

# TABLE OF SECTION CHANGES BY 1979 LEGISLATIVE SESSIONS

**Key:** A—Amendment of an existing section.  
R—Repeal of an existing section.  
T—Transfer of an existing section.  
Re—Reenactment of a section.  
N—Addition of a new section.  
Rn—Renumbering of a new section.  
X—Nullification of a previous action of the Legislature.  
\*—Becomes effective at a future time.

**Note:** If the entry does not show a session law chapter number, the action was performed by the reviser in the course of revision.

F. S. Sec. No.	Key	Session Law Ch. No.	F. S. Sec. No.	Key	Session Law Ch. No.	F. S. Sec. No.	Key	Session Law Ch. No.
11.075	A	79-400	13.9990	N	79-261	20.30(Cont.)	A	79-164
11.12	A	79-2		Rn as 450.54			A	79-239
11.13	A	79-215	14.057	A	79-190		A	79-243
	A	79-224	14.058	A	79-190	20.30 (5)	N	79-36
11.148	A	79-190	14.071	A	79-8		Rn fm	
11.149	A	79-164	14.201	N	79-190		455.0115 (2), (3)	
11.2421	A	79-281		Rn fm 14.25 (1)		20.30 (7)-(9)	N	79-36
11.2422	A	79-281	14.202	N	79-190	20.31	A	79-190
11.2424	A	79-281		Rn fm 14.25 (2)		20.315	A	79-7
11.2425	A	79-281	14.22	A	79-195		A	79-190
11.246	A	79-28	14.23	A	79-190	23.0112	A	79-190
11.44	A	79-190	14.25 (1)	N	79-190	23.0113	A	79-190
11.45	A	79-183		Rn as 14.201		23.0114	A	79-190
11.60	A	79-400		T fm 13.9964		23.0115	A	79-190
11.6105 (1)	T fm 476.264		14.25 (2)	N	79-190	23.012	A	79-190
11.6105 (2) (a)	N	79-116		Rn as 14.202		23.014	A	79-190
11.6105 (2) (b)	N	79-194		A	79-190	23.015	A	79-190
11.6105 (2) (c)	N	79-200		T fm 13.9965		23.016	A	79-190
11.6105 (2) (d)	N	79-202	14.25 (3)	A	79-190	23.0161	A	79-190
11.6105 (2) (e)	N	79-211		T fm 13.9966		23.017	A	79-190
11.6105 (2) (f)	N	79-225	14.25 (4)	T fm 13.9967		23.019	A	79-190
11.6105 (2) (g)	N	79-226	14.26	N	79-190	23.0191	A	79-190
11.6105 (2) (h)	N	79-227	15.0336	N	79-278	23.022	A	79-190
11.6105 (2) (i)	N	79-228		Rn fm 15.040		23.029	A	79-190
11.6105 (2) (j)	N	79-229	15.040	N	79-278	23.055	A	79-260
11.6105 (2) (k)	N	79-230		Rn as 15.0336		23.122	A	79-8
11.6105 (2) (l)	N	79-231	15.043	N	79-196	23.123	A	79-8
11.6105 (2) (m)	N	79-238	15.092	N	79-344	23.127	A	79-40
11.6105 (2) (n)	N	79-239	16.01	A	79-159	23.137	A	79-190
11.6105 (2) (o)	N	79-243	16.016	T fm 455.07		23.140	A	79-19
11.6105 (2) (p)	N	79-272	16.53	N	79-36	23.145	A	79-101
11.6105 (2) (q)	N	79-273	17.03	A	79-95	23.146	A	79-101
11.6105 (2) (r)	N	79-275	17.075	A	79-400		A	79-164
11.6105 (2) (s)	N	79-302	18.101	A	79-190	23.147	A	79-101
11.6105 (2) (t)	N	79-330	18.11	A	79-164	23.147 (3)-(8)	A	79-101
11.6105 (2) (u)	N	79-347		A	79-262		T to 23.148	
11.6105 (2) (v)	N	79-407		A	79-400	23.148	N	79-101
11.6105 (3)	N	79-240	20.04	A	79-3		Rn as 23.1491	
11.6115 (1) (a)	N	79-152		A	79-190		A	79-101
11.6115 (1) (b)	N	79-261	20.06	A	79-36		T fm	
11.6115 (2)	N	79-320	20.10	A	79-164		23.147 (3)-(8)	
11.6115 (3)	N	79-285	20.13	A	79-361	23.149	R	79-101
13.201	T to 23.161		20.15	A	79-222	23.1491	N	79-101
13.211	A	79-400	20.16	A	79-190		Rn fm 23.148	
	T to 23.162		20.17	A	79-7	23.151	A	79-190
13.221	T to 23.163			*A	79-40	23.152	A	79-3
13.231	A	79-190		A	79-308		A	79-8
13.241	T to 23.164	79-400	20.17 (5) (1)	T to			A	79-129
	T to 23.165		20.171	20.171 (4) (1)		23.154	A	79-190
13.251	T to 23.166			A	79-7	23.161	T fm 13.201	
13.261	A	79-400		A	79-40	23.162	T fm 13.211	
	T to 23.167			A	79-46	23.163	T fm 13.221	
13.9964	T to 14.25 (1)			A	79-190	23.164	T fm 13.231	
13.9965	T to 14.25 (2)	79-190	20.171 (4) (1)	T fm 20.17 (5) (1)		23.165	T fm 13.241	
13.9966	A	79-190	20.18	A	79-7	23.166	T fm 13.251	
	T to 14.25 (3)			A	79-10	23.167	T fm 13.261	
13.9967	T to 14.25 (4)			A	79-65	25.073	A	79-377
13.998	A	79-261		A	79-164	25.382	N	79-190
	T to 450.50			A	79-190	26.011	A	79-164
13.9981	A	79-190	20.19	A	79-261	26.031	A	79-413
	A	79-261		A	79-10	27.25	A	79-344
	T to 450.51			A	79-26	27.255	A	79-8
13.9982	A	79-7		A	79-190	27.33	A	79-190
	A	79-261		A	79-265	27.34	A	79-344
	T to 450.52			A	79-287	27.36	A	79-400
13.9984	R	79-261	20.21	A	79-10	27.37	A	79-400
13.9985	A	79-190	20.23	A	79-10	27.52	A	79-164
	R	79-261	20.24	A	79-10	27.55	A	79-190
13.9986	R	79-261		A	79-190	27.56	A	79-400
13.9987	R	79-261		A	79-324	27.562	A	79-400
13.9988	A	79-7	20.25	A	79-255	28.24	A	79-266
	A	79-261	20.261	A	79-10		A	79-400
	T to 450.53		20.28	A	79-10	28.2401	A	79-400
13.9989	A	79-261	20.29	A	79-10	30.09	A	79-246
	T to 450.55		20.30	A	79-36		A	79-400



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30.17	A	79-396	69.021	A	79-400	101.5612	A	79-400
30.231	A	79-396	73.071	A	79-400	101.62	A	79-400
30.232	R	79-396	75.05	A	79-183	101.64	A	79-365
30.31	A	79-8	78.065	A	79-396	101.68	A	79-400
30.49	A	79-190	83.49	A	79-400	101.73	A	79-400
34.021	A	79-411	83.770	A	79-400	102.012	A	79-400
34.022	A	79-413	83.776	A	79-400	102.061	A	79-400
34.041	A	79-400	83.780	A	79-164	102.071	A	79-400
35.01	A	79-413	83.784	A	79-400	102.131	A	79-400
35.02	A	79-413	83.801	N	79-404	102.141	A	79-400
35.03	A	79-413	83.802	N	79-404	102.166	A	79-400
35.04	A	79-413	83.802 (2)	N	79-404	102.168	A	79-400
35.042	A	79-413		Rn fm 83.808		103.071	A	79-190
35.043	N	79-413	83.803	N	79-404	103.091 (1), (4)	Re	79-164
35.05	A	79-413	83.804	N	79-404	103.121	A	79-400
35.06	A	79-312	83.805	N	79-404	104.061	A	79-400
	A	79-368	83.806	N	79-404	104.071	A	79-400
	A	79-413	83.807	N	79-404	104.29	A	79-400
39.01	A	79-164	83.808	N	79-404	104.31	A	79-190
	A	79-203		Rn as 83.802 (2)		105.031	A	79-365
39.03	A	79-164	85.031	A	79-244		A	79-400
39.031	A	79-8	88.011	A	79-383	105.041	A	79-400
	A	79-164	88.012	N	79-383	106.011	A	79-157
39.09	A	79-3	88.021	A	79-383		A	79-365
39.11	A	79-164	88.031	A	79-383		A	79-378
39.111	A	79-3	88.051	A	79-383	106.021	A	79-378
39.12	A	79-3	88.061	A	79-383		A	79-400
	A	79-164	88.065	N	79-383	106.03	A	79-365
39.41	A	79-164	88.071	R	79-383	106.04	A	79-400
39.411	A	79-164	88.081	A	79-383	106.06	A	79-378
40.01	*A	79-235	88.091	A	79-383	106.07	A	79-365
40.013	*A&T fm 40.07	79-235	88.101	A	79-383		A	79-378
40.015	*A	79-235	88.105	N	79-383		A	79-400
40.02	*A	79-235	88.111	A	79-383	106.07 (1) (a)	Re	79-164
40.03	*R	79-235	88.121	A	79-383	106.08	A	79-365
40.04	*R	79-235	88.131	A	79-383		A	79-378
40.05	*R	79-235	88.141	A	79-383	106.11	A	79-365
40.06	*R	79-235	88.151	A	79-383	106.125	N	79-365
40.061	*R	79-235	88.161	A	79-383	106.14	A	79-400
40.07	*A&T to 40.013	79-235	88.171	A	79-383	106.141	A	79-378
40.08	*R	79-235	88.181	A	79-383		A	79-400
40.09	*R	79-235	88.191	A	79-383	106.142	A	79-365
40.10	*R	79-235	88.193	N	79-383	106.15	A	79-400
40.101	*R	79-235	88.201	R	79-383	106.19	A	79-400
40.11	*R	79-235	88.211	A	79-383	106.22	A	79-365
40.13	*R	79-235	88.221	A	79-383	106.24	A	79-400
40.20	*R	79-235	88.231	A	79-383	106.26	A	79-400
40.22	*R	79-235	88.235	N	79-383	106.29	A	79-400
40.221	*N	79-235	88.241	A	79-383	110.022	A	79-8
40.225	*A&T fm 40.371	79-235	88.251	A	79-383		R	79-190
40.23	*A	79-235	88.255	N	79-383	110.041	R	79-190
40.231	*A	79-235	88.261	A	79-383	110.042	R	79-190
40.235	*N	79-235	88.271	A	79-383	110.051	A	79-8
40.24	*A	79-235	88.281	A	79-383		R	79-190
40.25	*R	79-235	88.291	A	79-383	110.055	R	79-190
40.27	*R	79-235	88.295	N	79-383	110.061	R	79-190
40.271	*A	79-235	88.297	N	79-383	110.0611	R	79-190
40.28	*R	79-235	88.311	A	79-383	110.071	R	79-190
40.29	*A	79-235	88.345	N	79-383	110.081	R	79-190
40.30	*A	79-235	88.351	A	79-383	110.092	R	79-190
40.31	*A	79-235	88.361	R	79-383	110.101	R	79-190
40.32	*A	79-235	88.371	A	79-383	110.105	N	79-190
40.33	*A	79-235	95.241	R	79-146	110.107	N	79-190
40.34	*A	79-235	97.021	A	79-157	110.109	N	79-190
40.35	*A	79-235		A	79-400		Rn fm 110.115	
40.36	*R	79-235	97.061	A	79-366	110.110	N	79-190
40.371	*A&T to 40.225	79-235	97.063	A	79-400		Rn as 110.123	
40.39	*R	79-235	97.102	A	79-365	110.111	R	79-190
40.40	*R	79-235	98.081	A	79-365	110.112	N	79-190
40.42	*R	79-235	98.212	A	79-400		Rn fm 110.120	
40.43	*R	79-235	98.251	A	79-365	110.113	N	79-190
43.41	A	79-99	99.012	A	79-391		Rn fm 110.145	
48.021	A	79-396	99.021	A	79-365	110.114	N	79-190
48.031	A	79-396		A	79-400		Rn fm 110.150	
48.081	A	79-396	99.092	A	79-400	110.115	N	79-190
48.151	A	79-164	99.095	A	79-400		Rn as 110.109	
48.195	N	79-396	100.041	A	79-164		N	79-190
55.01	A	79-387	100.111	A	79-400		Rn fm 110.155	
55.03	A	79-396	100.371	N	79-365	110.116	N	79-190
56.08	R	79-396	101.031	A	79-400		Rn fm 110.160	
56.23	A	79-396	101.051	A	79-366	110.117	N	79-190
56.275	N	79-396	101.141	A	79-400		Rn fm 110.130	
57.091	A	79-164	101.151	A	79-400	110.118	N	79-190
61.13	A	79-164	101.161	A	79-365		Rn fm 110.140	
61.1304	A	79-400	101.21	A	79-400	110.120	N	79-190
61.1306	A	79-400	101.22	A	79-400		Rn as 110.112	
61.191	A	79-164	101.27	A	79-400	110.121	N	79-306
63.172	A	79-369	101.47	A	79-400		Rn fm 112.202	
68.065	N	79-345	101.5609	A	79-400	110.122	N	79-190



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110.122(Cont.)	Rn fm 110.135	79-190	110.260(Cont.)	Rn as 110.233	79-190	120.63(3)	T to 120.633	79-299
110.123	N	79-190	110.301	N	79-190	120.633	T fm 120.63(3)	79-299
110.124	Rn fm 110.110	79-190	110.305	N	79-190	120.65	A	79-190
110.125	N	79-190	110.309	N	79-190	121.011	A	79-164
110.126	Rn fm 110.255	79-190	110.310	Rn fm 110.310	79-190	121.021	A	79-377
110.127	N	79-190	110.501	N	79-190	121.051	A	79-40
110.128	Rn fm 110.170	79-190	110.502	Rn as 110.309	79-190	121.052	A	79-375
110.129	N	79-190	110.503	T fm 112.901	79-190	121.061	A	79-377
110.130	Rn fm 110.175	79-190	110.504	A&T fm 112.902	79-190	121.081	A	79-164
110.131	N	79-190	110.505	T fm 112.903	79-190	121.091	A	79-375
110.132	Rn fm 110.180	79-190	111.06	T fm 112.904	79-190	121.125	A	79-40
110.133	N	79-190	111.07	T fm 112.905	79-190	121.135	A	79-183
110.134	Rn fm 110.165	79-190	111.071	R	79-139	122.03	A	79-40
110.135	N	79-190	111.072	A	79-139	122.07	A	79-164
110.136	Rn as 110.117	79-190	111.08	N	79-139	122.34	A	79-40
110.137	N	79-190	112.021	R	79-190	123.03	A	79-40
110.138	Rn as 110.122	79-190	112.031	A	79-7	123.09	R	79-163
110.139	N	79-190	112.041	A	79-190	123.20	R	79-163
110.140	Rn as 110.118	79-190	112.044	A	79-164	125.01	A	79-87
110.141	N	79-190	112.045	R	79-190	125.0103	A	79-400
110.142	Rn as 112.24	79-190	112.051	A	79-400	125.0104	A	79-359
110.143	N	79-190	112.055	R	79-190	125.0105	A	79-400
110.144	Rn as 110.114	79-190	112.061	A	79-190	125.011	Re	79-164
110.145	N	79-190	112.075	A	79-205	125.012	A	79-291
110.146	Rn as 110.115	79-190	112.08	A	79-303	125.0166	R	79-396
110.147	N	79-190	112.0801	A	79-412	125.31	A	79-119
110.148	Rn as 110.125	79-190	112.13	R	79-40	125.563	A	79-262
110.149	N	79-190	112.171	A	79-190	125.69	A	79-65
110.150	Rn as 110.126	79-190	112.19	A	79-40	129.02	A	79-379
110.151	N	79-190	112.191	A	79-337	136.02	A	79-400
110.152	Rn as 110.127	79-190	112.193	A	79-400	136.07	A	79-309
110.153	N	79-190	112.20	N	79-88	136.08	A	79-309
110.154	Rn as 110.207	79-190	112.202	R	79-40	145.021	A	79-309
110.155	N	79-190	112.216	N	79-190	145.09	A	79-190
110.156	Rn fm 110.210	79-190	112.24	Rn as 110.121	79-190	145.19	N	79-327
110.157	N	79-190	112.3145	N	79-190	153.95	A	79-190
110.158	Rn fm 110.215	79-190	112.362	A	79-306	154.03	A	79-400
110.159	N	79-190	112.61	N	159.26	159.27	A	79-101
110.160	Rn as 110.209	79-190	112.625	Rn fm 110.147	159.70	N	A	79-101
110.161	N	79-190	112.63	A	159.701	Rn as 159.701	N	79-101
110.162	Rn fm 110.235	79-190	112.64	A	159.702	N	Rn fm 159.70	79-101
110.163	N	79-190	112.65	N	159.703	N	Rn fm 159.71	79-101
110.164	Rn fm 110.230	79-190	112.656	A	159.704	N	Rn fm 159.72	79-101
110.165	N	79-190	112.658	A	159.705	N	Rn fm 159.73	79-101
110.166	Rn fm 110.240	79-190	112.66	N	159.706	N	Rn fm 159.74	79-101
110.167	N	79-190	112.665	A	159.707	N	Rn fm 159.75	79-101
110.168	Rn as 110.211	79-190	112.901	T to 110.501	159.708	N	Rn fm 159.76	79-101
110.169	N	79-190	112.902	A&T to 110.502	159.709	N	Rn fm 159.77	79-101
110.170	Rn fm 110.242	79-190	112.903	T to 110.503	159.7095	N	Rn fm 159.78	79-101
110.171	N	79-190	112.904	T to 110.504	159.71	N	Rn fm 159.79	79-101
110.172	Rn fm 110.245	79-190	112.905	T to 110.505	159.72	N	Rn as 159.702	79-101
110.173	N	79-190	114.04	A	159.73	N	Rn as 159.703	79-101
110.174	Rn as 110.213	79-190	114.05	A	159.74	N	Rn as 159.704	79-101
110.175	N	79-190	116.161	A	159.75	N	Rn as 159.705	79-101
110.176	Rn fm 110.248	79-190	119.011	A	159.76	N	Rn as 159.706	79-101
110.177	N	79-190	119.011(3) (c)	N	159.77	N	Rn as 159.707	79-101
110.178	Rn fm 110.250	79-190	119.07	Rn fm 119.07(3)	159.78	N	Rn as 159.708	79-101
110.179	N	79-190	119.07(3)	N	159.79	N	Rn as 159.709	79-101
110.180	Rn as 110.217	79-190	119.072	Rn as 119.011(3) (c)	161.0415	N	Rn as 159.7095	79-161
110.181	N	79-190	120.52	N	161.053	A	N	79-164
110.182	Rn as 110.215	79-190	120.53	A	161.141	A	A	79-233
110.183	N	79-190	120.54	A	161.161	A	A	79-233
110.184	Rn as 110.219	79-190	120.55	A				
110.185	N	79-190	120.565	A				
110.186	Rn as 110.221	79-190	120.57	A				
110.187	N	79-190	120.60	A				
110.188	Rn as 110.223	79-190	120.63	A				
110.189	N	79-190		A				
110.190	Rn as 110.225	79-190		A				
110.191	N	79-190		A				
110.192	Rn as 110.227	79-190		A				
110.193	N	79-190		A				
110.194	Rn as 110.124	79-190		A				
110.195	N	79-190		A				



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161.181	A	79-233	193.441	N	79-334	211.31	A	79-255
161.191	A	79-233	193.621	A	79-65	211.33	A	79-400
161.211	A	79-233	194.042	R	79-334	212.02	A	79-339
163.01	A	79-24	195.027	A	79-334		A	79-359
	A	79-31	195.073	A	79-334	212.03	A	79-359
	A	79-40	195.087	A	79-190	212.031	A	79-400
163.03	A	79-190		A	79-334	212.04	A	79-359
163.3164	A	79-190	196.0011	A&T to	79-334	212.08	A	79-164
163.3204	A	79-65		192.032 (4)			A	79-339
163.357	A	79-400		A	79-400		A	79-400
163.367	A	79-400	196.002	*N	79-332	212.15	A	79-359
163.385	A	79-400	196.011	A	79-164	213.05	A	79-9
163.387	A	79-400		A	79-334		A	79-164
163.400	A	79-400	196.031	*A	79-332	214.21	A	79-251
163.612	A	79-164	196.032	A	79-400	214.23	A	79-9
163.704	A	79-400	196.032 (5)	*N	79-332	214.71	A	79-164
163.7055	A	79-190		Rn as 196.033			A	79-326
163.708	A	79-400	196.033	*N	79-332	215.19	A	79-7
165.091	A	79-183		Rn fm 196.032 (5)			R	79-14
165.201	N	79-183	196.041	A	79-164	215.195	A	79-190
	Rn as 189.001		196.121	*A	79-332	215.22	A	79-36
165.202	N	79-183	196.141	*A	79-332		A	79-40
	Rn as 189.002		196.1975	A	79-400	215.25	A	79-190
165.203	N	79-183	196.1976	A	79-400	215.32	A	79-190
	Rn as 189.003		196.32	A	79-190	215.321	A	79-164
165.210	N	79-183	197.0121	N	79-334	215.37	A	79-36
	Rn as 189.004			Rn as 197.014			A	79-190
165.211	N	79-183	197.013	N	79-334	215.422	A	79-106
	Rn as 189.005			Rn fm 197.016 (5)		215.425	A	79-190
165.211 (4)-(7)	N	79-183	197.014	N	79-334	215.44	A	79-190
	Rn as 189.006			Rn fm 197.0121		215.47	A	79-262
165.212	N	79-183	197.016 (5)	N	79-334	215.48	A	79-164
	Rn as 189.007			Rn as 197.013		215.515	A	79-400
165.214	N	79-183	197.0164	A	79-334	216.011	A	79-190
	Rn as 189.008		197.0165	A	79-334	216.023	A	79-190
165.215	N	79-183	197.0166	A	79-334	216.031	A	79-222
	Rn as 189.009		197.0167	A	79-334	216.051	A	79-190
166.043	N	79-400	197.111	A	79-164	216.111	A	79-190
166.251	Re	79-164	197.271	A	79-334	216.141	A	79-400
166.261	A	79-119	197.281	A	79-334	216.181	A	79-190
	A	79-262	197.291	A	79-334	216.212	A	79-190
170.01	A	79-164	197.341	R	79-164	216.241	A	79-190
175.021	A	79-380	197.361	A	79-400	216.271	A	79-190
175.032	A	79-380	198.09	A	79-252	216.311	A	79-190
	A	79-388	198.35	A	79-34		A	79-222
175.041	A	79-380	199.025	R	79-164	216.345	A	79-190
	A	79-388	199.052	A	79-350	216.359	A	79-190
175.311	A	79-380	199.062	A	79-33	218.26 (5)	N	79-119
175.333	N	79-380	200.011	A	79-400		Rn as 286.043	
175.351	A	79-380	200.132	A	79-164	218.31	A	79-183
177.011	A	79-164	201.02	A	79-350	218.32	A	79-164
177.081	A	79-86	201.021	R	79-350		A	79-183
177.101	A	79-86	201.08	A	79-222	218.345	A	79-119
177.503	A	79-400		A	79-350		A	79-262
177.507	A	79-400		A	79-400	218.37	N	79-183
185.02	A	79-380	201.09	A	79-350	218.38	N	79-183
	A	79-388	201.15	A	79-350	218.50	N	79-183
185.03	A	79-380	201.21	A	79-350	218.501	N	79-183
	A	79-388	201.23	A	79-350	218.502	N	79-183
185.34	A	79-40		A	79-400	218.503	N	79-183
189.001	N	79-183	201.24	N	79-350	218.504	N	79-183
	Rn fm 165.201		205.171	A	79-400	219.075	A	79-262
189.002	N	79-183	205.193	N	79-120	220.03	A	79-35
	Rn fm 165.202			Rn fm 320.8286		220.222	A	79-326
189.003	N	79-183	205.195	N	79-228	220.25	N	79-250
	Rn fm 165.203			Rn fm 474.218		220.66	R	79-164
189.004	N	79-183	205.196	N	79-226	222.06	*R	79-396
	Rn fm 165.210		205.197	N	79-273	222.15	A	79-7
189.005	N	79-183	205.198	N	79-243	222.20	N	79-363
	Rn fm 165.211		205.199	N	79-243	228.051	*A	79-288
189.006	N	79-183	210.01	A	79-11	228.071	A	79-242
	Rn fm		210.02	A	79-11		A	79-385
	165.211 (4)-(7)		210.04	A	79-11	228.091	A	79-164
189.007	N	79-183		A	79-317	228.092	A	79-177
	Rn fm 165.212		210.05	A	79-11	228.195	A	79-354
189.008	N	79-183		A	79-317	229.053	A	79-222
	Rn fm 165.214		210.06	A	79-11	229.085	A	79-112
189.009	N	79-183	210.07	A	79-11	229.512	A	79-222
	Rn fm 165.215			A	79-317	229.514	A	79-190
192.001	A	79-334	210.08	A	79-11	229.551	A	79-222
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193.011	A	79-334	210.14	A	79-11		N	79-385
193.052	A	79-334	210.18	A	79-11		Rn as 231.086	
193.062	A	79-334	210.19	A	79-11	229.8055	A	79-261
193.072	A	79-334	210.20	A	79-11	229.808	A	79-164
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	A	79-151	230.776	A&T to 248.097	79-222	239.25	R	79-222
	A	79-184		Rn as 240.379		239.26	R	79-222
	A	79-256	231.02	A	79-12	239.27	R	79-222
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230.234	A	79-139	231.17	A	79-222	239.38	T to 248.102	79-222
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230.33	A	79-256		A	79-385	239.41	R	79-222
230.655	N	79-182	231.41	A	79-109	239.42	R	79-222
230.66	A	79-7	231.43	A	79-109	239.43	R	79-222
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	Rn as 240.303		232.01	*A	79-288	239.461	T to 248.1025	79-222
230.751	R	79-222	232.03	*A	79-288		Rn as 240.409	
230.752	R	79-222	232.031	*R	79-288	239.47	A&T to 248.103	79-222
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	Rn as 240.313		232.04	*A	79-288	239.49	R	79-222
230.7535	A&T to 248.063	79-222	232.06	*A	79-288	239.50	R	79-222
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230.754	A	79-140	232.09	*A	79-288	239.52	R	79-222
	A	79-150	232.13	A	79-12	239.53	A&T to 248.045	79-222
	A	79-286	232.17	A	79-7		Rn as 240.263	
	A&T to 248.064	79-222	232.246	A	79-20	239.54	A&T to 248.046	79-222
	Rn as 240.319			A	79-74		Rn as 240.264	
230.755	A&T to 248.066	79-222		A	79-213	239.55	T to 248.047	79-222
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230.756	T to 248.067	79-222	232.43	A	79-94		Rn as 240.266	
	Rn as 240.327		233.057	A	79-288		A	79-400
230.7565	T to 248.068	79-222	233.0671	A	79-222	239.57	T to 248.049	79-222
	Rn as 240.329		233.16	A	79-400		Rn as 240.267	
230.7566	T to 248.069	79-222	233.255	A	79-65	239.58	A	79-8
	Rn as 240.331			A	79-190		A&T to 248.051	79-222
230.757	T to 248.071	79-222	235.018	A	79-400		Rn as 240.268	
	Rn as 240.333		235.055	A	79-400		A	79-400
230.759	T to 248.072	79-222	235.19	A	79-400	239.581	T to 248.136	79-222
	Rn as 240.335		235.26	A	79-71		Rn as 240.132	
230.7591	T to 248.073	79-222		A	79-400	239.582	T to 248.137	79-222
	Rn as 240.337		235.31	A	79-400		Rn as 240.133	
230.7592	N	79-109	235.32	A	79-14		A	79-319
	Rn as 240.343		235.40	A	79-190	239.59	R	79-222
230.760	T to 248.074	79-222	235.41	A	79-190	239.60	R	79-222
	Rn as 240.339		235.42	A	79-190	239.61	R	79-222
230.7601	A&T to 248.075	79-222	235.4235	A	79-400	239.62	R	79-222
	Rn as 240.341		235.435	A	79-164	239.63	R	79-222
230.761	A	79-182		A	79-385	239.64	R	79-222
	T to 248.076	79-222	236.013	A	79-184	239.65	A&T to 248.138	79-222
	Rn as 240.345			A	79-213		Rn as 240.293	
230.762	T to 248.077	79-222		A	79-288	239.66	T to 248.104	79-222
	Rn as 240.347			A	79-385		Rn as 240.413	
230.763	A&T to 248.078	79-222	236.022	A	79-190	239.665	A&T to 248.139	79-222
	Rn as 240.349		236.023	N	79-373		Rn as 240.289	
230.764	T to 248.079	79-222	236.081	A	79-164	239.67	T to 248.105	79-222
	Rn as 240.351			A	79-190		Rn as 240.415	
230.765	T to 248.081	79-222		A	79-213	239.671	A&T to 248.106	79-222
	Rn as 240.353		236.0811	A	79-222	239.672	Rn as 240.417	79-222
230.7651	A&T to 248.083	79-222	236.0815	N	79-74		T to 248.107	79-222
	Rn as 240.355			A	79-213	239.68	Rn as 240.419	79-222
230.7661	T to 248.082	79-222		N	79-332		T to 248.108	79-222
	Rn as 240.357		236.25	A	79-184	239.681	Rn as 240.421	79-222
230.767	A	79-190	236.602	A	79-385		T to 248.109	79-222
	A&T to 248.084	79-222	237.211	A	79-288	239.682	Rn as 240.423	79-222
	Rn as 240.359		237.34	A	79-3		T to 248.110	79-222
230.768	T to 248.085	79-222	238.01	A	79-40	239.683	Rn as 240.425	79-222
	Rn as 240.363		238.06	A	79-169		T to 248.111	79-222
230.7681	T to 248.086	79-222	238.072	N	79-164	239.684	Rn as 240.427	79-222
	Rn as 240.323		238.09	A	78-629		A&T to 248.112	79-222
230.7685	T to 248.087	79-222	239.01	A	79-222	239.685	Rn as 240.429	79-222
	Rn as 240.365			R			A&T to 248.113	79-222
230.7686	R	79-222	239.011	T to 248.0131	79-222		Rn as 240.431	
230.769	T to 248.089	79-222		Rn as 240.521		239.686	A	79-400
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230.7695	T to 248.091	79-222		Rn as 240.523			Rn as 240.433	
	Rn as 240.367		239.013	T to 248.0133	79-222		A	79-400
230.771	A&T to 248.092	79-222	239.014	Rn as 240.525	79-222	239.687	T to 248.115	79-222
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230.772	T to 248.093	79-222	239.03	Rn as 240.527	79-222	239.69	T to 248.116	79-222
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230.773	T to 248.094	79-222		T to 248.135	79-222	239.70	T to 248.117	79-222
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239.715	T to 248.121	79-222		Rn as 240.213		240.331	Rn fm 248.069	
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239.72	A&T to 248.122	79-222	240.2011	N	79-222	240.335	Rn fm 248.072	
	Rn as 240.447			Rn fm 248.013		240.337	Rn fm 248.073	
239.725	T to 248.123	79-222	240.203	Rn fm 248.133		240.339	Rn fm 248.074	
	Rn as 240.449		240.205	N	79-222	240.341	Rn fm 248.075	
239.73	T to 248.124	79-222		Rn fm 248.018		240.343	N	79-109
	Rn as 240.451		240.207	Rn fm 248.019			Rn fm 230.7592	
239.735	A&T to 248.125	79-222	240.209	N	79-222	240.345	Rn fm 248.076	
	Rn as 240.453			Rn fm 248.021		240.347	Rn fm 248.077	
239.74	A&T to 248.126	79-222	240.2111	N	79-150	240.349	Rn fm 248.078	
	Rn as 240.455			Rn fm		240.351	Rn fm 248.079	
239.745	A&T to 248.127	79-222		240.042(2)(r)		240.353	Rn fm 248.081	
	Rn as 240.457		240.213	Rn fm 248.022		240.355	Rn fm 248.083	
239.75	T to 248.128	79-222	240.215	Rn fm 248.023		240.357	Rn fm 248.082	
	Rn as 240.459		240.217	Rn fm 248.0235		240.359	Rn fm 248.084	
239.755	A&T to 248.129	79-222	240.219	Rn fm 248.024		240.361	Rn fm 248.089	
	Rn as 240.461		240.221	A&T to 248.023	79-222	240.363	Rn fm 248.085	
239.76	A&T to 248.131	79-222		Rn as 240.215		240.365	Rn fm 248.087	
	Rn as 240.463		240.223	Rn fm 248.031		240.367	Rn fm 248.091	
239.77	A&T to 248.037	79-222	240.225	N	79-222	240.369	Rn fm 248.092	
	Rn as 240.237			Rn fm 248.025		240.371	Rn fm 248.093	
239.78	A&T to 248.038	79-222	240.227	N	79-222	240.373	Rn fm 248.094	
	Rn as 240.253			Rn fm 248.026		240.375	Rn fm 248.095	
239.79	R	79-222	240.229	N	79-222	240.377	Rn fm 248.096	
239.795	A&T to 248.141	79-222		Rn fm 248.034		240.379	Rn fm 248.097	
	Rn as 240.529		240.231	N	79-222	240.401	N	79-222
239.80	T to 248.132	79-222	240.233	Rn fm 248.027			Rn fm 248.099	
	Rn as 240.465			N	79-222	240.403	Rn fm 248.10	
240.001	R	79-222	240.235	Rn fm 248.028		240.405	Rn fm 248.101	
240.011	A	79-128		N	79-222	240.407	Rn fm 248.102	
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	Rn as 240.207		240.237	Rn fm 248.037		240.411	Rn fm 248.103	
240.021	R	79-222	240.239	Rn fm 248.039		240.413	Rn fm 248.104	
240.031	A	79-164	240.241	Rn fm 248.041		240.415	Rn fm 248.105	
	A&T to 248.133	79-222	240.243	Rn fm 248.042		240.417	Rn fm 248.106	
	Rn as 240.203		240.245	Rn fm 248.043		240.419	Rn fm 248.107	
240.042	A	79-65	240.247	Rn fm 248.044		240.421	Rn fm 248.108	
	A	79-164	240.253	Rn fm 248.038		240.423	Rn fm 248.109	
	R	79-222	240.257	N	79-222	240.425	Rn fm 248.110	
240.042(2)(r)	N	79-150	240.261	N	79-222	240.427	Rn fm 248.111	
	Rn as 240.2111			Rn fm 248.036		240.429	Rn fm 248.112	
240.0421	A&T to 248.154	79-222	240.263	Rn fm 248.045		240.431	Rn fm 248.113	
	Rn as 240.297		240.264	Rn fm 248.046		240.433	Rn fm 248.114	
240.043	R	79-222	240.265	Rn fm 248.047		240.435	Rn fm 248.115	
240.044	R	79-222	240.266	Rn fm 248.048		240.437	Rn fm 248.116	
240.0445	R	79-222	240.267	Rn fm 248.049		240.439	Rn fm 248.117	
240.045	R	79-222	240.268	Rn fm 248.051		240.441	Rn fm 248.118	
240.046	R	79-222	240.271	N	79-222	240.443	Rn fm 248.119	
240.047	R	79-222		Rn fm 248.052		240.445	Rn fm 248.121	
240.052	A	79-182	240.273	N	79-222	240.447	Rn fm 248.122	
	R	79-222		Rn fm 248.134		240.449	Rn fm 248.123	
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240.082	A	79-190	240.281	Rn fm 248.0249		240.455	Rn fm 248.126	
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240.095	A	79-190	240.285	N	79-222	240.461	Rn fm 248.129	
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240.103	A&T to 248.035	79-222	240.295	Rn fm 248.153		240.509	Rn fm 248.148	
	Rn as 240.291		240.297	Rn fm 248.154		240.511	Rn fm 248.149	
	A	79-400	240.299	Rn fm 248.032		240.513	Rn fm 248.151	
240.105	N	79-222	240.301	N	79-222	240.515	Rn fm 248.143	
	Rn fm 248.011			Rn fm 248.053		240.517	Rn fm 248.142	
240.111	R	79-222	240.303	Rn fm 248.054		240.519	Rn fm 248.152	
240.115	N	79-222	240.305	N	79-222	240.521	Rn fm 248.0131	
	Rn fm 248.098			Rn fm 248.055		240.523	Rn fm 248.0132	
240.125	N	79-222	240.307	N	79-222	240.525	Rn fm 248.0133	
	Rn fm 248.0981			Rn fm 248.056		240.527	Rn fm 248.0134	
240.132	Rn fm 248.136		240.309	N	79-222	240.529	Rn fm 248.141	
240.133	Rn fm 248.137			Rn fm 248.057		240.531	N	79-197
240.135	Rn fm 248.135		240.311	N	79-222		Rn fm 240.0952	
240.141	A&T to 248.153	79-222		Rn fm 248.058		241.08	R	79-222
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240.161	T to 248.0235	79-222	240.315	N	79-222	241.096	R	79-222
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240.171	T to 248.024	79-222	240.317	Rn fm 248.063		241.097	R	79-222
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240.181	T to 248.031	79-222	240.321	N	79-222	241.10	T to 248.142	79-222
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241.19	T to 248.145	79-222	246.223	A	79-48	248.054	T fm 230.741	79-222
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241.195	A	79-190		Rn as 240.2011		248.056	N	79-222
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	Rn as 240.507			Rn as 240.521		248.057	N	79-222
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	Rn as 240.511			Rn as 240.525		248.061	A&T fm 230.753	79-222
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241.45	R	79-222		Rn as 240.219		248.069	T fm 230.7566	79-222
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241.477	R	79-222		Rn as 240.225		248.074	T fm 230.760	79-222
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241.491	R	79-222		Rn as 240.227		248.077	T fm 230.762	79-222
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241.621	A&T to 248.041	79-222		Rn as 240.231		248.078	A&T fm 230.763	79-222
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310.171	A	79-9	325.11	A	79-324		A	79-400
315.05	A	79-401	325.13	A	79-324	372.57 (20)	N	79-285
316.006	A	79-246	325.14	A	79-47		Rn as 372.5712	
316.0746	*N	79-376		A	79-324	372.5712	N	79-285
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316.0747	*N	79-376		R	79-324	372.5714	N	79-285
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316.193	A	79-408	325.19 (7)	Re	79-164	372.575	R	79-199
316.1945	A	79-403	325.195	N	79-324	372.72	A	79-217
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316.1956	*A	79-82	325.24	A	79-324	372.9905	A	79-400
316.1964	*A	79-82	325.25	A	79-324	373.012	A	79-65
316.1967	A	79-403	325.26	A	79-324	373.016	A	79-65
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316.515	A	79-99	334.03	A	79-357		A	79-164
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464.105	R	79-225		R	79-226	466.033	N	79-330
464.106	R	79-225	465.14	R	79-226		Rn as	466.034
464.111	R	79-225	465.15	R	79-226		N	79-330
464.121	R	79-225	465.16	R	79-226		Rn fm	466.034
464.122	R	79-225	465.171	R	79-226	466.034	N	79-330
464.131	R	79-225	465.18	R	79-226		Rn as	466.033
464.151	R	79-225	465.185	N	79-106		N	79-330
464.152	R	79-225	465.19	R	79-226		Rn fm	466.033
464.171	R	79-225	465.20	R	79-226	466.035	N	79-330
464.18	R	79-225	465.21	R	79-226	466.036	N	79-330
464.19	R	79-225	465.22	R	79-226	466.037	N	79-330
464.21	R	79-225	465.23	R	79-226	466.038	N	79-330
464.22	R	79-225	465.24	R	79-226	466.039	N	79-330
464.24	R	79-225	465.30	R	79-226	466.04	R	79-330
464.25	R	79-225	465.305	R	79-226	466.05	R	79-330
465.001	N	79-226	465.31	R	79-226	466.06	R	79-330
465.002	N	79-226	466.001	N	79-330	466.07	R	79-330
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465.006	Rn fm	465.015		Rn fm	466.002	466.14	R	79-330
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465.007	N	79-226	466.004	N	79-330	466.16	R	79-330
	Rn fm	465.005	(1) (a), (b)	Rn fm	466.005	466.17	R	79-330
465.008	N	79-226	466.005	N	79-330	466.18	R	79-330
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466.25	R	79-330	468.1665	N	79-227	470.013	N	79-231
466.26	R	79-330		Rn as	468.1675		Rn as	470.015
466.261	R	79-330		N	79-227		N	79-231
466.27	R	79-330		Rn fm	468.1655		Rn fm	470.012
466.28	R	79-330	468.167	R	79-227	470.014	N	79-231
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466.30	R	79-330		Rn as	468.1685		N	79-231
466.31	R	79-330		N	79-227		Rn fm	470.0101
466.33	R	79-330		Rn fm	468.1665	470.015	N	79-231
466.331	R	79-330	468.168	R	79-227		Rn as	470.017
466.34	R	79-330	468.1685	N	79-227		N	79-231
466.35	R	79-330		Rn as	468.1695		Rn fm	470.013
466.36	R	79-330		N	79-227	470.016	N	79-231
466.37	R	79-330		Rn fm	468.1675		Rn as	470.018
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466.39	R	79-330	468.1695	N	79-227	470.017	Rn fm	470.014
466.40	R	79-330		Rn fm	468.1685		N	79-231
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466.42	R	79-330	468.1705	N	79-227		N	79-231
466.43	R	79-330	468.171	R	79-227	470.018	Rn fm	470.015
466.44	R	79-330	468.1715	N	79-227		N	79-231
466.45	R	79-330	468.172	R	79-227		Rn as	470.021
466.46	R	79-330	468.1725	N	79-227		N	79-231
466.47	R	79-330	468.173	R	79-227		Rn fm	470.016
466.48	R	79-330	468.1735	N	79-227	470.019	N	79-231
466.50	R	79-330		Rn as	468.1745		Rn as	470.022
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466.52	R	79-330		Rn fm	468.1755		Rn fm	470.017
466.521	R	79-330	468.174	R	79-227	470.02	R	79-231
466.53	R	79-330	468.1745	N	79-227	470.021	N	79-231
466.54	R	79-330		Rn as	468.1755		Rn as	470.023
466.55	R	79-330		N	79-227		N	79-231
466.56	R	79-330	468.175	Rn fm	468.1735	470.022	Rn fm	470.018
466.57	R	79-330	468.1755	R	79-227		N	79-231
466.58	R	79-330		N	79-227		Rn as	470.024
466.59	R	79-330		Rn as	468.1735		N	79-231
467.01	R	79-273		N	79-227		Rn fm	470.019
467.02	R	79-273	468.176	Rn fm	468.1745	470.023	N	79-231
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467.06	R	79-273		Rn as	468.1645	470.024	Rn fm	470.021
467.07	R	79-273		N	79-227		N	79-231
467.08	R	79-273	468.1775	Rn fm	468.1775		Rn as	470.031
467.09	R	79-273		N	79-227		N	79-231
467.10	R	79-273		Rn as	468.1765	470.025	Rn fm	470.022
467.11	R	79-273		N	79-227		N	79-231
467.12	R	79-273	468.178	Rn fm	468.1785		Rn as	470.036
467.13	R	79-273	468.1785	R	79-227		N	79-231
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467.17	R	79-273	468.182	R	79-272		N	79-231
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467.19	R	79-273	468.1831	R	79-272		N	79-231
468.101	R	79-200	468.184	R	79-272		Rn as	470.034
468.102	R	79-200	468.185	R	79-272		N	79-231
468.103	R	79-200	468.186	R	79-272	470.028	Rn fm	470.034
468.104	R	79-200	468.187	A	79-164		N	79-231
468.1045	R	79-200		R	79-272		Rn as	470.035
468.105	R	79-200	468.188	R	79-272		N	79-231
468.106	R	79-200	468.189	R	79-272	470.029	Rn fm	470.035
	A	79-400	468.190	R	79-272		N	79-231
468.107	R	79-200	468.191	R	79-272		Rn as	470.038
468.108	R	79-200	468.192	R	79-272		N	79-231
468.109	R	79-200	468.193	R	79-272	470.03	Rn fm	470.033
468.110	R	79-200	468.194	R	79-272	470.031	R	79-231
468.111	R	79-200	468.308	A	79-80		N	79-231
468.112	R	79-200	470.001	R	79-231		Rn as	470.037
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468.113	R	79-200	470.002(2)	N	79-231	470.032	Rn fm	470.024
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470.06	R	79-231	471.41	R	79-243	473.321	N	79-202
470.07	R	79-231	471.42	R	79-243	473.322	N	79-202
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470.10	R	79-231	472.001	N	79-243	473.325	N	79-202
470.11	R	79-231	472.003	N	79-243	474.011	R	79-228
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470.112	R	79-231	472.007	N	79-243	474.031	R	79-228
470.113	R	79-231	472.009	N	79-243	474.041	R	79-228
470.114	R	79-231	472.01	N	79-243	474.051	R	79-228
470.12	R	79-231	472.011	N	79-243	474.061	R	79-228
470.13	R	79-231	472.013	N	79-243	474.071	R	79-228
470.14	R	79-231	472.015	N	79-243	474.081	R	79-228
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470.18	R	79-231	472.021	N	79-243	474.121	R	79-228
470.19	R	79-231	472.023	N	79-243	474.131	R	79-228
470.20	R	79-231	472.025	N	79-243	474.14	R	79-228
470.21	R	79-231	472.027	N	79-243	474.141	R	79-228
470.22	R	79-231	472.029	N	79-243	474.15	R	79-228
470.23	R	79-231	472.03	R	79-243	474.16	R	79-228
470.235	R	79-231	472.031	N	79-243	474.17	R	79-228
470.24	R	79-231	472.033	N	79-243	474.18	R	79-228
470.26	R	79-231	472.035	N	79-243	474.19	R	79-228
470.28	R	79-231	472.037	N	79-243	474.20	R	79-228
470.29	R	79-231	472.039	N	79-243	474.201	N	79-228
470.30	R	79-231	472.04	R	79-243	474.202	N	79-228
470.31	R	79-231	472.05	R	79-243	474.203	N	79-228
470.32	R	79-231	472.06	R	79-243	474.204	N	79-228
470.34	R	79-231	472.07	R	79-243	474.205	N	79-228
470.35	R	79-231	472.08	R	79-243	474.206	N	79-228
471.001	N	79-243	472.09	R	79-243	474.207	N	79-228
471.003	N	79-243	472.10	R	79-243	474.209	N	79-228
471.005	N	79-243	472.11	R	79-243	474.21	R	79-228
471.007	N	79-243	472.12	R	79-243	474.211	N	79-228
471.009	N	79-243	472.13	R	79-243	474.212	N	79-228
471.01	R	79-243	472.14	R	79-243	474.213	N	79-228
471.011	N	79-243	473.011	R	79-202	474.214	N	79-228
471.013	N	79-243	473.021	R	79-202	474.215	N	79-228
471.015	N	79-243	473.03	R	79-202	474.216	N	79-228
471.017	N	79-243	473.04	R	79-202		Rn as	474.217
471.019	N	79-243	473.05	R	79-202		N	79-228
471.02	R	79-243	473.06	R	79-202		Rn fm	474.217
471.021	N	79-243	473.07	A	79-164	474.217	N	79-228
471.023	N	79-243		R	79-202		Rn as	474.216
471.025	N	79-243	473.08	R	79-202		N	79-228
471.027	N	79-243	473.09	R	79-202		Rn fm	474.216
471.03	R	79-243	473.10	R	79-202	474.218	N	79-228
471.031	N	79-243	473.111	R	79-202		Rn as	205.195
471.033	N	79-243	473.121	R	79-202		N	79-228
471.035	N	79-243	473.131	R	79-202		Rn fm	474.221
471.037	N	79-243	473.141	R	79-202	474.219	N	79-228
471.039	N	79-243	473.151	R	79-202		Rn as	705.19
471.04	R	79-243	473.161	R	79-202		N	79-228
471.05	R	79-243	473.171	R	79-202	474.22	R	79-228
471.06	R	79-243	473.181	R	79-202	474.221	N	79-228
471.061	R	79-243	473.191	R	79-202		Rn as	474.218
471.07	R	79-243	473.201	R	79-202	474.23	R	79-228
471.08	R	79-243	473.21	R	79-202	474.24	R	79-228
471.09	R	79-243	473.22	R	79-202	474.25	R	79-228
471.10	R	79-243	473.231	R	79-202	474.26	R	79-228
471.11	R	79-243	473.241	R	79-202	474.27	R	79-228
471.12	R	79-243	473.251	R	79-202	474.28	R	79-228
471.13	R	79-243	473.261	R	79-202	474.29	R	79-228
471.14	R	79-243	473.271	R	79-202	474.30	R	79-228
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471.21	R	79-243	473.304	N	79-202	474.39	R	79-228
471.22	R	79-243	473.305	N	79-202	474.40	R	79-228
471.23	R	79-243	473.306	N	79-202	474.41	R	79-228
471.24	R	79-243	473.307	N	79-202	474.42	R	79-228
471.25	R	79-243	473.308	N	79-202	474.43	R	79-228
471.26	R	79-243	473.309	N	79-202	474.44	R	79-228
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474.48	R	79-228	475.4835	A	79-239		Rn as 498.047	
474.49	R	79-228	475.484	A	79-239	478.161	XR	79-347
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475.04	A	79-239	476.04	R	79-165	478.211	XR	79-347
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475.05	A	79-239	476.06	R	79-165		Rn as 498.059	
	XR	79-239	476.061	R	79-165	478.221	XR	79-347
475.06	R	79-239	476.065	R	79-165		A&T to 478.353	79-347
475.07	R	79-239	476.07	R	79-165		Rn as 498.025	
475.08	R	79-239	476.071	R	79-165	478.23	XR	79-347
475.09	R	79-239	476.072	R	79-165		A&T to 478.352	79-347
475.10	A	79-239	476.08	R	79-165		Rn as 498.023	
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475.11	R	79-239	476.10	R	79-165		A&T to 478.358	79-347
475.12	R	79-239	476.11	R	79-165		Rn as 498.037	
475.125	N	79-239	476.12	R	79-165	478.25	XR	79-347
475.13	R	79-239	476.13	R	79-165		A&T to 478.354	79-347
475.131	R	79-239	476.14	R	79-165		Rn as 498.029	
475.14	R	79-239	476.16	R	79-165	478.26	XR	79-347
475.15	A	79-239	476.17	R	79-165		A&T to 478.361	79-347
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475.16	R	79-239	476.18	R	79-165	478.27	XR	79-347
475.17	A	79-239	476.19	R	79-165		A&T to 478.351	79-347
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475.18	R	79-239	476.22	R	79-165		A&T to 478.366	79-347
475.181	N	79-239	476.221	R	79-165		Rn as 498.057	
475.182	N	79-239	476.222	R	79-165	478.30	R	79-347
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475.19	R	79-239	476.24	R	79-165		A&T to 478.362	79-347
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475.21	R	79-239	476.254	Re	79-164	478.33	XR	79-347
475.22	A	79-239	476.26	R	79-165		A&T to 478.360	79-347
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475.23	A	79-239	476.27	R	79-165	478.34	A	79-4
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475.24	A	79-239	476.29	R	79-165		A&T to 478.348	79-347
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475.25	A	79-239	476.31	R	79-165	478.341	A&T fm 478.011	79-347
	XR	79-239	476.32	R	79-165		Rn as 498.001	
475.26	R	79-239	476.34	R	79-165	478.342	A&T fm 478.015	79-347
475.28	A	79-239	477.035	*N	79-201		Rn as 498.003	
	XR	79-239	477.038	A	79-164	478.343	A&T fm 478.021	79-347
475.29	R	79-239	478.011	XR	79-347		Rn as 498.005	
475.31	A	79-239		T to 478.341	79-347	478.344	A&T fm 478.041	79-347
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475.32	R	79-239	478.015	XR	79-347	478.345	A&T fm 478.061	79-347
475.34	R	79-239		A&T to 478.342	79-347		Rn as 498.009	
475.37	A	79-239		Rn as 498.003		478.346	A&T fm 478.081	79-347
	XR	79-239	478.021	XR	79-347		Rn as 498.011	
475.38	A	79-239		A&T to 478.343	79-347	478.347	A&T fm 478.091	79-347
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475.41	A	79-239		Rn as 498.007		478.349	A&T fm 478.131	79-347
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475.42	A	79-239		A&T to 478.359	79-347	478.35	N	79-347
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475.43	A	79-239		Rn as 498.009		478.352	A&T fm 478.23	79-347
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475.451	A	79-164		A&T to 478.346	79-347	478.353	A&T fm 478.221	79-347
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551.031	A	79-4	570.54	A	79-122	604.30	XR	79-238
551.071	A	79-300	570.542	T fm 570.281	79-37	607.034	A	79-384
	*R	79-300	570.543	T fm 570.282	79-37	607.037	A	79-384
551.12	A	79-4	570.544	T fm 570.283	79-37	607.224	A	79-400
551.15	A	79-4	570.545	T fm 570.284	79-37	607.324	A	79-384
552.092	A	79-8	570.548	N	79-37	607.357	A	79-384
	A	79-174	570.549	N	79-37	615.18	A	79-9
552.22	A	79-400	576.011	A	79-204	616.265	A	79-11
553.11	A	79-12	576.055	N	79-204	617.532	A	79-164
553.19	A	79-7	576.061	A	79-204	618.221	A	79-9
	A	79-40	580.031	A	79-66		A	79-400
553.35	A	79-152	580.071	A	79-66	619.04	A	79-9
553.36	A	79-152	580.081	A	79-66	620.07	A	79-279
553.37	A	79-152	580.091	A	79-66	620.27	A	79-164
553.38	A	79-152	580.101	A	79-66	621.05	A	79-9
553.39	A	79-152	580.111	A	79-66	621.07	A	79-9
553.40	A	79-152	580.112	A	79-66	623.12	A	79-153
553.41	A	79-152	580.121	A	79-66	624.311	A	79-52
553.42	A	79-152	580.131	A	79-66	624.408	A	79-72
553.73	A	79-400	580.141	A	79-66	624.435	A	79-40
553.77	A	79-152	581.011	A	79-158	624.509	*A	79-247
553.89	A	78-626	581.031	A	79-158	624.602	A	79-40
	A	79-400	581.083	A	79-158	624.603	A	79-40
553.903	A	78-625	581.091	A	79-158	624.605	A	79-40
553.904	A	78-625	581.101	A	79-158		A	79-156
	A	79-267	581.111	A	79-158	624.609	A	79-40
553.905	A	78-625	581.131	A	79-158	625.091	A	79-40
	A	79-267	581.142	A	79-158	625.121	A	79-356
553.906	A	78-625	581.152	R	79-158	625.305	A	79-245
	A	79-267	581.161	A	79-158	626.221	A	79-40
555.01	A	79-400	581.181	A	79-158	626.241	A	79-40
555.08	A	79-400	581.185	A	79-164	626.321	A	79-156
559.80	N	79-374	581.188	N	79-238	626.740	A	79-400
559.801	N	79-374	581.211	A	79-158	626.741	A	79-40
559.803	N	79-374	585.155	A	79-102	626.869	A	79-40
559.805	N	79-374	588.13	A	79-400	626.916	A	79-40
559.807	N	79-374	589.07	A	79-255	626.9541	A	79-289
559.809	N	79-374	590.02	A	79-91	626.9551	A	79-289
559.811	N	79-374		A	79-190		A	79-400
559.813	N	79-374		A	79-400	626.9705	A	79-171
559.815	N	79-374	592.02	T to 258.001		626.989	A	79-81
561.01	A	79-4	592.06	T to 258.004			A	79-400
561.051	A	79-11	592.07	T to 258.007		627.021	A	79-40
561.11	A	79-11	592.071	T to 258.001		627.062	A	79-40
561.14	A	79-163	592.072	T to 258.014		627.072	A	79-40
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561.221	A	79-54	592.074	T to 258.021		627.092	A	79-40
561.25	A	79-349	592.075	T to 258.024		627.093	N	79-40
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627.573	A	79-179		Rn fm 647.11		672.316	A	79-141
627.574	N	79-179	642.034	N	79-103	672.702	*A	79-398
627.575	N	79-179		Rn fm 647.12		674.106	A	79-164
627.601	A	79-40	642.036	N	79-103	675.116	*A	79-398
627.6111	A	79-175		Rn fm 647.13		679.102	*A	79-398
627.622	A	79-40	642.038	N	79-103	679.103	*A	79-398
627.623	A	79-40		Rn fm 647.14		679.104	*A	79-398
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627.786	A	79-16		Rn as 642.015		679.401	*A	79-398
627.826	A	79-164	647.04	N	79-103	679.402	*A	79-398
628.431	A	79-9		Rn as 642.017		679.403	*A	79-398
629.071	A	79-40	647.05	N	79-103	679.404	*A	79-398
629.401	N	79-394		Rn as 642.019		679.405	*A	79-398
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631.397	A	79-400		Rn as 642.021		679.407	*A	79-398
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631.61	A	79-40		Rn as 642.025		679.504	*A	79-398
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631.712	N	79-189		Rn as 642.027		680.101	*A	79-398
631.713	N	79-189	647.10	N	79-103	680.104	A	79-164
631.714	N	79-189		Rn as 642.029		680.108	*N	79-398
631.715	N	79-189	647.11	N	79-103	680.109	*N	79-398
631.716	N	79-189		Rn as 642.032		680.110	*N	79-398
631.717	N	79-189	647.12	N	79-103		Rn as 680.11	
631.718	N	79-189		Rn as 642.034		680.11	*N	79-398
631.719	N	79-189	647.13	N	79-103		Rn fm 680.110	
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631.722	N	79-189	647.14	N	79-103	683.011	R	79-190
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631.724	N	79-189	647.15	N	79-103	687.03	A	79-274
631.725	N	79-189		Rn as 642.041			A	79-400
631.726	N	79-189	647.16	N	79-103	687.04	A	79-90
631.727	N	79-189		Rn as 642.043		687.11	A	79-90
631.728	N	79-189	647.17	N	79-103		R	79-274
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631.734	N	79-189		Rn as 642.049			Rn fm 474.219	
631.735	N	79-189	651.011	A	79-164	713.31	A	79-400
633.081	A	79-352	651.015	A	79-400	713.78	A	79-206
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634.323	A	79-400	651.095	A	79-400	715.05	A	79-271
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639.10	A	79-164	657.061	A	79-400	717.195	A	79-400
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639.11	A	79-400	658.10	A	79-400	718.104	A	79-314
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	A	79-314	768.50	A	79-400	917.011	N	79-341
718.402	A	79-314	768.54	A	79-178	917.012	N	79-341
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719.402	A	79-284	806.111	A	79-108		R	79-341
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719.504	A	79-284	812.037	A	79-400	917.22	R	79-341
731.111	A	79-68	812.14	A	79-163	917.225	R	79-341
731.302	A	79-400		A	79-294	917.24	R	79-341
732.504	A	79-400	817.234	A&T fm 627.7375	79-81	917.25	R	79-341
732.505	A	79-400	817.43	A	79-164	917.31	R	79-341
733.302	A	79-343	817.45	A	79-164	917.32	R	79-341
733.304	A	79-343	817.52	A	79-164	918.017	R	79-164
733.602	A	79-400	817.562	N	79-113	918.11	R	79-336
733.612	A	79-400	823.14	N	79-61	918.15	A&T to 394.902	79-336
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733.817	A	79-400		Rn as 918.17			A	79-400
734.103	R	79-221	827.07	A	79-164	918.15 (4)	N	79-336
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737.3055	N	79-343	832.06	A	79-11	921.16	A	79-3
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737.308	N	79-343	839.07	R	79-163		A	79-310
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738.04	A	79-400	843.01	A	79-3	921.21	A	79-3
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738.07	A	79-400	843.02	A	79-3	922.11	A	79-3
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743.065	N	79-302	860.05	A	79-360	941.23	A	79-3
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744.301	A	79-221	860.091	N	79-360	943.12	A	79-400
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744.444	A	79-400	893.03	A	79-325	943.465	N	79-218
744.447	A	79-221	893.04	A	79-12	944.02	A	79-3
744.457	A	79-221	893.09	A	79-8	944.023	A	79-3
767.03	A	79-315	893.12	A	79-164	944.025	A	79-3
767.05	N	79-315	893.13	A	79-1	944.026	A	79-3
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# PREFACE

## THE CONTINUOUS REVISION PROGRAM

Florida long followed the practice of publishing the entire body of general law in force after each regular biennial legislative session. With the advent of annual sessions following the adoption of the Florida Constitution as revised in 1968, this practice was necessarily altered. Thereafter, the *Florida Statutes* has been published biennially following each odd-year regular session, and a Supplement is published following each even-year regular session. The Supplement contains the full text of each section amended or added during that session, together with the catchlines of sections repealed or transferred or otherwise affected. Despite this change in practice, the principal advantage of the Florida system remains: It provides an up-to-date, authoritative statement of the general law for use by practitioners, judges, legislators, and other interested persons. The following paragraphs identify and explain the principal attributes and consequences of the Florida program that should be of interest to all who use the *Florida Statutes*.

**Biennial adoption of the Florida Statutes.**—A vitally important part of the continuous statutory revision program is the enactment of the biennial adoption act during each odd-year regular session. This act amends ss. 11.2421, 11.2422, 11.2424, and 11.2425. It prospectively adopts as an official document the edition of the *Florida Statutes* to be published following that session. Perhaps more important, it adopts as the official statute law of the state those portions of that edition that are carried forward from the preceding regular edition.

As a result of the biennial adoption act, together with the standing provision of s. 11.242(5)(c) directing that the laws of a general and permanent nature enacted during the current session be meshed into the standing law and published as part of the *Florida Statutes*, each regular edition of the *Florida Statutes* contains matter having different evidential consequences: The portions carried forward from the preceding regular edition are the official law of the state and therefore constitute the best evidence of what the law is. The portions resulting from sessions occurring subsequent to the preceding odd-year regular session (i.e., the preceding even-year session, the current odd-year session, and any special sessions) are made prima facie evidence of the law in all courts of the state. Of course, during the period a provision is characterized as prima facie evidence, the enrolled act stands as the best evidence of the law as to the matter dealt with and would prevail in event of conflict.

**Some consequences.**—The Florida continuous statutory revision system has some significant consequences. For one, the task of the statutory researcher is greatly simplified in that he need examine only the current edition of the *Florida Statutes*, including the Supplement, if any, and the session law volumes for the period since publication of the preceding regular edition. Any law of a "general and permanent nature" enacted prior to that time which does not appear in the current edition stands repealed, both by the logic of the system and by the operation of s. 11.2422. See *National Bank of Jacksonville v. Williams*, 38 Fla. 305, 20 So. 931 (1896).

Another beneficial result of the Florida system is that the biennial adoption of the *Florida Statutes* is viewed as curing title defects that existed in the act as originally passed. See *State v. Lee*, 22 So.2d 804 (Fla. 1945). Thus, general legislation remains susceptible to attack on this ground only during the period between its original enactment and its subsequent adoption as the official law of the state two years or three years later, depending upon whether the original enactment occurred in an odd or even year.

**Construction of acts enacted during the same session.**—It occasionally happens that the Legislature enacts two or more bills that relate to the same provision of the *Florida Statutes*. In such cases, the editors must find the legislative intent from the best evidence available. When the provisions of two amendatory acts are not mutually inconsistent, the language is meshed and full effect is given to both acts. On the other hand, when the provisions of two amendatory statutes are in irreconcilable conflict, the editors apply the usual canons of statutory construction in determining which version to publish, inserting a note calling attention to the conflict and setting forth the alternative text pending resolution of the conflict by further legislative action. See also s. 1.04, F.S.



When an act purports to amend a section of the *Florida Statutes* which an earlier act has repealed, the course to be followed depends on whether the substance of the amendatory act makes sense standing alone. If it does not, it is omitted along with the repealed provision; if it does make sense standing alone, the amended or added portion of the amendatory act is published as a new enactment. Of course, if an act repeals a provision which an earlier act purported to amend, the amended provision is deleted.

## ADDITIONAL FEATURES OF THE FLORIDA STATUTES

**Arrangement of chapters and titles.**—The object of any arrangement of compiled statutes is to facilitate the finding of the law. There are two methods of arrangement in general use in the United States: The "logical," or "topical," grouping of related subjects, as used in many digests; and the "alphabetical" arrangement, as used in legal encyclopedias. Florida has followed the majority of states in adopting the former of these arrangements.

The Numerical Title and Chapter Index printed in the front part of Volumes 1, 2, and 3 provides a quick reference to the chapters grouped under the logical title system. It lists groups of related subjects in a general subject field and lists in numerical order all chapters assigned. Some chapters have been divided into parts based on logical organization or related subject matter.

**Numbering system.**—The sections of the *Florida Statutes* are identified by decimal numbers. Having first been arranged by subject matter, the chapters of the *Florida Statutes* are each assigned a whole number which appears to the left of the decimal point in each number that identifies a section. The section within the chapter is then identified by the whole decimal number, including the digits appearing to the right of the decimal point. Thus, s. 16.01 would identify a section in chapter 16 of the *Statutes*.

The principal advantage of the decimal numbering system is its infinite flexibility. A new section can always be inserted between any two existing sections. For example, a new section to be inserted between ss. 16.12 and 16.13 could be assigned any number from 16.121 through 16.129 without using more than three digits to the right of the decimal point. This is because, in the decimal numbering system, 16.12 is the same as 16.120 and 16.13 is the same as 16.130. If the zeros are added, it can easily be seen that 16.125, for example, comes in between 16.120 and 16.130.

As a corollary to this discussion of the decimal numbering system, it should be emphasized that the number of a section has no significance other than to indicate its location. In other words, a section that is identified by a number containing four digits to the right of the decimal point is of no less dignity or importance than a section having a number with only two or three digits to the right of the decimal point.

The hierarchical arrangement of textual subdivisions is indicated by various designations. Thus, chapters are indicated by whole arabic numbers; sections, by numbers containing a decimal point; subsections, by whole arabic numbers enclosed by parentheses; paragraphs, by lowercase letters enclosed by parentheses; subparagraphs, by whole arabic numbers followed by a period; and sub-subparagraphs, by lowercase letters followed by a period. Subdivisions beyond the sub-subparagraph are not ordinarily used.

**Finding the law.**—There are two general methods for finding those sections of the *Florida Statutes* that deal with a particular subject matter. The choice of which to use on any particular occasion should be determined by the preference of the searcher and the degree of his familiarity with the *Statutes* and the indexing systems contained therein. One who has considerable familiarity with the body of law being searched may save some time by simply using the chapter outline which appears at the beginning of the appropriate chapter. The proper chapter can usually be located by use of either the Numerical Title and Chapter Index or the Alphabetical Index to Chapter Titles located at the front of Volumes 1, 2, and 3. One who is less familiar with the subject matter, or who is conducting a more wide-ranging search, will probably prefer to use the general index which is located in Volume 4.

**History notes.**—Every section is followed by a history note containing citations to the section and chapter number of the act that created the section and of each subsequent amendatory act. For an explanation of citations to early compilations, see the following segment of this Preface.



**Cross-references.**—Cross-references appear in the *Florida Statutes* in two forms. Whenever it might be helpful to the users of the *Statutes*, the editors insert notes immediately following the history notes containing references to related or qualifying sections.

Cross-references, both specific and general, also appear as incorporated into the text of the *Statutes* by legislative enactment, and a word of caution concerning such specific references is in order. Florida follows the rule of construction that is applied in most other jurisdictions, that a specific reference to a statute in effect incorporates the language of that statute as it existed at the time the reference was enacted, unaffected by any subsequent amendment or repeal of the incorporated statute. *Williams v. State*, 125 So. 358 (Fla. 1930); *Overstreet v. Blum*, 227 So.2d 197 (Fla. 1969).

It is true that this rule often disappoints any popular expectation that such references are to the current text of the incorporated statute which may therefore be immediately consulted, but this is apparently unavoidable. Consequently, when users of the *Florida Statutes* encounter an internal reference to a specific statute that appears to be of critical importance to the meaning of the incorporating section, they will be well-advised to find and read the language actually incorporated.

On the other hand, the rule concerning a general reference to the body of law relating to a specified subject matter, without reference to a specific statute, is different in that a general reference is understood as including any subsequent amendment or repeal of the referenced body of law. *Williams v. State*, *ibid.*; *State ex rel. Springer v. Smith*, 189 So.2d 846 (Fla. 1966).

**Table of section changes.**—A table of changes to sections of the *Florida Statutes* is located at the front of Volumes 1, 2, and 3, printed on yellow paper. This table shows: (1) the sections, by number, that have been changed in any way and (2) whether the change consisted of an amendment, a repeal, a transfer, or an addition. It is a convenient device for pinpointing changes to a given segment of the general law.

**Tracing table.**—A table tracing all general laws enacted since 1919 into the *Florida Statutes* is located in Volume 4. The word "omitted" indicates that the act or section of an act was not of a "general and permanent nature." For the text of an omitted provision, consult the appropriate volume of the *Laws of Florida*.

Immediately following the tracing table for general laws enacted by the legislative process is a special table tracing various provisions of the Constitution of 1885, as amended, into the *Florida Statutes*. This conversion of constitutional provisions into statutory law occurred pursuant to the provisions of s. 10, Article XII of the Constitution as revised in 1968.

**Table of repealed and transferred sections.**—Immediately preceding the General Index in Volume 4 is a table showing repealed and transferred sections. Whenever a section is repealed or transferred to a new location in the *Statutes*, the former section number becomes inactive and will not be used again. Such numbers are then listed in this table, along with the chapter number of the session law which effected the repeal or transfer or the year in which the section number was changed in the course of revision. The entry for a transferred section also includes the new location of the section. For the text of the repealed or transferred section or the content of its history note, consult the edition of the *Statutes* prior to the repeal or transfer. The table is of primary utility to the researcher who is interested in the movement of the law as well as its current content.

**Miscellaneous materials.**—Section 11.242(4) authorizes the inclusion in the published edition of the *Florida Statutes*, in addition to the general laws as adopted and enacted, the Florida Constitution, and complete indexes, "such other matters, notes, data, and other material as may be deemed necessary or admissible by the joint committee for reference, convenience or interpretation." The various items published under this authority are located in Volume 4 and are identified in the table of contents at the front of each volume.



## FORMER REVISIONS AND COMPILATIONS

The laws of general application of the territory of Florida and of the State of Florida have either been compiled unofficially or revised under authority of law and adopted as official statutes in the following publications: *Duval's Compilation of Territorial Laws, 1840* (compilation); *Thompson's Digest, 1847* (compilation); *Bush's Digest, 1872* (compilation); *McClellan's Digest, 1881* (compilation); *Revised Statutes (R.S.) 1892* (revision enacted as a law); *General Statutes (G.S.) 1906* (revision enacted as a law); *Revised General Statutes (R.G.S.) 1920* (revision enacted as a law); *Compiled General Laws (C.G.L.) 1927* (compilation unofficial); revision of 1940 and the beginning of the continuous revision system; adoption of the official 1940 revision in 1941 (F.S. 1941); the *Florida Statutes* of 1949 (F.S. 1949) (consolidation of 1941 statutes and supplements printed during the war years in 1943, 1945, 1947); and *Florida Statutes* of 1951, 1953, 1955, 1957, 1959, 1961, 1963, 1965, 1967, 1969, 1971, 1973, 1975, and 1977.

## THE STATUTORY REVISION DIVISION

By chapter 22012, Laws of Florida, 1943, the Legislature created a permanent statutory revision and legislative drafting and reference department under the supervision and control of the Attorney General. The principal functions of this department were to publish the general laws of the state and to maintain a bill drafting department and legislative reference library. In 1949 the Legislature established the Legislative Council and Legislative Reference Bureau as an arm of the Legislature and completely separate from the Attorney General. By chapter 67-472, Laws of Florida, the Legislature removed the Statutory Revision Department from the office of the Attorney General and established it as a part of the Legislative Reference Bureau under the supervision of the Legislative Council. By chapter 69-52, Laws of Florida, the Legislative Reference Bureau was renamed the Legislative Service Bureau, and the Statutory Revision Department became the Statutory Revision Service within the bureau and its work was made subject to the supervision of the Joint Legislative Management Committee, which replaced the Legislative Council. In 1971, by order of the Joint Legislative Management Committee, the statutory revision and indexing functions were consolidated in a new division of the Joint Legislative Management Committee, the Division of Statutory Revision and Indexing. The division was renamed the Division of Statutory Revision in 1978.

The powers, duties, and functions of the Statutory Revision Division are set out in s. 11.242. In general, they are: (1) to conduct a systematic and continuing study of the statutes and laws of the state to reduce their number and bulk; remove inconsistencies, redundancies, and unnecessary repetitions; and otherwise improve their clarity and facilitate their correct and proper interpretation; (2) to publish the *Florida Statutes*; and (3) to index various publications of the Joint Legislative Management Committee.

Section 11.242(5) defines the limits of the editorial license that is available to the Statutory Revision Division in preparing the *Florida Statutes*. Pursuant to this section, the division has broad authority over the arrangement and grammatical structure of the *Statutes*. Although the statute provides that the product of the division's work shall constitute only prima facie evidence of the law until it has subsequently been formally adopted, the Statutory Revision Division nonetheless traditionally exercises its editorial prerogatives with self-restraint. It believes its mandate to be to produce the *Statutes* in usable and literate form, but strictly within the framework of the legislative intent.

The reviser's office is a clearinghouse where lawyers, judges, legislators, and administrators may help to improve the statutory law of the state. Persons calling attention to errors, omissions, conflicts, and other defects in the law can be a material help in administering Florida's continuous revision program.

JANE REYNOLDS HARRIS, Director  
Division of Statutory Revision



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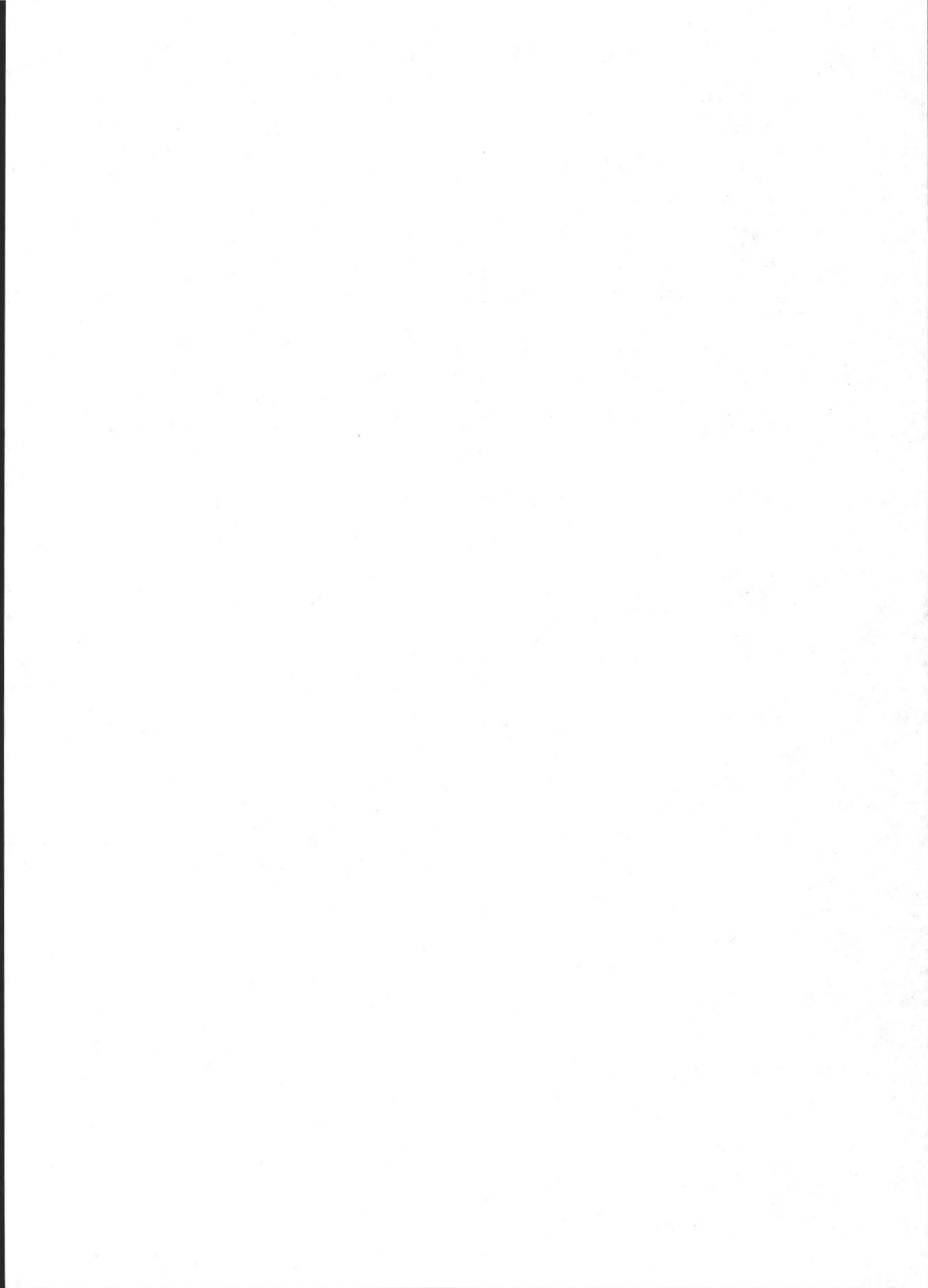
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# FLORIDA STATUTES

## 1979

### Volume 3

### TITLE XXXIII

#### ALCOHOLIC BEVERAGES

##### CHAPTER 561

##### BEVERAGE LAW; ADMINISTRATION

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**561.01 Definitions.**—As used in the Beverage Law:

(1) "Division" means the Division of Alcoholic Beverages and Tobacco of the Department of Business Regulation.

(2) "Department" means the Department of Business Regulation established under s. 20.16.

(3) "State bonded warehouse" means any licensed warehouse used to store alcoholic beverages.

(4)(a) "Alcoholic beverages" means all beverages containing more than 1 percent of alcohol by weight.

(b) The percentage of alcohol by weight shall be determined by measuring the weight of the standard ethyl alcohol in the beverage and comparing it with the weight of the remainder of the ingredients as though said remainder ingredients were distilled



water. It is the intent of this subsection that the volume and weight tables for standard ethyl alcohol and distilled water as established by the National Bureau of Standards shall be conclusive regardless of the actual weight, which variance from the weight of distilled water is due to the adding of sugar, flavoring, or other ingredients used in making the final product.

(5) "Intoxicating beverage" and "intoxicating liquor" mean only those alcoholic beverages containing more than 3.2 percent of alcohol by weight.

(6) "The Beverage Law" means chapters 561, 562, 563, 564, 565, 567, and 568.

(7) "Manufacturer" means all persons who make alcoholic beverages except those who hold a valid federal permit to make wine for home consumption pursuant to s. 564.035.

(8)(a) "Tax" means all taxes or payments required under the Beverage Law.

(b) "There shall be paid" means "there is hereby levied and imposed and shall be paid."

(9) "Sale" and "sell" mean any transfer of an alcoholic beverage for a consideration, any gift of an alcoholic beverage in connection with, or as a part of, a transfer of property other than an alcoholic beverage for a consideration, or the serving of an alcoholic beverage by a club licensed under the Beverage Law.

(10) "Discount in the usual course of business" means a cash or spirituous or vinous beverage merchandise discount given pursuant to an agreement made at the time of sale. However, such agreement shall not result in an accrued, accumulated, or retroactive discount. The same discounts shall be offered to all vendors buying similar quantities. Any discount which is in violation of this section shall be considered an arrangement for financial assistance by gift.

(11) "Licensed premises" means not only rooms where alcoholic beverages are stored or sold by the licensee, but also all other rooms in the building which are so closely connected therewith as to admit of free passage from drink parlor to other rooms over which the licensee has some dominion or control and shall also include all of the area embraced within the sketch, appearing on or attached to the application for the license involved and designated as such on said sketch, in addition to that included or designated by general law.

**History.**—s. 13, ch. 16774, 1935; CGL 1936 Supp. 4151(239); s. 1, ch. 18015, 1937; ss. 1, 3A, ch. 19301, 1939; CGL 1940 Supp. 4151(271a,n); s. 1, ch. 21839, 1943; s. 1, ch. 25359, 1949; s. 4, ch. 28149, 1953; s. 1, ch. 29786, 1955; s. 1, ch. 57-420; s. 1, ch. 63-32; s. 1, ch. 67-73; ss. 16, 35, ch. 69-106; s. 213, ch. 71-377; s. 1, ch. 72-230; s. 4, ch. 77-421; s. 1, ch. 78-133; s. 27, ch. 79-4.  
cf.—s. 1.01 Definitions.

**561.02 Creation and duties of Division of Alcoholic Beverages and Tobacco.**—There is created within the Department of Business Regulation a Division of Alcoholic Beverages and Tobacco, which shall supervise the conduct, management, and operation of the manufacturing, packaging, distribution, and sale within the state of all alcoholic beverages and shall enforce the provisions of the Beverage Law and the Tobacco Law and rules and regulations of the division in connection therewith. However, none of the provisions of the Beverage Law shall apply to ethyl alcohol intended for use or used for the following purposes:

(1) Scientific, chemical, mechanical, industrial, or medicinal purposes;

(2) Patented, patent, proprietary, medicinal, pharmaceutical, antiseptic, toilet, scientific, chemical, mechanical or industrial preparations, or products unfit for beverage purposes;

(3) Flavoring extracts and syrups, unfit for beverage purposes.

**History.**—s. 1, ch. 16774, 1935; CGL 1936 Supp. 4151(227); s. 1A, ch. 19301, 1939; s. 2, ch. 57-420; ss. 16, 35, ch. 69-106; s. 1, ch. 72-230; s. 5, ch. 77-421.  
cf.—s. 568.14 Duty of enforcing provisions of ch. 568.

#### **561.051 Bond of director and employees.—**

(1) The director of the division shall furnish a surety bond by a surety company authorized to do business in this state in the sum of \$100,000, payable to the Governor and to be approved by the Comptroller, conditioned upon the faithful performance of his duties. He shall promptly report and remit to the Treasurer all taxes and fees collected by him hereunder and shall send a copy of the reports to the Comptroller.

(2) All employees and assistants of the division shall be covered by a blanket bond in such amount as determined by the director, conditioned upon the faithful performance of their duties, payable to the state for the use and benefit of the division.

(3) The premiums on the bond of the director and the blanket bond covering all employees and assistants of the division, as herein provided, shall be paid by the state.

**History.**—s. 1, ch. 72-230; s. 15, ch. 79-11.

**561.07 Employees; powers and duties.**—All employees authorized by the division shall have access to and shall have the right to inspect the premises of all licensees under the Beverage Law and under the Cigarette Law, now in effect or which may hereafter be reenacted, to collect taxes and remit them to the officers entitled to them and to examine the books and records of all licensees. Such authorized employees shall require of each licensee strict compliance with the laws of this state relating to the transaction of such business and shall have all the power of deputy sheriffs in the enforcement of the Beverage Law and the Cigarette Tax Law of this state, and in the prosecution of offenders against such laws.

**History.**—s. 1, ch. 16774, 1935; CGL 1936 Supp. 4151(227); s. 1A, ch. 19301, 1939; s. 3, ch. 22663, 1945; s. 6, ch. 57-420; ss. 16, 35, ch. 69-106; s. 1, ch. 72-230.

**561.08 Enforcement of Beverage Law; division to prescribe forms.**—The division shall enforce the provisions of the Beverage Law and Cigarette Tax Law and perform such other acts as may be necessary to carry out the provisions thereof, and the division shall prescribe forms of bonds, reports, and other papers, to be used under and in the execution and enforcement of the provisions of the Beverage Law and the Cigarette Tax Law.

**History.**—s. 1, ch. 16774, 1935; CGL 1936 Supp. 4151(227); s. 1A, ch. 19301, 1939; s. 7, ch. 57-420; ss. 16, 35, ch. 69-106; s. 1, ch. 72-230.  
cf.—Ch. 562 Beverage Law; enforcement.

#### **561.11 Power and authority of division.—**

(1) The division shall have full power and authority to make, adopt, amend, or repeal rules, regulations, or administrative orders to carry out the purposes of the Beverage Law. All such rules, regula-

tions, or orders adopted in accordance with chapter 120 shall have the full force and effect of law.

(2) The division shall have full power and authority to provide for the continuous training and upgrading of all division personnel in their respective positions with the division. This training shall include the attendance of division personnel at workshops, seminars, or special schools established by the division or other organizations when attendance at such educational programs shall in the opinion of the division be deemed appropriate to the particular position which the employee holds.

**History.**—s. 1, ch. 16774, 1935; CGL 1936 Supp. 4151(227); s. 2, ch. 18015, 1937; s. 1A, ch. 19301, 1939; CGL 1940 Supp. 4151(271b); s. 4, ch. 22663, 1945; s. 132, ch. 26869, 1951; s. 9, ch. 57-420; s. 1, ch. 63-26; s. 1, ch. 67-366; ss. 16, 35, ch. 69-106; s. 1, ch. 72-230; s. 9, ch. 78-95; s. 16, ch. 79-11.

**561.12 Deposit of revenue.**—All funds collected by the state under the Beverage Law shall be paid into the state treasury to the credit of the General Revenue Fund.

**History.**—s. 18, ch. 18015, 1937; CGL 1940 Supp. 4151(271k); s. 1, ch. 22923, 1945; s. 133, ch. 26869, 1951; s. 1, ch. 72-230.

**561.14 License classification.**—Licenses referred to in the Beverage Law shall be classified as follows:

(1) Manufacturers licensed to manufacture alcoholic beverages and distribute the same at wholesale to licensed distributors and licensed vendors and to no one else within the state. Persons engaged in the business of distilling, rectifying, or blending spirituous liquors licensed under s. 565.03(1)(a)1. and (b) shall sell and distribute such beverages at wholesale only to other manufacturers and to licensed distributors and to no one else within this state.

(2) Distributors licensed to sell and distribute alcoholic beverages at wholesale to persons who are licensed to sell alcoholic beverages.

(3) Vendors licensed to sell alcoholic beverages at retail only. No vendor shall purchase or acquire in any manner for the purpose of resale any alcoholic beverages from any person not licensed as a vendor, manufacturer, bottler, or distributor under the Beverage Law. No vendor shall import, or engage in the importation of, any alcoholic beverages from places beyond the limits of the state.

**History.**—s. 4, ch. 16774, 1935; CGL 1936 Supp. 4151(230); s. 1, ch. 19499, 1939; s. 2, ch. 25359, 1949; s. 10, ch. 26484, 1951; s. 11, ch. 57-420; s. 1, ch. 63-562; s. 1, ch. 72-230; s. 1, ch. 72-272; s. 5, ch. 79-163.

**561.15 Licenses; qualifications required.**—

(1) Licenses shall be issued only to persons of good moral character, who are not less than 18 years of age. Licenses to corporations shall be issued only to corporations whose officers are of good moral character and not less than 18 years of age. There shall be no exemptions from the license taxes herein provided to any person, association of persons or corporation, any law to the contrary notwithstanding.

(2) No license under the Beverage Law shall be issued to any person who has been convicted within the last past 5 years of any offense against the beverage laws of this state, the United States, or any other state; who has been convicted within the last past 5 years in this state or any other state or the United States of soliciting for prostitution, pandering, letting premises for prostitution, keeping a disorderly place, or illegally dealing in narcotics; or who has

been convicted in the last past 15 years of any felony in this state or any other state or the United States; or to a corporation, any of whose officers shall have been so convicted. The term "conviction" shall include an adjudication of guilt on a plea of guilty or nolo contendere or the forfeiture of a bond when charged with a crime.

(3) The division may refuse to issue a license under the Beverage Law to any person, firm, or corporation whose license under the Beverage Law has been revoked or to any corporation, an officer of which has had his license under the Beverage Law revoked, or to any person, who is or has been an officer of a corporation whose license has been revoked under the Beverage Law. Any license issued to a person, firm, or corporation prohibited from obtaining such license, under the Beverage Law, may be revoked by the division.

**History.**—s. 3, ch. 16774, 1935; CGL 1936 Supp. 4151(229); s. 12, ch. 57-420; s. 1, ch. 61-219; ss. 16, 35, ch. 69-106; s. 1, ch. 72-230; s. 48, ch. 77-121; s. 3, ch. 77-471.

**cf.**—s. 112.011 Felons; removal of disqualifications for employment, exceptions.

**561.17 License applications; approved person.**—

(1) Any person, before engaging in the business of manufacturing, bottling, distributing, selling, or in any way dealing in alcoholic beverages, shall file, with the district supervisor of the district of the division in which the place of business for which a license is sought is located, a sworn application in duplicate on forms provided to the district supervisor by the division. Prior to any application being approved, the division may require the applicant to file a set of fingerprints on regular United States Department of Justice forms for himself and for any person or persons interested directly or indirectly with the applicant in the business for which the license is being sought, when so required by the division. If the applicant or any person interested with the applicant either directly or indirectly in the business is not qualified, the application shall be denied by the division.

(2) All applications for alcoholic beverage licenses for consumption on the premises shall be accompanied by a certificate of the Department of Health and Rehabilitative Services or the county health department that the place of business wherein the business is to be conducted meets all of the sanitary requirements of the state.

**History.**—s. 2, ch. 16774, 1935; CGL 1936 Supp. 4151(228); s. 5, ch. 22663, 1945; s. 4, ch. 25359, 1949; s. 3, ch. 29786, 1955; s. 14, ch. 57-420; s. 1, ch. 59-316; ss. 16, 19, 35, ch. 69-106; s. 1, ch. 72-230; s. 459, ch. 77-147; s. 2, ch. 77-192.

**561.18 License investigation.**—After the application has been filed with the district supervisor he shall cause the application to be fully investigated, both as to qualifications of the applicants and a manager or person to be in charge and the premises and location sought to be licensed.

**History.**—s. 2, ch. 16774, 1935; CGL 1936 Supp. 4151(228); s. 5, ch. 25359, 1949; s. 15, ch. 57-420; s. 2, ch. 59-316; s. 1, ch. 72-230.

**561.19 License issuance upon approval of division.**—

(1) Upon the completion of the investigation of an application, the division shall approve or disapprove the application. If approved, the license shall



be issued upon payment to the division of the license tax hereinafter provided.

(2) If the division finds that the applicant and premises have such qualifications as required by the Beverage Law, it shall approve the application. If the application is disapproved, any applicant may at any time within 30 days after such disapproval and notice thereof file with the division a request in writing for a review of such disapproval by the Department of Business Regulation. The division shall thereupon certify its findings on which the disapproval was based to the said department which shall review the same and order the application to be granted or denied as justice shall require.

(3) The state license tax shall be collected by the division, and the division shall return the county and municipal share pursuant to s. 561.342 to the appropriate county and municipality monthly on or before the tenth day of the month succeeding the beginning of the taxable year and quarterly thereafter.

**History.**—s. 2, ch. 16774, 1935; CGL 1936 Supp. 4151(228); s. 6, ch. 25359, 1949; s. 16, ch. 57420; ss. 16, 35, ch. 69-106; s. 1, ch. 72-230; s. 9, ch. 78-95; s. 28, ch. 79-4.

#### **561.20 Limitation of number of licenses issued.—**

(1) No license under s. 565.02(1)(a)-(f), inclusive, shall be issued so that the number of such licenses within the limits of the territory of any county shall exceed one such license to each 2500 residents, or major fraction thereof, within such county, as shown by the last regular statewide census, either federal or state, of such county. However, such limitation shall not prohibit the issuance of at least three licenses in any county that may approve the sale of intoxicating liquors in such county.

(2)(a) No such limitation of the number of licenses as herein provided shall henceforth prohibit the issuance of a special license to:

1. Any bona fide hotel, motel, or motor court of not less than 100 guest rooms;

2. Any condominium accommodation of which no less than 100 condominium units are wholly rentable to transients and which is licensed under the provisions of chapter 509, except that the license shall be issued only to the person or corporation which operates the hotel or motel operation and not to the association of condominium owners; or

3. Any restaurant having 2,500 square feet of service area and equipped to serve 150 persons full-course meals at one time, and deriving at least 51 percent of its gross revenue from the sale of food and nonalcoholic beverages. However, any license heretofore issued to any such hotel, motel, motor court, or restaurant or hereafter issued to any such hotel, motel, or motor court, including a condominium accommodation, under the general law shall not be moved to a new location, such licenses being valid only on the premises of such hotel, motel, motor court, or restaurant. Licenses issued to hotels, motels, motor courts, or restaurants under the general law and held by such hotels, motels, motor courts, or restaurants on May 24, 1947, shall be counted in the quota limitation contained in subsection (1). Any license issued for any hotel, motel, or motor court under the provisions of this law shall be issued only

to the owner of said hotel, motel, or motor court or, in the event the hotel, motel, or motor court is leased, to the lessee of the hotel, motel, or motor court, and the license shall remain in the name of said owner or lessee so long as the license is in existence. Any special license now in existence heretofore issued under the provisions of this law cannot be renewed except in the name of the owner of the hotel, motel, motor court, or restaurant or, in the event the hotel, motel, motor court, or restaurant is leased, in the name of the lessee of the hotel, motel, motor court, or restaurant in which the license is located and must remain in the name of said owner or lessee so long as the license is in existence. Any license issued under this section shall be marked "Special," and nothing herein provided shall limit, restrict, or prevent the issuance of a special license for any restaurant or motel which shall hereafter meet the requirements of the law existing immediately prior to the effective date of this act, if construction of such restaurant has commenced prior to the effective date of this act and is completed within 30 days thereafter, or if an application is on file for such special license at the time this act takes effect; and any such licenses issued under this proviso may be annually renewed as now provided by law. Nothing herein shall prevent an application for transfer of a license to a bona fide purchaser of any hotel, motel, motor court, or restaurant by the purchaser of such facility or the transfer of such license pursuant to law. Restaurants that are a part of, or serve, publicly owned or leased airports are exempt from the provisions of this paragraph regarding minimum size and seating capacity.

(b) Any county in which special licenses were issued under the provisions of s. 561.20(2)(b) in effect prior to the effective date of this act shall continue to qualify for such licenses pursuant to those provisions in effect prior to the effective date of this act, and shall not be affected by the provisions of paragraph (a) of this subsection.

(c) In addition to any special licenses that may be issued under the provisions of paragraph (a), the division is hereby authorized to issue special licenses to qualified applicants who own or lease bowling establishments having 12 or more lanes and all necessary equipment to operate same. Any license issued for any bowling establishment under the provisions of this paragraph shall be issued only to the owner of said bowling establishment or, in the event the bowling establishment is leased, to the lessee of the bowling establishment, and the license shall remain in the name of said owner or lessee so long as the license is in existence. Any such license issued under this paragraph shall not be moved to a new location and shall not be transferred in any manner whatsoever. No license issued pursuant to this paragraph shall permit the licensee to sell alcoholic beverages by the package for off-the-premises consumption. The provisions of this paragraph shall not preclude any bowling establishment from holding a beverage license issued pursuant to any other provision of this section.

(d) Any board of county commissioners may be issued a special license which shall be issued in the name of the county and be applicable only in and for

facilities owned and operated by the county and in which the sale and consumption of alcoholic beverages is not otherwise prohibited. The license may be transferred from one qualified county facility to another upon written notification to the department.

(e) The owner of a hotel, motel, or motor court may lease his restaurant operation to another corporation, individual, or business association that, upon meeting the requirements for a restaurant license set forth in this chapter, may operate independently of the hotel, motel, or motor court and be permitted to provide room service for alcoholic and intoxicating beverages within such hotel, motel, or motor court in which the restaurant is located.

(3) The limitation upon the number of such licenses to be issued as herein provided shall not apply to existing licenses or to the renewal or transfer of such licenses, but upon the revocation of any existing license no renewal thereof or new license therefore shall be issued contrary to the limitation herein prescribed. However, the beverage director may reissue a license under s. 565.02(1)(b) to any qualified applicant within any municipality in which there is only one license, which formerly had an additional license which has heretofore been revoked, and which has sufficient population as shown by the last regular statewide federal census to warrant the additional license. The transfer permitted herein shall not include the change in location of any licensed premises as provided in s. 561.33 of the Beverage Law when such change of location will increase the number of licenses contrary to the limitation upon the number of such licenses as herein provided.

(4) The limitations herein prescribed shall not affect or repeal any existing or future local or special act relating to the limitation by population and exceptions or exemptions from such limitation by population of such licenses within any incorporated city or town or county that may be in conflict herewith.

(5) Provisions of subsections (2) and (4) as amended by chapter 57-773, Laws of Florida, shall take effect January 1, 1958, and shall apply only to those places of business licensed to operate after January 1, 1958, and shall in no manner repeal or nullify any license issued under provisions of law which are now operating or will operate prior to the effective date January 1, 1958, and all such places of business shall be exempt from the provisions of this law so long as they are in continuous operation.

(6) When additional licenses are available by reason of an increase in population, no person, firm, or corporation already holding a liquor license shall be permitted to own or have any interest, directly or indirectly, in any such additional licenses, or when additional licenses are available by reason of a county permitting the sale of intoxicating beverages when the same is prohibited, no person, firm, or corporation will be permitted to own or have any interest, directly or indirectly, in more than one license. This limitation is enacted pursuant to the police power of the state, for the express purpose of promoting the public health, morals, and welfare. This limitation shall only apply when a license is originally issued after first becoming available and shall not apply to subsequent transfers of such licenses from

the original purchaser thereof, or to renewals of such licenses.

(7)(a) There shall be no limitation as to the number of licenses issued pursuant to s. 565.02(4). However, any licenses issued under this section shall be limited to:

1. Subordinate lodges or clubs of national fraternal or benevolent associations;

2. Golf clubs and tennis clubs municipally or privately owned or leased;

3. Nonprofit corporations or clubs devoted to promoting community, municipal, or county development or any phase of community, municipal, or county development;

4. Clubs fostering and promoting the general welfare and prosperity of members of showmen and amusement enterprises;

5. Clubs assisting, promoting, and developing subordinate lodges or clubs of national fraternal or benevolent associations; and

6. Clubs promoting, developing, and maintaining cultural relations of people of the same nationality.

(b) Any chartered or incorporated club owning or leasing and maintaining any bona fide regular, standard golf course consisting of at least nine holes, with clubhouse, locker rooms, and attendant golf facilities and comprising in all at least 70 acres of land owned or leased by such club may be issued a license under s. 565.02(4), but failure of such club to maintain golf course and golf facilities shall be grounds for revocation of license.

(c) Any chartered or incorporated club owning or leasing and maintaining any bona fide tennis club or 4-wall indoor racquetball club consisting of not less than 10 regulation-size tennis courts or 10 regulation-size 4-wall indoor racquetball courts, with clubhouse facilities, pro shop, locker rooms, and attendant tennis or racquetball facilities, all located on a contiguous tract of land owned or leased by such club, may be issued a license under s. 565.02(4), but failure of such club to maintain such courts and facilities shall be grounds for revocation of any such license so issued.

(8) In addition to any licenses that may be issued to restaurants under the provisions of this section, the division is hereby authorized to issue special licenses to qualified applicants whose applications have been approved by the Inter-American Center Authority for use within the confines of the Inter-American Cultural and Trade Center; provided, however, that any such license issued pursuant to this subsection shall not permit the licensee to sell alcoholic beverages by the package for off-premises consumption.

(9) In addition to any licenses that may be issued under the provisions of this chapter, the division is hereby authorized to issue special licenses to any county which has a population of at least one million persons according to the latest federal census and which owns and operates airport facilities pursuant to chapters 125 and 332, for transfer to qualified applicants who have secured approval from the board of county commissioners of such county for use within the confines of such airport facilities. Such licenses shall not be valid in any location beyond the confines of the terminal facilities of the airport. In



the event of expiration or revocation of such licenses, such licenses shall revert to the board of county commissioners automatically, by operation of law. However, no special license issued pursuant to this subsection shall permit the county or its transferee to sell alcoholic beverages by the package for off-premises consumption.

(10) In addition to any licenses that may be issued under the provisions of this chapter, the division is authorized to issue a special license to any marketing association of horse breeders organized under the laws of the state. Such license shall be applicable only in and for facilities used by the association for public auction of its products. No license issued pursuant to this subsection shall permit the licensee to sell alcoholic beverages by the package for off-premises consumption. The provisions of this subsection shall not preclude any cooperative marketing association of horse breeders from holding a license issued pursuant to any other provision of this chapter.

**History.**—s. 2, ch. 16774, 1935; CGL 1936 Supp. 4151(228); s. 2, ch. 23746, 1947; s. 7, ch. 25359, 1949; s. 1, ch. 28117, s. 1, ch. 28113, 1953; s. 4, ch. 29786, s. 1, ch. 29978, s. 1, ch. 29829, 1955; s. 17, ch. 57-420; s. 1, ch. 57-299; ss. 1, 2, ch. 57-773; s. 24, ch. 57-1; s. 1, ch. 57-837; s. 1, ch. 57-1991; s. 1, ch. 59-370; s. 2, ch. 61-219; ss. 1, 2, 4, ch. 61-300; s. 1, ch. 61-439; s. 1, ch. 67-173; ss. 16, 35, ch. 69-106; s. 1, ch. 71-238; s. 1, ch. 72-61; s. 1, ch. 72-83; s. 1, ch. 72-230; s. 1, ch. 72-260; s. 1, ch. 73-366; s. 1, ch. 73-367; ss. 1-3, ch. 76-2; s. 1, ch. 76-242; s. 5, ch. 77-471; s. 1, ch. 77-474; s. 1, ch. 78-103.

#### **561.22 Licensing manufacturers, distributors, and exporters as vendors prohibited.—**

(1) Except as hereinafter provided, any applicant may receive a license as a manufacturer, distributor, or exporter, but no license shall be issued to a manufacturer, distributor, or exporter as a vendor, nor shall any license be issued to a vendor as a manufacturer, distributor, or exporter.

(2)(a) If any applicant for a vendor's license or renewal thereof shall be an individual, such individual shall be deemed within the provisions of subsection (1) in the event the individual is interested or connected, directly or indirectly, with any corporation which is engaged, directly or indirectly, or through any subsidiary or affiliate corporation, including any stock ownership exceeding 0.5 percent owned individually, including a 0.5 percent interest in a blind or revocable trust, as set forth in subsection (3), in manufacturing, distributing, or exporting alcoholic beverages under a license of this state or any state of the United States.

(b) If any applicant for a vendor's license or renewal thereof shall be a copartnership, such copartnership shall be deemed within the provisions of subsection (1) in the event any member of the copartnership is interested or connected, directly or indirectly, with any corporation which is engaged, directly or indirectly, or through any subsidiary or affiliate corporation, including any stock ownership as set forth in subsection (3), in manufacturing, distributing, or exporting alcoholic beverages under a license of this state or any state of the United States.

(3) If any applicant for a vendor's license or the renewal thereof be a corporation, such corporation shall be deemed within the provisions of subsection (1) when such corporation is affiliated with, directly or indirectly, any other corporation which is engaged in manufacturing, distributing, or exporting alcoholic beverages under a license of this state or

any other state of the United States, or when such applicant corporation is controlled by or the majority stock therein owned by another corporation, which latter corporation owns or controls in any way the majority stock or controlling interest in any other corporation that is engaged, directly or indirectly, in manufacturing, distributing, or exporting alcoholic beverages under a license in this state or any other state in the United States.

(4) If any applicant for a manufacturer's, distributor's or exporter's license, or renewal thereof, shall be an individual or copartnership, such individual or copartnership shall be deemed within the provisions of subsection (1) in the event the individual or any member of the copartnership is interested or connected, directly or indirectly, with any corporation which is engaged, directly or indirectly, or through any subsidiary or affiliate corporation, including any stock ownership as set forth in subsection (5) in selling alcoholic beverages as a vendor under a license of this state.

(5) If any applicant for a manufacturer's, distributor's or exporter's license, or the renewal thereof, be a corporation, such corporation shall be deemed within the provisions of subsection (1) when such corporation is affiliated with, directly or indirectly, any other corporation which is engaged in selling alcoholic beverages as vendor under a license of this state or when such applicant corporation is controlled by, or the majority stock therein owned by another corporation, which latter corporation owns or controls in any way the majority stock or controlling interest in any other corporation that is engaged, directly or indirectly, in selling alcoholic beverages as vendor under a license of this state.

**History.**—s. 2, ch. 16774, 1935; CGL 1936 Supp. 4151(228); s. 8, ch. 25359, 1949; s. 2, ch. 63-562; s. 1, ch. 72-230; s. 1, ch. 76-288.

#### **561.221 Licensing manufacturers and distributors as vendors prohibited; exceptions.—**

Nothing contained in s. 561.22, s. 561.42, or any other provision of the Beverage Law shall prohibit the ownership, management, operation, or control of not more than three vendor's licenses for the sale of alcoholic beverages by a manufacturer of malt beverages or wine licensed and engaged in the manufacture of malt beverages or wine in this state, even if such manufacturer is also licensed as a distributor; provided that no such vendor's license shall be owned, managed, operated, or controlled by any licensed manufacturer of malt beverages or wine unless the licensed premises of the vendor are situated on property contiguous to the manufacturing premises of the said licensed manufacturer of malt beverages or wine.

**History.**—s. 1, ch. 63-11; s. 1, ch. 67-511; s. 1, ch. 72-230; s. 1, ch. 78-187; s. 1, ch. 79-54.

#### **561.23 License issued in triplicate and display.—**

(1) Licenses shall be issued in triplicate. The original license shall be delivered to the licensee; one copy shall be retained by the division; and the third copy shall be forwarded to the district office of the

county wherein the license is located.

(2) All vendors licensed under the Beverage Law shall display their licenses in conspicuous places on their licensed premises.

**History.**—s. 2, ch. 16774, 1935; CGL 1936 Supp. 4151(228); s. 9, ch. 25359, 1949; ss. 18, 19, ch. 57-420; ss. 16, 35, ch. 69-106; s. 1, ch. 72-230.

**561.24 Licensing out-of-state manufacturers as distributors or exporters prohibited; procedure for issuance and renewal of distributors' or exporters' licenses.—**

(1) No manufacturer, rectifier, or distiller, manufacturing, rectifying, or distilling spirituous liquors, in any state other than Florida, shall hereafter be granted a license as a distributor or exporter.

(2) No manufacturer, rectifier, or distiller, manufacturing, rectifying, or distilling spirituous liquors, in any state other than Florida, shall be granted a renewal of a license theretofore held as a distributor or exporter.

(3) If the applicant for a distributor's or exporter's license or renewal thereof shall be an individual or copartnership, such individual or copartnership shall be deemed within the provisions of subsections (1) or (2), as the case may be, in the event the individual or any member of the copartnership is interested or connected, directly or indirectly, with any corporation which is engaged directly or indirectly or through any subsidiary or affiliate corporation, including any stock ownership as set forth in subsection (4), in manufacturing, rectifying, or distilling spirituous liquors in any state other than this state. It is the intent of this subsection that if any individual or any member of such copartnership within 6 months next preceding the making of an application hereunder has been interested or connected as provided by this subsection, then such individual or such member of the copartnership shall be prima facie presumed to be so interested or connected with such corporation at the time of the making of the application and such prima facie presumption shall continue until overcome by the applicant.

(4) If the applicant for a distributor's or exporter's license, or for the renewal thereof, shall be a corporation, such corporation shall be deemed within the provisions of subsections (1) and (2), as the case may be, when such corporation is affiliated with, directly or indirectly any other corporation which is engaged in manufacturing, rectifying, or distilling spirituous liquors in any state other than Florida, or when such applicant corporation is controlled by, or the majority of stock therein is owned by, another corporation, which latter corporation is engaged, directly or indirectly, in manufacturing, rectifying, or distilling spirituous liquors in any state other than this state.

(5) Notwithstanding any of the provisions of the foregoing subsections, any corporation which holds a license as a distributor on June 3, 1947, shall be entitled to a renewal thereof, provided such corporation shall comply with all of the provisions of the Beverage Law of Florida, as amended, and of this section and shall establish by satisfactory evidence to the board of county commissioners of the county wherein the original license was issued that during the 6-month period next preceding its application for such renewal, that, of the total volume of its sales of

spirituous liquors, in either dollars or quantity, not more than 40 percent of such spirituous liquors sold by it, in either dollars or quantity, were manufactured, rectified, or distilled by any corporation, in any state other than Florida, with which the applicant is affiliated, directly or indirectly, including any corporation which owns or controls in any way any stock in the applicant corporation or any corporation which is a subsidiary or affiliate of the corporation so owning stock in the applicant corporation.

(6) Any person, copartnership, or corporation applying for a distributor's or exporter's license or a renewal thereof under the provisions of this section, shall file a written or printed application therefor with the division. Such application shall be sworn to by the applicant or a member of the copartnership or an officer of the corporation, depending upon whether the applicant is an individual, copartnership, or corporation. Forms for such applications shall be provided by the division. Every such application shall set forth clear and detailed information necessary and sufficient to establish the right of the applicant under the provisions of this section to receive or renew its license, as the case may be. The information herein required to be set forth shall be in addition to any information required to be set forth by any other provision of applicable law. Any application failing to comply fully with the provisions of this section shall be denied.

(7) The procedure otherwise provided in this chapter with regard to every application for license as a distributor or exporter with the addition thereto of the procedure provided by this section, shall be followed with regard to every application for a license as a distributor or exporter and every application for any renewal of such license; provided, s. 561.27 shall have no application to the renewal of a license of any distributor or exporter, except that no license of any distributor or exporter shall be renewed if the license of such distributor or exporter and continuations thereof shall have been revoked or the qualifications of such distributor shall have been impaired.

(8) Any maneuver, shift, or device by any applicant whereby any provision of this section, in any manner, is sought to be avoided or evaded shall constitute a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 2, ch. 16774, 1935; CGL 1936 Supp. 4151(228); s. 1, ch. 23899, 1947; s. 3, ch. 63-562; ss. 16, 35, ch. 69-106; s. 559, ch. 71-136; s. 1, ch. 72-230.

**561.25 Officers and employees prohibited from being employed by or engaging in beverage business; penalties; exceptions.—**

(1) No officer or employee of the division, and no sheriff or other state, county, or municipal officer with state police power granted by the Legislature, shall be permitted to engage in the sale of alcoholic beverages under the Beverage Law; or be employed, directly or indirectly, in connection with the operation of any business licensed under the Beverage Law; or be permitted to own any stock or interest in any firm, partnership, or corporation dealing wholly or partly in the sale or distribution of alcoholic beverages, except as provided in subsection (3).

(2) Any person violating this section shall be guilty of a misdemeanor of the second degree, pun-



ishable as provided in s. 775.082, s. 775.083 or s. 775.084, and shall be automatically removed or suspended from office.

(3) Nothing herein may be construed to prohibit any sheriff or other state, county, or municipal officer with state police power granted by the Legislature from owning, negotiating, or trading any shares of stock, bonds, or other securities which are regulated by and registered with the Securities and Exchange Commission, and which are customarily traded on the major stock exchanges of the United States, or from being employed as an entertainer or from rendering security services when off duty in any business establishment licensed under the beverage laws to sell beverages, provided the written approval of the chief of police, sheriff, or other appropriate department head is obtained for the place and hours of such employment or service. Any officer employed for the purposes of rendering private security services as permitted under this section shall not be paid less than the established prevailing wage.

**History.**—s. 3, ch. 16774, 1935; CGL 1936 Supp. 4151(229), 7648(4); s. 6, ch. 22663, 1945; s. 20, ch. 57-420; ss. 16, 35, ch. 69-106; s. 1, ch. 70-346; s. 560, ch. 71-136; s. 1, ch. 72-93; s. 1, ch. 72-230; s. 144, ch. 73-333; s. 1, ch. 77-471; s. 1, ch. 79-349.

**561.26 Term of licenses.**—Except as herein otherwise provided, no license shall be issued except annual licenses which shall be paid for before October 1 and shall expire on September 30 of the following year. Any person beginning business after October 1 may obtain a new license upon the application therefor and the payment of the annual license tax and such license shall expire on the following September 30. Any person beginning such business on or after April 1 of the license year may obtain a new license expiring on September 30 of the same year upon application therefor and the payment of one-half the license tax herein required for the annual license. Nothing herein shall be construed to permit the issuance of licenses contrary to the limitation on the number of such licenses as provided in s. 561.20(3), nor to amend the provisions of this law pertaining to the renewal or transfer of licenses.

**History.**—s. 5, ch. 16774, 1935; CGL 1936 Supp. 4151(231); s. 10, ch. 25359, 1949; s. 21, ch. 57-420; s. 1, ch. 67-127; s. 3, ch. 71-361; s. 1, ch. 72-230.

#### **561.27 Renewing license.**—

(1) A licensee under the Beverage Law shall be entitled to a renewal of his annual license from year to year, as a matter of course, on or before September 30 by presenting the license for the previous year or satisfactory evidence of its loss or destruction to the division and by paying the annual license tax and giving any bond required of such licensee under the Beverage Law.

(2) A license may be renewed subsequent to September 30 of each year only upon making to the division a delinquent application for approval, accompanied by an affidavit stating that no sales of alcoholic beverages have been made subsequent to September 30, and upon payment of a penalty of \$5 for each month or fraction of a month of delinquency, or upon payment of a penalty of 5 percent of the license fee, whichever amount is the greater. All licenses not renewed within 60 days of September 30 will be canceled by the division unless such license is involved in litigation; however, the division may

allow a licensee to renew the license subsequent to the 60-day period after good and sufficient cause for the delinquency has been shown to the division by the licensee.

**History.**—s. 9, ch. 18015, 1937; CGL 1940 Supp. 4151(271); s. 11, ch. 25359, 1949; s. 22, ch. 57-420; s. 3, ch. 59-316; s. 4, ch. 61-219; ss. 16, 35, ch. 69-106; s. 1, ch. 72-230.

#### **561.29 Revocation and suspension of license; power to subpoena.**—

(1) The division is given full power and authority to revoke or suspend the license of any person holding a license under the Beverage Law, when it is determined or found by the division upon sufficient cause appearing of:

(a) Violation by the licensee or his or its agents, officers, servants, or employees, on the licensed premises, or elsewhere while in the scope of employment, of any of the laws of this state or of the United States, or violation of any municipal or county regulation in regard to the hours of sale, service, or consumption of alcoholic beverages, or engaging in or permitting disorderly conduct on the licensed premises, or permitting another on the licensed premises to violate any of the laws of this state or of the United States; except that whether or not the licensee or his or its agents, officers, servants, or employees have been convicted in any criminal court of any violation as set forth in this paragraph shall not be considered in proceedings before the division for suspension or revocation of a license except as permitted by chapter 92 or the rules of evidence.

(b) Violation by the licensee or, if a corporation, by any officers thereof, of any laws of this state or any state or territory of the United States.

(c) Maintaining a nuisance on the licensed premises.

(d) Maintaining licensed premises that are unsanitary, or are not approved as sanitary by the county board of health or the Department of Health and Rehabilitative Services, whichever has jurisdiction thereof.

(e) Violation by the licensee or, if a corporation, by any officers thereof, of any rule or rules promulgated by the division in accordance with the provisions of this chapter, or a violation of any such rule by any agent, officer, servant, or employee of the licensee on the licensed premises or in the scope of such employment.

(2) The division, or any employee designated by it, shall have the power and authority to examine into the business, books, records, and accounts of any licensee, and to issue subpoenas to said licensee or any other person from whom information is desired and to take depositions of witnesses within or without of the state. The division, or any employee designated by it, may administer oaths and issue subpoenas. The provisions of the civil law of the state in relation to enforcing obedience to a subpoena lawfully issued by a judge or other person duly authorized to issue subpoenas under the laws of Florida, to issue subpoenas in civil cases, shall apply to a subpoena issued by the division, or any employee designated by it, as authorized in this section, and may be enforced by writ of attachment to be issued by the division, or any employee designated by it, for such witness to compel him to attend before the division,

or any employee designated by it, and give his testimony and to bring and produce such books, papers and documents as may be required for examination, and the division, or any employee designated by it, may punish any willful refusal to so appear or give testimony by citation of any witness before the circuit court who shall punish such witness for contempt as in cases of refusal to obey the orders and process of the circuit court. The division may in such cases pay such attendance and mileage fees as are permitted to be paid to witnesses in civil cases appearing before the circuit court.

(3) The division may impose a civil penalty against a licensee for any violation mentioned in the Beverage Law, or any rule issued pursuant thereto, not to exceed \$1,000 for violations arising out of a single transaction. If the licensee fails to pay the civil penalty, his license shall be suspended for such period of time as the division may specify. The funds so collected as civil penalties shall be deposited in the state General Revenue Fund.

(4) The division may compromise any alleged violations of the Beverage Law, by accepting from the licensee involved an amount not to exceed \$1,000 for violations arising out of a single transaction. All funds so collected are to be deposited in the state General Revenue Fund.

(5) The division may suspend the imposition of any penalty conditioned upon terms the division should in its discretion deem appropriate.

(6) In order to permit a licensee an opportunity to apply to the Department of Business Regulation for relief, no order suspending or revoking a license or imposing a civil penalty shall become effective until 15 days after the date of said order.

**History.**—s. 1, ch. 16774, 1935; CGL 1936 Supp. 4151(227); s. 1A, ch. 19301, 1939; s. 4, ch. 21839, 1943; s. 7, ch. 22663, 1945; s. 3, ch. 23746, 1947; s. 5, ch. 29786, 1955; s. 23, ch. 57-420; s. 5, ch. 61-219; s. 1, ch. 61-397; ss. 16, 19, 35, ch. 69-106; s. 1, ch. 69-267; s. 207, ch. 71-377; s. 1, ch. 72-230; s. 460, ch. 77-147; s. 4, ch. 77-471; s. 9, ch. 78-95; s. 29, ch. 79-4; s. 17, ch. 79-11.  
cf.—s. 92.142 Compensation of witnesses in various courts.

### 561.32 Transfer of licenses.—

(1) Licenses issued under the provisions of the Beverage Law shall not be transferable except as follows: When a licensee shall have made a bona fide sale of the business which he is so licensed to conduct he may obtain a transfer of such license to the purchaser of said business, provided the application of the purchaser shall be approved by the division in accord with the same procedure provided for in ss. 561.17, 561.18, and 561.19, in the case of issuance of new licenses. However, no one shall be entitled as a matter of right to a transfer of a license when revocation or suspension proceedings have been instituted against a licensee, and transfer of license in any such case shall be within the discretion of the division. Before the issuance of any transfer of license herein provided, the transferee shall pay a transfer fee of 10 percent of the annual license tax to the division, except for those licenses issued pursuant to ss. 561.20 and 565.02(1)(a)-(f), inclusive, for which the transfer fee shall be \$100 or 10 percent of the annual license tax, whichever is greater.

(2) Licensed manufacturers, distributors, and exporters shall pay a transfer license fee equal to 10

percent of the total state, county, and city, if any, annual license fee.

**History.**—s. 6, ch. 18015, 1937; CGL 1940 Supp. 4151(271f); s. 4, ch. 23746, 1947; s. 12, ch. 25359, 1949; s. 1, ch. 28123, 1953; ss. 16, 35, ch. 69-106; s. 1, ch. 72-230; s. 3, ch. 76-288; s. 1, ch. 77-192.

**561.321 Temporary transfer license.**—Upon the filing of an application of transfer pursuant to s. 561.32 by any purchaser of a business which possesses a beverage license of any type or series, the purchaser of such business and the applicant for transfer shall be entitled as a matter of right to receive a temporary beverage license, of the same type and series as that held by the seller of such business, to be valid for all purposes under the Beverage Law for a period not to exceed 90 days. Such temporary beverage licenses shall be issued by the district supervisor of the district in which the application for transfer is made, upon the paying of a fee of \$100 and the clearance by investigation of the division and the Federal Bureau of Investigation. The purchaser operating under the provisions of this section shall be subject to the same rights, privileges, duties, and limitations of a beverage licensee as is provided by law.

**History.**—s. 1, ch. 71-229; s. 1, ch. 72-230.

### 561.33 Licensee moving to new location; changing name of business.—

(1) Any licensee may move his place of business and sell at his new place of business upon approval by the division of the licensee's application for such change of location. Upon approval of the application, there shall be issued to such licensee a license for the new location without the payment of any further fee or tax.

(2) No licensee may change the name of his place of business without first giving the division 30 days' notice in writing of such change.

**History.**—s. 11, ch. 16774, 1935; CGL 1936 Supp. 4151(237); s. 1, ch. 20830, 1941; s. 13, ch. 25359, 1949; s. 24, ch. 57-420; s. 6, ch. 61-219; ss. 16, 35, ch. 69-106; s. 1, ch. 72-230; s. 2, ch. 72-260.

### 561.342 County and municipal license tax; caterers, clubs, manufacturers, distributors, exporters, and vendors.—

(1) Twenty-four percent of the license taxes imposed under ss. 563.02, 564.02, 565.02(1), (4), and (5), and 565.03 collected within the county shall be returned to the appropriate county tax collector.

(2) Thirty-eight percent of the license taxes imposed under ss. 563.02, 564.02, 565.02(1), (4), and (5), and 565.03 collected within an incorporated municipality shall be returned to the appropriate municipal officer.

(3) No tax on the manufacture, distribution, exportation, transportation, importation, or sale of such beverages shall be imposed by way of license, excise, or otherwise by any municipality, anything in any municipal charter or special or general law to the contrary notwithstanding.

**History.**—s. 6, ch. 71-361; s. 1, ch. 72-230.

**561.351 Manufacturers, distributors, exporters; term of license.**—All licenses of manufacturers, distributors, and exporters shall be issued annually and shall run from September 30 to the succeeding September 30, except that when a manufacturer,



distributor, or exporter begins business after April 1 in any year he may obtain a license expiring on the succeeding September 30 upon the payment of one-half the tax for such annual license.

**History.**—s. 1, ch. 72-230.

**561.37 Bond for payment of taxes.**—Each manufacturer, distributor, or exporter shall file with the division a surety bond acceptable to the division in the sum of \$25,000 as surety for the payment of all taxes, provided, however, that when in the discretion of the division the amount of business done by the manufacturer or distributor is of such volume that a bond of less than \$25,000 will be adequate to secure the payment of all taxes assessed or authorized by the Beverage Law, the division may accept a bond in a lesser sum than \$25,000, but in no event shall it accept bond of less than \$10,000, and it may at any time in its discretion require any bond in an amount less than \$25,000 to be increased so as not to exceed \$25,000; provided, however, that the amount of bond required for a brewer shall be \$20,000, except that where, in the discretion of the division, the amount of business done by the brewer is of such volume that a bond of less than \$20,000 will be adequate to secure the payment of all taxes assessed or authorized by the Beverage Law, the division may accept a bond in a lesser sum than \$20,000, but in no event shall it accept bond of less than \$10,000, and it may at any time in its discretion require any bond in an amount less than \$20,000 to be increased so as not to exceed \$20,000; provided further that the amount of the bond required for a wine or wine and cordial manufacturer shall be \$5,000, except that, in the case of a manufacturer engaged solely in the experimental manufacture of wines and cordials from Florida products, where in the discretion of the division the amount of business done by such manufacturer is of such volume that a bond of less than \$5,000 will be adequate to secure the payment of all taxes assessed or authorized by the Beverage Law, the division may accept a bond in a lesser sum than \$5,000, but in no event shall it accept a bond of less than \$1,000 and it may at any time in its discretion require a bond in an amount less than \$5,000 to be increased so as not to exceed \$5,000; provided, further, that the amount of bond required for a distributor who sells only beverages containing not more than 3.2 percent of alcohol by weight, in counties where the sale of intoxicating liquors, wines, and beers is prohibited, and to distributors who sell only beverages containing not more than 14 percent of alcohol by weight and wines regardless of alcoholic content, in counties where the sale of intoxicating liquors, wines, and beers is permitted, shall file with the division a surety bond acceptable to the division in the sum of \$25,000, as surety for the payment of all taxes; provided, however, that where in the discretion of the division the amount of business done by such distributor is of such volume that bond of less than \$25,000 will be adequate to secure the payment of all taxes assessed or authorized by the Beverage Law the division may accept a bond in a lesser sum than \$25,000 but in no event shall it accept a bond less than \$1,000 and it may at any time in its discretion require any bond in an amount less than \$25,000 to be increased so as not to exceed \$25,000;

provided, further, that the amount of bond required for a distributor in a county having a population of 15,000 or less who procures a license by which his sales are restricted to distributors and vendors who have obtained licenses in the same county, shall be \$5,000. Each exporter shall file with the division a surety bond acceptable to the division in the sum of \$5,000 as surety for the payment of all taxes; provided, however, that where in the discretion of the division the amount of business done by the exporter is of such volume that a bond of less than \$5,000 will be adequate to secure the payment of all taxes assessed or authorized by the Beverage Law, the division may accept a bond in a lesser sum than \$5,000 but in no event shall it accept bond of less than \$1,000.

**History.**—s. 5, ch. 16774, 1935; CGL 1936 Supp. 4151(231); s. 2, ch. 19301, 1939; s. 6, ch. 63-562; ss. 16, 35, ch. 69-106; s. 1, ch. 72-230.

**561.371 Bond for payment of taxes by spirituous liquor distributors.**—Each distributor of spirituous liquors shall file with the division a surety bond acceptable to the division in the sum of \$100,000 as surety for the payment of all taxes provided under the provisions of this chapter.

**History.**—s. 4, ch. 69-49; ss. 16, 35, ch. 69-106; s. 1, ch. 72-230.

**561.38 Issuance of license prohibited until bond approved; cancellation or expiration of bond.**—No license shall be issued to a manufacturer, distributor, or exporter until the bond herein provided for has been approved by the division. If at any time the bond is canceled or expires, the licensee is enjoined from making any further purchases, sales, distribution, or exportation of alcoholic beverages until a new bond is secured and approved by the division.

**History.**—s. 5, ch. 16774, 1935; CGL 1936 Supp. 4151(231); s. 2, ch. 19301, 1939; s. 7, ch. 61-219; s. 7, ch. 63-562; ss. 16, 35, ch. 69-106; s. 1, ch. 72-230.

**561.41 Maintenance and designation of principal office by manufacturers, distributors, and exporters.**—Each manufacturer, distributor, and exporter licensed shall have within this state an office designated as its principal office within this state and may maintain branch offices within or without this state. The principal and branch offices within this state shall during regular defined business hours be kept open for the inspection of authorized employees of the division.

**History.**—s. 4, ch. 16774, 1935; CGL 1936 Supp. 4151(230); s. 27, ch. 57-420; s. 8, ch. 63-562; ss. 16, 35, ch. 69-106; s. 1, ch. 72-230.

**561.42 Tied house evil; financial aid and assistance to vendor by manufacturer or distributor prohibited; procedure for enforcement; exception.**—

(1) No licensed manufacturer or distributor of any of the beverages herein referred to shall have any financial interest, directly or indirectly, in the establishment or business of any vendor licensed under the Beverage Law, nor shall such licensed manufacturer or distributor assist any vendor by any gifts or loans of money or property of any description or by the giving of any rebates of any kind whatsoever. No licensed vendor shall accept, directly or indirectly, any gift or loan of money or property of any description or any rebates from any such licensed man-

ufacturer or distributor; provided, however, that this shall not apply to any bottles, barrels, or other containers necessary for the legitimate transportation of such beverages, or advertising materials, and shall not apply to the extension of credit, for liquors sold, made strictly in compliance with the provisions of this section.

(2) Credit for the sale of liquors may be extended to any vendor up to but not including the tenth day after the calendar week within which such sale was made.

(3) In cases where payment for sales to a vendor is not made by the 10th day succeeding the calendar week in which such sale was made, the distributor who made such sale shall, within 3 days, notify the division in writing of such fact, and the division, upon receipt of such notice, shall, after compliance with the proceedings hereinafter mentioned, declare in writing to such vendor and to all manufacturers and distributors within the state that all further sales to such vendor are prohibited until such time as the division shall certify in writing that such vendor has fully paid for all liquors previously purchased. However, if a distributor received payment within the 3-day period following the tenth day succeeding the calendar week in which the sale was made, the distributor, if notification to the division has not already been made, shall not be required to notify the division. Payments so made within the 3-day period shall not constitute a violation of this section.

(4) Before the division shall so declare, and prohibit such sales to such vendor, it shall, within 2 days after receipt of such notice, give written notice to such vendor by mail of the receipt by the division of such notification of delinquency and such vendor shall be directed to forthwith make payment thereof, or upon failure to do so, to show cause before the division why further sales to such vendor shall not be prohibited. Good and sufficient cause to prevent such action by the division may be made by showing payment, failure of consideration, or any other defense which would be considered sufficient in a common-law action. The vendor shall have 5 days after receipt of such notice within which to show such cause, and he may demand a hearing thereon, provided he does so in writing within said 5 days, such written demand to be delivered to the division either in person or by due course of mail within such 5 days. If no such demand for hearing be made, the division shall thereupon declare in writing to such vendor and to all manufacturers and distributors within the state that all further sales to such vendor are prohibited until such time as the division shall certify in writing that such vendor has fully paid for all liquors previously purchased. In the event such prohibition of sales and declaration thereof to the vendor, manufacturers, and distributors is ordered by the division, the vendor may seek review of such decision by the Department of Business Regulation within 5 days. In the event application for such review is filed within such time, such prohibition of sales shall not be made, published, or declared until final disposition of such review by the department.

(5) Upon receipt by the division from the distributor of the notice of nonpayment provided for by

subsection (3), the division shall forthwith notify such delinquent vendor and all distributors in the state that no further purchases or sales of liquor by or to such vendor, except for cash, shall be made until good cause be shown by such vendor as heretofore provided for. No liquor shall be purchased by such vendor or sold to him by any distributor, except for cash, from and after such notification by the division and until such cause be shown as is provided for in subsection (4). In the event no good cause be shown, then all further sales, for cash or credit are hereby prohibited after such declaration in writing by the division is sent to such vendor and distributors and until all delinquent accounts have been paid.

(6) Nothing herein shall be taken to forbid the giving of trade discounts in the usual course of business upon wine and liquor sales.

(7) The extension or receiving of credits in violation of this section shall be considered as an arrangement for financial assistance and shall constitute a violation of the Beverage Act and any maneuver, shift, or device of any kind by which credit is extended contrary to the provisions of this section shall be considered a violation of the Beverage Act.

(8) The division may establish rules and require reports to enforce the herein established limitation upon credits and other forms of assistance. Nothing herein shall be taken to affect the provisions for cash sales of wines or beer as are provided in s. 562.21 or provisions of s. 563.08, but shall govern all other sales of intoxicating liquors.

(9) The term "advertising materials" as used in this section shall not include outside signs so located as to be connected with or appertaining to the vendor's licensed premises.

(10) No manufacturer or distributor of the beverages herein referred to shall directly or indirectly give, lend, rent, sell, or in any other manner furnish to a vendor any outside sign, printed, painted, electric, or otherwise; nor shall any vendor display any sign advertising any brand of alcoholic beverages on the outside of his licensed premises or on any lot of ground of which the licensed premises are situate, or on any building of which the licensed premises are a part.

(11) A vendor may display in the interior of his licensed premises, including the window or windows thereof, neon, electric, or other signs, including window painting and decalcomanias applied to the surface of the interior or exterior of such windows, and posters, placards, and other advertising material advertising the brand or brands of alcoholic beverages sold by him, whether visible or not from the outside of the licensed premises, but no vendor shall display in the window or windows of his licensed premises more than one neon, electric, or similar sign, advertising the product of any one manufacturer.

(12) Any manufacturer or distributor may give, lend, furnish, or sell to a vendor who sells the products of such manufacturer or distributor neon or electric signs, window painting and decalcomanias, posters, placards, and other advertising material



herein authorized to be used or displayed by the vendor in the interior of his licensed premises.

**History.**—s. 4, ch. 16774, 1935; CGL 1936 Supp. 4151(230); s. 1, ch. 22078, 1943; s. 6, ch. 23746, 1947; s. 1, ch. 25260, 1949; s. 1, ch. 25340, 1949; s. 10, ch. 26484, 1951; s. 28, ch. 57-420; ss. 16, 35, ch. 69-106; s. 208, ch. 71-377; s. 1, ch. 72-230; s. 1, ch. 75-97; s. 9, ch. 78-95; s. 30, ch. 79-4.

**561.421 Temporary convention permits.**—In convention halls, coliseums, and similar type buildings where there is an existing beverage license, upon the approval of the incorporated city, town, or board of county commissioners, the director may, in his discretion, issue a permit for not more than 5 calendar days for the display by manufacturers or distributors of products licensed under the Beverage Law; and may authorize consumption of such beverages on the premises only.

**History.**—s. 1, ch. 71-100; s. 1, ch. 72-230.

**561.422 Nonprofit civic organizations, temporary permits.**—Upon the filing of an application and payment of a fee of \$25 per day the director may issue a permit authorizing a bona fide nonprofit civic organization to sell alcoholic beverages for consumption on the premises only, for a period not to exceed 1 day, subject to any state law or municipal or county ordinances regulating the time for selling such beverages. However, any such civic organization shall be issued only one such permit per calendar year.

**History.**—s. 1, ch. 72-380.

**561.423 Beer and malt beverages; in-store servicing authorized.**—Nothing in s. 561.42 or any other provision of the Beverage Law shall prohibit a distributor of beer or malt beverages from providing in-store servicing of beer or malt beverages sold by such distributors. "In-store servicing" as used herein means quality control procedures, to wit: Rotation of malt beverages on the vendor's shelves, rotation and placing of malt beverages in vendor's coolers, proper stacking and maintenance of appearance and display of malt beverages on vendor's shelves, and price-stamping of malt beverages in vendor's licensed premises.

**History.**—s. 1, ch. 75-143.

**561.424 Vinous beverages; in-store servicing authorized.**—

(1) It is the finding of the Legislature that the in-store servicing of wine by a distributor is a necessary part of a distributor's function and responsibility to a vendor. It is further the finding of the Legislature that the in-store servicing of wine by a distributor is not intended by the distributor to induce a vendor to purchase wine from the distributor nor does the distributor intend to provide any financial assistance to a vendor by providing such in-store servicing to the vendor. In addition, it is the finding of the Legislature that in-store servicing of wine by a distributor is a normal trade or business practice which has substantially contributed to the increase in sales of wine resulting in a substantial benefit to the state by increased tax revenues resulting from the increased sales, and therefore is not a rendering of financial assistance to a vendor or an inducement to purchase wine.

(2) Nothing in s. 561.42 or any other provision of the alcoholic beverage law shall prohibit a distribu-

tor of wine from providing in-store servicing of wine sold by such distributor to a vendor. "In-store servicing" as used herein means: placing the wine on the vendor's shelves and maintaining the appearance and display of said wine on the vendor's shelves in the vendor's licensed premises; placing the wine not so shelved or displayed in a storage area designated by the vendor, which is located in the vendor's licensed premises; rotation of vinous beverages; and price stamping of vinous beverages in vendor's licensed premises. This section shall not apply to distilled spirits.

**History.**—s. 3, ch. 77-192.

**561.43 Dry counties; manufacturers' or distributors' licenses; exemptions.**—

(1) No license shall be issued to a manufacturer, distributor, or exporter for the operation of a manufacturing or distributing plant or exporting establishment in any county where the sale of intoxicating liquors, wines, and beers is prohibited, except:

(a) To manufacturers of wines or wines and cordials;

(b) To distillers of alcoholic or spirituous liquors made exclusively from citrus fruits, citrus fruit products or citrus fruit byproducts, agricultural products and byproducts;

(c) To manufacturers of beer whose plants are licensed at the time the county in which such plants are located votes to prohibit the sale of intoxicating beverages therein under the local option provisions of the Constitution of Florida.

(d) To rectifiers and blenders of alcoholic or spirituous liquors mixed exclusively with citrus fruit products or citrus fruit byproducts, agricultural products, or agricultural byproducts.

(2) It shall be lawful for any manufacturer or distiller authorized to be licensed under the provisions of this section to sell its products from its plants only for transportation out of the county.

**History.**—s. 5, ch. 16774, 1935; CGL 1936 Supp. 4151(231); s. 2, ch. 19301, 1939; s. 8, ch. 22663, 1945; s. 7, ch. 23746, 1947; s. 1, ch. 57-1969; s. 1, ch. 61-438; s. 9, ch. 63-562; s. 1, ch. 72-230.

**561.49 No tax on out-of-state sales.**—The excise taxes provided for in this chapter shall be paid as to all such beverages sold within this state. No excise tax shall be required to be paid by manufacturers, distributors, or exporters as to the sale of beverages which are actually delivered by such manufacturer, distributor, or exporter to persons outside the state when such deliveries are actually made outside the state in places where the sale of such beverages is authorized by law to persons authorized by the laws of the places where such delivery is made to purchase and receive such beverages in such places. The burden shall always be on the manufacturer, distributor, or exporter to show to the satisfaction of the division by bill of lading of a common carrier or other satisfactory evidence that delivery was made outside the state in accordance with the laws of the place of delivery.

**History.**—s. 9, ch. 16774, 1935; s. 10, ch. 18015, 1937; CGL 1936 Supp. 4151(235); s. 2, ch. 20830, 1941; s. 10, ch. 63-562; ss. 16, 35, ch. 69-106; s. 1, ch.

72-230.

**561.50 One state tax payment and reports.—**

There shall be only one state tax paid as to each gallon or fraction thereof of beverage sold under the Beverage Law, and no other excise tax shall be levied directly or indirectly. Said tax shall be computed from the reports, books, and records of manufacturers and distributors, and the amount so computed shall be remitted with the report required by s. 561.55 to the division at intervals of 1 month, on or before the tenth of each month, for all beverages sold during the previous calendar month, and such payment of tax shall accompany the report required by s. 561.55. If the monthly tax liability of a manufacturer or distributor exceeds the amount of the bond furnished for payment of taxes, the division may require payment each Monday of the tax on the sales for the previous week.

**History.**—s. 9, ch. 16774, 1935; CGL 1936 Supp. 4151(235); s. 10, ch. 18015, 1937; s. 2, ch. 20830, 1941; s. 30, ch. 57-420; ss. 16, 35, ch. 69-106; s. 1, ch. 72-230.

**561.506 Payment of tax by wholesaler.—**

(1) For 11 months beginning with the tax collection payment due the division on August 10, 1969, each wholesaler shall remit the tax due, plus a prepayment in the amount of 16.4 percent of the tax due to the division. Up to 10 percent of the total payment may be made in the form of revenue stamps previously purchased.

(2) Beginning August 10, 1971, each wholesaler may deduct from his monthly tax collection payment an amount not to exceed 2 percent of the prepaid amount to his credit as of June 11, 1970, which amount shall include any unamortized stamps.

**History.**—s. 2, ch. 69-49; ss. 16, 35, ch. 69-106; s. 1, ch. 72-230.

**561.54 Certain deliveries of beverages prohibited.**—It is unlawful for common or permit carriers, operators of privately owned cars, trucks, buses, or other conveyances or out-of-state manufacturers or suppliers to make delivery from without the state of any beverage containing more than 1 percent alcohol by weight to any person, association of persons, or corporation within the state, except to qualified manufacturers, distributors, and exporters of such beverages so delivered and to qualified bonded warehouses in Florida, and except sacramental wines ordered under permit issued by the division.

**History.**—CGL 1936 Supp. 4151(235); s. 10, ch. 18015, 1937; s. 5, ch. 20830, 1941; s. 11, ch. 22663, 1945; s. 11, ch. 23746, 1947; s. 11, ch. 25035, 1949; s. 11, ch. 29786, 1955; s. 11, ch. 63-562; ss. 16, 35, ch. 69-106; s. 1, ch. 72-230.

**561.55 Manufacturers', distributors', and exporters' records and reports.—**

(1) Manufacturers, distributors, and exporters shall each keep a complete and accurate record and make reports showing the amount of beverages manufactured or sold within the state and to whom sold; also, of all beverages imported from beyond the limits of the state and to whom sold; also, all beverages exported beyond the limits of the state, to whom sold, the place where sold and the address of the person to whom sold. Manufacturers, distributors, and exporters shall make full and complete report by the 10th day of each month for the previous calendar month. Said report shall be made out in triplicate, two copies of which shall be sent to the division,

the third copy retained for the manufacturer's, distributor's, or exporter's record. Reports shall be made on forms prepared and furnished by the division.

(2) All manufacturers, distributors, and exporters licensed under the Beverage Law shall maintain and keep for a period of 3 years at the licensed place of business such records of alcoholic beverages received, sold, or delivered within or without this state as may be required by the division.

**History.**—s. 4, ch. 16774, 1935; CGL 1936 Supp. 4151(230); s. 31, ch. 57-420; s. 3, ch. 61-219; s. 12, ch. 63-562; ss. 16, 35, ch. 69-106; s. 1, ch. 72-230.

**561.56 Transportation of beverages by manufacturers, distributors, and exporters.—**

Manufacturers, distributors, and exporters may transport or cause to be transported such beverages from one place in this state to another place in this state, or from any place beyond the limits of this state into any place within this state, or from any place in this state to any place beyond this state, for sale at wholesale or export as herein provided, except that no beverage prohibited to be sold in certain counties in this state shall be transported for sale or be caused to be transported for sale in the counties where their sale is prohibited.

**History.**—s. 4, ch. 16774, 1935; CGL 1936 Supp. 4151(230); s. 13, ch. 63-562; s. 1, ch. 72-230.

**561.57 Deliveries by licensees.—**

Vendors shall be permitted to make deliveries away from their places of business of sales actually made at the licensed place of business; provided, telephone orders received at vendor's licensed place of business shall be construed as a sale actually made at the vendor's licensed place of business. Where deliveries are made by a vendor, manufacturer, distributor, or exporter away from his place of business, such deliveries shall be made only in vehicles to which are conspicuously attached vehicle plates or decals as herein defined. The division shall have prepared annually vehicle plates or decals suitable to be attached to such vehicles, with the words, Beverage Vehicle No. ...., which may be obtained by any licensee upon payment of a fee of \$1 to the division.

**History.**—s. 11(c), ch. 16774, 1935; CGL 1936 Supp. 4151(237); s. 1, ch. 20830, 1941; s. 17, ch. 25359, 1949; s. 32, ch. 57-420; s. 14, ch. 63-562; ss. 16, 35, ch. 69-106; s. 1, ch. 72-230.

**561.58 Issuance of license for a prior license revoked.—**

When a license is revoked by the division, it may prohibit or permit a license to be issued for the location of the place of business formerly operated under such revoked license. The maximum period of time that any such license shall be prohibited by the division from any such place of business shall be 2 years from the succeeding October 1 following such revocation.

**History.**—s. 7, ch. 20830, 1941; s. 18, ch. 25359, 1949; ss. 16, 35, ch. 69-106; s. 1, ch. 72-230.

**561.65 Mortgagee's interest in license.—**

(1) Any lender licensed by the state holding a bona fide mortgage or other lien on a spirituous alcoholic beverage license in Florida shall have the right to enforcement of his lien against the said license within 12 days after any order of revocation or suspension by an administrative officer or department of the government for a cause or causes in which said



lienholder did not have knowledge or did not participate.

(2) If any said lienholder is the purchaser at a foreclosure sale of said license, he shall have the right to operate under said license, if otherwise lawfully qualified and authorized by the division to do so or to have a reasonable time within which to transfer the said license to some person qualified under the laws of this state to operate such license.

(3) If any such bona fide mortgagee or lienholder shall serve notice in writing on the division of the extension of such lien and accompany said notice with the payment of a fee of \$5 to the division, which money shall be used by the division to defray the costs of providing this service, then such lienholder shall be notified in writing of the filing of an order to show cause as to why said license should not be

suspended and revoked, and also said lienholder shall be furnished a copy of any order of suspension or revocation. In this event, the 12 days within which to file for the enforcement of the lien by the lienholder shall commence running from the date of the mailing of the copy of the order of revocation or suspension.

**History.**—s. 1, ch. 69-115; ss. 16, 35, ch. 69-106; s. 1, ch. 72-230; s. 18, ch. 79-11.

**561.66 Legislative intent.**—It is the intent of the Legislature that chapters 561, 562, 563, 564, and 565 shall apply within the state boundaries of Florida, including Indian country, Indian reservations, or land held in trust for Indians by the United States or any other person.

**History.**—s. 1, ch. 79-405.

## CHAPTER 562

## BEVERAGE LAW; ENFORCEMENT

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**562.01 Possession of untaxed beverages.**—It is unlawful for any person to own, possess, purchase, sell, serve, distribute, or store any alcoholic beverages unless said person has fully complied with the pertinent provisions of the beverage law relating to the payment of excise taxes.

**History.**—s. 9, ch. 16774, 1935; CGL 1936 Supp. 4151(235); s. 10, ch. 18015, 1937; s. 2, ch. 20830, 1941; s. 1, ch. 57-327; s. 147, ch. 71-355; s. 2, ch. 72-230.

**562.02 Possession of beverage not permitted to be sold under license.**—It is unlawful for a licensee under the Beverage Law or his agent to have in his possession, or permit anyone else to have in his possession, at or in the place of business of such licensee, alcoholic beverages not authorized by law to be sold by such licensee.

**History.**—s. 7, ch. 18015, 1937; s. 4, ch. 19301, 1939; CGL 1940 Supp. 4151(271g); s. 12, ch. 23746, 1947; s. 2, ch. 72-230.

**562.025 Possession of beverages as food ingredients.**—This chapter shall not be construed to prohibit the owner or employee of a public food service establishment from possessing or using alcoholic beverages manufactured pursuant to law as ingredients to enhance the flavor of food prepared in connection with the operation of such establishment, provided that such public food service establishment meets the following criteria:

(1) Such public food service establishment shall hold a license which allows consumption of alcoholic beverages on the premises, issued by the Division of



Alcoholic Beverages and Tobacco; and

(2) Such public food service establishment shall hold a license issued by the Division of Hotels and Restaurants.

Every such establishment shall maintain a menu on the premises which menu shall clearly designate the food containing alcoholic beverages. Daily specials need not be so posted. Alcoholic beverages may be used by the above licensees only as ingredients to enhance the flavor of food prepared and served on the licensed premises. It is the intention of this section to allow the use of such alcoholic beverages by the aforementioned licensees in the actual cooking of food and in the enhancement of the flavor of certain foods and desserts. This section shall not be construed so as to permit any other use of alcoholic beverages by such licensees or the purchase of spirituous beverages except from a licensed vendor.

**History.**—s. 1, ch. 79-70.

**562.03 Storage on licensed premises.**—It is unlawful for any vendor to store or keep any alcoholic beverages except for the personal consumption of the vendor, his family and guest in any building or room other than the building or room shown in the diagram accompanying his license application or in another building or room approved by the division.

**History.**—s. 6, ch. 16774, 1935; CGL 1936 Supp. 4151(232); s. 1, ch. 57-327; ss. 16, 35, ch. 69-106; s. 2, ch. 72-230.

**562.06 Sale only on licensed premises.**—Each license application shall describe the location of the place of business where such beverage may be sold. It is unlawful to sell, or permit the sale of such beverage except on the premises covered by the license as described in the application therefor.

**History.**—s. 11, ch. 16774, 1935; CGL 1936 Supp. 4151(237); s. 1, ch. 20830, 1941; s. 1, ch. 57-327; s. 2, ch. 72-230.

**562.061 Misrepresentation of beverages sold on licensed premises.**—It is unlawful for any licensee, his agent or employee knowingly to sell or serve any beverage represented or purporting to be an alcoholic beverage which in fact is not such beverage. It is further unlawful for any licensee knowingly to keep or store on the licensed premises any bottles which are filled or contain liquid other than that stated on the label of such bottle.

**History.**—s. 2, ch. 57-327; s. 2, ch. 72-230.

**562.07 Illegal transportation of beverages.**—It is unlawful for alcoholic beverages to be transported in quantities of more than 12 bottles except as follows:

(1) By common carriers;

(2) In vehicles of licensees to which said vehicles are attached the license plates or decals herein mentioned;

(3) By individuals who possess such beverages not for resale within the state.

**History.**—s. 11, ch. 16774, 1935; CGL 1936 Supp. 4151(237); s. 1, ch. 20830, 1941; s. 2, ch. 72-230.

**562.11 Selling, giving, or serving alcoholic beverages to minors prohibited.**—

(1)(a) It is unlawful for any person to sell, give, serve, or permit to be served alcoholic beverages to

persons under 18 years of age or to permit a person under 18 years of age to consume said beverages on the licensed premises. Anyone convicted of violation of the provisions hereof shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(b) A licensee who sells, gives, serves, or permits to be served any alcoholic beverage to a person under 18 years of age or permits a person under 18 years of age to consume any alcoholic beverage on the licensed premises shall have a complete defense to any civil action therefor, except for any administrative action by the division under the Beverage Law if, at the time the alcoholic beverage was sold, given, served, or permitted to be served, the minor falsely evidenced that he was of legal age to purchase or consume the alcoholic beverage and the appearance of the minor was such that an ordinarily prudent person would believe him to be of legal age to purchase or consume the alcoholic beverage, and the licensee carefully checked the driver's license or other comparable identification of the minor and acted in good faith and in reliance upon the representation and appearance of the minor in the belief that he was of legal age to purchase or consume the alcoholic beverage. Nothing herein shall negate any cause of action which arose prior to June 2, 1978.

(2) It is unlawful for any person to misrepresent or misstate his age or the age of any other person for the purpose of inducing any licensee or his agents or employees to sell, give, serve, or deliver any alcoholic beverages to a person under 18 years of age. Anyone convicted of violating the provisions hereof shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Any person under the age of 17 years violating said provisions shall be within the jurisdiction of the judge of the circuit court and shall be dealt with as a juvenile delinquent according to law.

(3) Any person under the age of 18 years testifying in any criminal prosecution or in any hearing before the division involving the violation by any other person of the provisions of this section may, at the discretion of the prosecuting officer, be given full and complete immunity from prosecution for any violation of law revealed in such testimony that may be or may tend to be self-incriminating, and any such person under 18 years of age so testifying, whether under subpoena or otherwise, shall be compelled to give any such testimony in such prosecution or hearing for which immunity from prosecution therefor is given.

**History.**—s. 11, ch. 16774, 1935; CGL 1936 Supp. 4151(237); s. 1, ch. 20830, 1941; s. 15, ch. 23746, 1947; s. 20, ch. 25359, 1949; s. 1, ch. 57-327; s. 1, ch. 67-355; ss. 16, 35, ch. 69-106; s. 563, ch. 71-136; s. 2, ch. 72-230; s. 26, ch. 73-334; s. 49, ch. 77-121; s. 1, ch. 78-134; s. 19, ch. 79-11.

**562.111 Possession of alcoholic beverages by minors prohibited.**—It is unlawful for any person under the age of 18 years to have in his or her possession alcoholic beverages, except persons employed under the provisions of s. 562.13, acting in the scope of their employment.

**History.**—s. 2, ch. 57-327; s. 2, ch. 72-230; s. 50, ch. 77-121.

**562.12 Beverages sold with improper license, or without license, or held with intent to sell prohibited.—**

(1) It is unlawful for any person to sell alcoholic beverages without a license, and it is unlawful for any licensee to sell alcoholic beverages except as permitted by his license, or to sell such beverages in any manner except that permitted by his license; and any licensee or other person who keeps or possesses alcoholic beverages not permitted to be sold by his license, or not permitted to be sold without a license, with intent to sell or dispose of same unlawfully, or who keeps and maintains a place where alcoholic beverages are sold unlawfully, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Upon the arrest of any licensee or other person charged with a violation of this section, the arresting officer shall take into his custody all alcoholic beverages found in the possession, custody, or control of the person arrested or, in the case of a licensee, all alcoholic beverages not within the purview of his license, and safely keep and preserve the same and have it forthcoming at any investigation, prosecution, or other proceeding for the violation of this section and for the destruction of the same as provided herein. Upon the conviction of the person arrested for the violation of this section, the judge of the court trying the case, after notice to the person convicted and any other person whom the judge may be of the opinion is entitled to notice, as the judge may deem reasonable, shall issue to the sheriff of the county, the division, or the authorized municipality a written order adjudging and declaring the alcoholic beverages forfeited and directing the sheriff, the division, or the authorized municipality to dispose of the alcoholic beverages as provided in s. 562.44 or s. 568.10.

**History.**—s. 11, ch. 16774, 1935; CGL 1936 Supp. 4151(237); s. 1, ch. 20830, 1941; s. 1, ch. 28069, 1953; s. 1, ch. 61-218; ss. 16, 35, ch. 69-106; s. 564, ch. 71-136; s. 2, ch. 72-230; s. 20, ch. 79-11.

**562.13 Employment of minors or certain other persons by certain vendors prohibited; exceptions.—**

(1) Unless otherwise provided in this section, it is unlawful for any vendor licensed under the beverage law to employ any person under 18 years of age.

(2) This section shall not apply to:

(a) Professional entertainers 17 years of age who are not in school.

(b) Persons under the age of 18 years who are employed in drugstores, grocery stores, or automobile service stations which have obtained licenses to sell beer or beer and wine, when such sales are made for consumption off the premises.

(c) Persons 17 years of age or over or any person furnishing evidence that he is a senior high school student with written permission of the principal of said senior high school or that he is a senior high school graduate, or any high school graduate, employed by a bona fide food service establishment where alcoholic beverages are sold, provided such persons do not participate in the sale, preparation, or service of the beverages and that their duties are of such nature as to provide them with training and knowledge as might lead to further advancement in

food service establishments.

(d) Persons under the age of 18 years employed as bellhops, elevator boys, and others in hotels when such employees are engaged in work apart from the portion of the hotel property where alcoholic beverages are offered for sale for consumption on the premises.

(e) Persons under the age of 18 years employed in bowling alleys in which alcoholic beverages are sold or consumed, so long as such minors do not participate in the sale, preparation, or service of such beverages.

(f) Persons under the age of 18 years employed by a bona fide dinner theater as defined in this paragraph, as long as their employment is limited to the services of an actor, actress, or musician. For the purposes of this paragraph, a dinner theater means a theater presenting consecutive productions playing no less than 3 weeks each in conjunction with dinner service on a regular basis. In addition, both events must occur in the same room, and the only advertised price of admission must include both the cost of the meal and the attendance at the performance.

(3)(a) It is unlawful for any vendor licensed under the beverage law to employ as a manager or person in charge or as a bartender any person:

1. Who has been convicted within the last past 5 years of any offense against the beverage laws of this state, the United States, or any other state.

2. Who has been convicted within the last past 5 years in this state or any other state or the United States of soliciting for prostitution, pandering, letting premises for prostitution, keeping a disorderly place, or illegally dealing in narcotics.

3. Who has, in the last past 5 years, been convicted of any felony in this state, any other state, or the United States.

The term "conviction" shall include an adjudication of guilt on a plea of guilty or nolo contendere or forfeiture of a bond when such person is charged with a crime.

(b) This subsection shall not apply to any vendor licensed under the provisions of paragraph 563.02(1)(a) or paragraph 564.02(1)(a).

**History.**—s. 11, ch. 16774, 1935; CGL 1936 Supp. 4151(237); s. 1, ch. 20830, 1941; s. 1, ch. 22669, 1945; s. 21, ch. 25359, 1949; s. 2, ch. 29964, 1955; s. 1, ch. 57-327; s. 1, ch. 61-429; s. 1, ch. 65-534; s. 1, ch. 67-2208; ss. 16, 35, ch. 69-106; s. 1, ch. 72-183; s. 2, ch. 72-230; s. 1, ch. 73-358; s. 1, ch. 73-365; s. 2, ch. 76-288; s. 1, ch. 77-174.

**562.131 Solicitation for sale of alcoholic beverage prohibited; penalty.—**

(1) It is unlawful for any licensee, his employee, agent, servant, or any entertainer employed at the licensed premises or employed on a contractual basis to entertain, perform or work upon the licensed premises to beg or solicit any patron or customer thereof or visitor in any licensed premises to purchase any beverage, alcoholic or otherwise, for such licensee's employee, agent, servant, or entertainer.

(2) It is unlawful for any licensee, his employee, agent, or servant to knowingly permit any person to loiter in or about the licensed premises for the purpose of begging or soliciting any patron or customer of, or visitor in, such premises to purchase any beverage, alcoholic or otherwise.



(3) Any violation of this section is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—ss. 1-3, ch. 61-234; s. 1, ch. 65-111; s. 565, ch. 71-136; s. 2, ch. 72-230.

**562.14 Regulating the time for sale of alcoholic and intoxicating beverages.—**

(1) Except as otherwise provided by county or municipal ordinance, no alcoholic beverages may be sold, consumed, served, or permitted to be served or consumed in any place holding a license under the division between the hours of midnight and 7 a.m. of the following day. This section shall not apply to railroads selling only to passengers for consumption on railroad cars.

(2) The division shall not be responsible for the enforcement of the hours of sale established by county or municipal ordinance.

(3) Any person violating this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 11, ch. 16774, 1935; CGL 1936 Supp. 4151(237); s. 1, ch. 20830, 1941; ss. 1-4, ch. 21944, 1943; s. 1, ch. 22605, 1945; s. 16, ch. 23746, 1947; s. 1, ch. 57-327; ss. 16, 35, ch. 69-106; s. 566, ch. 71-136; s. 2, ch. 72-230; s. 21, ch. 79-11.

**562.15 Unlawful possession; unpaid taxes.—**

It is unlawful for any person to own or possess within this state any alcoholic beverage containing more than 1 percent of alcohol by weight, unless full compliance has been had with the pertinent provisions of the Beverage Law as to payment of excise taxes on beverages of like alcohol content. Provided, that this section shall not apply to manufacturers or distributors licensed under the Beverage Law, to state bonded warehouses or to common carriers; provided, further, this section shall not apply to persons possessing not in excess of 1 gallon of such beverages; provided, the beverage shall have been purchased by said possessor outside of the state in accordance with the laws of the place where purchased and shall have been brought into this state by said possessor. The burden of proof that such beverages were purchased outside the state and in accordance with the laws of the place where purchased shall in all cases be upon the possessor of such beverages.

**History.**—s. 5, ch. 18015, 1937; s. 5, ch. 19301, 1939; CGL 1940 Supp. 4151(271e); s. 2, ch. 22669, 1945; s. 147, ch. 71-355; s. 2, ch. 72-230.

**562.16 Possession of beverages upon which tax is unpaid.—**Any person or corporation who shall own or have in his or its possession any beverage upon which a tax is imposed by the Beverage Law, or which would be imposed if such beverage were manufactured in or brought into this state in accordance with the regulatory provisions of the Beverage Law, and upon which such tax has not been paid shall, in addition to the fines and penalties otherwise provided in the Beverage Law, be personally liable for the amount of the tax imposed on such beverage, and the division may collect such tax from such person by suit or otherwise; provided, that this section shall not apply to manufacturers or distributors licensed under the Beverage Law, to state bonded warehouses or to common carriers; provided, further, this section shall not apply to persons possessing not in excess of 1 gallon of such beverages; provided, the beverage shall have been purchased by said possessor outside of the state in accordance with

the laws of the place where purchased and shall have been brought into this state by said possessor. The burden of proof that such beverages were purchased outside the state and in accordance with the laws of the place where purchased in all cases shall be upon the possessor of such beverages.

**History.**—s. 5, ch. 18015, 1937; s. 5, ch. 19301, 1939; CGL 1940 Supp. 4151(271e); s. 3, ch. 22669, 1945; s. 1, ch. 57-327; ss. 16, 35, ch. 69-106; s. 2, ch. 72-230.

**562.17 Collection of unpaid beverage taxes.—**

Any excise tax imposed by the Beverage Law may be collected as any other excise tax imposed by the state, and all rights and remedies available in the collection of any excise tax imposed by the state are made available for the collection of taxes imposed under the Beverage Law. Any and all taxes due the state on alcoholic beverages may be collected as provided in s. 210.14.

**History.**—s. 5, ch. 18015, 1937; s. 5, ch. 19301, 1939; CGL 1940 Supp. 4151(271e); s. 22, ch. 25359, 1949; s. 2, ch. 72-230.

**562.18 Possession of beverage upon which federal tax unpaid.—**It is unlawful for any person to have in his possession within this state any alcoholic beverage on which a federal excise tax is required to be paid, unless such federal excise tax has been paid as to such beverage.

**History.**—s. 4, ch. 18015, 1937; CGL 1940 Supp. 4151(271d); s. 2, ch. 72-230.

**562.20 Monthly reports by common and other carriers of beverages required.—**

(1) All common carriers of freight operating in the state shall file monthly reports with the division on forms to be prepared by the division which shall show in detail all shipments of alcoholic beverages transported by them to or from any point within the state.

(2) Every other person, except manufacturers and distributors licensed in this state who are required to make reports under s. 561.55, who brings into the state from any point without the state any alcoholic beverages, in amounts exceeding 1 gallon in the aggregate, shall likewise file monthly reports with the division on the forms to be prepared by the division, which shall show in detail all such amounts of alcoholic beverages transported by them to any point within the state from any point without the state. Every licensee under this law who ships any alcoholic beverage to points beyond the state shall file monthly reports with the division on forms to be prepared by the division, which shall show in detail all shipments of alcoholic beverages transported by them from any point within the state to any point without the state.

(3) Such reports shall show in detail the name of the shipper and the consignee of each shipment and a description of the kind and amount of each such shipment and shall be filed monthly on or before the 15th of each month for the calendar month previous.

**History.**—s. 12, ch. 16774, 1935; CGL 1936 Supp. 4151(238); s. 1, ch. 21840, 1943; ss. 16, 35, ch. 69-106; s. 2, ch. 72-230; s. 22, ch. 79-11.

**562.21 Sale of beer and wine to vendors for cash only.—**All sales of malt, brewed, or vinous beverages as defined in the Beverage Law, made by manufacturers, when distributing under a manufacturer's license, wholesalers and distributors to retail

licensees must be for cash only, and cash in this instance means that delivery and payment therefor is to be a simultaneous transaction and any maneuver, device, or shift of any kind whereby credit is extended shall constitute a violation of the Beverage Law. Nothing herein shall be construed to permit such manufacturers to distribute to vendors under a manufacturer's license where a warehouse has been established in any county or counties from which such beverages are distributed other than the county wherein they are licensed to so manufacture.

**History.**—s. 1, ch. 19568, 1939; CGL 1940 Supp. 4151(271cc); s. 2, ch. 21840, 1943; s. 23, ch. 25359, 1949; s. 2, ch. 72-230.

**562.23 Conspiracy to violate Beverage Law; penalty.**—If two or more persons shall conspire to do any act which is in violation of any of the provisions of the Beverage Law, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy, if the act so conspired to be done would be a misdemeanor under the provisions of the Beverage Law, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, or, if the act so conspired to be done would be a felony under the provisions of the Beverage Law, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 6, ch. 19301, 1939; CGL 1940 Supp. 7648(26); s. 3, ch. 29964, 1955; s. 568, ch. 71-136; s. 2, ch. 72-230.

**562.24 Administration of oaths by director or authorized employees.**—The director and authorized employees of the division may administer oaths or affirmations on statements of defendants charged with the violation of the Beverage Law and other things directly connected with the enforcement of said law.

**History.**—s. 7, ch. 19301, 1939; CGL 1940 Supp. 4151(271-o); ss. 16, 35, ch. 69-106; s. 2, ch. 72-230; s. 23, ch. 79-11.

**562.25 State bonded warehouses.—**

(1) No operator of any storage warehouse shall accept for storage in such warehouse any alcoholic beverage subject to tax under the Beverage Law until such operator shall have obtained from the division a permit to store such beverage and shall have filed a bond payable to the division, conditioned upon the full compliance by such operator with the provisions of this section. This section shall not apply to a federal bonded warehouse owned wholly by, and operated solely for, a manufacturer or distributor licensed under the Beverage Law. Such permit shall issue upon the payment of \$1 to the division, and may be refused, suspended, or revoked in the same manner and upon the same grounds that the license of a distributor may be refused, suspended, or revoked. Such bond shall be in an amount of not more than \$5,000 nor less than \$1,000, in the discretion of the division, with a surety company licensed to do business in the state as surety.

(2) On or before the 10th day of each month the operator of any state bonded warehouse shall report, on forms furnished by the division, the amount of such beverages on deposit in such warehouse on the last day of the previous calendar month and the amount of such beverages deposited in and withdrawn from such warehouse during the previous cal-

endar month, except that no report shall be required as to such beverages on which all taxes have been paid which have been deposited in storage by a vendor licensed under the Beverage Law.

**History.**—s. 8, ch. 19301, 1939; CGL 1940 Supp. 4151(271p); s. 24, ch. 57-1; ss. 16, 35, ch. 69-106; s. 2, ch. 72-230.

**562.26 Delivering beverage on which tax unpaid.**—It is unlawful for any storage warehouse operator to deliver any beverages subject to tax under the Beverage Law and on which the tax has not been paid to anyone within the state except a common carrier or a manufacturer or distributor licensed under the Beverage Law to manufacture or distribute the type of beverage so delivered.

**History.**—s. 8, ch. 19301, 1939; CGL 1940 Supp. 4151(271p); s. 2, ch. 72-230.

**562.27 Seizure and forfeiture.—**

(1) It is unlawful for any person to have in his possession, custody, or control, or to own, make, construct, or repair, any still, still piping, still apparatus, or still worm, or any piece or part thereof, designed or adapted for the manufacture of an alcoholic beverage, or to have in his possession, custody or control any receptacle or container containing any mash, wort, or wash, or other fermented liquids whatever capable of being distilled or manufactured into an alcoholic beverage, unless such possession, custody, control, ownership, manufacture, construction, or repairing be by or for a person authorized by law to manufacture such alcoholic beverage.

(2) It is unlawful for any person to have in his possession, custody, or control any raw materials or substance intended to be used in the distillation or manufacturing of an alcoholic beverage unless the person holds a license from the state authorizing the manufacture of the alcoholic beverage.

(3) The terms "raw material" or "substance" for the purpose of this chapter shall mean and include, but not be limited to, any of the following: Any grade or type of sugar, syrup, or molasses derived from sugar cane, sugar beets, corn, sorghum, or any other source; starch; potatoes; grain or cornmeal, corn chops, cracked corn, rye chops, middlings, shorts, bran, or any other grain derivative; malt; malt sugar, or malt syrup; oak chips, charred or not charred; yeast; cider; honey; fruit; grapes; berries; fruit, grape, or berry juices or concentrates; wine; caramel; burnt sugar; gin flavor; Chinese bean cake or Chinese wine cake; urea; ammonium phosphate, ammonium carbonate, ammonium sulphate, or any other yeast food; ethyl acetate or any other ethyl ester; any other material of the character used in the manufacture of distilled spirits or any chemical or other material suitable for promoting or accelerating fermentation; any chemical or material of the character used in the production of distilled spirits by chemical reaction; or any combination of such materials or chemicals.

(4) Any such raw materials, substance, or any still, still piping, still apparatus, or still worm, or any piece or part thereof, or any mash, wort, or wash, or other fermented liquid and the receptacle or container thereof, and any alcoholic beverage together with all personal property used to facilitate the manufacture or production of the alcoholic beverage or to facilitate the violation of the alcoholic beverage con-



trol laws of this state or the United States may be seized by the division or by any sheriff or deputy sheriff and shall be forfeited to the state.

(5) It shall be unlawful for any person to sell or otherwise dispose of raw materials or other substances knowing same are to be used in the distillation or manufacture of an alcoholic beverage unless such person receiving same, by purchase or otherwise, holds a license from the state authorizing the manufacture of such alcoholic beverage.

(6) Any vehicle, vessel, or aircraft used in the transportation or removal of or for the deposit or concealment of any illicit liquor still or stilling apparatus or any mash, wort, wash, or other fermented liquids capable of being distilled or manufactured into an alcoholic beverage or any alcoholic beverage commonly known and referred to as "moonshine whiskey" shall be seized and may be forfeited as provided by the Florida Uniform Contraband Transportation Act. Any sheriff, deputy sheriff, employee of the division, or police officer may seize any of the vehicles, vessels, or conveyances, and the same may be forfeited as provided by law.

(7) The finding of any still, still piping, still apparatus, or still worm, or any piece or part thereof, or any mash, wort, or wash or other fermented liquids in the dwelling house or place of business, or so near thereto as to lead to the reasonable belief that they are within the possession, custody, or control of the occupants of the dwelling house or place of business, shall be prima facie evidence of a violation of this section by the occupants of the dwelling house or place of business.

(8) Any person violating any provisions of this section of the law shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 9, ch. 19301, 1939; CGL 1940 Supp. 4151(271g); s. 4, ch. 22669, 1945; s. 1, ch. 28073, 1953; s. 1, ch. 29804, 1955; s. 2, ch. 61-218; ss. 16, 35, ch. 69-106; s. 569, ch. 71-136; s. 2, ch. 72-230; s. 26, ch. 73-334; s. 6, ch. 74-385; s. 24, ch. 79-11.

**562.28 Possession of beverages in fraud of Beverage Law.**—All beverages on which taxes are imposed by the Beverage Law or would be imposed if such beverages were manufactured in or brought into this state in accordance with the regulatory provisions of such law, which shall be found in the possession, or custody, or within the control of any person, for the purpose of being sold or removed by him in fraud of the Beverage Law, or with design to evade payment of said taxes, may be seized by the division or any sheriff or deputy sheriff and shall be forfeited to the state.

**History.**—s. 10, ch. 19301, 1939; CGL 1940 Supp. 4151(271r); ss. 16, 35, ch. 69-106; s. 2, ch. 72-230.

**562.29 Raw materials and personal property; seizure and forfeiture.**—All raw materials found in the possession of any person intending to manufacture the same into a beverage subject to tax under the Beverage Law, or into a beverage which would be subject to tax under such law if manufactured in accordance with the regulatory provisions thereof, for the purpose of fraudulently selling such manufactured beverage, or with the design to evade the payment of said tax; and all tools, implements, instruments, and personal property whatsoever, in the

place or building or within any yard or enclosure or in the vicinity where such beverage or raw materials are found, may also be seized by the division or any sheriff or deputy sheriff, and shall be forfeited as aforesaid.

**History.**—s. 10, ch. 19301, 1939; CGL 1940 Supp. 4151(271r); ss. 16, 35, ch. 69-106; s. 2, ch. 72-230.

**562.30 Possession of beverage prima facie evidence; exception.**—The possession by any person, except a licensed manufacturer or distributor, a state bonded warehouse, or a common carrier, of any beverage which is taxable under the Beverage Law, or which would be taxable thereunder if such beverage were manufactured in or brought into the state in accordance with the regulatory provisions thereof, and upon which the tax has not been paid, shall be prima facie evidence that such beverage has been manufactured, or is being sold, removed, or concealed with design to evade payment of such tax.

**History.**—s. 10, ch. 19301, 1939; CGL 1940 Supp. 4151(271r); s. 2, ch. 72-230.

**562.31 Possession of raw materials prima facie evidence; exception.**—The possession by any person, except a licensed manufacturer or distributor, a state bonded warehouse, or a common carrier, of any mash, wort, or wash, or any other raw materials for the manufacture of beverage subject to tax under the Beverage Law, or which would be taxable thereunder if such beverage were manufactured or brought into the state in accordance with the regulatory provisions of such law, shall be prima facie evidence that such person intends to manufacture the same into such beverage for the purpose of selling such beverage with design to evade the payment of such tax.

**History.**—s. 10, ch. 19301, 1939; CGL 1940 Supp. 4151(271r); s. 5, ch. 22669, 1945; s. 2, ch. 72-230.

**562.32 Moving or concealing beverage with intent to defraud state of tax; penalty.**—Every person who removes, deposits, or conceals, or is concerned in removing, depositing, or concealing any beverage for or in respect whereof any tax is imposed by the Beverage Law or would be imposed if such beverage were manufactured in or brought into this state in accordance with the regulatory provisions thereof, with intent to defraud the state of such tax or any part thereof, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 11, ch. 19301, 1939; CGL 1940 Supp. 7648(27); s. 570, ch. 71-136; s. 2, ch. 72-230.

**562.33 Beverage and personal property; seizure and forfeiture.**—Whenever any beverage on which any tax is imposed by the Beverage Law or would be imposed if such beverage were manufactured in or brought into this state in accordance with the regulatory provisions thereof, or any materials, utensils, or vessels proper, or other personal property whatsoever, intended to be made use of for or in the manufacture of such beverage are removed, or are deposited or concealed in any place, with intent to defraud the state of such tax, or any part thereof,

all such beverages and all such materials, utensils, vessels, or other personal property whatsoever, may be seized by the division or any sheriff or deputy sheriff and shall be forfeited to the state.

**History.**—s. 11, ch. 19301, 1939; CGL 1940 Supp. 4151(271s); ss. 16, 35, ch. 69-106; s. 2, ch. 72-230.

cf.—s. 210.12 Seizures; forfeiture proceedings.

#### **562.34 Containers; seizure and forfeiture.—**

(1) It shall be unlawful for any person to have in his possession, custody or control any cans, jugs, jars, bottles, vessels, or any other type containers which are being used, are intended to be used or are known by the possessor to have been used to bottle or package alcoholic beverages containing more than 1 percent of alcohol by weight; provided, that this provision shall not apply to any person properly licensed to bottle or package such alcoholic beverages or to any person intending to dispose of such containers to a person, firm or corporation properly licensed to bottle or package such alcoholic beverages.

(2) It shall be unlawful for any person to sell or otherwise dispose of any cans, jugs, jars, bottles, vessels, or any other type containers knowing that such are to be used in the bottling or packaging of alcoholic beverages containing more than 1 percent of alcohol by weight, unless the person receiving same, by purchase or otherwise, shall hold a license to manufacture or distribute such alcoholic beverages.

(3) It shall be unlawful for any person to transport any cans, jugs, jars, bottles, vessels, or any other type containers intended to be used to bottle or package alcoholic beverages containing more than 1 percent of alcohol by weight; however, this section shall not apply to any firm or corporation holding a license to manufacture or distribute such alcoholic beverages; and provided, further, that this section shall not apply to any person transporting such containers to any person, firm, or corporation holding a license to manufacture or distribute such alcoholic beverages.

(4) Any person violating any provision of this section of the law shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) Any such cans, jugs, jars, bottles, vessels, or any other type container found in the possession, custody, or control of any person which are being used or are intended to be used or to be disposed of in violation of this section shall be seized by the division, sheriffs, or deputy sheriffs and shall be forfeited to the state.

**History.**—s. 11, ch. 19301, 1939; CGL 1940 Supp. 4151(271s); s. 3, ch. 61-218; ss. 16, 35, ch. 69-106; s. 571, ch. 71-136; s. 2, ch. 72-230; s. 25, ch. 79-11.

#### **562.35 Conveyance; seizure and forfeiture.—**

Every vehicle, vessel, or aircraft used in the transportation or removal of, or for the deposit or concealment of, any mash, wort, or wash, or other fermented liquids, or any moonshine whiskey, or any raw materials used to manufacture illicit liquors, utensils, or stills and stilling apparatus, shall be seized and may be forfeited as provided by the Florida Uniform Contraband Transportation Act.

**History.**—s. 11, ch. 19301, 1939; CGL 1940 Supp. 4151(271s); s. 2, ch. 28073, 1953; s. 2, ch. 72-230; s. 7, ch. 74-385.

**562.36 Beverage on conveyance prima facie evidence; proviso.**—The presence, in any conveyance or place, of any beverage upon which a tax is imposed by the Beverage Law or would be imposed if such beverage were manufactured in or brought into this state in accordance with the regulatory provisions thereof, and upon which the tax has not been paid, shall be prima facie evidence that such beverage is being removed, deposited, or concealed with intent to defraud the state of such tax; provided, that the provisions of this section shall not apply to any conveyance or any place owned by, or in the possession, custody, or control of a licensed manufacturer or distributor, a state bonded warehouse, or a common carrier.

**History.**—s. 11, ch. 19301, 1939; CGL 1940 Supp. 4151(271s); s. 2, ch. 72-230.

**562.37 Prima facie evidence that federal tax not paid.**—The absence of the federal strip stamp on the immediate container of any beverage as to the sale of which an excise liquor stamp tax is required to be paid under the laws of the United States shall be prima facie evidence that such excise liquor stamp tax has not been paid. The absence of any entry on the page or pages of the records of the division on which such entry would ordinarily appear, showing the payment of the tax on any beverage upon which a tax is imposed by the Beverage Law, shall be prima facie evidence that such tax has not been paid. A true copy of such page or pages of such records, sworn to be such by the division, or the testimony in open court of any employee of the division that such employee has examined such records and that they contain no entry showing the payment of such tax, shall be admissible in any court in the state as evidence that such tax has not been paid.

**History.**—s. 11A, ch. 19301, 1939; CGL 1940 Supp. 4151(271t); s. 6, ch. 22669, 1945; ss. 16, 35, ch. 69-106; s. 147, ch. 71-355; s. 2, ch. 72-230; s. 26, ch. 79-11.

**562.38 Report of seizures.**—Any sheriff, deputy sheriff, or police officer, upon the seizure of any property under this act, shall promptly report such seizure to the division or its representative, together with a description of all such property seized so that the state may be kept informed as to the size and magnitude of the illicit liquor business.

**History.**—s. 12, ch. 19301, 1939; CGL 1940 Supp. 4151(271u); s. 25, ch. 25359, 1949; s. 3, ch. 28073, 1953; ss. 16, 35, ch. 69-106; s. 2, ch. 72-230; s. 26, ch. 73-334; s. 27, ch. 79-11.

#### **562.39 Disposition and appraisal of property seized under this chapter.—**

(1) Every peace officer seizing property pursuant to the provisions of this law shall forthwith make return of the seizure thereof and deliver the said property to the board of county commissioners of the county wherein the said property was seized. The said return to the board of county commissioners shall describe the property seized and give in detail the facts and circumstances under which the same was seized and state in full the reason why the seizing officer knew, or was led to believe, that the said property was being used for and in connection with a violation of the statutes and laws of this state prohibiting the manufacture of, and traffic in, illicit moonshine whiskey or other materials set forth in s. 562.27(6). The said return shall contain the names of all persons, firms, and corporations known to the



seizing officer to be interested in the seized property.

(2) When any property is seized by any peace officer or law enforcement officer heretofore named pursuant to this act and delivered to the board of county commissioners as aforesaid, the board shall forthwith fix the approximate value thereof and make return thereof to the clerk of the circuit court as hereinafter provided.

(3) The return of the board of county commissioners shall contain a schedule of the property seized, describing the same in reasonable detail and give in detail the facts and circumstances under which it was seized and state in full the reason why the seizing officer knew, or was led to believe, that the property was being used for, or in connection with, a violation of the statutes and laws of this state prohibiting the manufacture of, or traffic in, illicit moonshine whiskey; and a statement of the names of all persons, firms, and corporations known to the board to be interested in the seized property; and shall attach to their said return as exhibit thereto, the return of the seizing officer to the board.

(4) The board of county commissioners shall hold the said seized property pending its disposal by the court as hereafter provided.

**History.**—s. 13, ch. 19301, 1939; CGL 1940 Supp. 4151(271v); s. 7, ch. 22669, 1945; s. 4, ch. 28073, 1953; s. 2, ch. 72-230; s. 159, ch. 79-164.

#### 562.40 Forfeiture proceedings.—

(1) The return of the board aforesaid to the clerk of the circuit court shall be taken and considered as the state's petition or libel in rem for the forfeiture of the property therein described, of which the circuit court of the county shall have jurisdiction, without regard to value. The said return shall be sufficient as said petition or libel notwithstanding the fact that it may contain no formal prayer or demand for forfeiture, it being the intention of the legislature that forfeiture may be decreed without a formal prayer or demand therefor. The said return shall be subject to amendment at any time before final hearing, provided that copies thereof shall be served upon all persons, firms, or corporations who may have filed a claim prior to such amendment.

(2) Upon the filing of said return the clerk of the circuit court shall issue a citation, directed to all persons, firms, and corporations owning, having or claiming an interest in or lien upon the seized property, giving notice of the seizure and directing that all persons, firms, or corporations owning, having, or claiming an interest therein, or lien thereon, to file their claim to, on, or in said property within the time fixed in said citation, as to persons, firms, and corporations not personally served, and within 20 days from personal service of said citation, when personal service is had.

(3) The said citation may be in, or substantially in, the following form:

IN THE CIRCUIT COURT OF THE  
..... JUDICIAL CIRCUIT, IN AND FOR  
..... COUNTY, FLORIDA.  
IN RE FORFEITURE OF THE FOLLOWING DESCRIBED PROPERTY:

(here describe property)

THE STATE OF FLORIDA TO:

ALL PERSONS, FIRMS AND CORPORATIONS OWNING, HAVING OR CLAIMING AN INTEREST IN OR LIEN ON THE ABOVE DESCRIBED PROPERTY.

YOU AND EACH OF YOU are hereby notified that the above described property has been seized, under and by virtue of chapter 562, Florida Statutes as amended, and is now in the possession of the Board of County Commissioners of this county, and you, and each of you, are hereby further notified that a petition, under said chapter, has been filed in the Circuit Court of the ..... Judicial Circuit, in and for ..... County, Florida, seeking the forfeiture of the said property, and you are hereby directed and required to file your claim, if any you have, and show cause, on or before ....., 19....., if not personally served with process herein, and within twenty days from personal service if personally served with process herein, why the said property should not be forfeited pursuant to said chapter. Should you fail to file claim as herein directed judgment will be entered herein against you in due course. Persons not personally served with process may obtain a copy of the petition for forfeiture filed herein from the undersigned clerk of court.

WITNESS my hand and the seal of the above mentioned court, at ..... Florida, this ..... 19.....

(COURT SEAL)

.....(Clerk of the above mentioned court).....

By .....(Deputy Clerk).....

(4) Such citation shall be returnable, as to persons served constructively, as therein directed, not less than 21 nor more than 30 days, from the posting or publication thereof, and as to those personally served with process within 20 days from service thereof. A copy of the petition shall be served with the process when personally served. Personal service of process may be made in the same manner as a summons in chancery.

(5) If the value of the property seized is shown by the board's return to have an appraised value of \$400 or less, the above citation shall be served by posting at three public places in the county, one of which shall be the front door of the courthouse; if the value of the property is shown by the board's return to have an approximate value of more than \$400, the citation shall be published once a week for 3 consecutive weeks in some newspaper of general publication published in the county, if there be such a newspaper published in the county, and if not, then said notice of such publication shall be made by certificate of the clerk if publication is made by posting and by affidavit as provided in chapter 50, if made by publication in a newspaper, which affidavit or certificate shall be filed and become a part of the record in the cause. Failure of the record to show proof of such publication shall not affect any judgment made in the cause unless it shall affirmatively appear that no such publication was made.

**History.**—s. 14, ch. 19301, 1939; CGL 1940 Supp. 4151(271w); s. 26, ch. 25359, 1949; s. 5, ch. 28073, 1953; s. 2, ch. 72-230; s. 8, ch. 73-299.

**562.401 Delivery of property to claimant.—**

Any person, firm, or corporation filing a claim in the cause, which claim shall state fully his right, title, claim, or interest in and to the seized property, may, at any time after said claim is filed with the clerk of the court, obtain possession of the seized property by filing a petition therefor with the board of county commissioners and posting with said board, to be approved by it, a surety bond, payable to the Governor of the state, in twice the amount of the value of the said property as fixed in the board's return to the Clerk of the Circuit Court, with a corporate surety duly authorized to transact business in this state as surety, conditioned upon his paying to the board of county commissioners the value of the property together with costs of the proceeding if judgment of forfeiture be entered by the court. Upon the posting of such bond with the board and the release of the property to the applicant the cause shall proceed to final judgment in the same manner as it would have had no such bond been filed, except that any exception to be issued in the cause pursuant to judgment may run against and be enforced against the person posting said bond and his surety.

**History.**—s. 6, ch. 28073, 1953; s. 2, ch. 72-230.

**562.402 Proceeding when no claim filed.—**

When no claim is filed in the cause within the time required, the clerk shall enter a default against all persons, firms, and corporations owning, claiming, or having an interest in and to the property seized, and the cause may then proceed in the same manner as a common law cause after default, and final judgment shall be entered therein ex parte, except as may be herein otherwise provided.

**History.**—s. 7, ch. 28073, 1953; s. 2, ch. 72-230.

**562.403 Proceeding when claim filed.—**

When one or more claims are filed in the cause, the cause shall be tried upon the issues made thereby with the petition for forfeiture with any affirmative defenses being deemed denied without further pleading. Judgment by default shall be entered against all other persons, firms, and corporations owning, claiming, or having an interest in and to the property seized, after which the cause shall proceed as in other common law cases; except any claimant shall prove to the satisfaction of the court that he did not know or have any reason to believe, at the time his right, title, interest, or lien arose, that the property was being used for or in connection with the violation of any of the statutes or laws of this state prohibiting the manufacture of or traffic in illicit moonshine whiskey, and further that at said time there was no reasonable reason to believe that the said property might be used for such purpose. Where the owner or user of the property has been convicted of a violation of the statutes and laws of this state prohibiting the manufacture of or traffic in illicit moonshine whiskey, such conviction shall be prima facie evidence that each claimant had reason to believe that the property might be used for or in connection with a violation of such statutes and laws, and the burden of proof shall be upon such claimant to satisfy the court that he was without knowledge of such conviction, providing, however, the prima facie presumption of knowledge of a previous conviction of a

violation of this law shall only apply to a subsequent proceeding involving the forfeiture of a motor vehicle when owned by such previous offender and upon which a lien is held by the same licensee involved in the first claim proceedings. Trial of all such causes shall be without a jury, except in such cases as a trial by jury may be guaranteed by the state constitution and in such cases trial by jury shall be deemed waived unless demanded in the claim filed.

**History.**—s. 8, ch. 28073, 1953; s. 2, ch. 72-230.

**562.404 Attorney for board of county commissioners to represent state.—**

Upon the filing of the board's return with the clerk of the circuit court the said clerk shall furnish the attorney for the board of county commissioners with a copy thereof and the said attorney shall represent the state in the forfeiture proceeding. The Department of Legal Affairs shall represent the state in all appeals from judgments of forfeiture. The state may appeal from any judgment denying forfeiture in whole or in part or that may be otherwise adverse to the state.

**History.**—s. 9, ch. 28073, 1953; s. 1, ch. 59-293; ss. 11, 35, ch. 69-106; s. 2, ch. 72-230.

**562.405 Judgment of forfeiture.—**

On final hearing the return of the board to the clerk of the circuit court shall be taken as prima facie evidence that the property seized was or had been used in, or in connection with, the violation of the statutes and laws of this state prohibiting the manufacture of or traffic in illicit moonshine whiskey in this state and shall be sufficient predicate for a judgment of forfeiture in the absence of other proofs and evidence. The burden shall be upon the claimants to show that the property was not so used, if so used, that they had no knowledge of such violation and no reason to believe that the seized property was or would be used for the violation of such statutes and laws. Where such property is encumbered by a lien or retained title agreement under circumstances wherein the lienholder had no knowledge that the property was or would be used in violating such statutes and laws, and no reasonable reason to believe that it might be so used, then the court may declare a forfeiture of all other rights, titles and interests, subject, however, to the lien of such innocent lienholder, or may direct the payment of such lien from the proceeds of any sale of the said property. The proceedings and the judgment of forfeiture shall be in rem and shall be primarily against the property itself. Upon the entry of a judgment of forfeiture the court shall determine the disposition to be made of the property, which may include the destruction thereof, the sale thereof, the allocation thereof to some governmental function or use, or otherwise as the court may determine. Sales of such property shall be at public sale to the highest and best bidder therefor for cash after 2 weeks' public notice as the court may direct. Where the property has been delivered to a claimant upon the posting of a bond, the court shall determine the value of the property or portion thereof subject to forfeiture and shall enter judgment against the principal and surety of the bond in such amount for which execution shall issue in the usual manner. Upon the application of any claimant the court may fix the value of the forfeitable interest or interests in



the seized property and permit such claimant to redeem the said property upon the payment of a sum equal to said value which sum shall be disposed of as would the proceeds of a sale of the said property under a judgment of forfeiture.

**History.**—s. 10, ch. 28073, 1953; s. 2, ch. 72-230.

**562.406 Fees for services.**—Fees for services required hereunder shall be the same as provided for sheriffs and clerks for like and similar services in other cases and matters.

**History.**—s. 12, ch. 28073, 1953; s. 2, ch. 72-230.

**562.407 Disposition of proceeds of forfeiture.**—All sums received from sale or other disposition of the seized property shall be paid into the county fine and forfeiture fund and shall become a part thereof; however, in instances where the seizure is by a municipal police officer within the limits of any municipality having an ordinance requiring such vehicles, vessels, or conveyances to be forfeited, the city attorney shall act in behalf of the city in lieu of the state attorney and shall proceed to forfeit the property as herein provided, and all sums received therefrom shall go into the general operating fund of the city.

**History.**—s. 11, ch. 28073, 1953; s. 2, ch. 72-230.

**562.408 Exercise of police power.**—It is deemed by the Legislature that this law is necessary for the more efficient and proper enforcement of the statutes and laws of this state prohibiting the manufacture of, or traffic in, illicit moonshine whiskey and a lawful exercise of the police power of the state for the protection of the public welfare, health, safety, and morals of the people of the state. All the provisions of this law shall be liberally construed for the accomplishment of these purposes.

**History.**—s. 13, ch. 28073, 1953; s. 2, ch. 72-230.

**562.41 Searches; penalty.**—

(1) Any authorized employee of the division, any sheriff, any deputy sheriff, or any police officer may make searches of persons, places, and conveyances of any kind whatsoever in accordance with the laws of this state for the purpose of determining whether or not the provisions of the Beverage Law are being violated.

(2) Any authorized employee of the division, any sheriff, any deputy sheriff, or any police officer may enter, in the daytime, any building or place where any beverages subject to tax under the Beverage Law or which would be subject to tax thereunder if such beverages were manufactured in or brought into this state in accordance with the regulatory provisions thereof, or any intoxicating beverages containing more than 1 percent of alcohol by weight, are manufactured, produced, or kept, so far as may be necessary, for the purpose of examining said beverages. When such premises are open at night, such officers may enter them while so open, in the performance of their official duties.

(3) Any owner of such premises or person having the agency, superintendency, or possession of same, who refuses to admit such officer or to suffer him to examine such beverages, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(4) Any person who shall forcibly obstruct or hinder the director, any division employee, any sheriff, any deputy sheriff, or any police officer in the execution of any power or authority vested in him by law, or who shall forcibly rescue or cause to be rescued any property if the same shall have been seized by such officer, or shall attempt or endeavor to do so, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(5) Licensees, by the acceptance of their license, agree that their places of business shall always be subject to be inspected and searched without search warrants by the authorized employees of the division and also by sheriffs, deputy sheriffs, and police officers during business hours or at any other time such premises are occupied by the licensee or other persons.

**History.**—s. 15, ch. 19301, 1939; CGL 1940 Supp. 4151(271x), 7648(28), (29); ss. 1, 2, ch. 57-327; ss. 16, 35, ch. 69-106; s. 572, ch. 71-136; s. 2, ch. 72-230; s. 28, ch. 79-11.

**562.42 Destruction of forfeited property.**—In case of the seizure of any intoxicating beverage, still, doubler, worm, worm tub, still piping, still apparatus or any piece or part thereof, any mash, wort, or wash or other fermented liquids and any containers therefor, for any offense involving forfeiture of the same, where such apparatus shall be of less than \$1,000 in value and it shall be impracticable to remove the same to a place of safe storage from the place where seized, the seizing officer is authorized to destroy the same only so far as to prevent the use thereof, or any part thereof, for the purpose for which it was intended. Such destruction shall be in the presence of at least one credible witness and such witness shall unite with the said officer in a duly sworn report of said seizure and such destruction, to be made to the division, in which report they shall set forth the grounds of the claim or forfeiture and the reasons for such seizure and destruction and an estimate of the fair value of the apparatus destroyed and also of the materials remaining after the destruction and a statement that, from facts within their own knowledge, they have no doubt whatever that such apparatus was set up for use in the unlawful manufacture of intoxicating beverages and that it was impracticable to remove the same to a place of safe storage; provided, that not more than one pint of any such intoxicating beverage shall be preserved by the seizing officer to be used as evidence against anyone accused of violating the provisions of the Beverage Law, and such pint of intoxicating beverage is hereby declared to be sufficient of such intoxicating beverage upon which to base a conviction of a violation of the Beverage Law.

**History.**—s. 16, ch. 19301, 1939; CGL 1940 Supp. 4151(271y); ss. 16, 35, ch. 69-106; s. 2, ch. 72-230.

**562.44 Donation of forfeited beverages or raw materials to state institutions; sale of forfeited beverages.**—Any alcoholic beverage or raw materials used for the manufacture of alcoholic beverages that may be seized and forfeited under any of the provisions of the Beverage Law may, with the approval and consent of the Department of Business Regulation, be donated to any state-operated or charitable institution that may have a legitimate

use therefor in the operation of such institution, or the division may sell such beverage so seized and forfeited to any licensed wholesaler in the state, upon the condition that all federal and state taxes that may be due thereon shall be paid, that such sale shall be made only upon submission by said division of a request for bids to at least five wholesale dealers in the state, and that such sale shall be made to the highest and best bidder therefor. However, if no satisfactory bid from a wholesaler is received, the division may then reject all bids and sell such beverage so seized and forfeited to any retailer, licensed in this state to sell such beverage, upon the condition that all federal and state taxes that may be due thereon shall have been paid, that such sale shall be made only upon submission by said division of a request for bids to at least five retail dealers in the state and that such sale shall be to the highest and best bidder therefor. All moneys received from such sales shall be paid by the division to the State Treasurer for the account of the beverage fund and shall be subject to disbursement in accordance with the law relating thereto.

**History.**—s. 18, ch. 19301, 1939; CGL 1940 Supp. 4151(271aa); s. 8, ch. 22669, 1945; s. 1, ch. 57-327; ss. 16, 35, ch. 69-106; s. 2, ch. 72-230; s. 31, ch. 79-4.

#### **562.45 Penalties for violating Beverage Law.—**

(1) Any person willfully and knowingly making any false entries in any records required under the Beverage Law or willfully violating any of the provisions of the Beverage Law, concerning the excise tax herein provided for shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. It is unlawful for any person to violate any provision of the Beverage Law, and any provision of the Beverage Law for which no penalty has been provided shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083; provided, that any person who shall have been convicted of a violation of any provision of the Beverage Law and shall thereafter be convicted of a further violation of the Beverage Law, shall, upon conviction of said further offense, be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) Nothing in the Beverage Law contained shall be construed to affect or impair the power or right of any incorporated municipality of the state hereafter to enact ordinances regulating the hours of business and location of place of business, and prescribing sanitary regulations therefor, of any licensee under the Beverage Law within the corporate limits of such municipality.

**History.**—s. 15, ch. 16774, 1935; s. 3, ch. 19301, 1939; CGL 1940 Supp. 4151(240), 7648(6); s. 4, ch. 29964, 1955; s. 1, ch. 57-327; s. 573, ch. 71-136; s. 2, ch. 72-230.

#### **562.451 Moonshine whiskey; ownership, possession, or control prohibited; penalties; rule of evidence.—**

(1) Any person who owns or has in his possession or under his control less than one gallon of liquor, as defined in the Beverage Law, which was not made or manufactured in accordance with the laws in effect at the time when and place where the same was made or manufactured shall be guilty of a misdemeanor of the second degree, punishable as provided

in s. 775.082 or s. 775.083.

(2) Any person who owns or has in his possession or under his control 1 gallon or more of liquor, as defined in the Beverage Law, which was not made or manufactured in accordance with the laws in effect at the time when and place where the same was made or manufactured shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) In any prosecution under this section, proof that the liquor involved is what is commonly known as moonshine whiskey shall be prima facie evidence that the same was not made or manufactured in accordance with the laws in effect at the time when and place where the same was made or manufactured.

**History.**—s. 9, ch. 22669, 1945; s. 17, ch. 23746, 1947; s. 5, ch. 29964, 1955; s. 1, ch. 59-435; s. 574, ch. 71-136; s. 2, ch. 72-230.

**562.452 Curb service of intoxicating liquor prohibited.**—It is unlawful for any person to sell or serve, by the drink, any intoxicating liquor, other than malt beverages of legal alcoholic content, except within the building and licensed premises as provided in s. 562.06 and paragraph 565.02(1)(g) which is the address of the person holding a license for the sale of such intoxicating liquor. However, nothing in this section shall be construed to permit the practice of curbside or drive-in service in connection with such intoxicating liquors when sold by the drink or the sale of intoxicating liquors in parking lots; provided, however, that nothing in this section contained shall be construed to prevent the regular delivery by licensed dealers of sealed, federally stamped containers containing such intoxicating liquors.

**History.**—s. 1, ch. 19437, 1939; CGL 1940 Supp. 7648(30); s. 7, ch. 22858, 1945; s. 2, ch. 72-230; s. 1, ch. 75-278.

**Note.**—Former s. 569.01.

**562.453 Curb drinking of intoxicating liquor prohibited.**—It is unlawful for any person to consume any intoxicating liquor, except malt beverages of legal alcoholic content, at curbside or drive-in stands, except within the building which is the address of the person holding a license for the sale of such intoxicating liquors.

**History.**—s. 2, ch. 19437, 1939; CGL 1940 Supp. 7648(31); s. 2, ch. 72-230.

**Note.**—Former s. 569.02.

#### **562.454 Vendors to be closed in time of riot.—**

(1) Whenever any riot or gathering of a mob occurs in any area of this state, all persons in the area who sell alcoholic beverages shall, upon being so ordered by proclamation as provided herein, immediately stop the sale of alcoholic beverages and immediately close all barrooms, saloons, shops, or other places where any other alcoholic beverages are sold and keep them closed and refrain from selling, bartering, lending, or giving away any alcoholic beverages until such time as public notice shall be given by the sheriff of the county or the mayor of any city, town, or village where any riot or mob action may have occurred that such places may be opened and the sale of alcoholic beverages resumed.

(2) Whenever any riot has occurred or mob has gathered, or there is a reasonable cause to apprehend the occurrence of such events in any area of the



state, the mayor or county commission shall immediately issue a proclamation ordering the suspension of sale of alcoholic beverages and the closing of the places described in subsection (1) until such time as the public peace and safety no longer requires such restrictions.

(3) None of the provisions of this section shall require the closing of any store, shop, restaurant, gasoline service station, or other place or establishment in which alcoholic beverages are sold by the drink for consumption on the premises or as items in a stock of varied merchandise for sale to the general public, but all sales of such alcoholic beverages shall be suspended, and all bars, cocktail lounges, and other areas maintained for the sale or service of such beverages in such stores, shops, restaurants, gasoline service stations, and other such places or establishments shall be closed during any riot, gathering of a mob, or other occurrence contemplated in subsections (1) and (2).

(4) Any person who knowingly violates any of the provisions of this section or the proclamation or permits any person in his employ to do so or connives with any other person to evade the terms of such proclamation shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—ss. 1, 2, ch. 4033, 1891; GS 3244, 3245; CGL 1936 Supp. 7179(1), (2); ss. 581, 582, ch. 71-136; s. 2, ch. 72-230.

**Note.**—Former ss. 569.08 and 569.09.

**562.455 Adulterating liquor; penalty.**—Whoever adulterates, for the purpose of sale, any liquor, used or intended for drink, with cocculus indicus, vitriol, grains of paradise, opium, alum, capsicum, copperas, laurel water, logwood, brazil wood, cochineal, sugar of lead, or any other substance which is poisonous or injurious to health, and whoever knowingly sells any liquor so adulterated, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 4, ch. 1637, 1868; RS 2664; GS 3593; RGS 5522; CGL 7687; s. 583, ch. 71-136; s. 2, ch. 72-230.

**Note.**—Former s. 569.10.

**562.46 Legal remedies not impaired.**—It is the declared legislative intention that no provision or provisions of the Beverage Law shall in any manner limit, modify, or preclude any person from instituting legal proceedings in courts of competent jurisdiction for the adjudication of any rights that such person may have under the Federal and State Constitutions and under laws now existing, or laws which may be hereinafter enacted.

**History.**—s. 17, 16774, 1935; CGL 1936 Supp. 4151(243); s. 2, ch. 72-230.

**562.47 Rules of evidence; Beverage Law.**—In all prosecutions for violations of "The Beverage Law" proof that the liquor in question was and is known as whiskey, moonshine whiskey, shine, rum, gin, brandy, or other similar name or names shall be prima facie evidence that such liquor is intoxicating and contains more than 3.2 percent of alcohol by weight and that same is intoxicating. Any person or persons who by experience in the past in the handling or use of intoxicating liquors, or who by taste, smell, or the drinking of such liquors has knowledge as to the intoxicating nature thereof, may testify as to his opinion whether such beverage or liquor is or is not intoxicating, and a verdict based upon such testimony shall be valid.

**History.**—s. 1, ch. 20744, 1941; s. 2, ch. 72-230.

**562.48 Minors patronizing, visiting, or loitering in a dance hall.**—Any person operating any dance hall in connection with the operation of any place of business where any alcoholic beverage is sold who shall knowingly permit or allow any person under the age of 18 years to patronize, visit, or loiter in any such dance hall or place of business, unless such minor is attended by one or both of his or her parents or by his or her natural guardian, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 1, ch. 20838, 1941; s. 1, ch. 28291, 1953; s. 575, ch. 71-136; s. 2, ch. 72-230.

**cf.**—s. 1.01 Minor defined.

s. 562.11 Selling alcoholic beverages to minors.

**562.50 Habitual drunkards; furnishing intoxicants to, after notice.**—Any person who shall sell, give away, dispose of, exchange, or barter any alcoholic beverage, or any essence, extract, bitters, preparation, compound, composition, or any article whatsoever under any name, label, or brand, which produces intoxication, to any person habitually addicted to the use of any or all such intoxicating liquors, after having been given written notice by wife, husband, father, mother, sister, brother, child, or nearest relative that said person so addicted is an habitual drunkard and that the use of intoxicating drink or drinks is working an injury to the person using said liquors, or to the person giving said written notice, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 1, ch. 22633, 1945; s. 576, ch. 71-136; s. 2, ch. 72-230.

## CHAPTER 563

## BEER

- 563.01 Definition.
- 563.02 License fees; vendors; manufacturers and distributors.
- 563.03 Regulation concerning draft beer.
- 563.04 Labeling regulations; beer.
- 563.05 Excise taxes on malt beverages.
- 563.06 Malt beverages; stamp on crown or can lid, size of containers.
- 563.07 Beer distributors' collection credit.
- 563.08 Cash deposit on beer sales.

**563.01 Definition.**—The terms "beer" and "malt beverage" mean all brewed beverages containing malt.

*History.*—s. 3, ch. 72-230.

*Note.*—Former s. 561.01(3).

**563.02 License fees; vendors; manufacturers and distributors.**—

(1) Each vendor of malt beverages containing alcohol of more than 1 percent by weight shall pay an annual state license tax as follows:

(a) Vendors operating places of business where beverages are sold only for consumption off the premises, an amount equal to 50 percent of the amount of the license tax herein provided for vendors in the same county operating places of business where consumption on the premises is permitted. Vendors holding such off-premise sales licenses shall not be subject to zoning by municipal and county authorities.

(b) Vendors operating places of business where consumption on the premises is permitted in counties having a population of over 100,000, according to the latest state or federal census, \$200.

(c) Vendors operating places of business where consumption on the premises is permitted in counties having a population of over 75,000 and not over 100,000, according to the latest state or federal census, \$160.

(d) Vendors operating places of business where consumption on the premises is permitted in counties having a population of over 50,000 and less than 75,000, according to the latest state or federal census, \$120.

(e) Vendors operating places of business where consumption on the premises is permitted in counties having a population of over 25,000 and less than 50,000, according to the latest state or federal census, \$80.

(f) Vendors operating places of business where consumption on the premises is permitted in counties having a population of less than 25,000, according to the latest state or federal census, \$40.

(2) Each manufacturer engaged in the business of brewing only malt beverages shall pay an annual state license tax of \$3,000 for each plant or branch he may operate.

(3) Each distributor who shall distribute or sell alcoholic beverages containing less than 14 percent alcohol by weight shall pay an annual state license

tax of \$1,250 for each establishment or branch he may operate.

*History.*—s. 3, ch. 72-230.

*Note.*—Former ss. 561.34, 561.35.

*cf.*—s. 561.20 Limitation on number of licenses issued.

s. 561.32 Transfer of licenses.

s. 567.10 Refund on discontinuance by local option.

**563.03 Regulation concerning draft beer.**—

Each and every tap or spigot through which draft beer is served shall, on the handle of such tap or spigot in plain view of the consuming public, display the name of the beer being presently served through such tap or spigot.

*History.*—s. 9, ch. 20830, 1941; s. 18, ch. 57-1; s. 3, ch. 72-230.

*Note.*—Former s. 561.60.

**563.04 Labeling regulations; beer.**—The division is fully authorized to make and promulgate reasonable rules and regulations governing the labeling of beer, which rules and regulations shall not conflict with the federal regulations pertaining to such labeling.

*History.*—s. 3, ch. 72-230.

*Note.*—Former s. 561.09(1).

**563.05 Excise taxes on malt beverages.**—As to malt beverages containing more than 1 percent of alcohol by weight, there shall be paid by all manufacturers, distributors, and vendors, as herein defined, a tax of 40 cents per gallon upon all such beverages in bulk or in kegs or barrels, and, when sold in containers of less than 1 gallon, the tax shall be 5 cents on each pint or fraction thereof in said container. However, the excise taxes required to be paid by this section upon malt beverages containing alcohol of not more than 3.2 percent by weight shall not be required to be paid upon such beverages when the same are sold to post exchanges, ship service stores, and base exchanges located in military, naval, or air force reservations within this state.

*History.*—s. 3, ch. 72-230; s. 1, ch. 77-407.

*Note.*—Former s. 561.46(1).

**563.06 Malt beverages; stamp on crown or can lid, size of containers.**—

(1) On and after October 1, 1959, all taxable malt beverages packaged in bottles or cans, possessed by any person in the state for the purpose of sale or resale in the state, except operators of railroads, sleeping cars, steamships, buses, and airplanes engaged in interstate commerce and licensed under this section, shall have printed or lithographed on the crown or can lid thereof, the word "Florida" in not less than 8-point type; crown closures and can lids shall bear the manufacturer's insignia, name or trademark in addition to the word "Florida." Manufacturers of the malt beverages shall be required to submit samples of crowns or lids to the division for approval as to the "Florida" designation. However, manufacturers of malt beverages who have heretofore submitted samples of crowns or lids to the division and had said samples approved shall not be required to resubmit such samples for approval.

(2) Nothing herein contained shall require



crowns or can lids bearing such designation to be attached to containers of malt beverages which are transported through this state and which are not sold, delivered, or stored for sale therein, if transported in accordance with such rules and regulations as adopted by the division; nor shall this requirement apply to malt beverages packaged in bottles or cans and held on the premises of a brewer or bottler, which malt beverages are for sale and delivery to persons outside the state.

(3) The division shall issue its approval of a crown or can lid only if the word "Florida" is applied in a clear fashion and by a method that will assure the permanent attachment of the design to the crown or can lid.

(4) Possession by any person in the state, except as otherwise provided herein, of more than 4½ gallons of malt beverages in bottles or cans, the crowns or lids of which do not have the word "Florida" as herein provided, shall be prima facie evidence that said malt beverage is possessed for the purpose of sale or resale.

(5) Except as otherwise provided herein, any malt beverages in bottles or cans held or possessed in the state for the purpose of sale or resale within the state, the crown or can lid of which does not bear the word "Florida" thereon and for which design there is not an approval and an approved sample thereof on file in the office of the division, shall, at the direction of the division, be confiscated in accordance with the provisions of the Beverage Law.

(6) All malt beverages packaged in bottles or cans sold or offered for sale by vendors at retail in this state shall be in containers containing only 8, 12, 16, or 32 ounces of such malt beverages; provided however, that nothing contained in this subsection shall affect malt beverages packaged in bulk or in kegs or in barrels or in any container containing 1 gallon or more of such malt beverage regardless of container type.

(7) Any person, firm, or corporation, its agents, officers or employees, violating any of the provisions of this section, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083; and the license, if any, shall be subject

to revocation or suspension by the division.

**History.**—ss. 1-5, ch. 25261, 1949; s. 9, ch. 29786, 1955; s. 1, ch. 59-143; s. 8, ch. 61-219; s. 1, ch. 65-246; ss. 16, 35, ch. 69-106; s. 561, ch. 71-136; s. 3, ch. 72-230.

**Note.**—Former s. 561.471.

cf.—s. 11.065 Limitation on claims against state.

s. 215.26 Limitation on right to refund from State Treasury.

#### **563.07 Beer distributors' collection credit.**—

For the purpose of allowing credit to licensed distributors of malt beverages or beer for the keeping of prescribed records, furnishing bond, properly accounting for and remitting taxes due to the state, such licensed distributors shall be allowed 3 percent of the amount of the tax due, accounted for and remitted to the division, in the form of a deduction from such remittance. However, no allowance shall be granted or permitted when the tax is delinquent at the time of payment.

**History.**—s. 3, ch. 72-230.

**Note.**—Former s. 561.46(10).

#### **563.08 Cash deposit on beer sales.**—All li-

censed manufacturers, when distributing under a manufacturer's license, wholesalers and distributors of domestic malt or brewed beverages, as defined in the Beverage Law, shall require a minimum cash deposit of 50 cents on the sale of each case of 24 bottles of any domestic malt or brewed beverage herein referred to from their vendors, except nonreturnable bottles, and all vendors thereof shall make a minimum cash deposit of 50 cents on the purchase of each case of 24 bottles of any domestic malt or brewed beverage herein referred to, except nonreturnable bottles, and vendors shall require a minimum cash deposit of 50 cents on the sale of each case of 24 bottles of any domestic malt or brewed beverages herein referred to from their purchasers, except nonreturnable bottles. Said manufacturers, wholesalers, and distributors shall keep a record of all such deposits and shall make refund to their vendors within 10 days after receipt of notice from such vendors in writing that empties are ready for return, if such be true, to such manufacturers, wholesalers, and distributors.

**History.**—s. 1, ch. 19570, 1939; CGL 1940 Supp. 4151(271dd); s. 24, ch. 25359, 1949; s. 3, ch. 72-230.

**Note.**—Former s. 562.22.

## CHAPTER 564

## WINE

- 564.01 Definitions.
- 564.02 License fees; vendors; manufacturers and distributors.
- 564.03 Wines; sacramental and religious purposes.
- 564.035 Production of wine for family use.
- 564.04 Labeling regulations; wine.
- 564.045 Registration as primary American source of supply.
- 564.05 Limitation of size of individual wine containers; penalty.
- 564.06 Excise taxes on wines and beverages; exemptions.

**564.01 Definitions.—**

(1) "Wine" means all beverages made from fresh fruits, berries, or grapes, either by natural fermentation or by natural fermentation with brandy added, in the manner required by the laws and regulations of the United States, and includes all sparkling wines, champagnes, combination of the aforesaid beverages, vermouths, and like products. Sugar, flavors, and coloring materials may be added to wine to make it conform to the consumer's taste, except that the ultimate flavor or the color of the product may not be altered to imitate a beverage other than wine or to change the character of the wine.

(2) "Fortified wine" means all wines containing more than 14 percent of alcohol by weight.

**History.**—s. 4, ch. 72-230.

**Note.**—Former s. 561.01(4), (5).

**564.02 License fees; vendors; manufacturers and distributors.—**

(1) Each vendor of beverages containing alcohol of more than 1 percent by weight and not more than 14 percent by weight, and wines regardless of alcoholic content, shall pay an annual state license tax as follows:

(a) Vendors operating places of business where beverages are sold only for consumption off the premises, an amount equal to 50 percent of the amount of the license tax herein provided for vendors in the same county operating places of business where consumption on the premises is permitted.

(b) Vendors operating places of business where consumption on the premises is permitted in counties having a population of over 100,000, according to the latest state or federal census, \$280.

(c) Vendors operating places of business where consumption on the premises is permitted in counties having a population of over 75,000 and not over 100,000, according to the latest state or federal census, \$240.

(d) Vendors operating places of business where consumption on the premises is permitted in counties having a population of over 50,000 and less than 75,000, according to the latest state or federal census, \$200.

(e) Vendors operating places of business where consumption on the premises is permitted in counties having a population of over 25,000 and less than

50,000, according to the latest state or federal census, \$160.

(f) Vendors operating places of business where consumption on the premises is permitted in counties having a population of less than 25,000, according to the latest state or federal census, \$120.

(2) Each wine manufacturer authorized to do business under the Beverage Law shall pay an annual state license tax for each plant or branch he may operate, as follows:

(a) If engaged in the manufacturing or bottling of wines and of nothing else, a state license tax of \$1,000, unless engaged exclusively in the manufacturing or bottling of wines made from Florida-grown fresh fruits, berries, or grapes or concentrates of fruits, berries, or grapes grown and concentrated in Florida, a state license tax of \$50.

(b) If engaged in the manufacturing of wines and cordials and of nothing else, a state license tax of \$2,000.

(3) Each distributor who shall sell beverages containing alcohol of more than 1 percent by weight and not more than 14 percent by weight, and wines regardless of alcoholic content, in counties where the sale of intoxicating liquors, wines, and beers is permitted shall pay for each and every such establishment or branch he may operate or conduct a state license tax of \$1,250. A manufacturer licensed under paragraph (2)(a) may be licensed as a distributor under this subsection if the manufacturer's sales and distribution are limited to wines manufactured under such license and made from Florida-grown fresh fruits, berries, or grapes or concentrates of fruits, berries, or grapes grown and concentrated in Florida and bottled in Florida. A manufacturer so licensed shall pay a state license tax of \$50 for each and every such distribution establishment or branch he may operate or conduct.

**History.**—s. 4, ch. 72-230; s. 1, ch. 79-305.

**Note.**—Former ss. 561.34, 561.35.

cf.—s. 561.20 Limitation on number of licenses issued.

s. 561.32 Transfer of licenses.

s. 567.10 Refund on discontinuance by local option.

**564.03 Wines; sacramental and religious purposes.—**

(1) For the purpose of this section the term "wine" is hereby defined to mean wine, vinous spirits, or vinous liquors.

(2) Any religious order, monastery, church or religious body, or any minister, pastor, priest, or rabbi thereof, may purchase wine for religious or sacramental purposes from any duly licensed wholesaler or retailer within the state, by obtaining a permit from the division for such purchases herein provided.

(3) The division shall issue said permit upon sworn application, stating the name of the applicant, the religious purpose for which the wine is to be used, the amount to be purchased, and from whom the purchase is to be made.

(4) The division for good cause may refuse to issue said permit.

(5) Said wine and the sale thereof, when sold as



herein provided and used for religious or sacramental purposes, shall be exempt from all other restrictions, regulations, and taxation now provided by the laws of the state for the sale and distribution of wine.

**History.**—ss. 1-5, ch. 20978, 1941; s. 7, ch. 29964, 1955; ss. 16, 35, ch. 69-106; s. 4, ch. 72-230; s. 29, ch. 79-11.

**Note.**—Former s. 562.49.

#### **564.035 Production of wine for family use.—**

Notwithstanding any provisions to the contrary, the head of any family holding a valid federal permit for the manufacture of wine for home consumption only may, upon receipt of a permit from the division, produce for family use and not for sale an amount of wine not exceeding 200 gallons per annum without payment of taxes, fees, or license.

**History.**—s. 4, ch. 72-230; s. 1, ch. 72-269; s. 30, ch. 79-11.

**564.04 Labeling regulations; wine.**—The division is fully authorized to make and promulgate reasonable rules and regulations governing the labeling of all wines containing more than 1 percent of alcohol by weight, which rules and regulations shall not conflict with the federal regulations pertaining to such labeling.

**History.**—s. 4, ch. 72-230.

**Note.**—Former s. 561.09(1).

#### **564.045 Registration as primary American source of supply.—**

(1) **DEFINITION.**—"Primary American source of supply" means the manufacturer, vintner, winery, or owner of vinous beverages at the time same become a marketable product, or bottler, or the exclusive agent of any such person, who, if the product cannot be secured directly from the manufacturer by an American distributor, is the source closest to the manufacturer in the channel of commerce from whom the product can be secured by an American distributor, or who, if the product can be secured directly from the manufacturer by an American distributor, is the manufacturer.

(2) **TAX CONTROL REGISTRATION REQUIRED.**—For purposes of tax revenue control, beginning January 1, 1979, no person, firm, corporation, or other entity which is the primary American source of supply as defined herein may sell, offer for sale, accept orders for sale, ship, or cause to be shipped into this state any vinous beverages to any distributor within the state without having first registered as a primary American source of supply on forms provided by, and in such manner as prescribed by, the division.

(3) **CERTAIN INTERSTATE AND FOREIGN SHIPMENTS PROHIBITED.**—Beginning January 1, 1979, no holder of a distributor's license as classified by s. 561.14(2) may ship or cause to be shipped into this state, or accept delivery from another state or a foreign country of, any vinous beverages except directly from a primary American source of supply, registered as such as required herein for the brand of vinous beverages being shipped.

(4) **PRIVATE LABELS.**—Nothing herein shall prohibit the ownership by vendors of brand names of distilled spirits and vinous beverages commonly known as private labels; provided, that such ownership and use thereof does not otherwise violate the Beverage Law.

(5) **WITHDRAWAL OF REGISTERED BRAND OR LABEL.**—No brand or label registered hereunder or any brand or label of wine may be withdrawn from any distributor after it has been sold by a manufacturer to any distributor unless good cause for its withdrawal is shown by the manufacturer. Withdrawal of a registered brand or label by a manufacturer shall be permitted only if written notice is sent by certified mail to any distributor carrying the manufacturer's brand or label to the division prior to its withdrawal. If no objection is lodged with the division by a distributor carrying the brand or label intended to be withdrawn within the time as herein-after set forth, the brand or label may be withdrawn without a showing of good cause 60 days after the division's receipt of the manufacturer's notice of intent to withdraw. Any distributor carrying the brand or label or line who objects to its withdrawal shall file its written objection by certified mail with the division and the manufacturer within 60 days from its receipt of the manufacturer's notice of intent to withdraw. The distributor's objection shall be deemed a petition for declaratory statement, must comply with the division's administrative rule for such petitions, and shall be disposed of thereby. In rendering its decision, the division shall consider the reasons given by the manufacturer to justify the withdrawal and the distributor's reasons against the withdrawal. If the division determines that good cause to justify the withdrawal is absent, the division may prohibit the brand or label from being withdrawn, and failure on the part of the manufacturer so prohibited to ship the distributor a reasonable amount of the brand sought to be withdrawn will result in the withdrawal from sale in this state of all its brands. All distributors carrying a particular brand or label of spirituous or vinous beverages as of July 1, 1978, shall be deemed to be the distributors for the manufacturers of such brands or labels. No other distributors may be appointed by any manufacturer or representative of a manufacturer to carry the brands or labels already distributed on July 1, 1978, unless the division first approves the withdrawal from the existing distributor pursuant to this act. The purchase of any spirituous or vinous beverages by any licensed wholesaler or distributor from any manufacturer who has not complied with the provisions of this subsection is prohibited.

**History.**—ss. 1, 3, ch. 78-135.

**564.05 Limitation of size of individual wine containers; penalty.**—It is unlawful for any person to sell within this state any wine in individual containers holding more than 1 gallon of such wine. Provided, that qualified distributors and manufacturers may sell to other qualified distributors or manufacturers such wine in any size containers. Any person convicted of a violation of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—ss. 1, 2, ch. 19498, 1939; CGL 1940 Supp. 7648(33); s. 7, ch. 22858, 1945; s. 580, ch. 71-136; s. 4, ch. 72-230.

Note.—Former s. 569.06.

**564.06 Excise taxes on wines and beverages; exemptions.—**

(1) As to beverages including wines, except natural sparkling wines and malt beverages, containing more than 1 percent alcohol by weight and less than 14 percent alcohol by weight, there shall be paid by all manufacturers and distributors a tax at the rate of \$1.75 per gallon.

(2) As to all wines, except natural sparkling wines, containing more than 1 percent alcohol by weight and less than 14 percent alcohol by weight, manufactured in Florida from Florida-grown fresh fruits, berries, or grapes and not from concentrates thereof, except concentrates of fruits, berries, or grapes grown and concentrated in Florida and bottled in Florida, and upon all other such beverages, except malt beverages, containing more than 1 percent alcohol by weight and less than 14 percent alcohol by weight manufactured and bottled in Florida from Florida-grown citrus products, citrus byproducts, honey, fresh fruits, berries, grapes, sugar cane, guavas, potatoes, peaches, papayas, strawberries, and mangoes, and not from concentrates thereof, except concentrates grown and concentrated in the state, the tax imposed by subsection (1) shall not apply.

(3) As to all wines, except natural sparkling wines containing 14 percent or more alcohol by weight, there shall be paid by manufacturers and distributors a tax at the rate of \$2.43 per gallon, except that this tax shall not be required to be paid upon all wines manufactured in Florida from fresh fruits, berries, or grapes grown in Florida and not from concentrates thereof, except concentrates of fruits, berries, or grapes grown and concentrated in this state, bottled within this state, and containing 14 percent or more of alcohol by weight.

(4) As to natural sparkling wines, there shall be

paid by all manufacturers and distributors a tax at the rate of \$3.50 per gallon, except that this tax shall not be required to be paid upon all natural sparkling wines manufactured in Florida from fruits, berries, or grapes grown in Florida and not from concentrates thereof, except concentrates of fruits, berries, or grapes grown and concentrated in this state and bottled within this state.

(5) As to all beverages taxed under this section which are manufactured or bottled in Florida, there shall be a 2 percent discount allowed to the manufacturer or bottler on the amount of taxes assessed against wine for his losses from shrinkage, in filtering, breakage, and waste in bottling, said 2 percent to be computed on the taxable amount assessed by the state when sold taxpaid, and said 2 percent shall be deducted by the manufacturer or bottler on his monthly report.

(6) Wine used by any established church as sacramental wine or in connection with religious services is hereby expressly exempted from the provisions of this section.

(7) Every distributor selling wine within the state shall pay the tax to the division monthly on or before the tenth day of the following month, less 2.4 percent of the tax due, which shall be withheld by the distributor for the keeping of prescribed records, furnishing bond, and properly accounting for and remitting taxes due to the state. However, no allowance shall be granted or permitted when the tax is delinquent at the time of payment.

(8) The exemption from the payment of taxes provided in subsections (2), (3), and (4) shall not preclude the division from making periodic inspections necessary to carry out the provisions of this section.

History.—s. 4, ch. 72-230; s. 2, ch. 77-407; ss. 1, 2, ch. 79-304.

Note.—The words "provided in" were substituted for "of" by the editors.

Note.—Former s. 561.46.



## CHAPTER 565

## LIQUOR

- 565.01 Definition; liquor.
- 565.02 License fees; vendors; clubs; caterers and others.
- 565.03 License fees; manufacturers, distributors, exporters.
- 565.04 Package store restrictions.
- 565.045 Regulations for consumption on premises; penalty.
- 565.05 Purchase of distilled spirits by licensed clubs; size of individual containers.
- 565.06 Clubs to sell only individual drinks.
- 565.08 Labeling regulations; liquor.
- 565.09 Brands or labels to be registered; qualification to do business; fee; revocation.
- 565.095 Registration as primary American source of supply.
- 565.10 Distilled spirits container limit.
- 565.11 Refilling liquor bottles; misrepresentation; penalty.
- 565.12 Excise tax on liquors and beverages.
- 565.13 Monthly payment of tax by distributor.
- 565.14 Requirements necessary to qualify for tax rate for Florida-grown products.
- 565.15 Price affirmation.

**565.01 Definition; liquor.**—The words "liquor" or "distilled spirits" mean all spirituous beverages created by distillation and by mixture of distilled beverages by what is commonly termed "blending."

*History.*—s. 5, ch. 72-230.

*Note.*—Former s. 561.01(6).

**565.02 License fees; vendors; clubs; caterers and others.**—

(1) The following state license taxes shall apply to vendors who are permitted to sell any alcoholic beverages regardless of alcoholic content:

(a) Vendors operating places of business where beverages are sold only in sealed containers for consumption off the premises where sold, an amount equal to 75 percent of the amount of the license tax for vendors in the same county as provided in paragraphs (b), (c), (d), (e), and (f).

(b) Vendors operating places of business where consumption on the premises is permitted in counties having a population of over 100,000, according to the latest state or federal census, \$1,750.

(c) Vendors operating places of business where consumption on the premises is permitted in counties having a population over 75,000 and not over 100,000, according to the latest state or federal census, \$1,500.

(d) Vendors operating places of business where consumption on the premises is permitted in counties having a population of over 50,000 and not over 75,000, according to the latest state or federal census, \$1,250.

(e) Vendors operating places of business where consumption on the premises is permitted in counties having a population of over 25,000 and not over 50,000, according to the latest state or federal census, \$825.

(f) Vendors operating places of business where

consumption on the premises is permitted in counties having a population of 25,000 or less, according to the latest state or federal census, \$600.

(g) Vendors operating places of business where consumption on the premises is permitted and which have more than three permanent separate locations serving alcoholic beverages for consumption on the licensed premises shall pay in addition to the license tax imposed in paragraphs (b), (c), (d), (e), and (f), \$1,000. However, such permanent separate locations shall not include service bars not accessible to the public or portable or temporary bars being used for a single occasion or event. Golf club license holders may operate service bars or portable or temporary bars on the grounds contiguous to their licensed premises and shall pay \$100 for a certified copy of the club license, which shall be posted on the bar. The area contiguous to the licensed premises shall be considered an extension of the licensed premises upon payment of the fee, posting of the certified copy of the license, and notation of such extension upon the sketch accompanying the original license application.

(2) Any operator of railroads or sleeping cars in this state may obtain a license to sell the beverages mentioned in the Beverage Law on passenger trains on the payment of an annual license tax of \$2,500, said tax to be paid to the division. Such license shall authorize the holder thereof to keep for sale and sell all beverages mentioned in the Beverage Law upon any dining, club, parlor, buffet, or observation car operated by it in this state, but said beverages may be sold only to passengers upon said cars, and must be served for consumption thereon. It is unlawful for such licensees to purchase or sell any liquor except in miniature bottles of not more than 2 ounces. Every such license shall be good throughout the state. No license shall be required, or tax levied by any municipality or county, for the privilege of selling such beverages for consumption in such cars. Such beverages shall be sold only on cars in which are posted certified copies of the licenses issued to such operator. Such certified copies of such licenses shall be issued by the division upon the payment of a tax of \$10.

(3)(a) Operators of steamships and steamship lines, buses and bus lines, airplanes and airlines engaged in interstate commerce or plying between fixed terminals and upon fixed schedules in this state may obtain licenses to sell the beverages mentioned in the Beverage Law on steamships, buses, and airplanes operated by such operators on payment of an annual license tax of \$1,100, said tax to be paid to the division. Such licenses shall authorize the holders thereof to keep for sale and sell all beverages mentioned in the Beverage Law upon any steamship, bus, or airplane operated by such operators in this state, but said beverages may be sold only to passengers upon such steamships, buses and airplanes and may be served only for consumption thereon. It is unlawful for such licensees to purchase for resale any liquor except in miniature bottles of not more

than 2 ounces or liquor in individual containers of not less than one-fifth of 1 gallon. Such sales shall be permitted only while said steamships, buses, and airplanes are in transit and shall not be permitted while such steamships are moored at docks or wharves in ports of this state, while said buses are at stations, or while airplanes are in airports. Every such license shall be good throughout the state. No license shall be required or tax levied by any municipality or county for the privilege of selling such beverages for consumption on such steamships, buses, or airplanes. Such beverages shall be sold only on steamships, buses, and airplanes in which are posted certified copies of the license issued to their operators. Certified copies of such license shall be issued by the division upon payment of a fee of \$25 for each certified copy. However, this paragraph shall not apply to operators of pleasure or excursion boats not having regular round trip runs of more than 100 miles in each direction, but operators of such pleasure or excursion boats may obtain a license, with such boats being designated as their place of business, upon compliance with all the laws relating to vendors operating places of business where consumption on the premises is permitted. Also, no license to sell the beverages herein defined shall be issued to the operator of any boat which plies upon or is anchored upon the waters of any lake within this state.

(b) Operators of railroads, sleeping cars, steamships, buses, and airplanes licensed under this section shall not be required to obtain their beverages from licensees under the Beverage Law, but such operators shall keep strict account of all such beverages sold within this state and shall make monthly reports to the division on the forms prepared and furnished by the division. Said operators are hereby required to pay an excise tax for said beverages sold within this state as to which such excise tax has not theretofore been paid, equal to the tax assessed against manufacturers and distributors. Said operators shall pay said tax monthly to the division at the same time they furnish the reports hereinabove provided for. Said reports shall be filed on or before the 15th day of each month for sales for the previous calendar month.

(4) Persons associated together as a chartered or incorporated club, including social clubs incorporated by orders of circuit judges after their charters have been found to be for objects authorized by law and approved by said judges as organized for lawful purposes and not for the purpose of evading license taxes on dealers in beverages defined herein, which such organizations are bona fide clubs, and at the time of application for license hereunder shall have been in continuous active existence and operation for a period of not less than 2 years in the county where they exist, shall before serving or distributing to their members or nonresident guests the beverages defined herein, whether such service or distribution be made upon contribution to the club of money or by check or other device, pay an annual state license tax of \$400. However, any golf club operated by or on behalf of any incorporated municipality in this state, and any veterans' or fraternal organization of national scope, need not have been, or need

not be, in continuous active existence or operation for any required period of time prior to an application for license hereunder. The payment of such club license tax shall authorize the service and distribution to members and nonresident guests of the club only, and such service and distribution to said members and nonresident guests shall not be deemed sales within the meaning of the law in this state, but any service or distribution to anyone other than a member or nonresident guest of such licensed club shall be deemed a sale, and any officer, member, or employee of any such licensed club who shall sell or distribute or serve any such beverages to any person other than a member or nonresident guest of such club for money or other value shall be deemed guilty of selling such beverages without a license and shall be punished as provided by law. The holders of golf club licenses may sell alcoholic beverages to those other than members and their nonresident guests on days when the club is open to the public. For each such day of service to nonmembers, the club shall obtain from the division for a fee of \$50 an extension of its license to permit such sales. Such license extensions shall be limited to one event per year, not to exceed five consecutive days. Any officer of any such club which has not paid such license who shall knowingly permit such service or distribution by such club of the beverages herein defined to members or nonresident guests of such club shall, upon conviction thereof, be punished as herein provided. However, this paragraph shall not apply to clubs organized or used for the purpose of evading the payment of the license tax on vendors of such beverages, but such club shall be subject to the payment of the license tax imposed by the Beverage Law upon vendors. The president, vice president, secretary, or treasurer, or officers of corresponding duties by any name they may be called, of any club required by this section to pay a license tax, shall be required to see that such license tax shall be paid and in default thereof shall each be personally liable to the punishment provided by the Beverage Law for nonpayment of the license hereby required. Clubs not authorized to obtain licenses under this subsection or which do not obtain licenses under this subsection may, if they comply with this provision of the Beverage Law, obtain licenses as vendors. Clubs obtaining such club licenses shall not purchase any beverage herein defined from anyone other than a distributor or vendor licensed under the Beverage Law, nor shall such clubs dispense or serve any beverages defined herein unless such beverages shall have been purchased by such club from such licensed distributor or vendor; nor shall they dispense or serve any such beverage on which a tax is required by the Beverage Law unless such beverage tax has been paid as required by said law. Such club license cannot be transferred in any manner whatsoever.

(5) Caterers at horse and dog racetracks and jai alai frontons may obtain licenses upon the payment of an annual state license tax of \$675. Such caterers' licenses shall permit sales only within the enclosure wherein such races or jai alai games are conducted, and such licensees shall be permitted to sell only during the period beginning 10 days before and ending 10 days after racing or jai alai under the authori-



ty of the Division of Pari-mutuel Wagering of the Department of Business Regulation is conducted at such race track or jai alai fronton. Except as in this subsection otherwise provided, caterers licensed hereunder shall be treated as vendors licensed to sell by the drink the beverages mentioned herein and shall be subject to all the provisions hereof relating to such vendors.

(6) State-chartered legal entities not for profit organized principally for the purpose of supporting or managing the affairs of a symphony orchestra may obtain licenses upon the payment of an annual license tax of \$400. Such licenses shall permit sales only within the enclosure wherein such symphony normally and regularly performs and in which enclosure alcoholic beverages are otherwise authorized, and such licensees shall be permitted to sell only during the hours in which the symphony premises are in use for a cultural event under the auspices or authorization of the licensee. The issuing of a license under this section shall not be subject to any quota or limitation, except that the license shall be issued only to an entity supporting a well-recognized symphony whose reputation is known generally in the state or region of operation. Except as otherwise provided in this subsection, entities licensed hereunder shall be treated as vendors licensed to sell by the drink the beverages mentioned herein and shall be subject to all the provisions hereof relating to such vendors.

**History.**—s. 1, ch. 72-42; s. 5, ch. 72-230; s. 2, ch. 72-272; s. 1, ch. 74-96; s. 2, ch. 75-278.

**Note.**—Former s. 561.34.

cf.—s. 561.20 Limitation of number of licenses issued.

s. 561.32 Transfer of licenses.

s. 567.10 Refund on discontinuance by local option.

#### **565.03 License fees; manufacturers, distributors, exporters.**

(1)(a) Each liquor manufacturer authorized to do business under the Beverage Law shall pay an annual state license tax for each plant or branch he operates in the state, as follows:

1. If engaged in the business of distilling spirituous liquors and nothing else, a state license tax of \$4,000.

2. If engaged in the business of rectifying and blending spirituous liquors and nothing else, a state license tax of \$4,000.

(b) Persons licensed hereunder in the business of distilling spirituous liquors may also engage in the business of rectifying and blending spirituous liquors without the payment of an additional license tax.

(2) Distributors authorized to do business under the Beverage Law, unless otherwise provided, shall pay a state license tax of \$4,000 for each and every establishment or branch they may operate or conduct in the state. However, in counties having a population of 15,000 or less according to the latest state or federal census, the state license tax for a restricted license shall be \$1,000, but the holder of such a license shall be permitted to sell only to vendors and distributors licensed in the same county, and such license shall contain such restrictions. In such counties, licenses without such restrictions may be obtained as in other counties, but the tax for a license without such restrictions shall be the same as in

other counties. Warehouses of a licensed distributor used solely for storage and located in the county in which the license is issued to such distributor shall not be construed to be separate establishments or branches.

(3) Each exporter, as defined in s. 561.14(4), shall pay an annual state license tax of \$500 for each and every establishment or branch that such exporter may operate or conduct in this state.

**History.**—s. 5, ch. 72-230.

**Note.**—Former s. 561.35.

cf.—s. 561.32 Transfer of licenses.

**565.04 Package store restrictions.**—Vendors licensed under s. 565.02(1)(a) shall not in said place of business sell, offer, or expose for sale any merchandise other than such beverages, and such places of business shall be devoted exclusively to such sales; provided, however, that such vendors shall be permitted to sell bitters, grenadine, nonalcoholic mixer-type beverages (not to include fruit juices produced outside this state), fruit juices produced in this state, home bar, and party supplies and equipment (including but not limited to glassware and party-type foods), miniatures of no alcoholic content, and tobacco products. Such places of business shall have no openings permitting direct access to any other building or room, except to a private office or storage room of the place of business from which patrons are excluded.

**History.**—s. 11, ch. 16774, 1935; CGL 1936 Supp. 4151(237); s. 1, ch. 20830, 1941; s. 13, ch. 23746, 1947; s. 1, ch. 29964, 1955; s. 1, ch. 57-327; s. 1, ch. 65-143; s. 1, ch. 67-257; s. 5, ch. 72-230.

**Note.**—Former s. 562.09.

**565.045 Regulations for consumption on premises; penalty.**—Vendors licensed under s. 565.02(1)(b)-(f) shall provide seats for the use of their customers. Such vendors may sell alcoholic beverages by the drink or in sealed containers for consumption on or off the premises where sold. There shall not be sold at such places of business anything other than the beverages permitted, home bar and party supplies and equipment (including but not limited to glassware and party-type foods), cigarettes, and what is customarily sold in a restaurant. The premises of all such vendors shall be subject to and meet all the applicable provisions of chapter 381 and the regulations promulgated thereunder.

**History.**—s. 11, ch. 16774, 1935; CGL 1936 Supp. 4151(237); s. 1, ch. 20830, 1941; s. 14, ch. 23746, 1947; s. 1, ch. 67-256; s. 2, ch. 72-230; s. 2, ch. 77-471.

**Note.**—Former s. 562.10.

**565.05 Purchase of distilled spirits by licensed clubs; size of individual containers.**—It is unlawful for any person holding a license as a club for the sale of distilled spirits to purchase any of said distilled spirits in individual containers larger than 1.00 liter or 33.82 ounces, or smaller than 0.75 liter or 25.36 ounces.

**History.**—s. 1, ch. 19500, 1939; CGL 1940 Supp. 7648(34); s. 5, ch. 72-230; s. 3, ch. 72-272; s. 1, ch. 75-96; s. 200, ch. 77-104; s. 1, ch. 79-143.

**Note.**—Section 1, ch. 79-143, amended this section, effective July 1, 1980, to read:

**565.05 Purchase of distilled spirits by licensed clubs; size of individual containers.**—It is unlawful for any person holding a license as a club for the sale of distilled spirits to purchase any of said distilled spirits in individual containers larger than 1.75 liters or 59.18 ounces, or smaller than 0.75 liter or 25.36 ounces.

Note.—Former s. 569.03.

#### 565.06 Clubs to sell only individual drinks.—

It is unlawful for any person holding a license as a club for the sale of intoxicating liquors and beverages to sell the same except by the individual drink.

History.—s. 2, ch. 19500, 1939; CGL 1940 Supp. 7648(35); s. 5, ch. 72-230.  
Note.—Former s. 569.04.

**565.08 Labeling regulations; liquor.**—The division is fully authorized to make and promulgate reasonable rules and regulations governing the labeling of all liquors containing more than 1 percent of alcohol by weight, which rules and regulations shall not conflict with the federal regulations pertaining to such labeling.

History.—s. 5, ch. 72-230.  
Note.—Former s. 561.09(1).

#### 565.09 Brands or labels to be registered; qualification to do business; fee; revocation.—

(1) No manufacturer, distiller, rectifier, processor, blender, bottler, distributor, or importer of spirituous liquors, whether licensed under the beverage laws of this state or not, shall sell or offer for sale in this state, or move or cause to be moved within this state, or into this state, any spirituous liquors, without first qualifying to do business in the state in accordance with the provisions of chapter 613 and registering its name and the brands or labels under which the spirituous liquors are to be sold or moved and furnishing such samples and information as to content, quality, age, proof, and formula of such spirituous liquors as the division may require.

(2) Each registrant shall pay an annual registration fee of \$20 for a brand or label. Any registration may be suspended or revoked in the same manner as a beverage license for any violation of the Beverage Law.

(3) The purchase by any licensed wholesaler of any spirituous liquors from any manufacturer, distiller, rectifier, processor, blender, bottler, distributor or importer who has not complied with the provisions of subsection (1) is prohibited.

(4) The division shall promulgate suitable rules for carrying out the purpose of this section.

History.—s. 1, ch. 28149, 1953; s. 2, ch. 29786, 1955; s. 1, ch. 69-98; ss. 16, 35, ch. 69-106; s. 5, ch. 72-230.  
Note.—Former s. 561.091.

#### 565.095 Registration as primary American source of supply.—

(1) DEFINITION.—“Primary American source of supply” means the manufacturer, rectifier, or owner of spirituous liquors at the time same become a marketable product, or bottler, or the exclusive agent of any such person, who, if the product cannot be secured directly from the manufacturer by an American distributor, is the source closest to the manufacturer in the channel of commerce from whom the product can be secured by an American distributor, or who, if the product can be secured directly from the manufacturer by an American distributor, is the manufacturer.

(2) TAX CONTROL REGISTRATION REQUIRED.—For purposes of tax revenue control, beginning January 1, 1979, no person, firm, corporation, or other entity which is the primary American

source of supply as defined herein may sell, offer for sale, accept orders for sale, ship, or cause to be shipped into this state any spirituous liquors to any distributor within the state without having first registered as a primary American source of supply on forms provided by, and in such manner as prescribed by, the division.

(3) CERTAIN INTERSTATE AND FOREIGN SHIPMENTS PROHIBITED.—Beginning January 1, 1979, no holder of a distributor's license as classified by s. 561.14(2) may ship or cause to be shipped into this state, or accept delivery of from another state or a foreign country, any spirituous liquors except directly from a primary American source of supply, registered as such as required herein for the brand of spirituous liquors being shipped.

(4) PRIVATE LABELS.—Nothing herein shall prohibit the ownership by vendors of brand names of distilled spirits and vinous beverages commonly known as private labels; provided, that such ownership and use thereof does not otherwise violate the Beverage Law.

(5) WITHDRAWAL OF REGISTERED BRAND OR LABEL.—No brand or label registered hereunder or any brand or label of wine may be withdrawn from any distributor after it has been sold by a manufacturer to any distributor unless good cause for its withdrawal is shown by the manufacturer. Withdrawal of a registered brand or label by a manufacturer shall be permitted only if written notice is sent by certified mail to any distributor carrying the manufacturer's brand or label to the division prior to its withdrawal. If no objection is lodged with the division by a distributor carrying the brand or label intended to be withdrawn within the time as hereinafter set forth, the brand or label may be withdrawn without a showing of good cause 60 days after the division's receipt of the manufacturer's notice of intent to withdraw. Any distributor carrying the brand or label or line who objects to its withdrawal shall file its written objection by certified mail with the division and the manufacturer within 60 days from its receipt of the manufacturer's notice of intent to withdraw. The distributor's objection shall be deemed a petition for declaratory statement, must comply with the division's administrative rule for such petitions, and shall be disposed of thereby. In rendering its decision, the division shall consider the reasons given by the manufacturer to justify the withdrawal and the distributor's reasons against the withdrawal. If the division determines that good cause to justify the withdrawal is absent, the division may prohibit the brand or label from being withdrawn, and failure on the part of the manufacturer so prohibited to ship the distributor a reasonable amount of the brand sought to be withdrawn will result in the withdrawal from sale in this state of all its brands. All distributors carrying a particular brand or label of spirituous or vinous beverages as of July 1, 1978 shall be deemed to be the distributors for the manufacturers of such brands or labels. No other distributors may be appointed by any manufacturer or representative of a manufacturer to carry the brands or labels already distributed on July 1, 1978 unless the division first approves the withdrawal from the existing distributor pursuant to this act.



The purchase of any spirituous or vinous beverages by any licensed wholesaler or distributor from any manufacturer who has not complied with the provisions of this subsection is prohibited.

**History.**—ss. 2, 3, ch. 78-135.

**565.10 Distilled spirits container limit.**—It is unlawful for any distributor or vendor to sell or distribute distilled spirits in any size container in excess of 1.00 liter or 33.82 ounces. The division is authorized to make reasonable rules in accordance with chapter 120 governing the standards of fill of distilled spirits containers, which rules shall not conflict with or be more stringent than the federal regulations pertaining to such standards of fill of distilled spirits containers.

**History.**—s. 11, ch. 16774, 1935; CGL 1936 Supp. 4151(237); s. 1, ch. 20830, 1941; s. 1, ch. 57-327; s. 1, ch. 61-447; s. 1, ch. 65-142; s. 1, ch. 67-524; s. 148, ch. 71-355; s. 5, ch. 72-230; s. 1, ch. 73-328; s. 2, ch. 75-96; s. 2, ch. 79-143.

**Note.**—Section 2, ch. 79-143, amended this section, effective July 1, 1980, to read:

**565.10 Distilled spirits container limit.**—It is unlawful for any distributor or vendor to sell or distribute distilled spirits in any size container in excess of 1.75 liters or 59.18 ounces. The division is authorized to make reasonable rules in accordance with chapter 120 governing the standards of fill of distilled spirits containers, which rules shall not conflict with or be more stringent than the federal regulations pertaining to such standards of fill of distilled spirits containers.

**Note.**—Former s. 562.08.

**565.11 Refilling liquor bottles; misrepresentation; penalty.**—Any person who shall reuse or refill with distilled spirituous liquors for the purpose of sale a bottle or other container which has once been used to contain spirituous liquors, or any person who shall willfully misrepresent or permit to be misrepresented the brand of distilled spirits being sold or offered for sale in or from any bottles or containers, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083 and, when such person is licensed under this law, be subject to have his license revoked by the division. The possession of such a refilled or a mislabeled bottle or other container of spirituous liquors shall be prima facie evidence of the violation of this section.

**History.**—s. 5, ch. 72-230.

**Note.**—Former s. 561.09(2).

**565.12 Excise tax on liquors and beverages.**—

(1)(a) As to beverages containing 14 percent or more of alcohol by weight and not more than 48 percent of alcohol by weight, except wines, there shall be paid by all manufacturers, distributors and vendors a tax at the rate of \$4.75 per gallon.

(b) As to all such beverages manufactured and bottled in Florida from Florida-grown citrus products, citrus byproducts, honey, fresh fruits, berries, grapes, sugarcane, guavas, potatoes, peaches, papayas, strawberries, and mangoes, and not from concentrates thereof, except concentrates grown and concentrated in the state, the tax imposed by paragraph (a) shall not apply. However, in lieu thereof there shall be paid by all manufacturers and distributors a tax at the rate of \$2.39 per gallon.

(2)(a) As to beverages containing more than 48 percent of alcohol by weight, there shall be paid by all manufacturers, distributors, and vendors a tax at the rate of \$9.53 per gallon.

(b) As to all such beverages manufactured and bottled in Florida from Florida-grown citrus prod-

ucts, citrus byproducts, honey, fresh fruits, berries, grapes, sugarcane, guavas, potatoes, peaches, papayas, strawberries, and mangoes, and not from concentrates thereof, except concentrates grown and concentrated in the state, the tax imposed by paragraph (a) shall not apply. However, in lieu thereof there shall be paid by all manufacturers and distributors a tax at the rate of \$4.75 per gallon.

(3) The use of the words "and vendors" in subsections (1)(a) and (2)(a) shall not be construed as imposing a new excise tax based upon sale at retail, but shall only be construed as applying the increase in tax rates to vendors' inventories of stock on June 1, 1968.

**History.**—s. 5, ch. 72-230; s. 3, ch. 77-407.

**Note.**—Former s. 561.46.

**565.13 Monthly payment of tax by distributor.**—Every distributor selling spirituous beverages within the state shall pay the tax to the division monthly on or before the tenth day of the following month, less 1.4 percent of the tax due, which shall be withheld by the distributor for the keeping of prescribed records, furnishing bond, and properly accounting for and remitting taxes due to the state. However, no allowance shall be granted or permitted when the tax is delinquent at the time of payment.

**History.**—s. 1, ch. 69-49; ss. 16, 35, ch. 69-106; s. 5, ch. 72-230.

**Note.**—Former s. 561.505.

**565.14 Requirements necessary to qualify for tax rate for Florida-grown products.**—

(1) In order to qualify, in whole or in part, for the Florida tax rate provided in s. 565.12(1)(b), (2)(b), an alcoholic beverage must be manufactured exclusively from raw materials, except for flavoring extracts, produced in Florida and may not be blended with whiskey produced in any other state. Such beverage must be either distilled and bottled by a distiller licensed under s. 565.03(1)(a)1. and (b) who conducts distilling operations only in Florida and in no other state, or bottled by a bottler licensed under s. 565.03(1)(a)2. who conducts bottling operations only in Florida and in no other state. Such beverages shall bear a Florida sunburst emblem no smaller than one-half inch in diameter reading "Made in Florida."

(2) If a Florida distiller is an individual or copartnership, such individual or copartnership shall be deemed to be conducting distilling operations in a state other than Florida if the individual or any member of the copartnership is interested or connected, directly or indirectly, or if such distiller produces an alcoholic beverage sold under a brand name identical or deceptively similar to the brand name of any corporation which is engaged, directly, indirectly, or through any subsidiary or affiliate corporation, including any stock ownership as set forth in subsection (3), in distilling spirituous liquors in any state other than the State of Florida.

(3) If a Florida distiller shall be a corporation, such corporation shall be deemed to be engaged in distilling operations in a state other than Florida when such corporation is affiliated with, directly or indirectly, or if such distiller produces an alcoholic beverage sold under a brand name identical or de-

ceptively similar to the brand name of any other corporation which is engaged in distilling spirituous liquors in any state other than Florida, or when such corporation is controlled by, or the majority of stock therein is owned by another corporation, which latter corporation owns or controls in any way the majority of stocks or controlling interest in any other corporation which is engaged directly or indirectly in distilling spirituous liquors in any state other than Florida.

(4) If a Florida bottler is an individual or copartnership, such individual or copartnership shall be deemed to be conducting bottling operations in a state other than Florida in the event the individual or any member of the copartnership is interested or connected, directly or indirectly, or if such bottler produces an alcoholic beverage sold under a brand name identical or deceptively similar to the brand name of any corporation which is engaged, directly or indirectly, or through any subsidiary or affiliate corporation, including any stock ownership as set forth in subsection (5), in bottling spirituous liquors in any state other than Florida.

(5) If a Florida bottler is a corporation, such corporation shall be deemed to be carrying on bottling operations in a state other than Florida when such corporation is affiliated with, directly or indirectly, or if such bottler produces an alcoholic beverage sold under a brand name identical or deceptively similar to the brand name of any other corporation which is engaged in bottling spirituous liquors in any state other than Florida, or when such corporation is controlled by or the majority of stock therein is owned by another corporation, which latter corporation owns or controls in any way the majority of stocks or controlling interest in any other corporation which is engaged directly or indirectly in bottling spiritu-

ous liquors in any state other than Florida.

**History.**—s. 1, ch. 70-225; s. 5, ch. 72-230.  
**Note.**—Former s. 561.463.

#### **565.15 Price affirmation.—**

(1) Each 6 months, at such dates as the division shall determine, each manufacturer or other person authorized to sell distilled spirits to licensed distributors in Florida shall submit to the division a duly verified affirmation that the net prices charged for such distilled spirits, when computed on an F.O.B. point of origin basis, whether sold by bottle or case, were no higher than the lowest net prices, when computed as defined in this chapter, charged to any distributor in any other state or the District of Columbia or to any state or state agency which owns and operates retail liquor outlets during the same 6-month period. Included in such duly filed affirmation shall be a listing of all of the licensed distributors in Florida to whom distilled spirits were sold during such period and the net price, by brand, by bottle or case, charged to such distributors. The net price as reported in such duly filed affirmation shall in each event be the gross price charged each distributor less any allowances or discounts in cash or merchandise or any other consideration or anything of intrinsic value received by the distributor. The reporting requirements imposed by this section shall not apply to transactions between distributors licensed in Florida.

(2) Any violation of this section shall constitute a misdemeanor and shall be punishable as provided by law. In addition, the division may bring a suit for injunction in the courts of this state in any county to enjoin violation of any of the provisions of this act.

**History.**—s. 1, ch. 75-89; s. 1, ch. 77-174.



## CHAPTER 567

## LOCAL OPTION ELECTIONS

- 567.01 Petition, order, notice of election.
- 567.02 Registration and qualification of electors.
- 567.03 Mode of holding election.
- 567.04 Time of holding elections.
- 567.05 Inspectors, returns, and canvass.
- 567.06 Form of ballot; canvassing votes, etc.
- 567.07 Results of election.
- 567.08 Refund of unused portion of state license tax.
- 567.09 Refund of unused portion of county license tax.
- 567.10 Refund of unused portion of municipal license tax.
- 567.11 Evidence of legal election.
- 567.12 Proceedings to test legality of election.
- 567.13 Sale by the package only.
- 567.14 Penalty for violation.

**567.01 Petition, order, notice of election.—**

(1) The board of county commissioners of each county shall order an election to decide whether the sale of intoxicating liquors, wines, or beer shall be prohibited in said county and if not prohibited, to decide the method of sale, upon the presentation to said board at a regular or special meeting, of a written application asking for such a determination in the county in which said application is made signed by one-fourth of the registered voters of the county. The signature of each registered voter shall be personally signed to such application; provided, however, a copy of said petition shall be dated and filed with the clerk of the circuit court of the county in which such election is to be held prior to procuring the signature of any registered voter thereon; and such petition must be completed and presented to the board of county commissioners within 120 days from the date said copy of said petition is originally filed with the clerk of the circuit court; and if not so done, said petition shall be held to be invalid.

(2) The election so ordered shall be to decide whether the sale of intoxicating liquors, wines, or beer shall be prohibited or permitted in said county, and to decide also whether such sale, if permitted by said election, shall be restricted to sales by the package as hereinafter defined.

(3) The term "Sales by the package" is defined to mean sales made in quantities of not less than one-half of a pint, contained in sealed containers, for consumption off the premises where sold.

(4) Such an election shall not be ordered oftener than once every 2 years. All orders for such election shall be in writing and shall be entered upon the minutes of the board but this requirement shall be directory only.

(5) Upon the making of the order for an election as aforesaid, the board shall cause its clerk to give at least 30 days' notice of said election by publishing a copy of the order for election in one newspaper in each and every town in said county in which a newspaper or newspapers be published, and if no newspaper be published within the county, then by posting at least 10 copies of said order in 10 of the most

public places in said county, one of which shall be the courthouse door. Proof of publication or proof of posting shall be filed with the board and shall be made as provided by ss. 49.10 and 49.11, for making proof of publication and proof of posting incident to constructive service of process, except that the provisions of said sections for recording shall not apply. All proofs of publication and of posting shall be entered upon the minutes of the board, but this requirement shall be directory only.

(6) It is the purpose and intent of the Legislature that such election shall obviate the necessity for holding two separate elections by determining in one election:

(a) Whether the sale of intoxicating liquors, wines, or beer shall be prohibited or permitted, and

(b) If such sales are determined to be permitted, to further determine whether the sales so made shall be limited to sales by the package as hereinbefore defined, or whether sales by the drink on the premises, as well as sales by the package, may be permitted.

A majority of those legally voting at such election must cast their votes "For selling intoxicating liquors, wines, or beer" in order that the results of the election on the second question shall be effective and binding.

**History.**—s. 1, ch. 3700, 1887; RS 857; GS 1209; s. 1, ch. 6180, 1911; CGL 1936 Supp. 4151(196); s. 1, ch. 23747, 1947; s. 1, ch. 57-119.

**567.02 Registration and qualification of electors.**—For the election under s. 567.01 electors may be registered as provided in the general law for registration for special elections and they shall have the same qualifications for and prerequisites to voting as in elections under the general election laws.

**History.**—s. 1, ch. 3700, 1887; RS 858; GS 1210; CGL 1936 Supp. 4151(197).

**567.03 Mode of holding election.**—The election under s. 567.01 shall be held and conducted in the manner prescribed by law for holding general elections, except as herein provided.

**History.**—s. 1, ch. 3700, 1887; RS 859; GS 1211; CGL 1936 Supp. 4151(198).

**567.04 Time of holding elections.**—All elections ordered under this chapter shall be held within 60 days from the time of presenting such application, but if any such election should thereby take place within 60 days of any state or national election, it shall be held within 60 days after any such state or national election.

**History.**—s. 1, ch. 3700, 1887; RS 860; GS 1212; CGL 1936 Supp. 4151(199).

**567.05 Inspectors, returns, and canvass.**—Inspectors of election shall be appointed and qualified as in cases of general elections, and they shall canvass the vote cast and make due returns of the same to the county commissioners without delay. The county canvassing board shall canvass the returns and declare the result, and cause the same to be

recorded as provided in the general law concerning elections, as far as applicable.

**History.**—s. 1, ch. 3700, 1887; RS 861; GS 1213; CGL 1936 Supp. 4151(200).

### 567.06 Form of ballot; canvassing votes, etc.—

(1) At the election under s. 567.01, the ballot used shall be printed on one side of a plain white piece of paper in the form following:

OFFICIAL BALLOT NO.....  
 .....  
 OFFICIAL BALLOT NO.....  
 .....  
 OFFICIAL ELECTION BALLOT  
 .....  
 (Month)..... (Day)..... (Year).....  
 PRECINCT NUMBER .....

..... County, Florida

INSTRUCTIONS: Local Option Election on  
 TWO QUESTIONS:

QUESTION NUMBER 1 is to decide whether the sale of intoxicating liquors, wines, or beer shall be prohibited or permitted in ..... County, Florida.

QUESTION NUMBER 2 is to decide whether the sale of intoxicating liquors, wines, or beer shall be restricted to sales made in quantities of not less than one-half of a pint, contained in sealed containers, for consumption off the premises where sold, such sales being described as "Sales by the package." The results on question number 2 shall be effective and binding only in the event a majority of those voting at the election shall cast their votes "For Selling Intoxicating Liquors, Wines, or Beer" on question number 1.

Vote on both questions!

If you fail to vote on question number 1, your vote on question number 2 will not be counted!

To vote, make a crossmark (X) at the right of your choice on each question:

#### QUESTION NO. 1:

For Selling Intoxicating Liquors, Wines, or Beer	
Against Selling Intoxicating Liquors, Wines, or Beer	

#### QUESTION NO. 2:

For Sales by the Package and Drink	
For Sales by the Package Only	

(2) No vote on question number 2 shall be counted or considered in determining the results on said question unless the elector casting said vote shall have voted also upon question number 1; provided that:

(a) If a majority of those legally voting at said election cast their votes on question number 1, the vote of said majority shall be determinative of said question and the votes cast on question number 2 shall in no way affect or nullify the result of the vote on question number 1; provided that

(b) A majority of votes legally cast on question number 2 shall be determinative of said question and the number of votes cast on question number 1

shall in no way affect or nullify the result of the vote on question number 2 unless a majority of the votes legally cast at said election shall be "Against Selling Intoxicating Liquors, Wines, or Beer";

(c) Provided, further, that voting machines may be used in counties which have adopted voting machines for use in general elections.

**History.**—s. 1, ch. 3700, 1887; RS 862; GS 1214; CGL 1936 Supp. 4151(201); s. 2, ch. 23747, 1947.

### 567.07 Results of election.—

(1) Should a majority of those legally voting at any election under s. 567.01 cast their votes "Against Selling Intoxicating Liquors, Wines, or Beer" on question number 1, then no intoxicating liquors, wines, or beer shall be sold in the county in which said election was held until otherwise determined by an election, which shall not be held oftener than once in every 2 years.

(2) Should a majority of those legally voting at any such election cast their votes "For Selling Intoxicating Liquors, Wines, or Beer" on question number 1 and a majority of votes legally cast on question number 2 be cast "For Sales by the Package Only," then:

(a) No intoxicating liquors, wines, or beer shall be sold in said county in quantities of less than one-half of a pint,

(b) No intoxicating liquors, wines, or beer shall be sold in said county that are not contained in sealed containers, and

(c) No intoxicating liquors, wines, or beer shall be consumed in said county on the premises where such intoxicating liquors, wines, or beer are sold or on any other premise under the control, either directly or indirectly, of the licensee, until otherwise determined in an election, which shall not be held oftener than once in every 2 years.

(3) In the event a majority of those legally voting in any such election cast their vote "For Selling Intoxicating Liquors, Wines, or Beer" on question number 1 and a majority of the votes legally cast on question number 2 be not cast "For Sales by the Package Only," then intoxicating liquors, wines, or beer may be sold as otherwise provided by law in said county until otherwise determined in an election, which shall not be held oftener than once in every 2 years.

**History.**—s. 1, ch. 3700, 1887; RS 863; GS 1215; CGL 1936 Supp. 4151(202); s. 3, ch. 23747, 1947; s. 11, ch. 25035, 1949.

**567.08 Refund of unused portion of state license tax.**—When any county votes by an election to discontinue permitting the sale of intoxicating liquors, wines, or beer, prior to the date of expiration of any license issued by the state for the sale of intoxicating liquors, wines, or beer in such county, the fee for the unexpired and unused portion of said license shall be refunded to the licensee by warrant drawn by the State Comptroller on the State Treasurer who shall pay such warrants from any moneys in the State Treasury not otherwise appropriated.

**History.**—s. 1, ch. 5479, 1905; CGL 1936 Supp. 4151(203).



cf.—s. 17.12 Comptroller authorized to issue warrants for payment.

**567.09 Refund of unused portion of county license tax.**—The county commissioners of such county voting by election to discontinue permitting the sale of intoxicating liquors, wines, or beer, shall refund to the licensee the fee for the unexpired and unused portion of any such license issued to him by said county.

**History.**—s. 2, ch. 5479, 1905; CGL 1936 Supp. 4151(204).

**567.10 Refund of unused portion of municipal license tax.**—Any municipality in such county voting by election to discontinue permitting the sale of intoxicating liquors, wines, or beer, shall refund to the licensee the fee for the unexpired and unused portion of any such license issued to him by said municipality.

**History.**—s. 3, ch. 19140, 1939; s. 1, ch. 20719, 1941.

**567.11 Evidence of legal election.**—In all prosecutions by the state for the unlawful sale of intoxicating liquors, wines, or beer contrary to prohibition regulations, the introduction of a copy of the record of the result of the canvass of the returns of the election as made by the county canvassing board and recorded in the minutes of the proceedings of the board of county commissioners, or in any book used as a book of record in the office of the clerk of the circuit court, duly certified to by the clerk of the circuit court, for such county in which an election shall have been held, shall be taken as prima facie evidence that said election was legally called, conducted, and held.

**History.**—s. 7, ch. 4930, 1901; GS 3559; s. 1, ch. 7289, 1917; CGL 1936 Supp. 7600(1).

**567.12 Proceedings to test legality of election.**—Any resident of any county in this state in which an election may be held or which may hereafter be held to determine whether the sale of intoxicating liquors, wines, or beer should be prohibited or permitted in such county and, if permitted by such election, to determine whether such sale should be restricted to "Sales by the package," as such term is defined in s. 567.01, shall have the right to test the legality and regularity of such election by suit in equity in the circuit court of such county to be filed against the county commissioners thereof; and in case any such election shall be adjudged to be illegal

and void in any such suit such judgment shall have the effect of nullifying such election in toto as to all inhabitants of such county whether they were parties to such suit or not; provided, no such suit shall be brought to test the validity of any such election unless the same shall be instituted within 90 days after the recording of the declaration of the result of any such election in the minutes of the board of county commissioners.

**History.**—s. 1, ch. 5247, 1903; GS 1216; CGL 1936 Supp. 4151(205); s. 4, ch. 23747, 1947; s. 2, ch. 29737, 1955.

**567.13 Sale by the package only.**—In any county that has voted "For Selling Intoxicating Liquors, Wines, or Beer" and also has voted to restrict such sale to "Sales by the package only" as herein provided, thereupon:

(1) It shall be unlawful for anyone to sell, or cause to be sold, any intoxicating liquors, wines, or beer in quantities of less than one-half of a pint;

(2) It shall be unlawful for anyone to sell, or cause to be sold, any intoxicating liquors, wines, or beer not contained in sealed containers;

(3) It shall be unlawful for anyone who sells, or causes to be sold, any intoxicating liquors, wines, or beer to permit such intoxicating liquors, wines, or beer to be consumed on the premises where such intoxicating liquors, wines, or beer are sold or on any other premise under the control, either directly or indirectly, of the licensee and it shall be unlawful for anyone to consume any intoxicating liquors, wines, or beer on the premises where such intoxicating liquors, wines, or beer are sold or on any other premise under the control, either directly or indirectly, of the licensee.

**History.**—s. 5, ch. 23747, 1947.

**567.14 Penalty for violation.**—Any person violating any of the provisions of s. 567.13 shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083; provided, that any person who shall have been convicted of a violation of any of the provisions of s. 567.13 and shall thereafter be convicted of a further violation of any of said provisions, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 6, ch. 23747, 1947; s. 577, ch. 71-136.

## CHAPTER 568

## INTOXICATING LIQUORS IN COUNTIES WHERE PROHIBITED

- 568.01 Alcoholic content of intoxicating liquors.
- 568.02 Selling intoxicating liquors in counties where prohibited.
- 568.03 Possessing intoxicating liquors in counties where prohibited with intent to sell.
- 568.04 Maintaining place of business for sale of liquors in counties where prohibited.
- 568.05 Penalty.
- 568.06 Proof necessary to convict.
- 568.07 Name sufficient proof; competency of witness.
- 568.08 Person required to testify; exemption from prosecution.
- 568.09 Holding federal license or tax stamp prima facie evidence.
- 568.10 Confiscation of liquors.
- 568.11 Right of property forfeited.
- 568.12 Record of confiscation required.
- 568.13 Form of information or indictment.
- 568.14 Division vested with enforcing powers.

**568.01 Alcoholic content of intoxicating liquors.**—All liquors, wines, or beer containing more than 3.2 percent of alcohol by weight shall be deemed and held to be intoxicating liquors, wines, or beer and subject to the provisions of this chapter.

*History.*—s. 5, ch. 18016, 1937; CGL 1940 Supp. 7648(14).

**568.02 Selling intoxicating liquors in counties where prohibited.**—It is unlawful for anyone to sell, or cause to be sold, any intoxicating liquors, wines, or beer in any county that has voted against the sale of intoxicating liquors, wines, or beer.

*History.*—s. 1, ch. 18016, 1937; CGL 1940 Supp. 7648(10).

**568.03 Possessing intoxicating liquors in counties where prohibited with intent to sell.**—It is unlawful for anyone to keep, or possess, intoxicating liquors, wines, or beer in any county that has voted against the sale of such intoxicating liquors, wines, or beer with intent to sell or dispose of them unlawfully.

*History.*—s. 2, ch. 18016, 1937; CGL 1940 Supp. 7648(11).

**568.04 Maintaining place of business for sale of liquors in counties where prohibited.**—It is unlawful for anyone to keep or maintain a place where intoxicating liquors, wines, or beer are sold in any county that has voted against the sale of intoxicating liquors, wines or beer.

*History.*—s. 3, ch. 18016, 1937; CGL 1940 Supp. 7648(12).

**568.05 Penalty.**—Any person who sells, or causes to be sold, any intoxicating liquors, wines, or beer in any county that has voted against the sale of intoxicating liquors, wines, or beer, or who keeps or possesses in any such county any intoxicating liquors, wines, or beer with intent to sell or dispose of same unlawfully, or who keeps or maintains in any such county a place where intoxicating liquors, wines, or beer are sold, shall be guilty of a misde-

meanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

*History.*—s. 4, ch. 18016, 1937; CGL 1940 Supp. 7648(13); s. 578, ch. 71-136.

**568.06 Proof necessary to convict.**—In any trial of any person for violation of s. 568.02, it shall not be necessary for the prosecution to prove that the accused had any interest in the intoxicating liquors, wines, or beer delivered or sold by him, or any interest in the money received by the accused for such intoxicating liquors, wines, or beer delivered by him, but proof of the delivery of intoxicating liquors, wines, or beer by the accused and the receipt of money therefor by him, shall be prima facie evidence of the ownership of said intoxicating beverages by the accused and proof of the sale of a single quantity of intoxicating liquors, wines, or beer by such person shall be sufficient evidence upon which to base a conviction for violation of s. 568.02.

*History.*—s. 6, ch. 18016, 1937; CGL 1940 Supp. 7648(15).

**568.07 Name sufficient proof; competency of witness.**—

(1) In all prosecutions for violation of this chapter proof that the liquor in question was and is known as whiskey, moonshine whiskey, shine, rum, gin, brandy, or other similar name or names shall be prima facie evidence that such liquor is intoxicating and contains more than 3.2 percent of alcohol by weight and that same is intoxicating. Any person or persons who by experience in the past in the handling or use of intoxicating liquors, or who by taste, smell, or the drinking of such liquors have knowledge as to the intoxicating nature thereof, may testify as to this opinion, whether such beverage or liquor is or is not intoxicating, and a verdict based upon such testimony shall be valid.

(2) The alcoholic content of any liquor, wine, or beer, or other beverage may be shown by hydrometer or gravity test made in or away from the presence of the jury by any person who has knowledge of the uses of such instruments, but the production of such evidence shall be optional. The alcoholic content of any liquor or beverage, or compound, the subject of any inquiry in and proceedings or prosecution may also be shown by chemical or any other analysis made by and certified by any competent chemist or the state chemist, or any of his duly designated assistants or deputies. The sample analyzed may be identified by the sworn testimony of any peace officer or prosecuting officer, that he personally delivered to said chemist such sample for analysis and that it was personally taken by him from the receptacle containing beverages, drinks or alcoholic liquors or compounds, the subject of inquiry.

(3) The mode of proof herein provided shall be considered cumulative and not exclusive.

*History.*—s. 7, ch. 18016, 1937; CGL 1940 Supp. 7648(16).

**568.08 Person required to testify; exemption from prosecution.**—No person shall, upon any investigation before a grand jury or state attorney for an alleged violation of any of the provisions of this



chapter, or before any court upon the trial of any person, association of persons, or corporation, charged with the violation of any of the provisions of this chapter herein made a criminal offense, refuse to testify or give evidence, or produce any document, record, book, papers, or any other personal property of any kind or description, upon the ground that by so doing he may thereby convict himself of crime, or give evidence against himself, or expose himself to criminal prosecution, penalty or forfeiture; and any person who shall so testify or give such evidence, or produce any such document, record, book, paper, or any other personal property of any kind or description, shall not be prosecuted or held liable for any penalty or forfeiture for or on account of any matter or thing concerning which he may so testify, or give evidence, or produce any such document, record, book, paper or any other personal property of any kind or description, and the same shall not be given in evidence or used against such person in anywise or in any manner in any prosecution or other proceeding in any of the courts of this state, or otherwise; provided, that nothing in this section contained shall protect any person against prosecution for perjury or false swearing.

**History.**—s. 8, ch. 18016, 1937; CGL 1940 Supp. 7648(17); s. 26, ch. 73-334, cf.—s. 12(e), Art. V, State Const. Access by Judicial Qualifications Commission to Grand Jury information.

**568.09 Holding federal license or tax stamp prima facie evidence.**—The holding, owning, having in possession, or paying for a license or tax stamp issued by the internal revenue authorities of the United States showing the payment of a tax as a dealer in intoxicating liquors, wines, or beer, by the holder thereof to the United States Government shall be held in all the courts of this state as prima facie evidence against the holder thereof in prosecution of such holder for violation of this chapter and upon proof being made by the certificate of the collector of internal revenue, as provided for by the federal statute, in cases where the proper prosecuting officers shall produce said certificate or certified copy, the grand jury may indict the holder of such license or tax stamp or the proper prosecuting officer may file information against the holder of such license or tax stamp without further proof, charging such holder with the violation of this chapter, and upon the trial of persons charged with the violation of this chapter, upon information or indictment proof of the owning, holding, or possession of such license or tax stamp by the defendant may be made by two witnesses who have seen such license or tax stamp in the place of business or the holder thereof, or by the production of the original tax stamp or license with proof that said license or tax stamp is the property of the defendant by one or more witnesses, or by production by the prosecuting officer of a certified copy of said license, tax stamp or certificate of the Collector of Internal Revenue of the United States; and proof having been made as provided in this section, it shall be sufficient evidence, without explanation, to convict.

**History.**—s. 9, ch. 18016, 1937; CGL 1940 Supp. 7648(18).

**568.10 Confiscation of liquors.**—Upon the arrest of any person charged with a violation of any of the provisions of this chapter, the arresting officer shall take into his custody all of the intoxicating liquors, wines, or beer found in the possession, custody or control of the person arrested, and safely keep and preserve the same and have it forthcoming at any investigation, prosecution or other proceeding for the violation of any of the provisions of this chapter, and for the destruction of same as is in this section provided. Upon the conviction of the person arrested for the violation of any provision of this chapter, the judge of the court trying the case, after notice to the person convicted and any other person who the judge may be of the opinion is entitled to notice, as the judge may deem reasonable, shall issue to the sheriff of the county, division, or authorized municipality a written order adjudging and declaring such intoxicating liquors, wines, or beer forfeited and directing the sheriff, division, or authorized municipality to sell the liquors, wines, or beer to any licensed wholesaler in the state upon the condition that the intoxicating liquors, wines, and beer must be first inspected by an employee of the division to ascertain that all state taxes applicable have been paid. Sale shall be made, however, only upon submission by the sheriff, division, or authorized municipality of a request for bids to at least five wholesalers in the state, and the sale shall be made to the highest and best bidder; provided, however, if in the opinion of the sheriff, division, or authorized municipality no satisfactory bid from a wholesaler is received, bids may then be rejected and the intoxicating liquors, wines, or beer so seized and forfeited may be sold to any retailer licensed in this state to sell such beverages provided that the sale shall be made only upon submission by the sheriff, division, or authorized municipality of a request for bids to at least five retail dealers in the state and that the sale shall be made to the highest and best bidder therefor; the order shall further provide, in the event any forfeited liquors, wines, or beer cannot be sold, that the sheriff, division, or authorized municipality shall immediately destroy same or that the sheriff or authorized municipality shall deliver same to the division for the disposition as provided in s. 562.44. In the event that the liquors, wines, or beer are to be destroyed under the order, the destruction by the sheriff or authorized municipality shall be in the presence of the clerk of the circuit court of the county and at times, places and in the manner as the judge, in his order, directs.

**History.**—s. 10, ch. 18016, 1937; CGL 1940 Supp. 7648(19); s. 1, ch. 22024, 1943; s. 1, ch. 61-259; ss. 16, 35, ch. 69-106; s. 31, ch. 79-11, cf.—s. 562.12 Beverage sold with improper license.

**568.11 Right of property forfeited.**—The right of property in and to intoxicating liquors, wines, or beer sold or possessed by any person, association of persons, or corporation in violation of any of the provisions of this chapter is declared not to exist in any person, association of persons, or corporation and the same shall be forfeited.

**History.**—s. 11, ch. 18016, 1937; CGL 1940 Supp. 7648(20).

**568.12 Record of confiscation required.**—Any sheriff, who seizes intoxicating liquors, wines, or beer as provided for in this chapter, shall keep a permanent itemized record of all such liquors including a complete record of the destruction of such liquors, which record shall be verified by the signature of the sheriff in person, and such records shall be open to inspection at all times.

**History.**—s. 12, ch. 18016, 1937; CGL 1940 Supp. 7648(21).

**568.13 Form of information or indictment.**—

(1) An indictment or information framed substantially as follows shall be deemed sufficient in counties voting against the sale of intoxicating liquors, wines, or beer:

The grand jurors of the State of Florida, inquiring in and for the body of the County of ....., upon their oaths do present that ....., late of the County of ....., did, on, to wit: the ..... day of ..... 19....., in the said County of ....., State of Florida, unlawfully sell intoxi-

cating liquors, (or intoxicating wines or intoxicating beer as the case may be), which said county had voted against the sale of intoxicating liquors, wines, or beer, contrary to the statute made and provided and against the peace and dignity of the State of Florida.

(2) Said form of indictment or information may also be used in charging violation of s. 568.03 and s. 568.04.

**History.**—s. 13, ch. 18016, 1937; CGL 1940 Supp. 7648(22).

**568.14 Division vested with enforcing powers.**—For the purpose of enforcing the provisions of this chapter the division shall exercise and perform all powers and duties vested in the several sheriffs and their deputies in the state under the provisions of this chapter.

**History.**—s. 13A, ch. 18016, 1937; CGL 1940 Supp. 7648(23); ss. 16, 35, ch. 69-106; s. 32, ch. 79-11.  
cf.—s. 561.02 Duties of Division of Alcoholic Beverages and Tobacco.



# TITLE XXXIV

## AGRICULTURE, HORTICULTURE, AND ANIMAL INDUSTRY

### CHAPTER 570

#### DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

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**570.01 Department created; commissioner.**—There is hereby created a department of the government of this state to be known as the "Department of Agriculture and Consumer Services." The affairs of the department shall be transacted under the control of the commissioner of agriculture.

**History.**—s. 1, ch. 59-54; ss. 14, 35, ch. 69-106.

**570.02 Definitions of terms.**—The following words and phrases as used in this chapter and the agricultural laws of this state, unless the context otherwise requires, shall have the meanings respectively ascribed to them in this section:

(1) "Department" means the Department of Agriculture and Consumer Services.

(2) "Commissioner" means the commissioner of agriculture.

(3) "Council" means the state Agricultural Advisory Council.

(4) "Agriculture" means the science and art of production of plants and animals useful to man, including to a variable extent, the preparation of these products for man's use and their disposal by marketing or otherwise and shall include horticulture, floriculture, viticulture, forestry, dairy, livestock, poultry, bees, and any and all forms of farm products, and farm production.

History.—s. 1, ch. 59-54; ss. 14, 35, ch. 69-106; s. 215, ch. 71-377.

**570.06 Offices of the department.**—The principal office of the department shall be located at the seat of state government. Branch offices may be established and maintained by the department in such places as the commissioner may determine. The offices shall be supplied with all necessary books, stationery, office equipment and furniture, to be furnished and paid for in the manner provided by law.

History.—s. 1, ch. 59-54.

**570.07 Department of Agriculture and Consumer Services; functions, powers, and duties.**—The department shall have and exercise the following functions, powers, and duties:

(1) Inquire into the needs of agriculture of the state, and make appropriate recommendations to the Governor and the Legislature, except as to such functions as are specifically assigned under state law to other state agencies.

(2) Perform all regulatory and inspection services relating to agriculture except agricultural education, demonstration, research, and those regulatory functions relating primarily to the protection of the public health or assigned by law to other state agencies.

(3) Make investigations, conduct hearings, and make recommendations concerning all matters relating to the powers, duties, and functions of the department as provided by law.

(4) Cooperate with the United States Department of Agriculture in obtaining and disseminating production statistics, market and trade information concerning demand, supply, prevailing prices, and commercial movements of agricultural products and extent of products in storage, and cooperate with any other state or federal agencies which in any manner may be helpful to agriculture. It may compile, publish and disseminate information and pertinent data on crops, livestock, poultry, and agricultural products and may provide matching funds with other agencies, local, state, or national for the conduct of such service.

(5) Annually fix such inspection and license fees and recording and service charges within maximum limits provided by law as may be necessary to pay the cost of the service performed, maintenance of reasonable reserves for contingencies, including cost of depository, accounting, disbursement, auditing, rental of quarters and facilities furnished by the state, and payment of compensation to fruit and vegetable inspectors for overtime work, for which industry has been billed, in excess of 40 hours per week at the same rate of pay as received for normal work

hours, in those cases where conditions do not permit reimbursement for overtime work by giving compensatory time.

(6) Foster and encourage the standardizing, grading, inspection, labeling, handling, storage, and marketing of agricultural products. And, after investigation and public hearings thereon, acting in cooperation with the United States Department of Agriculture, to establish and promulgate standard grades and other standard classifications of and for agricultural products.

(7) Extend in every practicable way the distribution and sale of Florida agricultural products throughout the markets of the world.

(8) Promote, in the interest of the producer, the distributor, and the consumer, the economical and efficient distribution of agricultural products of this state; and to that end cooperate with the Department of Commerce of the United States and any other department or agency of the federal or state government.

(9) Obtain and furnish information relating to the selection of shipping routes, adoption of shipping methods, avoidance of delays in the transportation of agricultural products, or helpful in the solution of other transportation problems connected with the distribution of agricultural products.

(10) Act as advisor to producers and distributors, when requested and to assist them in the economical and efficient distribution of their agricultural products as well as to assist and encourage cooperative effort among producers to gain economical and efficient production of agricultural products.

(11) Foster and encourage cooperation between producers and distributors in the interest of the general public.

(12) Act as a mediator or arbitrator in any controversy or issue that may arise between producers and distributors of any agricultural products concerning the grade or classification of such products.

(13) Protect the agricultural and horticultural interests of the state, and to that end it shall enforce those functions, powers, and duties given to it in chapter 581, and all other laws relating thereto.

(14) Inspect apiaries for diseases inimical to bees and beekeeping and enforce the laws relating thereto.

(15) Protect the livestock interests of the state, and to that end it shall enforce those functions, powers, and duties given to it in chapter 585, and all other laws relating thereto.

(16) Enforce the state laws and regulations relating to: fruit and vegetable inspection and grading; spray, residue inspection, and removal; registration, labeling, inspection and analysis of commercial stock feeds and commercial fertilizers; classification, inspection, and sale of poultry and eggs; registration, inspection and analysis of gasolines and oils; registration, labeling, inspection, and analysis of pesticides; registration, labeling, inspection, germination testing and sale of seeds, both common and certified; weights, measures, and standards; foods, as set forth in the Food, Drug and Cosmetic Law; inspection and certification of honey; sale of liquid fuels; the licensing of dealers in agricultural products; administration and enforcement of all regulatory legislation



applying to milk and milk products, ice cream and frozen desserts; recordation and inspection of marks and brands of livestock; and all other regulatory laws relating to agriculture.

(17) Receive and compile reports on all fruits, vegetables, and other farm products as are grown in the state, to publish same in the state press that will do so without cost; to obtain and disseminate information as to carriers' rates, to collect information as to additional market centers and their capacity, and to keep and compile a statement of all shipments moving out of the state, that through this information the farmers and producers can be kept posted as to exact conditions existing in the state, and the several markets of the country, to better cooperate with and prevent a loss to our people, and to cooperate with the United States Government in establishing and maintaining a market news system; to issue such bulletins or other information along lines of advice as to how best pick, pack, kind of package, and way to distribute; to study all conditions as affecting other states; to keep in touch with the Department of Agriculture at Washington, D. C., that through this close touch and study of conditions, it can advise our people what crops to plant or not plant, what markets are overstocked, and through a system of cooperation aid in development of agricultural interests and protection of Florida's producers; to devise such methods as will best carry forward this work, such as inspection of packages and other measures as conform to plans of the marketing system of the Department of Agriculture at Washington; to publish or issue bulletins listing for sale, exchange, and wanted items for farmers; to do all that can be done to bring relief to and aid in the marketing and distribution of Florida's products.

(18) Instruct in the standardization, grading, packing, processing, loading, refrigeration, routing, diversion, and distribution of farm products; to carry on research work or cooperate with other state or federal agricultural agencies on research work in marketing and to provide any other information and assistance necessary to the efficient selling of farm products; to acquire suitable sites and erect thereon necessary marketing facilities, livestock pens and properly equip, maintain, and operate same for the handling of all staple field crops, meats, fruits and vegetables, poultry and dairy products, and all farm and home products, and for selling and loading livestock, and to let or lease space therein and thereon; to store, or refrigerate any meats, vegetables, fruits, poultry or dairy products; to employ such managers and other help as may be necessary to operate the plants and pens and market the products handled, and make such charges for such services as will cover the costs of operation and maintenance.

(19) Protect the dairy interests of the state, and to that end it shall enforce those functions, powers, and duties given to it in chapters 502 and 503.

(20) Stimulate, encourage, and foster the production and consumption of agricultural products; conduct activities that may foster a better understanding and more efficient cooperation among producers, dealers, buyers, food editors, and the consuming public in the promotion and marketing of Florida agricultural products; sponsor trade breakfasts, lunch-

eons, and dinners and distribute promotional materials and favors in connection with meetings, conferences, and conventions of dealers, buyers, food editors, and merchandising executives that will assist in the promotion and marketing of Florida agricultural products to the consuming public.

(21) To declare an emergency when such exists, as defined in chapters 581 and 585, and make, adopt, and promulgate rules and regulations which would be effective during the term of such emergency.

(22) Hold hearings, administer oaths, subpoena witnesses and take testimony in all matters relating to the exercise and performance of the powers and duties of the department. Upon failure or refusal of any witness to obey any subpoena, the department may petition the circuit court having jurisdiction in the county within which the seat of government is located, and upon proper showing, the court shall enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the order of the court shall be punishable as a contempt of court.

(23) Enact, amend, and repeal necessary administrative rules.

(24) In its discretion, adopt and promulgate rules pertaining to the inspection of quality, the truthful and honest branding of each package shipped, and the prohibiting of any shipper having the benefit of shipping through the facilities of the department who does not strictly observe and obey such rules in the preparation, packing, and shipping of his agricultural products.

(25) With the approval of a majority of the Board of Trustees of the Internal Improvement Trust Fund, the department may sell, exchange, convey, or otherwise dispose of any real property owned or held by it when, in its judgment, such property is not needed for the purpose for which the said property was held and cannot be put to any other beneficial use by the department. A deed to any real property owned or held by the department, duly executed by the department and witnessed by a majority of the board of trustees, shall be sufficient to convey all the right, title and interest of the said department or of the state in and to the property described therein.

(26) Sell, exchange, convey or otherwise dispose of any personal property and lease any real property owned or held by the department when in its judgment, such property is not needed for the purpose for which the said property was held and cannot be put to any other beneficial use by the department.

(27) Incur expenses for membership dues in the national and southern associations of state departments of agriculture and other organizations affiliated with agriculture and for presentment of plaques and framed certificates for outstanding service.

(28) For pollution control purposes, regulate open burning connected with rural land-clearing, agricultural, or forestry operations, except as to fires for cold or frost protection.

(29) Advance funds monthly to career service employees whose duties require the purchase of official state samples for state examination, to be used for the purchase of such samples. Each monthly advance shall be in an amount equal to one-twelfth of

the actual expenses paid the position for such samples in the previous fiscal year, or in the case of new positions, one-twelfth of the expenses paid for samples of a similar classification in the previous fiscal year; however, in the event of unusual circumstances, such advances may be increased for a period not to exceed 60 days. Such advances shall be granted to each such career service employee as long as the employee remains in a position which requires the purchase of samples and is employed by the department and shall be granted only to career service employees who have executed a proper power of attorney with the department to insure the proper collection of such advances in case it may become necessary.

**History.**—s. 1, ch. 59-54; s. 1, ch. 61-407; s. 1, ch. 67-77; ss. 14, 27, 35, ch. 69-106; s. 1, ch. 69-348; s. 1, ch. 71-340; s. 4, ch. 77-114; s. 1, ch. 77-216; s. 6, ch. 78-95; s. 1, ch. 78-396.

**Note.**—Former ss. 570.35, 570.39, 570.08.

**570.071 Florida Agricultural Exposition; responsibility of Departments of Agriculture and Consumer Services and Corrections.**—The Department of Agriculture and Consumer Services and the Department of Corrections are authorized to construct and equip an agricultural exposition center in the vicinity of Belle Glade in Palm Beach County to be known as "Florida Agricultural Exposition," to be administered by the Department of Agriculture and Consumer Services as a place to demonstrate and sell Florida agricultural and agriculture business products; to attract and inform buyers; to conduct agricultural short courses and conferences; to organize tours in the aid of marketing Florida agricultural products to the domestic, Latin American, and other foreign markets; and to train prisoners of the correctional institutions of the state in agricultural labor and management. To accomplish the purpose of this section, the Department of Agriculture and Consumer Services and Department of Corrections are authorized to receive donations of funds from growers and dealers of agricultural products and groups and associations thereof, manufacturers and dealers of agriculture business products and groups and associations thereof, the Federal Government, and other sources, such funds to be deposited in the State Treasury in a separate trust. Further, to accomplish the purpose of this section, the Department of Agriculture and Consumer Services is authorized to expend up to \$25,000 from the funds of the department, if available.

**History.**—s. 1, ch. 69-177; ss. 14, 19, 35, ch. 69-106; ss. 1, 2, ch. 70-441; s. 10, ch. 77-120; s. 17, ch. 79-3.

**570.09 Assistant commissioner.**—The commissioner shall appoint and may at pleasure remove an assistant commissioner of agriculture and assign to such assistant the work which shall be under the said assistant's supervision. Before entering upon the duties of his office the assistant commissioner shall take and subscribe to the same oath of office as required of state officers in s. 5, Art. II of the Florida Constitution and give bond as provided in s. 570.11. The said assistant commissioner shall be a person qualified by training and experience for the performance of the duties of his office.

**History.**—s. 1, ch. 59-54; s. 33, ch. 69-216; s. 1, ch. 74-204.

#### **570.10 Counsel.**—

(1) The department may have a legal staff of full-time attorneys, one of whom shall be general counsel.

(2) The attorneys of the department shall represent and appear for the department at all actions and proceedings involving any question under this chapter or within the jurisdiction of the department under any general or special law or under or in reference to any act, order, or proceedings of or before the department, and shall, when directed, intervene, if possible, in behalf of the department in any action or proceeding involving or relating to any matter within the jurisdiction or powers of the department as herein prescribed.

(3) The several prosecuting attorneys of the state shall prosecute all violations of the agricultural laws of this state upon the request of the department.

(4) Counsel shall act as counsel for any officer of the department in the conduct of a hearing, investigation, or inquiry executed under authority of the department or as provided in this chapter; advise any officer of the department, when so requested, in regard to all matters in connection with his powers and duties; and perform generally all duties and services as counsel of the department which may be reasonably required of them.

**History.**—s. 1, ch. 59-54; s. 2, ch. 61-407; ss. 11, 14, 35, ch. 69-106; s. 146, ch. 73-333; ss. 1, 2, ch. 75-252.

**570.11 Directors; oath of office.**—Each director of the department shall before entering upon the duties of his office take and subscribe to the same oath of office as required of state officers by s. 5, Art. II of the Florida Constitution, and give bond with good security to be approved by the Governor; in the sum of \$10,000, conditioned upon the faithful discharge of the duties of his office. Such oath shall be filed with the Department of State.

**History.**—s. 1, ch. 59-54; s. 33, ch. 69-216; ss. 10, 35, ch. 69-106.

**570.12 Other officers and employees.**—There shall be employed or appointed such agents, inspectors, chemists, experts, statisticians, accountants, stenographers, clerks and other assistants and employees, as the department shall deem necessary for the exercise and the performance of the duties of the department under law. Such officers and employees shall be appointed by the department subject to personnel practices which shall be adopted by it and administered by the Division of Administration. The officers and employees of the department who are employed when this chapter takes effect shall continue their employment during the pleasure of the department.

**History.**—s. 1, ch. 59-54; ss. 14, 35, ch. 69-106.

#### **570.13 Salary of commissioner, officers, and employees; expenses.**—

(1) The annual salary of the commissioner shall be in that amount, as provided by law. The salaries of the assistant commissioner, counsel, directors, and all other officers and employees of the department shall be fixed by the department within the limits of appropriations made therefor.

(2) The reasonable and necessary traveling and other expenses of the commissioner, assistant com-



missioner, counsel, directors, and other officers and employees of the department, while actually engaged in the performance of their duties, outside of the City of Tallahassee, or if any such officer or employee be in charge of or regularly employed at a branch office of the department, the reasonable and necessary traveling and other expenses outside the place such branch office is located, shall be paid from the state treasury upon the audit of the comptroller upon vouchers approved by the department in the amount provided in s. 112.061.

**History.**—s. 1, ch. 59-54; ss. 14, 35, ch. 69-106.

**570.14 Seal of department.**—The department shall have an official seal. Such seal shall be used for the authentication of the orders and proceedings of the department and for such other purposes as the department may prescribe.

**History.**—s. 1, ch. 59-54; ss. 14, 35, ch. 69-106.

**570.15 Access to places of business and vehicles.**—

(1)(a) The commissioner, assistant commissioner, directors, counsel, experts, chemists, agents, inspectors, road-guard inspection special officers, and other employees and officers of the department shall have full access at all reasonable hours to all:

1. Places of business;
2. Factories;
3. Farm buildings;
4. Carriages;
5. Railroad cars;
6. Trucks;
7. Motor vehicles, except private passenger automobiles with no trailer in tow, travel trailers, camping trailers, and motor homes as defined in s. 320.01(1)(b);
8. Truck and motor vehicle trailers;
9. Vessels; and
10. All records pertaining thereto;

used in the production, manufacture, storage, sale, or transportation within the state of any food product; any agricultural, horticultural, or livestock product; or any article or product with respect to which any authority is conferred by law on the department.

(b) If such access be refused by the owner, agent, or manager of such premises or by the driver of such aforesaid vehicle, the inspector or road-guard inspection special officer may apply for and may execute a search warrant, which shall be obtained as provided by law for the obtaining of search warrants in other cases, or may conduct a search of any of the aforesaid vehicles without a warrant pursuant to s. 933.19.

(c) Such departmental officers, employees, and road-guard inspection special officers may examine and open any package or container of any kind containing or believed to contain any article or product which may be transported, manufactured, sold, or exposed for sale in violation of the provisions of this chapter, the rules of the department, or the laws which the department enforces and may inspect the contents thereof and take therefrom samples for analysis.

(2) It shall be unlawful for any truck or any truck or motor vehicle trailer to pass any official road-

guard inspection station without first stopping for inspection. A violation of this subsection shall constitute a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(3) Every law enforcement officer is authorized to assist employees of the department listed in subsection (1) in the enforcement of subsection (2). Such officer is authorized to stop and detain any vehicle and its driver who has failed to comply with subsection (2) until an employee of the department arrives to conduct the inspection required by law. Such law enforcement officer or a road guard inspection special officer may require the driver to return with his vehicle to the road guard inspection station where the driver failed to stop the vehicle for inspection.

(4) No civil or criminal liability shall be imposed upon any person who is authorized to enforce or assist in enforcement of the provisions of this section and who is lawfully engaged in such activity.

**History.**—s. 1, ch. 59-54; s. 1, ch. 75-215; s. 1, ch. 78-180; s. 1, ch. 79-371.

**570.151 Appointment and duties of road-guard inspection special officers.**—

(1) The department may appoint road-guard inspection special officers of sufficient number to carry out the duties of the department relating to road-guard inspection as prescribed in this section. Said officers shall be known as road-guard inspection special officers. Each such special officer shall be covered by a public employee's faithful-performance-of-duty bond with a corporate surety authorized to do business in this state, in the amount of \$1,000, to be approved by the department, conditioned upon the faithful performance of his duties and payable to the Governor.

(2) All such special officers shall have power and authority to make arrests, with or without warrants as provided in s. 570.15, for violations of law committed within the jurisdiction of s. 570.15 to the same extent and under the same limitations and duties as do peace officers under the provisions of chapter 901, and all such special officers shall have the right and authority to carry arms while on duty, provided such officers shall meet the requirements of the Police Standards and Training Commission established under s. 943.11. The compensation of such special officers shall be fixed and paid in accordance with the state classification and pay plan for career service employees.

(3) The department may, at any time for cause, withdraw the appointment as special officer from any inspector assigned to duties of road-guard inspection.

**History.**—s. 2, ch. 75-215.

**570.16 Interference with department employees in performance of duties.**—No person shall attempt, by means of any threat or violence, to deter or prevent an inspector, agent or other employee of the department from performing any duties imposed by law upon him or upon the department. Whoever violates this section, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 1, ch. 59-54; s. 584, ch. 71-136.

**570.17 Division of work between department and experiment station and extension service.**—All of the regulatory work of the state relating to the protection of agricultural interests shall be conducted by the department and all of the demonstrational work shall be conducted by the Extension Service of the University of Florida. The experimental and research work pertaining to agriculture shall be conducted by the Experiment Station of the University of Florida.

*History.*—s. 1, ch. 59-54; s. 3, ch. 61-407; ss. 14, 35, ch. 69-106.

**570.18 Organization of departmental work.**—In the assignment of functions to the 11 divisions of the department created in s. 570.29, the department shall retain within the Division of Administration, in addition to executive functions, those powers and duties enumerated in s. 570.30. The department shall organize the work of the other 10 divisions in such a way as to secure maximum efficiency in the conduct of the department. The divisions created in s. 570.29 are solely to make possible the definite placing of responsibility. The department shall be conducted as a unit in which every employee, including each division director, is assigned a definite workload, and there shall exist between division directors a spirit of cooperative effort to accomplish the work of the department.

*History.*—s. 1, ch. 59-54; ss. 14, 35, ch. 69-106; s. 1, ch. 77-289.

**570.20 General Inspection Trust Fund.**—All inspection fees and funds authorized and received from whatever source in the enforcement of the inspection laws administered by the department shall be paid into the General Inspection Trust Fund of Florida, which said fund is created in the office of State Treasurer, and all expenses incurred in carrying out the provisions of said inspection laws shall be paid from said fund as other funds are paid from the State Treasury. Two percent of all income of a revenue nature deposited in this fund, including transfers from any subsidiary accounts thereof, shall be deposited in the General Revenue Fund in lieu of the 4 percent service charge provided for in s. 215.20.

*History.*—s. 1, ch. 59-54; s. 2, ch. 61-119; s. 4, ch. 61-493; ss. 14, 35, ch. 69-106.

**570.21 Publication of department's bulletins, publications, and reports.**—

(1) There may be published by the department within the Division of Administration and the Division of Marketing from time to time bulletins or other publications and reports containing accurate data and statistics and information relating to:

(a) Agriculture, agricultural production, agricultural labor, and the agricultural conditions of the state, and the development and improvement thereof, with a view of increasing farm production and values.

(b) The sources, supply, and prices of food; their storage and accumulation at different places; and the quantity and location of the available supply thereof.

(c) The market prices of foods.

(d) Facilities afforded for transportation, marketing, and distribution of foods within the state.

(e) Matters pertaining generally to the production of foods, the actual food value of articles used in

food, and the sale and distribution thereof to the consumer, which in the opinion of the department will prove valuable or of interest to the public.

(f) Investigations, hearings, and inquiries conducted as provided in this chapter; conclusions reached as to matters involved therein; and the orders and recommendations made as a result thereof.

(g) Rules, regulations, and orders of the department.

(h) Any other matter of an agricultural nature which the department deems proper and that is not within the jurisdiction of the agricultural experiment station, agricultural extension service, or the Division of Economic Development of the Department of Commerce.

(2) Such bulletins, publications, reports, rules, regulations, and orders and the information contained therein shall be published and distributed in the manner deemed best by the department for the dissemination of knowledge as to the agricultural interest of the state and the production, sale, purchase, storage, marketing, and distribution of food, and the economic and food value of articles used as food. The cost of publishing such bulletins, publications, and reports shall be paid in the same manner as other expenses of the department out of appropriations made therefor. Copies of the bulletins, publications, and reports of the department may also be sold to the public at the estimated cost thereof, in accordance with a schedule of charges which the department is hereby authorized to adopt.

*History.*—s. 1, ch. 59-54; ss. 14, 17, 35, ch. 69-106; s. 1, ch. 73-283; s. 2, ch. 77-289.

**570.22 Service of process.**—Process against the department shall be served on the commissioner or in his absence, on the assistant commissioner.

*History.*—s. 1, ch. 59-54; ss. 14, 35, ch. 69-106.

**570.23 State Agricultural Advisory Council; appointment; vacancies; terms; removal.**—The State Agricultural Advisory Council in the Department of Agriculture and Consumer Services is hereby created and shall be composed of 28 members as follows:

(1) The said 28 members shall be appointed by the department upon recommendations as provided in subsection (2), from the state at large, one member to represent each of the following areas of agricultural or trade interests affected by the activities of the department:

- (a) Beef cattle.
- (b) Swine.
- (c) Dairy.
- (d) Poultry.
- (e) Apiary.
- (f) Citrus.
- (g) Tropical fruits.
- (h) Vegetable.
- (i) Ornamental horticulture.
- (j) Seed.
- (k) Commercial feed.
- (l) Commercial fertilizer and pesticide.
- (m) Field crops.
- (n) Forestry.
- (o) Retail food stores.
- (p) Independent agricultural markets.



- (q) Meat processing and packing establishments.
- (r) Food, other than meat or citrus, processing and canning establishments.
- (s) Petroleum.
- (t) Citizen at large.
- (u) Sugar.
- (v) Commercial flower growers.
- (w) Agricultural limestone.
- (x) Horses.
- (y) Turfgrass.
- (z) Grape growers.
- (aa) Foliage plants.
- (bb) Veterinarians.

(2) Each appointment to the council shall be made by the department from recommendations submitted by the governing bodies of recognized statewide organizations representing the area of agricultural or trade interest for which the appointment is made, except that the citizen-at-large member shall be appointed by the department from the general public and shall be representative of the views of the general public toward agriculture and its activities. Nominations shall be made by the governing bodies of such agricultural or trade organizations pursuant to proper provisions adopted and made a part of their bylaws; however, each recommending organization shall recommend no less than two or more than three candidates for each council seat for which it is eligible to recommend.

(3) Each appointment by the department to the council of representatives of the areas of agricultural interests enumerated in paragraphs (1)(a)-(n) and (v)-(bb) shall be made from those nominees who are producers or growers actively engaged in the area of agricultural interest which the appointee is chosen to represent and from which he gains a major portion of his income. Each appointment by the department to the council of representatives of the areas of trade interest enumerated in paragraphs (1)(o)-(r) shall be made from those nominees who are actively engaged in the area of trade interest which the appointee is chosen to represent and from which he gains a major portion of his income. The petroleum representative appointment by the department enumerated in paragraph (1)(s) shall be made from those nominees who are distributors of petroleum or petroleum products. The citizen-at-large member of the council enumerated in paragraph (1)(t) shall not be actively engaged in any agricultural pursuit, nor shall any nominations be required for the appointment to the council by the department. The member of the council enumerated in paragraph (1)(u) shall be primarily and actively engaged in the growing and processing of sugarcane into raw sugar and by-products.

(4) In the absence of nominations from an area of agricultural or trade interest as provided in this section, the department shall appoint a person to that seat on the council without such person first being nominated by a qualified organization, provided that such person meets the requirements of subsection (3).

(5) Ten members of the first council shall hold office until January 15, 1962, or until their successors are duly appointed and qualified and thereafter

shall serve for a term of 2 years. The remaining members shall serve for a term of 2 years. The terms of office of members of the first council shall date from January 15, 1961.

(6) In the event of a vacancy among the membership of the council, the unexpired term so occurring shall be filled by the department, which shall appoint a person having the same required qualifications as the person who theretofore held such office.

(7) Any member of the council who fails to attend three consecutive meetings of the council without good cause shall be subject to removal from the council by the department.

**History.**—s. 1, ch. 59-54; s. 1, ch. 61-224; s. 1, ch. 63-395; s. 1, ch. 65-459; ss. 14, 35, ch. 69-106; s. 1, ch. 77-71; s. 5, ch. 77-108; s. 1, ch. 78-24; s. 1, ch. 78-196; s. 4, ch. 78-323.

**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

#### **§570.24 Council; organization; meetings; quorum.—**

(1) Immediately after their appointment, the members of the council shall meet and organize by the election of a chairman, a vice chairman, and a secretary, whose terms shall be for 1 year.

(2) The council shall meet at the call of the department, its chairman, or at the request of a majority of its membership, and at such times as may be prescribed by its rules, not less frequently, however, than quarterly.

(3) A majority of the members of the council shall constitute a quorum for all purposes, and an act by a majority of such quorum at any meeting shall constitute an official act of the council.

**History.**—s. 1, ch. 59-54; ss. 14, 35, ch. 69-106; s. 4, ch. 78-323.

**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

#### **§570.25 Council; powers and duties.—**The state Agricultural Advisory Council, shall, with respect to its field of work and that of the department with which it is associated, have the following powers and duties:

(1) To consider and study the entire field of agriculture; to advise, counsel, and consult with the department and division directors and officers of the department upon their request in connection with the promulgation, administration, and enforcement of laws, rules, and regulations relating to agriculture; to consider all matters submitted to it by the department; to offer suggestions and recommendations to the department on its own initiative in regard to changes in the agricultural laws, rules, and regulations, as may be deemed advisable to secure the effective administration and enforcement of said laws, rules, and regulations; to investigate violations of the provisions of the agricultural laws of the state, and rules and regulations promulgated by the authority of said laws and to report its findings or recommendations in connection therewith to the department; to submit with the consent of the department for enactment by the Legislature such draft or drafts of legislation in regard to agriculture as it may deem necessary; to suggest or recommend, on its own initiative, policies and practices for the conduct of the department's business to the department which suggestions or recommendations the department shall duly consider but not be bound by.

(2) To adopt rules and regulations, not inconsistent

ent with law, to govern its own proceedings, a copy of which rules shall be filed in the office of the department. The secretary shall keep a complete record of all its proceedings which shall show the names of the members present at each meeting and any action taken by the council. The record shall be filed in the office of the department and shall be a public record. All records and other documents of the department relating to matters within the jurisdiction of the council shall be subject to inspection by the members of the council.

**History.**—s. 1, ch. 59-54; ss. 14, 35, ch. 69-106; s. 4, ch. 78-323.

**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

**570.26 Council; ex officio members.**—The director of the Agricultural Extension Service of the University of Florida, the director of the Experiment Station of the University of Florida, and the Provost of Agriculture of the University of Florida shall be ex officio members of the council without the right to vote.

**History.**—s. 1, ch. 59-54; s. 4, ch. 78-323.

**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

**570.27 Council; compensation.**—The members of the council shall receive no compensation for their services, except that they shall receive per diem as provided in s. 112.061, and their legal traveling expenses when actually engaged on the business of the council.

**History.**—s. 1, ch. 59-54; s. 4, ch. 78-323.

**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

**570.28 Council; clerical help and space.**—The department shall detail from time to time to the assistance of the council such employees of the department as may be required, and shall provide suitable space in the offices of the department for the meetings and records of the council.

**History.**—s. 1, ch. 59-54; ss. 14, 35, ch. 69-106; s. 4, ch. 78-323.

**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

**570.29 Departmental divisions.**—The Department of Agriculture and Consumer Services shall include the following divisions:

- (1) Administration.
- (2) Plant industry.
- (3) Animal industry.
- (4) Dairy industry.
- (5) Inspection.
- (6) Standards.
- (7) Fruit and vegetable inspection.
- (8) Chemistry.
- (9) Marketing.
- (10) Consumer services.
- (11) Forestry.

**History.**—s. 1, ch. 59-54; ss. 14, 35, ch. 69-106; s. 8, ch. 77-108; s. 3, ch. 77-289. cf.—s. 20.14 Department of Agriculture and Consumer Services.

**570.30 Division of Administration; powers and duties.**—The Division of Administration shall be divided into not less than six bureaus; however, it shall also render any other services required by the department and its other divisions, or by the Commissioner of Agriculture in the exercise of his constitutional and cabinet responsibilities, that can advan-

tageously and effectively be centralized and administered and any other function of the department that is not specifically assigned by law to some other division. The six bureaus are as follows:

(1) **BUREAU OF ACCOUNTING AND BUDGETING.**—It shall be the duty of the Bureau of Accounting and Budgeting to conduct all of the accounting and budgeting work of the department, including, but not restricted to, budget preparation and planning, revenue, auditing, payroll, property, inventories, insurance coverage and claims, federal funds, fixed construction, and all other contracts and grants.

(2) **BUREAU OF PERSONNEL MANAGEMENT AND EMPLOYEE RELATIONS.**—It shall be the duty of the Bureau of Personnel Management and Employee Relations to conduct all matters relating to a sound personnel management program for the department, including, but not restricted to, the handling of all official personnel actions, records, training, recruiting, organizational changes, employee relations, and any other personnel matters.

(3) **BUREAU OF INFORMATION, EDUCATION, AND RESEARCH SERVICES.**—It shall be the duty of the Bureau of Information, Education, and Research Services to disseminate information concerning the programs and activities of the Department of Agriculture and Consumer Services as set forth in s. 570.21. It shall also be the duty of this bureau to research and disseminate information concerning the constitutional and cabinet responsibilities of the Commissioner of Agriculture.

(4) **BUREAU OF MANAGEMENT SYSTEMS.**—It shall be the duty of the Bureau of Management Systems to provide electronic data processing and management information systems support for the department.

(5) **BUREAU OF GENERAL SERVICES.**—It shall be the duty of the Bureau of General Services to provide support for the department, including, but not limited to, mailing, printing, purchasing, maintenance, supplies inventory, communications, and such other services as may be assigned.

(6) **BUREAU OF PUBLIC FAIRS AND EXPOSITIONS.**—It shall be the duty of the Bureau of Public Fairs and Expositions to administer the provisions of chapter 616 relating to public fairs and expositions; fair permits, applications, fees, and inspections; premiums and awards; safety requirements; agricultural exhibits; and youth activities.

**History.**—s. 1, ch. 59-54; s. 4, ch. 61-407; ss. 4, 14, 22, 35, ch. 69-106; s. 4, ch. 77-289; s. 229, ch. 79-400.

#### **570.31 Director; duties.**—

(1) The director of the Division of Administration shall be appointed by the department and shall serve at its pleasure.

(2) It shall be the duty of the director to supervise, direct and coordinate the activities provided in s. 570.30.

**History.**—s. 1, ch. 59-54; s. 2, ch. 74-204.

**570.32 Division of Plant Industry; powers and duties.**—The Division of Plant Industry shall be divided into eight bureaus as follows:

(1) **BUREAU OF ENTOMOLOGY.**—It shall be the duty of this bureau to identify insects, mites, and



mollusks submitted, conduct surveys of agricultural and horticultural crops to determine insect, mite, or mollusk populations present, and to carry on investigations of methods of control, eradication, and prevention of dissemination of insect, mite, or mollusk pests.

(2) **BUREAU OF PLANT PATHOLOGY.**—It shall be the duty of this bureau to identify plant diseases from samples submitted, conduct surveys of agricultural and horticultural crops to determine plant diseases present, and to carry on investigations of methods of control, eradication, and prevention of dissemination of plant diseases.

(3) **BUREAU OF NEMATOLOGY.**—It shall be the duty of this bureau to identify nematodes submitted, conduct surveys of agricultural and horticultural crops to determine nematode population present, and to carry on investigations of methods of control, eradication, and prevention of dissemination of nematode pests.

(4) **BUREAU OF APIARY.**—It shall be the duty of this bureau to enforce the laws of the state and the rules of the department relating to honeybees and the control and eradication of honeybee diseases.

(5) **BUREAU OF PLANT INSPECTION.**—It shall be the duty of this bureau to survey for all plant pests and inspect all plants or plant products grown or held in any area of the state and enforce the laws of the state and the rules of the department pertaining to plants and plant products.

(6) **BUREAU OF PEST ERADICATION AND CONTROL.**—It shall be the duty of this bureau to conduct plant pest and noxious weed eradication and control programs and all plant pest surveys associated with eradication and control.

(7) **BUREAU OF CITRUS BUDWOOD REGISTRATION.**—It shall be the duty of this bureau to test citrus trees for diseases and desirable horticultural characteristics, to register trees meeting the requirements of the test, to maintain a source of budwood of the superior, tested varieties for distribution to the citrus industry, to verify propagations of citrus varieties and special rootstocks for growers when requested, and to maintain appropriate records.

(8) **BUREAU OF METHODS DEVELOPMENT.**—It shall be the duty of this bureau to develop, investigate, and make operative new ideas, techniques, and methods for the survey, detection, control, and eradication of plant pests.

**History.**—s. 1, ch. 59-54; s. 2, ch. 65-459; ss. 4, 35, ch. 69-106; s. 1, ch. 79-127.

### **570.33 Director; qualifications; duties.—**

(1) The department shall appoint a Director of the Division of Plant Industry who shall serve at its pleasure.

(2) No person shall be appointed director who does not possess the following minimum qualifications:

(a) An expert who has at least 5 years experience in the regulation, control, eradication and prevention of the dissemination of insect, mite and nematode pests, and plant diseases.

(b) A person of recognized ability in regulatory plant industry work.

(c) A graduate of a recognized and reputable college of agriculture with training in plant science.

(3) The director shall be responsible for protecting the plant industry of the state, and to that end he shall, under the direction of the department, direct, coordinate, and enforce the activities described herein and in chapters 581 and 586 and in other chapters and rules applicable hereto.

**History.**—s. 1, ch. 59-54; ss. 14, 35, ch. 69-106; s. 1, ch. 70-389; s. 1, ch. 70-439; s. 2, ch. 79-127.

cf.—s. 570.35 Plant industry technical council.

**570.34 Plant Industry Technical Council; membership; terms; meetings; quorum; compensation.**—The Plant Industry Technical Council in the Department of Agriculture and Consumer Services, which may be known as the "State Plant Board," is hereby created and shall be composed of nine members as follows:

(1) The citrus, vegetable, ornamental horticulture, commercial flower grower, turfgrass, forestry, apiary, and citizen-at-large representatives who serve on the State Agricultural Advisory Council shall constitute eight of the nine-member technical council. The terms of office of these eight members shall be concurrent with their terms of office as members of the advisory council.

(2) The remaining member shall be appointed by the department subject to the following qualification:

(a) Such member shall be an additional citrus fruit representative and shall be appointed by the department subject to the same qualifications and by the same procedure as prescribed in s. 570.23, for membership to the council by the citrus representative.

(b) The term of office of the second citrus fruit representative provided for in this subsection shall be for 2 years or until his successor is duly appointed and qualified.

(3) The terms of office of members of the first technical council shall date from January 15, 1961.

(4) Immediately after their appointment, the members of this technical council shall meet and organize by the election of a chairman and vice chairman, whose terms of office shall be for 1 year.

(5) This technical council shall meet at the call of its chairman or secretary, at the request of a majority of its membership, at the request of the department, and at such times as may be prescribed by its rules, not less frequently, however, than quarterly.

(6) A majority of the members of this technical council shall constitute a quorum for all purposes, and an act by a majority of such quorum at any meeting shall constitute an official act of this technical council.

(7) The members of this technical council shall receive no compensation for their services, except that they shall receive per diem as provided in s. 112.061, and their legal traveling expenses when actually engaged on the business of this technical council.

**History.**—s. 1, ch. 59-54; s. 5, ch. 61-407; ss. 14, 35, ch. 69-106; s. 2, ch. 70-389; s. 2, ch. 77-71; s. 9, ch. 77-108; s. 4, ch. 78-323.

**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

**570.35 Powers and duties.**—The Plant Industry Technical Council shall, with respect to its field of work and that of the Division of Plant Industry of

the department with which it is associated, have the following powers and duties:

(1) To consider and study the entire field of plant industry; to advise, counsel, and consult with the commissioner and the director upon their request in connection with the promulgation, administration, and enforcement of all laws, rules, and regulations relating to plant industry; to consider all matters submitted to it by the commissioner or the director; to offer suggestions and recommendations to the commissioner and the director on its own initiative in regard to changes in the laws, rules, and regulations relating to plant industry, as may be deemed advisable to secure the effective administration and enforcement of said laws, rules, and regulations; to investigate violations of the provisions of chapter 581, and rules and regulations promulgated by the authority of said chapter and to report its findings or recommendations in connection therewith to the commissioner and the director; to submit with the consent of the commissioner for enactment by the Legislature such draft or drafts of legislation in regard to plant industry as it may deem necessary; to suggest or recommend, on its own initiative, policies and practices for the conduct of the business of the Division of Plant Industry of the department to the commissioner and the director which suggestions or recommendations the commissioner and director shall duly consider.

(2) To adopt rules, not inconsistent with law, to govern its own proceedings. The director shall serve as the secretary to the council and shall keep a complete record of all its proceedings which shall show the names of the members present at each meeting and any action taken by the council. The record shall be filed with the department and shall be a public record. All records and other documents of the Division of Plant Industry relating to matters within the jurisdiction of the council shall be subject to inspection by the members of the council.

**History.**—s. 1, ch. 59-54; ss. 14, 35, ch. 69-106; s. 3, ch. 70-389; s. 1, ch. 70-439; s. 218, ch. 71-377; s. 6, ch. 78-95; s. 4, ch. 78-323.

**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

**570.36 Division of Animal Industry; powers and duties.**—The Division of Animal Industry shall be divided into not fewer than five bureaus as follows:

(1) **BUREAU OF BRUCELLOSIS AND TUBERCULOSIS.**—It shall be the duty of this bureau to enforce those provisions of chapter 585, and rules adopted pursuant thereto, relating to testing, supervising, controlling, and eradicating brucellosis and tuberculosis in livestock.

(2) **BUREAU OF CONTAGIOUS AND INFECTIOUS DISEASES.**—It shall be the duty of this bureau to enforce those provisions of chapter 585, and rules adopted pursuant thereto, relating to the control and eradication of dangerous transmissible diseases of livestock other than the control and eradication of those diseases specifically delegated to another bureau of the Division of Animal Industry and to enforce those provisions of chapter 534, and rules adopted pursuant thereto, relating to recordation of livestock marks and brands and such other provisions of such chapter as directed by the department. It shall also be the duty of this bureau to enforce

those provisions of chapter 585, and rules adopted pursuant thereto, relating to the dipping, inspection, and quarantine of cattle for the eradication of the cattle fever tick and relating to the control and eradication of screwworm.

(3) **BUREAU OF POULTRY SERVICES.**—It shall be the duty of this bureau to enforce those provisions of chapter 585, and rules adopted pursuant thereto, relating to the enforcement of the provisions of the national poultry improvement plan and the national turkey improvement plan.

(4) **BUREAU OF DIAGNOSTIC LABORATORIES.**—It shall be the duty of this bureau to operate and manage the large animal and poultry disease diagnostic laboratories as provided in chapter 585.

(5) **BUREAU OF MEAT INSPECTION.**—It shall be the duty of this bureau to enforce s. 585.34, relating to inspection of meats in Florida, and the rules adopted pursuant thereto, and the provisions of law relating to antemortem and postmortem inspection of poultry when such services are instituted by the department.

**History.**—s. 1, ch. 59-54; s. 1, ch. 67-584; ss. 4, 14, 35, ch. 69-106; s. 1, ch. 79-122.

#### **570.37 Director; qualifications; duties.—**

(1) The department shall appoint a director of the Division of Animal Industry in conformity with s. 570.36, who may be known as the State Veterinarian.

(2) No person shall be appointed director who does not possess the following minimum qualifications:

(a) An expert who has at least 5 years' experience in the regulation, control, eradication and prevention of contagious, infectious, and communicable diseases of cattle, hogs, poultry, and other domestic animals including but not limited to the following pests and diseases: Fever ticks, tuberculosis, hog cholera, brucellosis, hemorrhagic septicemia, anthrax, and screwworms.

(b) A person of recognized ability in regulatory veterinary medicine;

(c) A graduate of a recognized and reputable college of veterinary medicine;

(3) The director shall be responsible for protecting the animal and livestock interests of the state and to that end he shall under the direction of the department direct, coordinate and enforce the activities contained in chapters 585 and 534.

**History.**—s. 1, ch. 59-54; ss. 14, 35, ch. 69-106.

**570.38 Animal Industry Technical Council; membership; terms; meetings; quorum; compensation.**—The Animal Industry Technical Council in the Department of Agriculture and Consumer Services is hereby created and shall be composed of the following named members:

(1) The beef cattle, swine, dairy, horse, independent agricultural markets, meat processing and packing establishments, veterinary medicine, and poultry representatives who serve on the State Agricultural Advisory Council shall constitute eight of the 11-member technical council. The terms of office of these members shall be concurrent with their terms of office as members of the council.

(2) The remaining three members shall be repre-



representatives of the beef cattle industry and shall be appointed by the department subject to the same qualifications and by the same procedure as prescribed in s. 570.23 for membership to the council by the beef cattle representative except that under the provision of this subsection each recognized statewide organization representing the beef cattle industry shall recommend no less than six nor more than nine candidates to fill these three seats on the technical council. The terms of office of the three members provided for in this subsection shall be for 2 years or until their successors are duly appointed and qualified.

(3) The terms of office of members of the first technical council shall date from January 15, 1961.

(4) Immediately after their appointment, the members of this technical council shall meet and organize by the election of a chairman and vice chairman, whose terms of office shall be for 1 year.

(5) This technical council shall meet at the call of its chairman or secretary, at the request of a majority of its membership, at the request of the department, and at such times as may be prescribed by its rules, not less frequently, however, than quarterly.

(6) A majority of the members of this technical council shall constitute a quorum for all purposes, and an act by a majority of such quorum at any meeting shall constitute an official act of this technical council.

(7) The members of this technical council shall receive no compensation for their services, except that they shall receive per diem as provided in s. 112.061, and their legal traveling expenses when actually engaged on the business of this technical council.

**History.**—s. 1, ch. 59-54; s. 3, ch. 65-459; s. 1, ch. 67-69; ss. 14, 35, ch. 69-106; s. 10, ch. 77-108; s. 2, ch. 78-196; s. 4, ch. 78-323.

**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

**570.39 Powers and duties.**—The Animal Industry Technical Council shall, with respect to its field of work and that of the Division of Animal Industry of the department, with which it is associated, have the following powers and duties:

(1) To consider and study the entire field of animal industry; to advise, counsel, and consult with the commissioner and the director upon their requests in connection with the promulgation, administration, and enforcement of all laws, rules, and regulations relating to animal industry; to consider all matters submitted to it by the commissioner or the director; to offer suggestions and recommendations to the commissioner and the director on its own initiative in regard to changes in the laws, rules, and regulations relating to animal industry, as may be deemed advisable to secure the effective administration and enforcement of said laws, rules, and regulations; to investigate violations of the provisions of chapters 585 and 534, and rules and regulations promulgated by the authority of said chapter and to report its findings or recommendations in connection therewith to the commissioner and the director; to submit with the consent of the commissioner for enactment by the Legislature such draft or drafts of legislation in regard to animal industry as it may deem necessary; to suggest or recommend, on its own initiative, policies, and practices for the conduct of

the business of the Division of Animal Industry of the department to the commissioner and the director which suggestions or recommendations the commissioner and director shall duly consider.

(2) To adopt rules, not inconsistent with law, to govern its own proceedings. The director shall serve as the secretary to the council and shall keep a complete record of all its proceedings which shall show the names of the members present at each meeting and any action taken by the committee. The record shall be filed with the department and shall be a public record. All records and other documents of the Division of Animal Industry relating to matters within the jurisdiction of the council shall be subject to inspection by the members of the council.

**History.**—s. 1, ch. 59-54; ss. 14, 35, ch. 69-106; s. 219, ch. 71-377; s. 6, ch. 78-95; s. 4, ch. 78-323.

**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

**570.40 Division of Dairy Industry; powers and duties.**—The Division of Dairy Industry shall be divided into not less than three bureaus as follows:

(1) **BUREAU OF DAIRY FARM INSPECTION.**

—It shall be the duty of this bureau to inspect dairy farms of the state, to enforce those provisions of chapter 502 as authorized by the department, and to enforce the law relating to inspection for detection of mastitis in dairy cattle and relating to supervision of milking operations and to enforce rules adopted pursuant to such law.

(2) **BUREAU OF DAIRY PRODUCTS INSPECTION.**

—It shall be the duty of this bureau to inspect milk plants, milk product plants, and plants engaged in the manufacture and distribution of frozen desserts and frozen desserts mix and to enforce those provisions of chapters 502 and 503 as authorized by the department.

(3) **BUREAU OF DAIRY LABORATORIES.**—It shall be the duty of this bureau to analyze and test samples of milk, milk products, frozen desserts, and frozen desserts mix collected by it and to enforce those provisions of chapters 502 and 503 as authorized by the department.

**History.**—s. 1, ch. 59-54; s. 2, ch. 67-584; ss. 4, 14, 35, ch. 69-106; s. 2, ch. 79-122.

**570.41 Director; qualifications; duties.**—

(1) The director of the Division of Dairy Industry shall be appointed by the department and shall serve at its pleasure.

(2) No person shall be appointed director of the Division of Dairy Industry who does not possess the following minimum qualifications:

(a) A graduate of a recognized and reputable college of agriculture;

(b) A person with at least 4 years' experience in dairy farm and milk plant control supervision.

(3) The director shall supervise, direct, and coordinate the activities of his division and to that end he shall under the direction of the department enforce the provisions of chapters 502 and 503.

**History.**—s. 1, ch. 59-54; ss. 14, 35, ch. 69-106.

**'570.42 Dairy Industry Technical Council; membership; terms; meetings; quorum; compensation.—**

(1) The Dairy Industry Technical Council in the Department of Agriculture and Consumer Services is hereby created and shall be composed of seven members as follows:

(a) Two citizens of the state, one of whom shall be associated with the Agricultural Extension Service of the University of Florida and the other such citizen shall be associated with the College of Agriculture of the University of Florida.

(b) An employee of the Department of Health and Rehabilitative Services;

(c) Two dairy farmers who are actively engaged in the production of milk in this state and who earn a major portion of their income from the said production of milk.

(d) Two distributors of milk. "Distributor" means any milk dealer who operates a milk gathering station or processing plant where milk is collected and bottled or otherwise processed and prepared for sale.

(2) The department shall appoint the members of this technical council except that its choice of appointment of the four members provided for in paragraphs (c) and (d) of subsection (1) shall be limited to nominations received from the governing bodies of recognized statewide organizations representing the producer group and the distributor group of the dairy industry. These respective organizations shall each recommend no less than four nor more than six candidates to fill their respective two seats on the technical council. Such nominations shall be made pursuant to proper provisions adopted and made a part of the bylaws of the respective organizations. In the absence of nominations from the producer or distributor groups of the dairy industry, the department shall appoint such persons as are qualified under the provisions of this section.

(3) Three members of the first technical council shall hold office until January 15, 1962, or until their successors are duly appointed and qualified and thereafter shall serve for a term of 2 years. The remaining four members shall serve for a term of 2 years. The terms of office of members of the first technical council shall date from January 15, 1961.

(4) Immediately after their appointment, the members of this technical council shall meet and organize by the election of a chairman and vice chairman, whose terms shall be for 1 year.

(5) This technical council shall meet at the call of its chairman or secretary, or at the request of a majority of its membership, or at the request of the department, and at such times as may be prescribed by its rules, not less frequently, however, than quarterly.

(6) A majority of the members of this technical council shall constitute a quorum for all purposes, and an act by a majority of such quorum at any meeting shall constitute an official act of this technical council.

(7) The members of this technical council shall receive no compensation for their services, except that they shall receive per diem as provided in s. 112.061, and their legal traveling expenses when ac-

tually engaged on the business of this technical council.

**History.**—s. 1, ch. 59-54; s. 6, ch. 61-407; ss. 14, 19, 35, ch. 69-106; s. 11, ch. 77-108; s. 461, ch. 77-147; s. 4, ch. 78-323.

**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

**'570.43 Dairy Industry Technical Council; powers and duties.—**The Dairy Industry Technical Council shall, with respect to its field of work and that of the Division of Dairy Industry of the department with which it is associated, have the following powers and duties:

(1) To consider and study the entire field of dairy industry; to advise, counsel, and consult with the commissioner and the division director upon their request in connection with the promulgation, administration, and enforcement of all laws, rules, and regulations relating to dairy industry; to consider all matters submitted to it by the commissioner or the division director; to offer suggestions and recommendations to the commissioner and the division director on its own initiative in regard to changes in the laws, rules, and regulations relating to dairy industry, as may be deemed advisable to secure the effective administration and enforcement of said laws, rules, and regulations; to investigate violations of the provisions of chapters 502 and 503 and rules and regulations promulgated by the authority of said chapters and to report its findings or recommendations in connection therewith to the commissioner and the division director; to submit with the consent of the commissioner for enactment by the Legislature such draft or drafts of legislation in regard to dairy industry as it may deem necessary; to suggest or recommend, on its own initiative, policies and practices for the conduct of the business of the Division of Dairy Industry of the department to the commissioner and the division director which suggestions or recommendations the commissioner and the division director shall duly consider.

(2) To adopt rules, not inconsistent with law, to govern its own proceedings. The division director shall serve as the secretary to the council and shall keep a complete record of all its proceedings which shall show the names of the members present at each meeting and any action taken by the council. The record shall be filed with the department and shall be a public record. All records and other documents of the Division of Dairy Industry relating to matters within the jurisdiction of the council shall be subject to inspection by the members of the council.

**History.**—s. 1, ch. 59-54; ss. 14, 35, ch. 69-106; s. 6, ch. 78-95; s. 4, ch. 78-323.  
**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

**570.44 Division of Inspection; powers and duties.—**The Division of Inspection shall be divided into not less than three bureaus as follows:

(1) BUREAU OF FEED, SEED, FERTILIZER AND PESTICIDE INSPECTION.—It shall be the duty of this bureau to inspect and draw samples of: Commercial feeds offered for sale in this state and to enforce those provisions of chapter 580, as authorized by the department; seeds offered for sale in this state and to enforce those provisions of chapter 578, as authorized by the department; certified seed



grown in this state and to enforce those provisions of chapter 575, as authorized by the department; commercial fertilizers offered for sale in this state and to enforce those provisions of chapter 576, as authorized by the department; and, pesticides offered for sale in this state and to enforce those provisions of chapter 487, as authorized by the department.

(2) **BUREAU OF FOOD, GRADES AND STANDARDS INSPECTION.**—It shall be the duty of this bureau to conduct those general inspection activities in regard to: Foods offered for sale in this state and to enforce those provisions of chapters 500 and 583, relating to foods as authorized by the department; weights, measures, and standards of articles offered for sale in this state and to enforce those provisions of chapter 531, as authorized by the department; dairy products offered for sale at retail in this state and to enforce those provisions of chapters 502 and 503, as authorized by the department.

(3) **BUREAU OF ROAD GUARDS.**—It shall be the duty of this bureau to operate and manage those road guard inspection stations of the state and to perform the general inspection activities relating to the movement of agricultural, horticultural, and livestock products and commodities as directed by the department and the division director.

*History.*—s. 1, ch. 59-54; s. 7, ch. 61-407; ss. 4, 14, 35, ch. 69-106.

**570.45 Director; duties.—**

(1) The director of the Division of Inspection shall be appointed by the department and shall serve at its pleasure.

(2) It shall be the duty of the director of this division to receive all reports from the inspectors of this division, to direct the inspectors in the performance of their duties under instructions of the department, and such other powers and authority as authorized by the department.

*History.*—s. 1, ch. 59-54; ss. 14, 35, ch. 69-106.

**570.46 Division of Standards; powers and duties.**—The Division of Standards shall be divided into not less than two bureaus as follows:

(1) **BUREAU OF PETROLEUM INSPECTION.**—It shall be the duty of this bureau to inspect petroleum measuring devices and perform the quality analysis as required under chapters 525 and 526.

(2) **BUREAU OF WEIGHTS AND MEASURES.**—It shall be the duty of this bureau to inspect all scales and measures in the state and to carry out the provisions of chapter 531, relating to weights, scales, and measuring devices.

*History.*—s. 1, ch. 59-54; s. 8, ch. 61-407; ss. 4, 35, ch. 69-106; s. 3, ch. 79-122.

**570.47 Director; qualifications; duties.—**

(1) The Director of the Division of Standards shall be appointed by the department and shall serve at its pleasure.

(2) The director of this division shall be an expert oil analyst in both education and experience and shall have experience in the calibration of weights, scales, and measuring devices.

(3) The director shall supervise, direct, and coordinate the activities of his division and to that end

he shall under the direction of the department enforce the provisions of chapters 525, 526, and 531.

*History.*—s. 1, ch. 59-54; ss. 14, 35, ch. 69-106.

**570.48 Division of Fruit and Vegetable Inspection; powers and duties.**—The Fruit and Vegetable Division shall be divided into not less than five bureaus as follows:

(1) **BUREAU OF CITRUS INSPECTION, FRESH.**—It shall be the duty of this bureau to perform such duties related to the inspection and certification of fresh citrus fruit shipments for maturity and grade as required by rules and regulations promulgated under the Florida Citrus Code; to perform such inspection and certification duties as may be assigned in connection with regulations issued under federal or state marketing agreements or orders; and to perform other inspection and certification assignments as requested by and agreed upon with the applicant.

(2) **BUREAU OF CITRUS INSPECTION, PROCESSED.**—It shall be the duty of this bureau to perform such duties relating to inspection and certification of the maturity and condition of fresh citrus fruits to be processed as required by the rules and regulations promulgated under the Florida Citrus Code; to inspect and certify the grade, quality, or condition of the finished processed pack, as required by rules or regulations promulgated under the Florida Citrus Code; to perform such inspection and certification duties as may be assigned in connection with regulations issued under federal or state marketing agreements or orders; to conduct inspection of internal quality, and to perform other inspection and certification assignments as requested by and agreed upon with the applicant.

(3) **BUREAU OF VEGETABLE INSPECTION.**—It shall be the duty of this bureau to perform such duties relating to inspection and certification of vegetables, other fruits, melons, and nuts as requested by and agreed upon with the applicant and to perform such inspection and certification duties as may be assigned in connection with regulations issued under federal or state marketing agreements or orders.

(4) **BUREAU OF CITRUS BOND AND LICENSE.**—It shall be the duty of this bureau to perform such duties relating to enforcement of the Citrus Bond and License Law as required by chapter 601.

(5) **BUREAU OF CITRUS, TECHNICAL.**—It shall be the duty of this bureau to perform analyses on waxes, dyes, and other substances used on citrus fruit and to issue authorization for the use of said waxes, dyes, and other substances; to issue and maintain equipment issued to inspectors; to conduct necessary technical investigations relative to inspectional procedures; and to carry out the technical duties prescribed under the arsenical spray provisions of chapter 601, and such other technical duties as may be prescribed by the department.

*History.*—s. 1, ch. 59-54; ss. 4, 14, 35, ch. 69-106.

**570.49 Director; duties.—**

(1) The director of the Division of Fruit and Vegetable Inspection shall be appointed by the department and shall serve at its pleasure.

(2) It shall be the duty of the director of this division to direct and supervise the overall operation of the division and exercise such other powers and duties as authorized by the department.

*History.*—s. 1, ch. 59-54; ss. 14, 35, ch. 69-106.

#### **570.50 Division of Chemistry; powers and duties.—**

(1) BUREAUS OF DIVISION.—The Division of Chemistry shall be divided into not less than six bureaus as follows:

(a) *Bureau of fertilizer laboratory.*—It shall be the duty of this bureau to analyze samples of commercial fertilizer offered for sale in this state as required under chapter 576.

(b) *Bureau of pesticide laboratory.*—It shall be the duty of this bureau to analyze samples of pesticide formulations offered for sale in this state as required under chapter 487.

(c) *Bureau of feed laboratory.*—It shall be the duty of this bureau to analyze samples of commercial feed offered for sale in this state as required under chapter 580.

(d) *Bureau of food laboratory.*—It shall be the duty of this bureau to analyze samples of foods offered for sale in this state as required under chapters 500, 502, 503, 585, 586, and 601.

(e) *Bureau of seed laboratory.*—It shall be the duty of this bureau to analyze samples of vegetable, agricultural, flower, and forest tree seed offered for sale in this state as required under chapters 575 and 578.

(f) *Bureau of chemical residue laboratory.*—It shall be the duty of this bureau to analyze for chemical residues in samples of food and feed offered for sale in this state as required under the adulteration sections of chapters 500 and 580.

(2) LABORATORY SECTIONS.—There is established within the Division of Chemistry three laboratory sections to perform their assigned duties under the general supervision of the Assistant Director of Chemistry:

(a) *Laboratory services.*—It shall be the duty of this section to receive, prepare, and distribute samples to the laboratories; coordinate ordering, receiving, and distribution of supplies and chemicals; and assist with repairs and maintenance for all divisional laboratories.

(b) *Commodity testing.*—It shall be the duty of this section to test samples submitted, under contractual agreement, by the Department of General Services and the Department of Education to establish and verify conformity with state specifications.

(c) *Methods development.*—It shall be the duty of this section to investigate, evaluate, and develop new or improved methodology to enhance the analytical capability and efficiency of all divisional laboratories.

*History.*—s. 1, ch. 59-54; s. 9, ch. 61-407; s. 2, ch. 65-459; ss. 4, 14, 35, ch. 69-106; s. 4, ch. 79-122.

*Note.*—Former s. 570.32.

#### **570.51 Director; qualifications; duties.—**

(1) The director of the Division of Chemistry shall be appointed by the department to serve at its pleasure, and shall be known as the State Chemist.

(2) No person shall be appointed State Chemist

who does not possess the following minimum qualifications:

(a) A person who is a professional chemist.

(b) A person who shall hold an advanced degree in chemistry, conferred by a university whose department of chemistry is accredited by the American Chemical Society, or the equivalent.

(c) A person who has not less than 10 years of practical experience in analytical chemistry, including experience in the supervision of an analytical laboratory.

(3) The director shall supervise, direct, and coordinate the activities of his division and enforce the provisions of chapters 487, 500, 576 and 580, as they pertain to the duties of the State Chemist. The director shall serve on the Fertilizer Technical Council as provided in s. 576.091, and on the Pesticide Technical Council.

*History.*—s. 1, ch. 59-54; ss. 14, 35, ch. 69-106.  
cf.—s. 487.061 Pesticide Technical Council.

**570.52 Fertilizer and Pesticide Technical Councils; per diem and travel expenses.**—The members of the Fertilizer and Pesticide Technical Councils shall receive no compensation for their services, except that they shall receive per diem as provided in s. 112.061 and their legal traveling expenses when actually engaged on the business of the technical council.

*History.*—s. 1, ch. 59-54; s. 10, ch. 61-407; s. 1, ch. 65-439; s. 1, ch. 67-508; s. 1, ch. 69-22; ss. 14, 19, 25, 26, 35, ch. 69-106; s. 2, ch. 71-137; s. 151, ch. 71-355; ss. 133, 147-149, ch. 73-333; s. 4, ch. 78-323.

*Note.*—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

cf.—s. 487.061 Pesticide Technical Council.  
s. 576.091 Fertilizer Technical Council.

**570.53 Division of Marketing; powers and duties.**—The Division of Marketing shall be divided into not less than six bureaus as follows:

(1) BUREAU OF STATE MARKETS.—It shall be the duty of this bureau to manage the operation of all the farmers' markets, livestock markets, and state livestock and crop pavilions owned by the state and perform other related duties and responsibilities which are required of the department by s. 570.07(18).

(2) BUREAU OF LICENSE AND BOND.—It shall be the duty of this bureau to enforce the provisions of ss. 604.15-604.30, the Dealers in Agricultural Products Law, and ss. 534.47-534.53.

(3) BUREAU OF MARKET NEWS.—It shall be the duty of this bureau to obtain and disseminate current price, supply, and movement data and other such pertinent information on the state's agricultural economy as required of the department by ss. 570.07(4), and (17) and 570.21.

(4) BUREAU OF MARKET DEVELOPMENT.—It shall be the duty of this bureau to stimulate, encourage, and foster the production and consumption of agricultural products and to conduct activities that may foster a better understanding and more efficient cooperation among producers, buyers, food editors, and the consuming public in the promotion and marketing of Florida agricultural products as required of the department by s. 570.07(20).

(5) BUREAU OF CROP AND LIVESTOCK REPORTING.—It shall be the duty of this bureau to obtain and disseminate production statistics, histori-



cal data, and other such pertinent information on the state's agricultural economy as required of the department by ss. 570.07(4) and (17) and 570.21.

(6) **BUREAU OF TECHNICAL MARKETING PROGRAMS.**—It shall be the duty of this bureau to provide professional marketing services to the agricultural agribusiness industry; to establish and maintain programs which will aid in the orderly marketing of agricultural products; to assist in providing efficient and effective distribution of agricultural products; to develop plans and recommendations designed to support the agricultural industry in meeting its marketing needs; and to extend in every practicable way the distribution and sale of Florida agricultural products throughout the markets of the world as required of the department by ss. 570.07(7), (8), (10), and (11) and 570.071 and chapters 571, 573, and 574.

**History.**—s. 1, ch. 59-54; s. 4, ch. 65-459; ss. 4, 35, ch. 69-106; s. 1, ch. 71-195; s. 5, ch. 79-122.

#### **570.54 Director; duties.—**

(1) A director of the Division of Marketing shall be appointed by the department and shall serve at its pleasure.

(2) It shall be the duty of the director of this division to supervise, direct, and coordinate the activities authorized by ss. 570.21, 570.07(4), (7), (8), (10), (11), (12), (17), (18), and (20), 570.071, 604.15-604.30, and 534.47-534.53 and chapters 571, 573, and 574 and to exercise such other powers and authority as authorized by the department.

**History.**—s. 1, ch. 59-54; ss. 14, 35, ch. 69-106; s. 6, ch. 79-122.

**570.542 Short title.**—This law shall be known as the "Florida Consumer Services Act."

**History.**—s. 1, ch. 67-342; s. 1, ch. 79-37.

**Note.**—Former s. 570.281.

**570.543 Florida Consumers' Council; membership; powers.**—The Florida Consumers' Council in the Department of Agriculture and Consumer Services is hereby created as herein described and with duties and powers herein defined:

(1) The Commissioner of Agriculture shall be chairman of the Florida Consumers' Council. The council, to be appointed by the department, shall not exceed 20 members, selected from the various areas of consumer interest, who are, where possible, leading members of statewide organizations representing segments of the consumer public so as to establish a broadly based and representative consumer council.

(2) One-half of the members appointed by the department shall hold office for 1 year from July 1, 1967, and the remaining members of such group shall serve for a term of 2 years. Thereafter, all members shall be appointed for a term of 2 years.

(3) The members of the council shall receive no compensation for their services, except that they shall receive per diem as provided in s. 112.061 and their legal traveling expenses when actually engaged on the business of the council.

(4) The failure of any member appointed by the department to attend three consecutive meetings of the council shall create a vacancy in his office.

(5) The Florida Consumers' Council is hereby authorized and empowered:

(a) To conduct studies and make analyses of matters affecting the interests of consumers;

(b) To study the operation of laws for consumer protection;

(c) To advise with and make recommendations to the various state agencies concerned with matters affecting consumers;

(d) To assist, advise, and cooperate with local, state, or federal agencies and officials in order to promote the interests of the consumer public;

(e) To make use of the testing and laboratory facilities of the department for the detection of consumer frauds;

(f) To report to the appropriate law enforcement officers any information concerning violation of consumer protective laws;

(g) To assist, develop, and conduct programs of consumer education and consumer information through publications and other informational and educational material prepared for dissemination to the consumer public in order to increase the competence of consumers;

(h) To organize and hold conferences on problems affecting consumers; and

(i) To recommend programs to encourage business and industry to maintain high standards of honesty, fair business practices, and public responsibility in the production, promotion, and sale of consumer goods and services.

**History.**—s. 1, ch. 67-342; ss. 14, 35, ch. 69-106; s. 6, ch. 77-108; s. 4, ch. 78-323; ss. 1, 3, ch. 79-37.

**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

**Note.**—Former s. 570.282.

#### **570.544 Division of Consumer Services; director; processing of complaints; records.—**

(1) A director of the Division of Consumer Services shall be appointed by and serve at the pleasure of the Department of Agriculture and Consumer Services. The director shall serve as executive secretary to the Florida Consumers' Council.

(2) The Division of Consumer Services shall serve as a clearinghouse for matters relating to consumer protection, consumer information, and consumer services generally. It shall receive complaints and grievances from consumers and promptly transmit the same to that agency most directly concerned in order that such complaint or grievance may be expeditiously handled in the best interests of the complaining consumer. If no such agency exists, the Division of Consumer Services shall seek a settlement of the complaint using formal or informal methods of mediation and conciliation.

(3) If any complaint received by the Division of Consumer Services concerns matters which involve concurrent jurisdiction in more than one agency, duplicate copies of such complaint shall be referred to those offices deemed to have concurrent jurisdiction.

(4)(a) Any agency, office, bureau, division, or board of state government receiving a complaint which deals with consumer fraud or consumer protection and which is not within the jurisdiction of the receiving agency, office, bureau, division, or board originally receiving it, shall forthwith refer such complaint to the Division of Consumer Services.

(b) Upon receipt of any such complaint, the Division of Consumer Services shall make a determination of the proper jurisdiction to which such complaint relates and shall immediately refer such complaint to the agency, office, bureau, division, or board which does have the proper regulatory or enforcement authority to deal with the same.

(5)(a) The office or agency to which a complaint has been referred shall within 30 days acknowledge receipt of the complaint and report on the disposition made of such complaint. In the event a complaint has not been disposed of within 30 days, the receiving office or agency shall file progress reports with the Division of Consumer Services no less frequently than 30 days until final disposition.

(b) The report shall contain at least the following information:

1. A finding of whether the receiving agency has jurisdiction of the subject matter involved in the complaint.

2. Whether the complaint is deemed to be frivolous, sham, or without basis in fact or law.

3. What action has been taken and a report on whether the original complainant was satisfied with the final disposition.

4. Any recommendation regarding needed changes in law or procedure which in the opinion of the reporting agency or office will improve consumer protection in the area involved.

(6)(a) If the office or agency receiving a complaint fails to file a report as contemplated in this section, such failure to file a report shall be construed as a denial by the receiving office or agency that it has jurisdiction of the subject matter contained in the complaint.

(b) If an office or agency receiving a complaint determines that the matter presents a prima facie case for criminal prosecution or if the complaint cannot be settled at the administrative level, such complaint together with all supporting evidence shall be transmitted to the Department of Legal Affairs or other appropriate enforcement agency with a recommendation for such civil or criminal action as the evidence may warrant.

(7) The records of the Division of Consumer Services shall be public records, except for information which would separately disclose the business transactions of any person, trade secrets, or names of customers, all of which shall be held confidential and shall not be disclosed. However, such disclosure as may be necessary to enforcement procedures shall not be construed as violative of this prohibition against disclosure.

(8) It shall be the duty of the Division of Consumer Services to maintain records and compile summaries and analyses of consumer complaints and their eventual disposition, which data may serve as a basis for recommendations to the Legislature and to state regulatory agencies.

(9) If the division by its own inquiry, or as a result of complaints, has reason to believe that a violation of the laws of the state relating to consumer protection has occurred or is occurring, it may conduct an investigation, subpoena witnesses and evidence, and administer oaths and affirmations. If, as a result of the investigation, the division has reason

to believe a violation of chapter 501 has occurred, the division with the coordination of the Department of Legal Affairs and any state attorney, if the violation has occurred or is occurring within his judicial circuit, shall have the authority to bring an action in accordance with the provisions of chapter 501.

**History.**—s. 1, ch. 67-342; ss. 11, 14, 35, ch. 69-106; s. 2, ch. 73-124; s. 7, ch. 77-108; ss. 1, 2, ch. 78-16; s. 7, ch. 78-179; s. 1, ch. 79-37.

**Note.**—Former s. 570.283.

**570.545 Unsolicited goods; no obligation on part of recipient.**—When unsolicited goods are delivered to a person, he may refuse delivery of the goods, or, if the goods are delivered, the person is not obligated to return the goods to the sender. If unsolicited goods are either addressed to or intended for the recipient, they shall be deemed a gift and the recipient may use or dispose of them in any manner without obligation to the sender.

**History.**—s. 1, ch. 69-43; s. 1, ch. 79-37.

**Note.**—Former s. 570.284.

**570.548 Division of Forestry; powers and duties.**—The Division of Forestry shall be divided into four bureaus as follows:

(1) **BUREAU OF FIRE CONTROL.**—It shall be the duty of this bureau to administer and enforce those powers and responsibilities of the division prescribed in chapter 590, the rules adopted pursuant thereto, and other forest fire and forest protection laws of this state.

(2) **BUREAU OF FOREST EDUCATION.**—It shall be the duty of this bureau to administer and enforce those powers and responsibilities of the division prescribed in chapters 589, 590, and 591, the rules adopted pursuant thereto, and other forest protection and forest management laws of this state.

(3) **BUREAU OF FOREST MANAGEMENT.**—It shall be the duty of this bureau to administer and enforce those powers and responsibilities of the division prescribed in chapters 589, 590, and 591, the rules adopted pursuant thereto, and other forest protection and forest management laws of this state.

(4) **BUREAU OF FOREST RESOURCE AND ECONOMIC PLANNING.**—It shall be the duty of this bureau to administer and enforce those powers and responsibilities of the division prescribed in chapters 589, 590, and 591, the rules adopted pursuant thereto, and other forest protection and forest management laws of this state.

**History.**—s. 2, ch. 79-37.

**570.549 Director; duties.**—

(1) The director of the Division of Forestry shall be appointed by the department and shall serve at its pleasure.

(2) No person shall be appointed director of this division who does not possess:

(a) A bachelor of science degree in forestry from a recognized and reputable school of forestry.

(b) At least 10 years' experience in forestry.

(3) It shall be the duty of the director of this division to direct and supervise the overall operation of the division and to exercise such other powers and duties as authorized by the department.

**History.**—s. 2, ch. 79-37.



**570.55 Identification of sellers or handlers of avocados, mangoes, or limes; penalties.—**

(1) **SHORT TITLE.**—This section may be known and cited as the "Florida Avocado, Mango, and Lime Sales Law."

(2) **ENFORCEMENT AGENCY.**—This section shall be administered within the Division of Inspection of the Department of Agriculture and Consumer Services and may be enforced by any police department or by any sheriff or deputy sheriff in the state.

(3) **DEFINITIONS.**—As used in this section:

(a) "Avocados" means all varieties and types of avocados, *Persea americana*.

(b) "Department" means the Department of Agriculture and Consumer Services.

(c) "Division" means the Division of Inspection of the department.

(d) "Inspector" means an inspector or agent of the division.

(e) Avocados, mangoes, or limes shall be deemed and held to be in the "primary channel of trade" when such commodity is cut, gathered from the ground, or otherwise harvested for commercial purposes, but any such avocados, mangoes, or limes shall cease to be in the "primary channel of trade" if and when they leave intrastate commerce.

(f) "Handler" means any person engaged in growing, distributing, retailing, or transporting avocados, mangoes, or limes in the primary channel of trade.

(g) "Limes" means all varieties and types of limes, *Citrus aurantifolia* or *Citrus latifolia*.

(h) To "distribute" means to engage in the business of selling, marketing, or distributing, in the primary channel of trade, avocados, mangoes, or limes which he has produced, purchased, or acquired from a producer, or which he is marketing on behalf of a producer, whether as owner, agent, employee, broker, or otherwise, but shall not include such activity by a person engaged in the business of retailing.

(i) To "handle" means to produce, distribute, retail, or transport avocados, mangoes, or limes in the primary channel of trade.

(j) To "retail" means to engage in the business of purchasing or acquiring avocados, mangoes, or limes for resale at retail to the general public, but does not include such activity by a person engaged in the business of distributing.

(k) "Mangoes" means all varieties of mangoes, *Mangifera indica*.

(4) **IDENTIFICATION OF HANDLER.**—At the time of each transaction involving the handling or sale of 55 pounds or more of avocados, mangoes, or limes in the primary channel of trade, the buyer or receiver of such avocados, mangoes, or limes shall be required to demand a bill of sale, invoice, sales memorandum, or other such document listing the date of the transaction, the quantity of the avocados, mangoes, or limes involved in the transaction, and the identification of the seller or handler as it appears on the driver's license of the seller or handler, including the driver's license number. If the seller or handler does not possess a driver's license, the buyer or receiver shall use any other acceptable means of identification, i.e., voter's registration card and number, draft card, social security card, or other identification. However, no less than two such identification documents shall be used. The identification of the seller or handler shall be recorded on the bill of sale, sales memorandum, invoice, or voucher, which shall be retained by the buyer or receiver for a period of not less than 1 year from the date of the transaction.

(5) **CONFISCATION.**—When any person is in violation of subsection (4), an inspector, or any police officer, sheriff, or deputy sheriff in the state, shall confiscate any and all avocados, mangoes, and limes in the possession of that person.

(6) **PENALTY.**—In addition to confiscation of avocados, mangoes, or limes as provided in subsection (5), whoever knowingly, willfully, and intentionally violates the provisions of subsection (4) shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—ss. 1-6, ch. 73-77; s. 1, ch. 75-267.

## CHAPTER 571

## FLORIDA SEAL OF QUALITY LAW

- 571.01 Short title.
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- 571.03 Definitions.
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- 571.07 Suspension or revocation of license.
- 571.08 Unlawful acts.
- 571.09 Penalties.
- 571.10 Injunction.

**571.01 Short title.**—This chapter shall be known as the "Florida Seal of Quality Law."

*History.*—s. 1, ch. 63-378.

**571.02 Purpose.**—The purpose of this chapter is to authorize the Department of Agriculture and Consumer Services to adopt seals of quality to be used in advertising and promoting the sale of agricultural products produced in Florida and to provide controls in the use of such seals of quality.

*History.*—s. 1, ch. 63-378; ss. 14, 35, ch. 69-106.

**571.03 Definitions.**—As used in this chapter:

- (1) "Department" means the Department of Agriculture and Consumer Services.
- (2) "Person" means an individual, firm, partnership, corporation, association, business, trust, legal representative, or any other business unit.
- (3) "Seal of quality" means any word, device, emblem, or symbol adopted by the department for the purpose of identifying and promoting the sale of high quality agricultural products produced in Florida.
- (4) "Reproduce" means to stencil, emboss, print, engrave, impress, imprint, lithograph, or duplicate in any manner or to cause any such acts to be done.
- (5) "Agricultural product" includes any fresh or processed horticultural, viticultural, dairy, poultry, apicultural, or any other farm or garden product.
- (6) "Use of seal of quality" means to imprint a seal of quality on any produce, package or container, or attach a reproduction of any seal of quality to any Florida agricultural product, package or container of same, or to cause any such acts to be done, for the purpose of identifying any such product in its preparation for market or in any of the various steps in marketing.

*History.*—s. 1, ch. 63-378; ss. 14, 35, ch. 69-106; s. 220, ch. 71-377.

**571.04 Powers and duties of the department.**—The duty of enforcing and administering this chapter is vested in the department, and the department is authorized to employ all agents and persons necessary therefor.

- (1) All fees collected under this chapter shall be paid into the State Treasury and placed to the credit of the General Inspection Trust Fund, from which fund there shall be paid the expenses incurred in the enforcement and administration of this chapter to include publicizing, advertising, and promoting seals of quality and the agricultural products with which such seals of quality are used. The department may accept contributions of money or services to aid in

any advertising or promotion work undertaken by it under authority of this chapter.

(2) The department may register any seal of quality with the Department of State of Florida, United States Patent Office, appropriate offices of other states of the United States and of foreign countries.

(3) The department, through its authorized representatives, is authorized to:

(a) Enter upon the premises, place of business, or vehicle of any applicant or licensee during normal business hours and conditions for the purpose of determining by inspection and examination the sufficiency of bookkeeping systems, accuracy of records, the agricultural products with which the seal of quality is used, articles purporting to be seals of quality or reproductions of same, and for the purpose of determining whether any other provision of this chapter or any rule or regulation adopted hereunder is being violated.

(b) Issue hold orders to owners and custodians and affix copy of same to seal of quality or reproduction of same in the possession of a nonlicensee; any seal of quality or reproduction of same that is an imitation or counterfeit; any agricultural product with which an imitation or counterfeit seal is used; any agricultural product on which a seal of quality is used after failure to make reports and remittance of advertising and promotion fees provided in this chapter and rules and regulations adopted hereunder; any agricultural product with which a seal of quality is used unless said product is labeled to indicate it is packaged by a licensee or to any agricultural product or article with which a seal of quality is used in violation of this chapter or rules and regulations adopted hereunder. Such hold order shall name and describe the product or article to which attached and the amount and address of same, give notice that the product or article to which attached is or is suspected of being sold, offered for sale, or held for the purpose of sale in violation of law or of rules specified in said order and said hold order shall give warning to all persons not to remove or dispose of such product or article by sale or otherwise until permission is granted by the department or by order of court.

*History.*—s. 1, ch. 63-378; ss. 10, 14, 35, ch. 69-106.

**571.05 Rules and regulations.**—The department by rules and regulations may design, determine, and adopt seals of quality for use in publicizing, advertising, and promoting agricultural products; prescribe minimum standards of quality and grade of agricultural products with which a seal of quality may be used; name and define market packages of agricultural products; fix a reasonable and equitable advertising and promotion fee for such market package of agricultural products; and otherwise interpret, implement, and make specific the provisions of this chapter.

*History.*—s. 1, ch. 63-378; ss. 14, 35, ch. 69-106.



**571.06 License; application, fee, and conditions.—**

(1) Application for license to reproduce or use a seal of quality shall be made to the department on application forms supplied by the department. Anyone making application and payment of license fee in the amount of \$10 and meeting other qualifications required under this chapter and rules and regulations adopted hereunder shall be granted license for which applied. Such license shall be valid for 1 year from date of issue. The department, however, may refuse to issue a license to any person whose license has been revoked until such person demonstrates to the department that he no longer will violate the provisions of this chapter or rules adopted hereunder.

(2) Issue of license shall be conditioned upon the applicant's satisfying the department that he has an adequate bookkeeping system, that he keeps and will keep at all times all records necessary to indicate accurately the total volume of agricultural products on which the seal of quality has been used, that such records shall be open at all times for periodic inspection and examination by auditors of the department. The volume and kind of agricultural products on which the seal of quality has been used shall be reported monthly, quarterly, semiannually, or annually as prescribed by rule of the department and such report shall be made with remittance of the advertising and promotion fee applicable not later than the 20th day of the month following the period covered by the report. The report shall be made under oath and on forms furnished by the department. If the report is not filed and advertising and promotion fee paid on the date due or if the report be false, the amount of fee due is subject to a penalty of 10 percent, which shall be added to the advertising and promotion fee and paid therewith.

**History.**—s. 1, ch. 63-378; ss. 14, 35, ch. 69-106.

**571.07 Suspension or revocation of license.—**

The department, after finding that licensee has violated any of the provisions of this chapter or rules adopted hereunder, may revoke the license of any licensee or suspend such license for not more than 1 year.

**History.**—s. 1, ch. 63-378; ss. 14, 35, ch. 69-106; s. 6, ch. 78-95.

**571.08 Unlawful acts.—**It is unlawful for any person:

(1) To remove or dispose of any hold order or any detained agricultural product or article by sale or otherwise without permission of the department or by order of court.

(2) To reproduce or use any seal of quality without license or in violation of the provisions of this

chapter or rules adopted hereunder.

(3) To supply any seal of quality or reproduction of same to any unauthorized person.

(4) To make, reproduce, or use any seal of quality that is an imitation or counterfeit.

(5) To market any agricultural product with which an imitation or counterfeit seal of quality is used.

(6) To market any agricultural product with which a seal of quality is used unless the container of such product is labeled to indicate the name of the licensee.

(7) To fail to report the volume and kind of agricultural product on which a seal of quality has been used and make remittance of advertising and promotion fee when due as provided by rule.

(8) To mislead or deceive, use any imitation, counterfeit, or likeness of the seal of quality on any label, tag, seal, container, sign, or otherwise of any agricultural product of any kind or description for any purpose whatsoever or to mislead or deceive, use any emblem or counterfeit likeness thereof upon or in connection with any offer to sell or advertise for sale or use of any agricultural product of any kind or description which does not in fact lawfully bear a seal of quality.

(9) To fail to do any act required or to do any act prohibited by this chapter or rules adopted hereunder.

**History.**—s. 1, ch. 63-378; ss. 14, 35, ch. 69-106.

**571.09 Penalties.**—Any person violating any of the provisions of this chapter or rules adopted hereunder shall for the first offense be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and for each succeeding offense shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 1, ch. 63-378; s. 585, ch. 71-136.

**571.10 Injunction.**—In addition to the remedies provided in this chapter and notwithstanding the existence of any adequate remedy at law, the department is authorized to make application for injunction to a circuit judge, and such circuit judge shall have jurisdiction upon a hearing and for cause shown to grant a temporary or permanent injunction, or both, restraining any person from violating or continuing to violate any of the provisions of this chapter or from failing or refusing to comply with the requirements of this chapter or any rule or regulation adopted hereunder, such injunction to be issued without bond.

**History.**—s. 1, ch. 63-378; ss. 14, 35, ch. 69-106.

## CHAPTER 573

## MARKETING OF AGRICULTURAL COMMODITIES

## PART I CELERY AND SWEET CORN MARKETING (ss. 573.01-573.29)

## PART II FOLIAGE PLANT MARKETING (ss. 573.50-573.76)

## PART III WATERMELON MARKETING (ss. 573.801-573.827)

## PART IV SOYBEAN MARKETING (ss. 573.830-573.856)

## PART V FLUE-CURED TOBACCO MARKETING (ss. 573.857-573.882)

## PART VI PEANUT MARKETING (ss. 573.883-573.908)

## PART I

## CELERY AND SWEET CORN MARKETING

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**573.01 Short title.**—Part I of this chapter may be known and cited as the "Florida Celery and Sweet Corn Marketing Law."

*History.*—s. 1, ch. 59-133; s. 1, ch. 59-283.

**573.02 Legislative findings; declaration of policy.**—This law is passed:

(1) Because it is hereby declared that the marketing of celery and sweet corn grown in Florida in excess of reasonable and normal market demands therefor; disorderly marketing of such commodity; improper preparation for market and lack of uniform grading and classification; unfair methods of competition in the marketing of such commodity; and the inherent inability of individual producers to maintain present markets, or to develop new and larger markets for Florida grown celery and sweet corn result in an unreasonable and unnecessary economic waste of the agricultural wealth of this state.

Such conditions and the accompanying waste jeopardize the future continued production of adequate celery and sweet corn food supply for the people of this and other states, and prevent agricultural producers from obtaining a fair return from their labor, their farms, and the celery and sweet corn which they produce. As a consequence, the purchasing power of such producers has been in the past, and in all likelihood will continue to be in the future, unless such conditions are remedied, low in relation to that of persons engaged in other gainful occupations within this state. Celery and sweet corn producers are thereby prevented from maintaining a proper and reasonable standard of living and from contributing their fair share to the support of the necessary governmental and educational functions, thus tending to increase unfairly the tax burdens of other citizens of this state.

(2) Because the conditions herein before described and set forth vitally concern the health, peace, safety, and general welfare of the people of this state, and it is hereby declared to be the policy of this state to aid agricultural producers in preventing economic waste in the marketing of their agricultural commodities, to develop more efficient and equitable methods in the marketing of agricultural commodities, and to aid agricultural producers in restoring and maintaining their purchasing power at a more adequate, equitable, and reasonable level.

(3) The marketing of celery and sweet corn within this state is hereby declared to be affected with a public interest. The provisions of this law are enacted in the exercise of the police powers of this state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state.

*History.*—s. 1, ch. 59-133; s. 1, ch. 59-283.

**573.03 Purposes.**—The purposes of this part are:

(1) To enable celery and sweet corn producers of this state, with the aid of the state, to correlate more effectively the marketing of their agricultural commodities, with market demands therefor.

(2) To establish and maintain orderly marketing of celery and sweet corn.

(3) To provide for uniform grading and proper preparation of celery and sweet corn for market.

(4) To provide methods and means for the maintenance of present markets, or for the development



of new and larger markets for celery and sweet corn grown in Florida.

(5) To eliminate or reduce economic waste in the marketing of celery and sweet corn grown in Florida.

(6) To prevent, modify, or eliminate trade barriers which obstruct the free flow of celery and sweet corn to market.

**History.**—s. 1, ch. 59-133; s. 1, ch. 59-283.

**573.04 Definitions.**—As used in this law, the following terms have the following meanings:

(1) "Department" means the Department of Agriculture and Consumer Services.

(2) "Person" means an individual, firm, partnership, corporation, association, business, trust, legal representative, or any other business unit.

(3) "Celery" means all varieties and types of celery (*Apium graveolens*).

(4) "Sweet corn" means all varieties and types of sweet corn (*Zea mays*, var. *rugosa*).

(5) "Producer" means any person engaged within this state in a proprietary capacity in the business of producing, or causing to be produced, any celery or sweet corn for market.

(6) "Primary channel of trade" means celery or sweet corn shall be deemed and held to be in the primary channel of trade when such commodity is cut, gathered from the ground, or otherwise harvested for commercial purposes, but any such celery or sweet corn shall cease to be in the primary channel of trade if and when it leaves intrastate commerce.

(7) "Handler" is synonymous with "shipper" and means any person, except a common or contract carrier of celery or sweet corn owned by another person, engaged within this state as a distributor in the business of distributing celery or sweet corn in the primary channel of trade.

(8) "Distributor" means any person who engages in the operation of selling, marketing, or distributing, in the primary channel of trade, celery or sweet corn which he has produced, or purchased or acquired from a producer, or which he is marketing on behalf of a producer, whether as owner, agent, employee, broker, or otherwise, but shall not include a retailer as herein defined.

(9) "Retailer" means any person who purchases or acquires any celery or sweet corn for resale at retail to the general public, unless such retailer engages in the business of a distributor.

(10) "Marketing agreement" means an agreement entered into, pursuant to the provisions of this law, by and between the department and distributors, producers, handlers, and others engaged in the handling of celery or sweet corn, regulating the handling of such commodity.

(11) "Marketing order" means an order issued by the department, pursuant to this law, prescribing rules and regulations governing the distributing, or handling, in any manner, of celery or sweet corn in the primary channel of trade during any specified period or periods.

(12) "To handle" means to engage in the business of handler as herein defined.

(13) "To distribute" means to engage in the business of a distributor as herein defined.

(14) "To retail" means to engage in the business of a retailer as herein defined.

(15) "Advertising and sales promotion," in addition to the ordinarily accepted meaning, means trade promotion and activities for the prevention, modification, or removal of trade barriers which restrict the free flow of celery or sweet corn to market and may include the presentation of facts to and negotiations with the state, federal, and foreign governmental agencies on matters which affect the production and marketing of celery or sweet corn.

(16) "Container" means a crate, bag, box, basket, package, bulk load, or other unit used in the packaging, transportation, sale, shipment, or other handling of celery or sweet corn.

(17) "Advisory council" means the advisory council or councils established pursuant to this law.

**History.**—s. 1, ch. 59-133; s. 1, ch. 59-283; ss. 14, 35, ch. 69-106; s. 221, ch. 71-377.

**573.05 Required consent by industry.**—It is herein expressly stated that no marketing order or amendment thereto directly or indirectly affecting or regulating the celery or sweet corn industry of this state shall become effective unless and until the said marketing order or amendment thereto has been consented to by the majority of celery or sweet corn producers and handlers, both in volume and numbers, as provided in ss. 573.10 and 573.11.

**History.**—s. 1, ch. 59-133; s. 1, ch. 59-283.

**573.06 Petition of producers.**—

(1) Upon the application or petition of five or more celery producers for a celery marketing order or 10 or more sweet corn producers for a sweet corn marketing order who state they have reason to believe that the issuance of a marketing order will tend to effectuate the declared policy of this act with respect to celery or sweet corn, the department shall give due notice of, and an opportunity for, a public hearing upon a proposed marketing order.

(2) After a marketing order has been issued and is in effect, said marketing order may be amended after a public hearing upon the proposed amended marketing order, which public hearing may be called by the department after the receipt by it of an application or petition as provided by subsection (1) or upon the receipt by the department of recommendations by the advisory council for the marketing order of such commodity in effect.

**History.**—s. 1, ch. 59-133; s. 1, ch. 59-283; s. 7, ch. 61-467; s. 1, ch. 63-123; ss. 14, 35, ch. 69-106.

**573.07 Petitioner's expense.**—

(1) Prior to the issuance of any marketing order by the department under this act, the department shall require the applicants therefor to deposit with it such amounts as the department may deem necessary to defray the expenses of preparing and making effective such marketing order. Such funds shall be received, deposited, and disbursed by the department; provided, however, any balance remaining shall be returned to the petitioners if a marketing order does not become effective. If an order does become effective, the total amount deposited may be refunded from the funds collected under such order upon the recommendation of the council and approval of the department.

(2) This section shall not apply to any amend-

ment to any marketing order which is sought on the recommendations of an advisory council for a marketing order in effect.

**History.**—s. 1, ch. 59-133; s. 1, ch. 59-283; s. 1, ch. 61-466; s. 1, ch. 61-467; s. 2, ch. 63-123; ss. 14, 35, ch. 69-106.

**573.08 Procedure for notice of hearing.**—Due notice of any hearing shall be given to all persons who may be directly affected by any action by the department, pursuant to the provisions of this law. Such hearings shall be open to the public. All testimony shall be received under oath and a full and complete record of all proceedings at any such hearing shall be made and filed by the department in its office.

**History.**—s. 1, ch. 59-133; s. 1, ch. 59-283; s. 2, ch. 61-466; s. 2, ch. 61-467; ss. 14, 35, ch. 69-106.

**573.09 Notice of effective date of marketing order.**—At least 10 days prior to the effective date of any marketing order or any suspension or termination thereof, a notice of such action or effective date shall be posted on a public bulletin board to be maintained by the department in the Division of Marketing of the department in the Nathan Mayo Building, Tallahassee, Leon County. Within 3 days after the posting of such notice, a copy of such notice shall be mailed to all producers and handlers in the marketing area known to the department and to each person who has filed with the department a written request for a copy of such notice. A copy of such notice shall be published in a newspaper of general circulation in the state and in such other newspaper or newspapers as the department may prescribe. The notice published in a newspaper or newspapers shall be sent by first-class mail by the department to those newspapers designated by it on the same date that the notice is posted on the aforesaid bulletin board with instructions to publish the same as a legal advertisement, on the first date after receipt of such notice as such newspaper's policy for publishing legal advertisements provides.

**History.**—s. 1, ch. 59-133; s. 1, ch. 59-283; s. 3, ch. 61-466; s. 3, ch. 61-467; s. 3, ch. 63-123; ss. 14, 35, ch. 69-106.

**573.10 Procedure for referendum.**—

(1) With respect to any referendum conducted under the provisions of this act, the department shall fix, determine, and publicly announce at least 15 days prior to the mailing of the copies of the proposed marketing order or proposed amended marketing order and the ballots, the date on which the copies of the proposed marketing order or proposed amended marketing order and ballots will be mailed. Such announcement shall be by notice given in the manner provided for notice in s. 573.09. The announcement notice aforesaid shall include a list of the counties, if less than all of the counties of the state, in which the county agent will have ballots and copies of the said proposed marketing order, which ballots and said copies of proposed marketing order may be obtained by producers and handlers of celery or sweet corn, whichever is affected, not receiving them by mail from the department. The ballots shall set forth the date on which the ballots must be returned to the department.

(2) The notice required by subsection (1) and the copies of the proposed marketing order or proposed

amended marketing order shall be mailed to all celery or sweet corn producers whose names and addresses are known to the department in the state or within the marketing area if the said proposed order pertains only to a portion of the state.

(3) It shall be the duty of the celery or sweet corn producers or handlers, whichever are affected, who vote in each referendum to send their marked ballots to the department the duty of which it shall be to have the ballots counted by qualified and impartial personnel in its office. The department shall, within 10 days after the closing date for submitting ballots in any referendum post the notice required by s. 573.09 in the event the referendum is affirmative as provided by s. 573.11, or in the event the said referendum is negative, certify the results and thereafter publish the results in a newspaper of general circulation in the state and in such other newspapers as the department may prescribe.

**History.**—s. 1, ch. 59-133; s. 1, ch. 59-283; s. 4, ch. 61-466; s. 4, ch. 61-467; s. 4, ch. 63-123; ss. 14, 35, ch. 69-106.

**573.11 Referendum.**—

(1) No marketing order or amendments thereto directly affecting and regulating handlers issued pursuant to this law shall become effective unless and until the department finds that such order has been approved by ballot by the handlers covered by the marketing order, who during a representative period determined by the department handled:

(a) As to celery, not less than 75 percent of the volume of the celery covered by the marketing order and who total by number not less than 75 percent of the handlers covered by the marketing order.

(b) As to sweet corn, not less than 65 percent of the volume of the sweet corn covered by the marketing order.

(2) No marketing order or amendments thereto directly affecting and regulating producers, issued pursuant to this law, shall become effective unless and until the department finds that such order has been approved by ballot by the producers covered by the marketing order, who during a representative period determined by the department, produced:

(a) As to celery, not less than 75 percent of the volume of the celery covered by the marketing order, and who total by number not less than 75 percent of the celery producers so covered by the marketing order.

(b) As to sweet corn, not less than 75 percent of the volume of the sweet corn covered by the marketing order, and who total by number not less than 65 percent of the sweet corn producers so covered by the marketing order.

(3) No marketing order or amendments thereto directly affecting and regulating both producers and handlers, issued pursuant to this law, shall become effective unless and until the department finds that such order has been approved by ballot by the producers covered by the marketing order, who during a representative period determined by the department, produced:

(a) As to celery, not less than 75 percent of the volume of the celery covered by the marketing order, and who total by number not less than 75 percent of the celery producers so covered by the marketing order; and further finds that such order has been



approved by ballot by the handlers covered by the marketing order, who during a representative period determined by the department, handled not less than 75 percent of the volume of celery covered by the marketing order and who total by number not less than 75 percent of the handlers covered by the marketing order, or

(b) As to sweet corn, not less than 75 percent of the volume of the sweet corn covered by the marketing order, and who total by number not less than 65 percent of the sweet corn producers so covered by the marketing order; and further finds that such order has been approved by ballot by the handlers covered by the marketing order, who during a representative period determined by the department, handled not less than 65 percent of the volume of sweet corn covered by the marketing order.

(4) All percentages determined by the department as required in this section shall be computed on the basis of the persons voting in the referendum.

**History.**—s. 1, ch. 59-133; s. 1, ch. 59-283; ss. 14, 35, ch. 69-106.

**573.12 Findings required to issue order.**—After such notice and hearing, the department shall issue a marketing order if it finds and sets forth in such marketing order that such order will tend to accomplish the objectives and purposes of this act.

**History.**—s. 1, ch. 59-133; s. 1, ch. 59-283; s. 5, ch. 61-466; s. 5, ch. 61-467; ss. 14, 35, ch. 69-106.

**573.13 Criteria considered in making findings.**—In making the findings set forth in s. 573.12, the department shall take into consideration any and all facts available to it with respect to the following factors:

(1) The quantity of celery or sweet corn available for distribution.

(2) The quantity of celery or sweet corn normally required by consumers.

(3) The cost of producing celery or sweet corn as determined by available records, statistics, and surveys.

(4) The purchasing power of consumers as indicated by reports and indices.

(5) The level of prices of other commodities which compete with or are utilized as substitutes for celery or sweet corn.

(6) The level of prices of commodities, services, and articles which farmers commonly buy.

(7) That no hardship will result to any celery producer(s) by the issuance of such proposed marketing order which cannot be remedied under the provision of s. 573.23.

**History.**—s. 1, ch. 59-133; s. 1, ch. 59-283; ss. 14, 35, ch. 69-106.

**573.17 Possible subjects of marketing orders.**—Subject to the legislative restrictions and limitations set forth in this law, any marketing order issued by the department pursuant to this law may contain any or all of the following provisions for regulating the handling or any of the operations of distributing of handlers of any celery or sweet corn within this state, but no others;

(1) **AS TO CELERY.**—

(a) Provisions for determining the existence and extent of the surplus of celery or of any grade, size, or quality thereof, and providing for the control and

distribution of such surplus and for equalizing the burden of such surplus elimination or control among the producers, distributors, or other handlers affected.

(b) Provisions for limiting the total quantity of celery or of any grade, size, or quality thereof, which may be distributed or otherwise handled in the primary channel of trade by any and all persons engaged in distributing, or handling during any specified period or periods. The total quantity of any such celery so regulated and permitted to be distributed, or otherwise handled, shall not be less than the quantity which the department finds is reasonably necessary to supply the market demands of consumers of such commodity.

(c) Provisions for allotting the quantity of celery or of any grade, size, or quality thereof, which each handler may purchase or acquire from or handle on behalf of, any and all producers thereof in the primary channel of trade during any specified period or periods, under a uniform rule, applicable to all handlers so regulated, based upon the amounts of celery or of any grade, size, or quality thereof produced or placed in the primary channels of trade by such producers in a prior period which the department finds to be representative or upon the current season's production or volume placed in the primary channels of trade by such producers, or both, to the end that the total quantity of celery or any grade, size, or quality thereof, so purchased or handled in the primary channel of trade, shall be apportioned equitably among the producers thereof.

(d) Provisions for allotting the quantity of celery or any grade, size, or quality thereof, which each producer may sell or have handled for his account, or on his behalf, in the primary channel of trade, during any specified period or periods, under a uniform rule applicable to all producers so regulated, based upon the amounts of celery or of any grade, size, or quality thereof placed in the primary channels of trade by such producers in a prior period which the department finds to be representative or upon the current season's production or volume placed in the primary channels of trade by such producers or both to the end that the total quantity of such celery or any grade, size, or quality thereof, so purchased from or handled for producers in the primary channel of trade, shall be apportioned equitably among all such producers.

(e) Provisions for allotting the quantity of celery or any grade, size, or quality thereof, which each handler may distribute or handle in the primary channel of trade under a uniform rule applicable to all handlers so regulated, based upon the amounts of celery or of any grade, size, or quality thereof, of the current season's crop which each such handler has available for such distributing, or handling, or upon the quantities of celery, or of any grade, size, or quality thereof so distributed or handled by each such handler in a prior period which the department finds to be representative, or based upon both, to the end that the total quantity of celery, or any grade, size, or quality thereof, distributed or handled in the primary channel of trade during any specified period or periods, shall be equitably apportioned among all such handlers thereof.

(f) Provisions regulating the period or periods during which any celery or any grade, size, or quality thereof, may be distributed, or otherwise marketed in the primary channel of trade by any and all persons engaged in such distributing or marketing. Provided, that the total quantity of such commodity so regulated and permitted to be distributed, or otherwise marketed during such period or periods, shall not be less than the quantity which the department finds is necessary to reasonably supply the needs of consumers of such commodity.

(g) Provisions for the establishment of surplus or reserve pools of celery, or of any grade, size, or quality thereof, and providing for the sale of such surplus celery and the equitable distribution among the persons interested therein of the net returns derived from the sale of such celery or such distribution of such representative value of such celery.

(2) AS TO SWEET CORN.—

(a) Provisions for determining the existence and extent of the surplus of sweet corn or of any variety, type, grade, size, or quality thereof, and providing for the control and distribution of such surplus and for equalizing the burden of such surplus elimination or control among the producers, distributors, or other handlers affected.

(b) Provisions for limiting the total quantity of sweet corn or of any variety, type, grade, size, or quality thereof, which may be distributed or otherwise handled in the primary channel of trade by any and all persons engaged in distributing, or handling during any specified period or periods. The total quantity of any such sweet corn so regulated and permitted to be distributed, or otherwise handled, shall not be less than the quantity which the department finds is reasonably necessary to supply the market demands of consumers of such commodity.

(c) Provisions for allotting the quantity of sweet corn or of any variety, type, grade, size, or quality thereof, which each handler may purchase or acquire from or handle on behalf of, any and all producers thereof in the primary channel of trade during any specified period or periods, under a uniform rule, applicable to all handlers so regulated, based upon the amounts of sweet corn or of any variety, type, grade, size, or quality thereof produced or placed in the primary channels of trade by such producers in a prior period which the department finds to be representative or upon the current season's production or volume placed in the primary channels of trade by such producers, or both, to the end that the total quantity of sweet corn or any variety, type, grade, size, or quality thereof, so purchased or handled in the primary channel of trade, shall be apportioned equitably among the producers thereof.

(d) Provisions for allotting the quantity of sweet corn or any variety, type, grade, size, or quality thereof, which each producer may sell or have handled for his account, or on his behalf, in the primary channel of trade, during any specified period or periods under a uniform rule applicable to all producers so regulated, based upon the amounts of sweet corn or any variety, type, grade, size, or quality thereof placed in the primary channels of trade by such producers in a prior period which the department finds to be representative or upon the current season's

production or volume placed in the primary channel of trade by such producers, or both, to the end that the total quantity of such sweet corn or any variety, type, grade, size, or quality thereof, so purchased from or handled for producers in the primary channel of trade, shall be apportioned equitably among all such producers.

(e) Provisions for allotting the quantity of sweet corn or any variety, type, grade, size, or quality thereof, which each handler may distribute or handle in the primary channel of trade under a uniform rule applicable to all handlers so regulated, based upon the amounts of sweet corn or of any variety, type, grade, size, or quality thereof, of the current season's crop which each such handler has available for such distributing, or handling, or upon the quantities of sweet corn, or of any variety, type, grade, size, or quality thereof so distributed or handled by each such handler in a prior period which the department finds to be representative, or based upon both, to the end that the total quantity of sweet corn, or any variety, type, grade, size, or quality thereof, distributed or handled in the primary channel of trade during any specified period or periods, shall be equitably apportioned among all such handlers thereof.

(f) Provisions regulating the period or periods during which any sweet corn or any variety, type, grade, size or quality thereof, may be distributed, or otherwise marketed in the primary channel of trade by any and all persons engaged in such distributing or marketing. Provided that, the total quantity of such commodity so regulated and permitted to be distributed, or otherwise marketed during such period or periods, shall not be less than the quantity which the department finds is necessary to reasonably supply the needs of consumers of such commodity.

(g) Provisions for the establishment of surplus or reserve pools of sweet corn, or of any variety, type, grade, size, or quality thereof, and providing for the sale of such surplus sweet corn and the equitable distribution among the persons interested therein of the net returns derived from the sale of such sweet corn or such distribution of such representative value of such sweet corn.

(3) AS TO CELERY OR SWEET CORN.—

(a) Provisions establishing or providing for establishing, with respect to celery or sweet corn, either as delivered by producers to handlers, or as handled or otherwise prepared for market, or as marketed by producers or handlers:

1. Grading standards of quality, condition, size, maturity or pack, which standards may include minimum standards, provided the standards so established shall not be established below any minimum standards prescribed by law for such commodity.

2. Uniform inspection, grading of and proper labeling of celery or sweet corn, in accordance with the standards so established.

3. Fix the type, specifications, size, weight, capacity, dimensions or pack of the containers which may be used in the packaging, transportation, sale, shipment, or other handling of celery or sweet corn.

(b) Provisions for the establishment of plans and programs for advertising and sales promotion to



maintain present markets or to create new or larger markets for celery or sweet corn grown in Florida. The department is authorized to prepare, issue, administer, and enforce plans and programs for promoting the sale of celery or sweet corn; provided that any such plan or program shall be directed toward increasing the sale of celery or sweet corn without reference to a particular private brand or trade name.

(c) Provisions relating to the prohibition of unfair trade practices. In addition to the unfair trade practices now prohibited by law, applicable to the distribution or handling of celery or sweet corn within this state, the department is hereby authorized to include in any marketing order issued hereunder provisions designed to correct any trade practice affecting the distributing or handling of celery or sweet corn within this state which the department finds, after a hearing thereupon in which all interested persons are given an opportunity to be heard, is unfair and detrimental to the effectuation of the declared purposes of this act.

(d) Provisions for carrying on research studies in the production or distribution of celery or sweet corn and for the expenditure of moneys for such purposes.

(e) Provisions incidental to and not inconsistent with the terms, conditions and provisions hereinbefore specified and necessary to effectuate the other provisions of such marketing order.

**History.**—s. 1, ch. 59-133; s. 1, ch. 59-283; s. 7, ch. 61-466; s. 8, ch. 61-467; ss. 6, 7, ch. 63-123; ss. 14, 35, ch. 69-106; s. 1, ch. 78-341.

#### **573.18 Cooperation with other governments.**

—The department is hereby authorized to confer with and cooperate with the legally constituted authorities of other states and of the United States, for the purpose of obtaining uniformity in the administration of federal and state marketing regulations, licenses, or orders, and said department is authorized to conduct joint hearings, issue joint or concurrent marketing orders, for the purposes and within the standards set forth in this law, and may exercise any administrative authority prescribed by this law to effect such uniformity of administration and regulation.

**History.**—s. 1, ch. 59-133; s. 1, ch. 59-283; ss. 14, 35, ch. 69-106.

**573.19 Limited marketing orders.**—A marketing order issued by the department under this law may be limited in application by prescribing the marketing areas or portions of the state in which a particular order shall be effective; provided, that no marketing order shall be issued by the department unless it embraces all persons of a like class who are engaged in a specific and distinctive agricultural industry or trade within the prescribed marketing area or portion of the state in which a particular order shall be effective.

**History.**—s. 1, ch. 59-133; s. 1, ch. 59-283; s. 8, ch. 61-466; s. 9, ch. 61-467; ss. 14, 35, ch. 69-106.

**573.20 Marketing agreements.**—In order to effectuate the declared policy of this law, the department shall have the power to enter into marketing agreements, which agreements may contain any of those provisions, contained in s. 573.17, with distributors, producers, and others engaged in the handling

of celery or sweet corn, regulating the handling of such agricultural commodities, which marketing agreements shall be binding upon the signatories thereto exclusively. The execution of a marketing agreement shall in no manner affect the issuance, administration, or enforcement of any marketing order provided for in this law. The department may issue such marketing order without executing a marketing agreement, or may execute a marketing agreement without issuing a marketing order, or may execute a marketing agreement and issue a marketing order covering the same agricultural commodity.

**History.**—s. 1, ch. 59-133; s. 1, ch. 59-283; s. 9, ch. 61-466; s. 10, ch. 61-467; ss. 14, 35, ch. 69-106; s. 6, ch. 78-95.

#### **573.21 Assessment and funds.**

(1) For the purpose of providing funds to defray the necessary expenses incurred by the department in the formulation, issuance, administration, and enforcement of any marketing order issued by the department hereunder, every person engaged in the production, distributing, or handling of celery or sweet corn within this state and directly affected by any marketing order issued pursuant to this law shall pay to the department at such times and in such installments as the department may prescribe such person's pro rata share of said necessary expenses. Each such person's share of such expenses shall be that proportion thereof which the total quantity of celery or sweet corn produced, distributed, or handled by such person during the current marketing season, or part thereof covered by such marketing order, is of the total quantity of such commodity produced, distributed, or handled by all such persons during the same current marketing season or part thereof. The department, after receiving the recommendation of the advisory council, shall fix the rate of assessment per container of celery or sweet corn or some other equitable basis. However, such rate of assessment per container shall not be greater than 5 cents per container of any size not in excess of 3,159 cubic inches inside measurement for celery or 5 cents per container of any size not in excess of 2,574 cubic inches inside measurement for sweet corn, nor shall the rate of assessment be greater for larger containers than the ratio of the cubical contents of the larger container to that of aforesaid containers respectively for celery and sweet corn applied to said 5 cents.

(2) The department may require every producer, distributor, or handler directly affected by any marketing order to deposit with it in advance cash or sufficient bond based upon the estimated volume of the celery or sweet corn to be handled by such producer, distributor, or handler during the period or periods covered by such marketing order, at the close of each marketing season during which the marketing order is effective. The sum so deposited shall be adjusted to the amount which is chargeable against such producer, distributor, or handler upon the basis of the actual volume of celery or sweet corn handled by such producer, distributor, or handler during such period or periods. The department shall prescribe the rules and regulations with respect to the assessment and collection of such funds.

(3) Any money so collected shall be deposited in

the General Inspection Trust Fund of the State Treasury in a special account to be known as the Celery and Sweet Corn Marketing Order Account. All moneys so collected shall be used to defray the actual expenses incurred by the department as to each such marketing order. At the close of each fiscal period, the department shall, upon the recommendation of the advisory council, either refund all or a portion of any money which remains in such fund upon a pro rata basis to all persons from whom such funds were collected during the last fiscal period or carry all or a portion of such money over into the next succeeding fiscal period if the department finds that such money is required to defray subsequent expenses under the marketing order for which the funds were collected. Upon termination by the department of any such marketing order, all moneys remaining and not required by the department to defray the expenses of such order shall be returned by the department upon a pro rata basis to all persons from whom such funds were collected during the last fiscal period during which said funds were collected.

(4) Any assessment levied hereunder, in such specified amount as may be determined by the department pursuant to the provisions of this section shall constitute a personal debt of every person so assessed and shall be due and payable to the department when payment is called for by the department. In the event of failure of such person or persons to pay any such assessment upon the date determined by the department, the department may file a complaint against such person or persons in a state court of competent jurisdiction for the collection thereof as provided in this section.

**History.**—s. 1, ch. 59-133; s. 1, ch. 59-283; ss. 10-12, ch. 61-466; ss. 11-13, ch. 61-467; s. 8, ch. 63-123; s. 1, ch. 67-56; ss. 14, 35, ch. 69-106; s. 2, ch. 71-194.

#### **573.22 Department; duties.—**

(1) The department shall administer and enforce the provisions of this law within the Division of Marketing in the department. In order to effectuate the declared purposes of this law, the department is hereby authorized to issue, administer, and enforce the provisions of marketing agreements or orders hereunder, regulating the handling of celery or sweet corn in the primary channel of trade.

(2) The department shall have power, consistent with this law and in accordance with the provision of marketing orders and agreements made effective hereunder, to establish such general rules for uniform application to all marketing orders and marketing agreements issued hereunder as may be necessary to facilitate the administration and enforcement of such marketing orders and agreements. The provisions of this law relative to posting, publication, and time of taking effect shall not be applicable to any such general rule established pursuant to this law and applicable to marketing orders generally. Such notice shall be mailed to the advisory council for each marketing order or marketing agreement in active operation in addition to any notice requirements established by law.

(3) Upon recommendation of the advisory council concerned, the department shall have power, consistent with this law, to establish administrative rules and regulations for each marketing order or

marketing agreement issued and made effective as may be necessary to facilitate the administration and enforcement of each such order or agreement.

(4) Upon recommendation of the advisory council concerned, the department shall have the power, consistent with the provisions of this act, to issue and make effective marketing regulations authorized by the provisions of any marketing order or marketing agreement issued and made effective hereunder and necessary to carry out and make effective the purposes and provisions of any such marketing order or agreement. Notice of any such regulation issued by the department shall be given to all producers and handlers directly affected, in addition to any other notice required by law.

(5) The department shall have full authority and power to review and consider all facts available to it and to determine in its sole discretion, who is a producer or handler under the terms of this act, what period or periods are appropriate and just in fixing allotments or other regulations pertaining to, affecting or controlling the handling of commodities dealt with, and to make all other decisions and determinations reasonably necessary or appropriate to render effective the terms of any marketing order and to promote the objectives of this act.

**History.**—s. 1, ch. 59-133; s. 1, ch. 59-283; ss. 9, 10, ch. 63-123; ss. 14, 35, ch. 69-106; s. 6, ch. 78-95.

#### **573.23 Exemptions.—**

(1) The department may adopt the procedures pursuant to which certificates of exemption will be issued to producers or handlers.

(2) The department may issue certificates of exemption to any applicant who applies for such exemption and furnishes adequate evidence to the department that, by reason of a marketing order issued pursuant to this law, such applicant has been adversely affected, unduly burdened, or the result of the marketing order is confiscatory by reason of acts beyond such applicant's control or by acts beyond reasonable expectation.

(3) The department shall be permitted at any time to make a thorough investigation of any applicant's claim pertaining to exemptions.

**History.**—s. 1, ch. 59-133; s. 1, ch. 59-283; ss. 14, 35, ch. 69-106; s. 151, ch. 73-333.

**573.24 Termination of orders.—**The department shall suspend or terminate the marketing order or any provision of the marketing order, whenever it finds such provision or order does not tend to effectuate the declared purposes of this act, within the standards and subject to the limitations and restrictions herein imposed and it further finds upon a referendum called by the department that 50 percent of those producers who vote, who are engaged within the state in the production of celery or sweet corn for market, covered by such marketing order, and who produce for market more than 50 percent of the volume of such commodity produced within the state for market are opposed to the said marketing order; provided that such suspension or termination shall not be effective until the expiration of the current marketing season. If the department finds that the termination of any marketing order is requested in writing by more than 50 percent of those



producers who are engaged within the state in the production of celery or sweet corn for market, covered by such marketing order, and who produce for market more than 50 percent of the volume of such commodity produced within the state for market and the department further finds that such marketing order obstructs or does not tend to carry out the declared policy and purposes of this act, it shall terminate or suspend for a specified period such marketing order or provision thereof; provided that such termination shall become effective not less than 10 days after the department gives notice of an order of termination as required in s. 573.09.

**History.**—s. 1, ch. 59-133; s. 1, ch. 59-283; s. 13, ch. 61-466; s. 14, ch. 61-467; s. 11, ch. 63-123; ss. 14, 35, ch. 69-106.

**573.25 Inspections.**—Any authorized inspector or other authorized person discharging his duties in the checking of compliance with the provisions of any marketing order made effective pursuant to this law may enter and inspect any premises, enclosure, building, or conveyance where he has reason to believe any celery or sweet corn subject to a marketing order is produced, stored, being prepared for market or marketed, and inspect or cause to be inspected such representative samples of the commodity as may be necessary to determine whether or not any lot of said celery or sweet corn is in compliance with applicable regulations of any marketing order made effective pursuant to the provisions of this law.

**History.**—s. 1, ch. 59-133; s. 1, ch. 59-283.

**573.26 Maintenance and production of records, etc.—**

(1) The department may require any and all persons directly affected by and subject to the provisions of any marketing order issued pursuant to this law to maintain books and records reflecting their operations under said marketing order, and to furnish to the department or its duly authorized or designated representative or representatives such information as may be from time to time requested by them relating to operations under said marketing order and to permit the inspection by said department, or its duly authorized or designated representative or representatives of such portions of such books and records as relate to operations under said marketing order.

(2) Information obtained by any person hereunder shall be confidential and shall not be disclosed by him to any other person save and except to a person with like right to obtain the same, or any attorney employed to give legal advice or by court order.

(3) For the purposes of carrying out the provisions of this law, the department or its duly authorized or designated representative or representatives, may hold hearings, take testimony, administer oaths, subpoena witnesses, and issue subpoenas for the production of books, records, or documents, relevant and material to the subject matter of such hearings.

(4) No person shall be excused from attending and testifying or from producing documentary evidence before the department, or its duly authorized or designated representative or representatives, in obedience to the subpoena of the department on the ground or the reason that the testimony or evidence,

documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may be so required to testify, or produce evidence, documentary or otherwise, before the department in obedience to a subpoena issued pursuant to this law; provided, that no natural person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

**History.**—s. 1, ch. 59-133; s. 1, ch. 59-283; ss. 14, 35, ch. 69-106.

**573.27 Penalties; violation; hearings.—**

(1) Every person who violates any provision of this law, or any provision of any marketing agreement or order duly issued by the department hereunder, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.083. Each day during which any of the violations above referred to continue after the department has issued a cease and desist order against the violator shall constitute a separate offense. Such fine imposed by a court of competent jurisdiction shall be transmitted by the clerk of such court to the department for depositing in the State Treasury in the General Inspection Trust Fund.

(2) Upon the filing of a verified complaint charging a violation of any provision of this law, or of any provision of any marketing order issued by the department hereunder, or of any provision of any marketing agreement enforced by the department hereunder, and prior to institution of any court proceedings authorized hereinafter, the department may, in its discretion, refer the matter to the Department of Legal Affairs or a prosecuting attorney of this state having jurisdiction for action pursuant to the provisions of this law or proceed to consider the charges set forth in such verified complaint.

(3) If the department finds that no violation has occurred, it shall forthwith dismiss such complaint.

(4) If the department finds that a violation has occurred, it shall so enter its findings and notify the parties to such complaint. Should the defendant or defendants thereafter fail, neglect, or refuse to desist from such violation within the time specified by the department, the department may thereupon file a complaint against such defendant or defendants in a court of competent jurisdiction, as set forth herein-after.

(5) The Department of Legal Affairs or any prosecuting attorney of this state having jurisdiction may, upon his own initiative, and shall upon complaint of any person, if after investigation, he believes the violation to have occurred, bring an action in the name of the state in any court of competent jurisdiction within the state against any person violating any provision of this law or of any marketing order duly issued by the department hereunder or any marketing agreement enforced by the department.

(6) The several circuit courts of the state, sitting in chancery, are hereby vested with jurisdiction specifically to enforce and to enjoin and restrain any person from violating any provisions of this law, or of any marketing order duly issued by the depart-

ment hereunder or any marketing agreement enforced by the department, in any proceeding brought by the department in any of said circuit courts; and in any such proceeding it shall not be necessary for the department to allege or prove that an adequate remedy at law does not exist. The said circuit courts may issue a temporary restraining order and preliminary injunction, as in other actions for injunctive relief, and upon final hearing, if final decree be in favor of the department, the court shall permanently enjoin the defendant or defendants from further violations. Any such final decree in favor of the department shall provide that the defendant or defendants pay it reasonable costs of such suit, including reasonable attorney's fees to be fixed by the court. Any such action may be commenced either in the county where the defendant resides, or in the county where any other defendant resides, if more than one defendant, or in the county where any act of omission, or part thereof, complained of occurred.

(7) It shall be a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, for:

(a) Any person to willfully render or furnish a false or fraudulent report, statement or record required by the department, pursuant to the provisions of this law, or any marketing agreement or marketing order effective thereunder.

(b) Any person engaged in the handling of celery or sweet corn or in the wholesale or retail trade thereof to fail or refuse to furnish to the department or its duly authorized agents, upon request, information concerning the name and address of the persons from whom he has received celery or sweet corn regulated by a marketing order issued and in effect hereunder, and the quantity of such commodity so received.

**History.**—s. 1, ch. 59-133; s. 1, ch. 59-283; ss. 11, 14, 35, ch. 69-106; s. 586, ch. 71-136; s. 3, ch. 71-194; s. 6, ch. 78-95.

**573.29 Presumption of validity.**—The validity or propriety of any act or action taken by the department hereunder or in pursuance of any marketing order heretofore or hereafter issued shall be presumed until the contrary is affirmatively established by the person or persons objecting thereto.

**History.**—s. 12, ch. 63-123; ss. 14, 35, ch. 69-106.

## PART II

### FOLIAGE PLANT MARKETING

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**573.50 Short title.**—Part II of this chapter may be known and cited as the "Florida Foliage Plant Marketing Law."

**History.**—s. 1, ch. 63-126.

**573.51 Legislative findings; declaration of policy.**—This act is passed:

(1) Because the marketing of foliage plants in Florida in excess of reasonable and normal market demands therefor, disorderly marketing of the commodity, improper preparation for market and lack of uniform grading and classification, unfair methods of competition in the marketing of foliage plants and the inherent inability of individual producers to maintain present markets or to develop new and larger markets for Florida-grown foliage plants result in an unreasonable and unnecessary economic waste of the agricultural wealth of this state. Such conditions and the accompanying waste jeopardize the future continued production of adequate supplies of foliage plants for the people of this state and other states, and prevent foliage plant producers from obtaining a fair return from their labor, farms and products. As a consequence, the purchasing power of the producers has been, in the past, and in all likelihood will continue to be in the future, low in relation to that of persons engaged in other gainful occupations within this state, unless such conditions are remedied. Foliage plant producers are thereby prevented from maintaining a proper and reasonable standard of living and from contributing their fair share to the support of the necessary governmental and educational functions, thus tending to increase unfairly the tax burdens of the other citizens of this state.

(2) Because these conditions vitally concern the health, peace, safety and general welfare of the people of this state, it is hereby declared to be the policy of this state to aid foliage plant producers in preventing economic waste in the marketing of their commodity, to develop more efficient and equitable methods in the marketing of foliage plants, and to aid foliage plant producers in restoring and maintaining their purchasing power at a more adequate, equitable, and reasonable level.

(3) In the exercise of the police power of this state to promote and protect the public health, peace, safety, and general welfare of the people, the marketing of foliage plants within this state is hereby declared to be affected with a public interest.

**History.**—s. 2, ch. 63-126.



**573.52 Purposes.**—The purposes of this act are:

- (1) To enable foliage plant producers of this state, with the aid of the state, to correlate more effectively the marketing of their foliage plants with market demands therefor.
- (2) To establish and maintain orderly marketing of foliage plants.
- (3) To provide methods for the maintenance of present markets, or for the development of new and larger markets for foliage plants grown in Florida.
- (4) To provide for uniform grading and proper preparation of foliage plants for market.
- (5) To eliminate or reduce economic waste in the marketing of foliage plants grown in Florida.
- (6) To prevent, modify, or eliminate trade barriers which obstruct the free flow of foliage plants to market.

History.—s. 3, ch. 63-126.

**573.53 Definitions.**—As used in this act:

- (1) "Department" means the Department of Agriculture and Consumer Services.
- (2) "Person" means an individual, firm, partnership, corporation, association, business, trust, legal representative, or any other business unit.
- (3) "Foliage plants" are defined as perennial or woody plants, or vines grown mostly under partial shade primarily to be used for foliage as potted plants or interior landscaping decor in the home, office, or business, including but not limited to philodendron, either established or unestablished on bark or poles, rooted or unrooted, small and variegated leafed plants used in dish gardens, terrariums, and hanging baskets; dwarfed citrus, palms; bromeliads and ferns.
- (4) "Producer" means any person engaged within this state in a proprietary capacity in the business of producing, or causing to be produced, foliage plants for market.
- (5) "Primary channel of trade" means foliage plants shall be deemed and held to be in the primary channel of trade when such commodity is cut, gathered from the ground, or otherwise harvested or prepared for sale in any manner for commercial purposes, but foliage plants shall cease to be in the primary channel of trade if they leave intrastate commerce.
- (6) "Handler" is synonymous with shipper and means any person, except a common or contract carrier of foliage plants owned by another person, engaged within this state as a distributor in the business of distributing foliage plants in the primary channel of trade.
- (7) "Distributor" means any person who engages in the operation of selling, marketing, or distributing, in the primary channel of trade, foliage plants which he has produced, or purchased or acquired from a producer, or is marketing on behalf of a producer, whether as owner, agent, employee, broker, or otherwise, but shall not include a retailer as herein defined.
- (8) "Retailer" means any person who purchases or acquires any foliage plants for resale at retail to the general public, unless such retailer engages in the business of a distributor.
- (9) "Marketing agreement" means an agreement between the department and distributors, produc-

ers, handlers, and others engaged in the handling of foliage plants, regulating the handling of the commodity.

(10) "Marketing order" means an order issued by the department, prescribing rules and regulations governing the distributing, or handling in any manner, of foliage plants in the primary channel of trade during any specified period or periods.

(11) "To handle" means to engage in the business of a handler as herein defined.

(12) "To retail" means to engage in the business of a retailer as herein defined.

(13) "To distribute" means to engage in the business of a distributor as herein defined.

(14) "Advertising and sales promotion" in addition to the ordinarily accepted meaning, means trade promotion and activities for the prevention, modification, or removal of trade barriers which restrict the free flow of foliage plants to market and may include the presentation of facts to and negotiations with the state, federal, and foreign governmental agencies on matters which affect the production and marketing of foliage plants.

(15) "Container" means a crate, bag, box, basket, carton, package, bulk load, or other unit used in the packaging, transportation, sale, shipment, or any other unit used in the handling of foliage plants.

(16) "Advisory council" means the advisory council or councils established pursuant to this part.

(17) "General rules" means rules applicable to all marketing orders and marketing agreements issued and made effective by the department to provide uniform methods and procedures to facilitate the administration and enforcement of all marketing orders and marketing agreements. Uniform methods and procedures may include, but shall not be limited to, methods and procedures pertaining to the receiving, depositing, and expenditure of moneys received from assessments; the preparation, handling, and payment of claim schedules for the payment of bills, salaries, and other obligations; the establishment of maximum rates to be allowed for travel expenses of council members and council employees; the preparation, verification, and filing of evidence relating to violations of marketing orders, agreements, and marketing regulations; and other fiscal and administrative activities which the department finds are necessary to obtain reasonable uniformity, efficiency, and economy in the administration and enforcement of any marketing order or agreement.

(18) "Administrative rules" means rules applicable to a particular marketing order or agreement, issued and made effective by the department upon recommendation of the advisory council concerned, to provide methods and procedures to facilitate the administration and enforcement of the marketing order or agreement. Rules may include, but shall not be limited to, methods and procedures for the purpose of explaining or clarifying the provisions of the marketing order or agreement; providing information to producers and handlers subject to the provisions of the marketing order or agreement; and other similar procedural and explanatory provisions to enable such producers and handlers better to understand the program and their respective obligations

thereunder and thereby assist in obtaining cooperation and compliance.

(19) "Seasonal marketing regulations" means marketing regulations, applicable to a particular marketing order or agreement, made effective by the department upon recommendation of the advisory council concerned for the purpose of carrying into effect by administrative order, the marketing regulator authorizations and provisions of the marketing order or agreement as such authorizations or provisions may be applicable to or required by changing economic or marketing conditions and requirements from time to time during each marketing season in which the marketing order or agreement may operate. Seasonal marketing regulations shall not extend beyond the marketing regulatory authorizations specified in the marketing order or agreement concerned.

**History.**—s. 4, ch. 63-126; ss. 14, 35, ch. 69-106; s. 222, ch. 71-377; s. 6, ch. 78-95.

**573.54 Required consent by industry.**—No marketing order or amendment directly or indirectly affecting or regulating foliage plants in the primary channel of trade of this state shall become effective unless the marketing order or amendment has been consented to by a majority of producers or handlers of such commodity in Florida, as provided in s. 573.61.

**History.**—s. 5, ch. 63-126.

**573.55 Petition of producers.**—Upon the application or petition of 10 or more producers who state they have reason to believe that the issuance of a marketing order will tend to effectuate the declared policy of part II of this chapter, the department may give due notice of, and an opportunity for, a public hearing upon a proposed marketing order.

**History.**—s. 6, ch. 63-126; ss. 14, 35, ch. 69-106.

**573.56 Petitioner's expense.**—Prior to the issuance of any marketing order by the department, the department shall require the applicants to deposit with it such amounts as the department may deem necessary to defray the expenses of preparing and making effective any marketing order. Funds shall be received, deposited, and disbursed by the department provided, however, any balance remaining shall be returned to the petitioners if the proposed order does not become effective. If such proposed order does become effective, the total amount deposited may be refunded from the funds collected under the order upon the recommendation of the advisory council and approval of the department.

**History.**—s. 7, ch. 63-126; ss. 14, 35, ch. 69-106.

**573.57 Public hearing.**—Due notice of any hearing shall be given to all persons who may be directly affected by any action of the department. These hearings shall be open to the public. All testimony shall be received under oath and a full and complete record of all proceedings at any hearing shall be made and filed by the department in its office. All interested persons shall have a period of not less than 7 days following the public hearing for

filing written briefs with the department concerning such action.

**History.**—s. 8, ch. 63-126; ss. 14, 35, ch. 69-106.

**573.58 Findings required to issue order.**—After notice and hearing, the department shall issue a marketing order if it finds and sets forth that the order will tend to accomplish the objectives and purposes of part II of this chapter, and:

(1) The provisions are necessary in order to effect a reasonable correlation of the supply of foliage plants affected with market demands therefor and the marketing order or amendments thereto will tend to reestablish or maintain a level of prices for foliage plants which will provide a purchasing power for the commodity adequate to maintain sufficient producers as are required to provide such supply of the quantities and qualities of foliage plants as is necessary to fulfill the normal requirements of consumers.

(2) The marketing order or amendments thereto will tend to approach equality of purchasing power at as rapid a rate as is feasible in view of the market demand for foliage plants.

(3) The marketing order or amendments thereto are in conformity with the provisions of part II of this chapter and will tend to effectuate the declared purposes and policies of part II of this chapter.

(4) The marketing order or amendments thereto will protect the interests of consumers of foliage plants, by exercising the powers of part II of this chapter only to the extent necessary to establish the equality of purchasing power described in subsection (1).

**History.**—s. 9, ch. 63-126; ss. 14, 35, ch. 69-106.

**573.59 Criteria considered in making findings.**—In making the findings set forth in s. 573.58, the department shall take into consideration all facts available with respect to:

(1) The quantity of foliage plants available for distribution.

(2) The quantity of foliage plants normally required by consumers.

(3) The cost of producing foliage plants as determined by available records, statistics, and surveys.

(4) The purchasing power of consumers as indicated by reports and indexes.

(5) The level of prices of other commodities which compete with or are utilized as substitutes for foliage plants.

(6) The level of prices of foliage plants, services, and articles which farmers commonly buy.

(7) That no hardship will result to any foliage plant producer by the issuance of any proposed marketing order which cannot be remedied under the provision of s. 573.72.

**History.**—s. 10, ch. 63-126; ss. 14, 35, ch. 69-106.

**573.60 Procedure for referendum.**—

(1) With respect to any referendum conducted under the provisions of this act, the department shall, before calling and announcing a referendum, fix, determine, and publicly announce, at least 15 days in advance of the date on which ballots and copies of the proposed order shall be mailed to all agricultural producers or handlers affected who are



in the state and whose names and addresses are known, the date by which ballots must be returned to the department. Ballots and copies of the proposed order may be obtained from county agricultural agents' offices in the marketing area by producers or handlers not receiving them by mail.

(2) It shall be the duty of the producers or handlers affected, who vote in each referendum to send their marked ballots to the department, the duty of which it shall be to have the ballots counted by qualified and impartial personnel in its office, and the department shall within 10 days after the closing date for submitting ballots in any referendum, certify in writing and publish the results of such referendum in a newspaper of general circulation in the state and in such other newspapers as the department may prescribe.

*History.*—s. 11, ch. 63-126; ss. 14, 35, ch. 69-106.

#### **573.61 Referendum.—**

(1) No marketing order or amendments thereto directly affecting and regulating handlers shall become effective unless the department finds that the order has been approved by ballot by the handlers covered by the marketing order, who during a representative period determined by the department handled no less than 65 percent of the volume of foliage plants produced or marketed within the production or marketing area covered by the order, as provided in subsection (3).

(2) No marketing order or amendments thereto directly affecting and regulating producers, shall become effective unless and until the department finds that the order has been approved by ballot by the producers covered by the marketing order, who during a representative period determined by the department produced not less than 65 percent of the volume of foliage plants covered by the marketing order, and who total by number not less than 65 percent of the foliage plant producers so covered by the marketing order, as provided in subsection (3).

(3) All percentages determined by the department as required in this section shall be computed on the basis of persons voting in the referendum.

*History.*—s. 12, ch. 63-126; ss. 14, 35, ch. 69-106.

**573.62 Notice of effective date of marketing order.**—Before the issuance of any marketing order, or any suspension, amendment or termination thereof, a notice shall be posted on a public bulletin board to be maintained by the department in the Division of Marketing of the department in the Nathan Mayo Building, Tallahassee, Leon County, and a copy of the notice shall be published in a newspaper of general circulation in the state and in such other newspaper or newspapers as the department may prescribe. The notices published in the newspaper or newspapers shall be sent by first-class mail, by the department to those newspapers designated by it, the same date that the notice is posted on the bulletin board with instructions to publish the same as a legal advertisement the first date after receipt of the notice as such newspaper's policy for publishing legal advertisements provide. No marketing order, or any suspension, amendment or termination thereof shall become effective until the termination of a period of 5 days from the date of posting and

publication. It shall also be the duty of the department to mail a copy of the notice of the issuance to every person who files with the department a written request for such notice.

*History.*—s. 13, ch. 63-126; ss. 14, 35, ch. 69-106.

#### **573.63 Advisory council.—**

(1) Any marketing order shall provide in it a method for the selection of an advisory council in the Department of Agriculture and Consumer Services and the term of office of the members of the council. The advisory council shall assist the department in the administration of any marketing order. Members of the advisory council and their alternates shall be appointed by the department. The number of producers, handlers, or distributors, upon any advisory council shall be such number of producers, handlers, or distributors as the department finds is necessary to assist properly in the administration of the order; provided always, the majority of the members and alternate members of any advisory council shall be producers.

(2) No members or alternate members of any advisory council shall receive a salary, but shall be reimbursed for traveling expenses as provided in s. 112.061. The department may authorize the advisory council to employ necessary personnel, including professional and technical services, fix their compensation and terms of employment, and to incur expenses, to be paid by the department from moneys collected as herein provided, as the department may deem necessary and proper to enable the advisory council to perform properly its authorized duties.

*History.*—s. 14, ch. 63-126; s. 19, ch. 63-400; ss. 14, 35, ch. 69-106; s. 13, ch. 77-108.

**573.64 Advisory council; duties.**—The duties of any council shall be advisory only, and may include the following:

(1) To recommend to the department administrative rules and regulations relating to the marketing order.

(2) To receive and report to the department complaints or violations of the marketing order.

(3) To recommend to the department amendments to the marketing order.

(4) To assist the department in the assessment of members of the industry and in the collection of funds to cover expenses incurred by the department in the administration of the marketing order.

(5) To assist the department in the collection of information and data which the department may deem necessary to the proper administration of part II of this chapter.

*History.*—s. 15, ch. 63-126; s. 223, ch. 71-377.

**573.65 Advisory council; exemption from liability.**—The members and alternate members of any advisory council, duly appointed by the department, including employees of the council, shall not be held responsible individually in any way whatsoever to any producer, distributor or other handler or any other person for errors in judgment, mistakes or other acts, either of commission or omission as principal, agent, person or employee, except for their own individual acts of dishonesty or crime. No person or employee shall be held responsible individu-

ally for any act of any other member of any council.

History.—s. 16, ch. 63-126; ss. 14, 35, ch. 69-106.

#### **573.66 Possible subjects of marketing orders.**

—Subject to the legislative restrictions and limitations set forth herein, any marketing order issued by the department may contain any or all of the following provisions:

(1) Provisions for the establishment of plans and programs for advertising and sales promotion to maintain present markets or to create new or larger markets for foliage plants grown in Florida. The department is authorized to prepare, issue, administer, and enforce plans and programs for promoting the sale of foliage plants; provided that any plan or program shall be directed toward increasing the sale of the commodity without reference to a private brand or trade name.

(2) Provisions for carrying on research studies in the production or distribution of foliage plants and for the expenditure of moneys for such purposes. In any research in production or distribution carried on hereunder, the department upon recommendation of the advisory council shall select the research project or projects to be carried on. These projects may be carried out by any research agency the department determines, based upon recommendations of the advisory council.

(3) Provisions relating to the prohibition of unfair trade practices. In addition to the unfair trade practices, now prohibited by law, applicable to the distribution or handling of foliage plants within this state, the department is hereby authorized to include in any marketing order issued hereinunder provisions designed to correct any trade practices affecting the distributing or handling of foliage plants within this state which the department finds, after a hearing in which all interested persons are given an opportunity to be heard, is unfair and detrimental to the effectuation of the declared purposes of part II of this chapter.

(4) Provisions establishing or providing for establishing, with respect to foliage plants, either as delivered by producers to handlers, or as handled or otherwise prepared for market, or as marketed by producers or handlers:

(a) Grading standards of quality, condition, size, shape, maturity, pack, or any other criteria for indicating desirability of foliage plants, which standards may include minimum standards, provided the standards shall not be established below any minimum prescribed by law for this commodity.

(b) Uniform inspection, grading of, and proper labeling of foliage plants in accordance with the standards so established.

(c) Fix the size, weight, capacity, dimensions, or pack of the containers which may be used in the packaging, transportation, sale, shipment, or other handling of foliage plants.

(5) Provisions for the establishment of surplus, stabilization, or byproduct pools for foliage plants or of any grade, size, quality, or condition and providing for the sale of the commodity in any pool and for the equitable distribution among the persons participating of the net returns derived from the sale of the commodity. Whenever the marketing order authorizes the establishment of any pool or pools, the de-

partment shall have power to receive the commodity from each producer or handler and to handle the same according to the grade, size, quality, or condition and to account to each producer or handler participating upon a pro rata basis for the net proceeds derived from the sale.

(6) Provisions incidental to and not inconsistent with the terms, conditions, and provisions specified and necessary to effectuate the other provisions of the marketing order.

History.—s. 17, ch. 63-126; ss. 14, 35, ch. 69-106; s. 2, ch. 78-341.

#### **573.67 Cooperation with other governments.**

—The department is hereby authorized to confer with and cooperate with the legally constituted authorities of other states and of the United States, for the purposes of obtaining uniformity in the administration of federal and state marketing regulations, licenses or orders, and the department is authorized to conduct joint hearings, issue joint or concurrent marketing orders, and may exercise any administrative authority to effect such uniformity of administration and regulation.

History.—s. 18, ch. 63-126; ss. 14, 35, ch. 69-106.

**573.68 Limited marketing orders.**—A marketing order issued by the department may be limited in application by prescribing the marketing areas or portions of the state in which a particular order shall be effective; provided that no marketing order shall be issued by the department unless it embraces all persons of a like class who are engaged in a specific and distinctive agricultural industry or trade within the prescribed marketing area or portion of the state in which a particular order shall be effective.

History.—s. 19, ch. 63-126; ss. 14, 35, ch. 69-106.

**573.69 Marketing agreement.**—In order to effectuate the declared policy of part II of this chapter, the department shall have the power to enter into marketing agreements, which agreements may contain any of those provisions contained in s. 573.66 with distributors, producers, and others engaged in the handling of foliage plants regulating the handling of the commodity, which marketing agreements shall be binding upon the signatories exclusively. The execution of a marketing agreement shall in no manner affect the issuance, administration, or enforcement of any marketing order. The department may issue a marketing order without executing a marketing agreement, or may execute a marketing agreement and issue a marketing order covering the same commodity.

History.—s. 20, ch. 63-126; ss. 14, 35, ch. 69-106; s. 6, ch. 78-95.

#### **573.70 Assessment; funds; audit; loans.**

(1) To provide funds to defray the necessary expenses incurred by the department in the formulation, issuance, administration, and enforcement of any marketing order, every person engaged in the production, distributing, or handling of foliage plants within this state, and directly affected by any marketing order, shall pay to the department at such times and in such installments as the department may prescribe, such person's pro rata share of necessary expenses. Each person's share of expenses shall be that proportion which the total volume of



foliage plants produced, distributed, or handled by the person during the current marketing season, or part thereof covered by such marketing order, is of the total volume of the commodity produced, distributed, or handled by all such persons during the same current marketing season or part thereof. The department, after receiving the recommendations of the advisory council, shall fix the rate of assessment on the volume of foliage plants sold or some other equitable basis. For convenience of collection, upon request of the department, handlers of the commodity shall pay any producer assessments. Handlers paying assessments for and on behalf of any producers shall at their discretion, collect the producer assessments from any moneys owed by the handlers to the producers.

(2) The department may require every producer, distributor, or handler directly affected by any marketing order to deposit with it in advance cash or sufficient bond based upon the estimated volume of foliage plants to be handled during the period or periods covered by the marketing order to defray the costs involved in the formulation, issuance, administration, and enforcement of any marketing order. At the close of each marketing season during which the marketing order is effective, the sum so deposited shall be adjusted to the amount which is chargeable against the producer, distributor, or handler upon the basis of the volume of foliage plants handled during the period or periods. The department shall prescribe rules and regulations with respect to the assessment and collection of these funds.

(3) Any money so collected shall be used to defray the actual expenses incurred by the department with respect to the foliage plant marketing order. Any moneys remaining in the fund, at the discretion of the department, may be refunded at the close of any marketing season upon a pro rata basis to all persons from whom the funds were collected. Upon termination by the department of any marketing order, all moneys remaining and not required to defray the expenses of the order shall be returned by the department upon a pro rata basis to all persons from whom the funds were collected.

(4) In the event of levying and collecting of assessments for each fiscal year in which assessment funds are received by the department, the department shall cause to be made a thorough annual audit of the books and accounts by a certified public accountant, the audit to be completed within 60 days after the end of the fiscal year. The department and all producers and handlers covered by the marketing order shall be properly advised of the details of the annual official audit of the accounts as shown by the certified public accountant within 30 days of the audit.

(5) Any assessment levied, in the specified amount as may be determined by the department, shall constitute a personal debt of every person so assessed and shall be due and payable to the department; the department may file a complaint against any person or persons in a state court of competent jurisdiction for the collection of the assessment.

**History.**—s. 21, ch. 63-126; ss. 14, 35, ch. 69-106; s. 224, ch. 71-377.

#### **573.71 Department; powers and duties.—**

(1) The department shall administer and enforce the provisions of part II of this chapter within the Division of Marketing in the department. In order to effectuate the declared purposes of this act, the department is authorized to issue, administer, and enforce the provisions of any marketing agreement or order, regulating producer marketing and handling of foliage plants in the primary channel of trade.

(2) The department shall have the power to establish general rules and regulations for uniform application to all marketing orders and marketing agreements as may be necessary to facilitate the administration and enforcement of the marketing orders and agreements. These general rules shall not be applicable to the provisions of this act relative to posting, publications, and effective date. General rules shall be mailed to the advisory council for each marketing order or marketing agreement in active operation.

(3) Upon recommendation of the advisory council concerned, the department shall have the power to establish administrative rules and regulations for each marketing order or marketing agreement issued and made effective as may be necessary to facilitate the administration and enforcement of each order or agreement.

(4) Upon recommendation of the advisory council concerned, the department shall have the power to issue and make effective seasonal marketing regulations authorized by the provisions of any marketing order or marketing agreement necessary to carry out and make effective the purposes and provisions of any marketing order or agreement. Notice of any regulations issued by the department shall be given to all producers and handlers directly affected.

**History.**—s. 22, ch. 63-126; ss. 14, 35, ch. 69-106.

#### **573.72 Exemptions.—**

(1) The department may adopt the procedures pursuant to which certificates of exemption will be issued to producers or handlers.

(2) The department may issue certificates of exemption to any applicant who applies for an exemption and furnishes adequate evidence to the department, that by reason of a marketing order, the applicant has been adversely affected, unduly burdened or the result of the marketing order is confiscatory by reason of acts beyond the applicant's control or by acts beyond reasonable expectation.

(3) The department shall be permitted at any time to make a thorough investigation of any applicant's claim pertaining to exemption.

**History.**—s. 23, ch. 63-126; ss. 14, 35, ch. 69-106; s. 225, ch. 71-377.

**573.73 Termination of orders.—**The department shall suspend or terminate the marketing order or any provision of the marketing order, whenever it finds the provision or order does not tend to effectuate the declared purposes of part II of this chapter, within the standards and subject to the limitations and restrictions herein imposed and it further finds upon a referendum called by the department that 51 percent of the producers who are engaged within the state in the production of foliage plants for market, covered by the marketing order, and who produce for market more than 51 percent

of the volume of foliage plants produced within the state for market are opposed to the marketing order; provided the suspension or termination shall not be effective until the expiration of the current marketing season. If the department finds that the termination of any marketing order is requested in writing by more than 51 percent of the producers who are engaged within the state in the production of foliage plants for market, covered by the marketing order, and who produce for market more than 51 percent of the volume of the commodity produced within the state for market, covered by the order, and the department further finds the marketing order obstructs or does not tend to carry out the declared policy and purposes of part II of this chapter, it shall terminate or suspend for a specified period the marketing order or provision thereof; provided the termination shall be effective only if announced on or before the date, prior to the end of the current marketing period, as may be specified in the order.

**History.**—s. 24, ch. 63-126; ss. 14, 35, ch. 69-106.

**573.74 Inspections.**—Any authorized inspector or other authorized person discharging his duties in the checking of compliance with the provisions of any marketing order may enter and inspect any premises, enclosure, building, or conveyance where he has reason to believe any foliage plants subject to a marketing order are produced, stored, being prepared for market or marketed, and inspect or cause to be inspected the representative samples of the commodity as may be necessary to determine whether or not any lot of foliage plants is in compliance with applicable regulations of any marketing order.

**History.**—s. 25, ch. 63-126.

**573.75 Maintenance and production of records.**—

(1) The department may require any and all persons directly affected by and subject to the provisions of any marketing order to maintain books and records reflecting their operations under the marketing order, and to furnish to the department or its duly authorized or designated representative or representatives any information as may be from time to time requested by them relating to operations under the marketing order and to permit the inspection by the department or its duly authorized or designated representative or representatives of such portions of the books and records as relate to operations under the marketing order.

(2) Information obtained by any person shall be confidential and shall not be disclosed by him to any other person except to a person with like right to obtain it, or any attorney employed to give legal advice or by court order.

(3) The department or its duly authorized or designated representative or representatives may hold hearings, take testimony, administer oaths, subpoena witnesses, and issue subpoenas for the production of books, records, or documents relevant and material to the subject matter of the hearings.

(4) No person shall be excused from attending and testifying or from producing documentary evidence before the department, or its duly authorized or designated representative or representatives, in obedience to the subpoena of the department on the

ground or the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may be so required to testify, or produce evidence, documentary or otherwise, before the department in obedience to a subpoena issued; provided, no natural person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

**History.**—s. 26, ch. 63-126; ss. 14, 35, ch. 69-106.

**573.76 Penalties; violation; hearings.**—

(1) Every person who violates any provision of part II of this chapter, or any provision of any marketing agreement or order duly issued by the department shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.083. Each day during which any of the violations above referred to continue after the department has issued a cease and desist order against the violator shall constitute a separate offense. Any fine imposed by a court of competent jurisdiction shall be transmitted by the clerk of such court to the department to be used to defray the cost of administering the respective marketing order or agreement.

(2) Upon the filing of a verified complaint with the department charging a violation of any provision of part II of this chapter, or of any provision of any marketing order issued by the department, or of any provision of any marketing agreement enforced by the department, and prior to institution of any court proceedings authorized, the department may refer the matter to the Department of Legal Affairs or a prosecuting attorney of this state having jurisdiction for action pursuant to the provisions of part II of this chapter or proceed to consider the charges set forth in such verified complaint.

(3) If the department finds no violation has occurred, it shall forthwith dismiss the complaint.

(4) If the department finds a violation has occurred, it shall so enter its findings and notify the parties to the complaint. Should the defendant or defendants thereafter fail, neglect, or refuse to desist from the violation within the time specified by the department, the department may thereupon file a complaint against the defendant or defendants in a court of competent jurisdiction.

(5) The Department of Legal Affairs, or any prosecuting attorney of this state having jurisdiction, may upon his own initiative and shall upon complaint of any person, if after investigation, it believes the violation to have occurred, bring an action in the name of the state in any court of competent jurisdiction within the state against any person violating any provision of part II of this chapter or any marketing order duly issued by the department or any marketing agreement enforced by the department.

(6) The several circuit courts of the state, sitting in chancery, are hereby vested with jurisdiction specifically to enforce and to enjoin and restrain any person from violating any provisions of part II of this chapter, or of any marketing order duly issued by the department or any marketing agreement enforced by the department in any of the circuit courts;



and in any such proceeding it shall not be necessary for the department to allege or prove that an adequate remedy at law does not exist. The circuit courts may issue a temporary restraining order and preliminary injunction, as in other actions for injunctive relief, and upon final hearing, if final decree be in favor of the department, it shall provide that the defendant or defendants pay it reasonable costs of each suit, including reasonable attorneys' fees to be fixed by the court. These actions may be commenced either in the county where the defendant resides, if more than one defendant, or in the county where any act or part thereof, complained of occurred.

(7) The provisions of part II of this chapter shall not be applicable to retailers of agricultural commodities except to the extent that any retailer also engages in the processing or distributing of agricultural commodities as defined in part II of this chapter.

(8) It shall be a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, for:

(a) Any person to willfully render or furnish a false or fraudulent report, statement or record required by the department, or any marketing agreement or marketing order effective thereunder.

(b) Any person engaged in the handling of any agricultural commodity or in the wholesale or retail trade thereof to fail or refuse to furnish to the department or its duly authorized agents, upon request, information concerning the name and address of the persons from whom he has received any agricultural commodity regulated by a marketing order issued and in effect hereunder, and the quantity of the commodity so received.

**History.**—s. 27, ch. 63-126; ss. 11, 14, 35, ch. 69-106; s. 587, ch. 71-136; s. 226, ch. 71-377; s. 6, ch. 78-95.

### PART III

#### WATERMELON MARKETING

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**573.801 Short title.**—Part III of this chapter may be known and cited as the "Florida Watermelon Marketing Law."

**History.**—s. 1, ch. 63-292.

**573.802 Legislative findings; declaration of policy.**—This law is passed:

(1) Because the marketing of watermelons in Florida in excess of reasonable and normal market demands therefor, disorderly marketing of such commodity, improper preparation for market and lack of uniform grading and classification, unfair methods of competition, and the inherent inability of individual producers to maintain present markets or to develop new and larger markets for Florida-grown watermelons result in an unreasonable and unnecessary economic waste of the agricultural wealth of this state. Such conditions jeopardize the continued production of adequate supplies of watermelons for the people of this state and other states, and prevent watermelon producers from obtaining a fair return from their labor, their farms, and their products. As a consequence, the purchasing power of such producers has been low in relation to that of persons engaged in other gainful occupations within this state and in all likelihood will continue to be so in the future, unless these conditions are remedied. Watermelon producers are thereby prevented from maintaining a proper and reasonable standard of living and from contributing their fair share to the support of the necessary governmental and educational functions, thus tending to increase unfairly the tax burdens of the other citizens of this state.

(2) Because these conditions vitally concern the health, peace, safety, and general welfare of the people of this state, it is hereby declared to be the policy of this state to aid watermelon producers in preventing economic waste in the marketing of their commodity, to develop more efficient and equitable methods in the marketing of watermelons, and to aid watermelon producers in restoring and maintaining their purchasing power at a more adequate, equitable and reasonable level.

(3) The marketing of watermelons within this state is declared to be affected with a public interest. The provisions of part III of this chapter are enacted in the exercise of the police powers of this state for the purpose of protecting the public health, peace, safety, and general welfare of the people.

**History.**—s. 2, ch. 63-292.

**573.803 Purposes.**—The purposes of part III of this chapter are:

(1) To enable watermelon producers of this state, with the aid of the state, to correlate more effectively the marketing of their watermelons with market demands therefor.

(2) To establish and maintain orderly marketing of watermelons.

(3) To provide for uniform grading and proper preparation of watermelons for market.

(4) To provide methods for the maintenance of

present markets, or for the development of new and larger markets for watermelons grown in Florida.

(5) To eliminate or reduce economic waste in the marketing of watermelons grown in Florida.

(6) To prevent, modify or eliminate trade barriers which obstruct the free flow of watermelons to market.

History.—s. 3, ch. 63-292.

**573.804 Definitions.**—As used in part III of this chapter:

(1) "Department" means the Department of Agriculture and Consumer Services.

(2) "Person" means an individual, firm, partnership, corporation, association, business, trust, legal representative, or any other business unit.

(3) "Watermelon" means all varieties and types of watermelons *Citrullus vulgaris*.

(4) "Producer" means any person engaged within this state in a proprietary capacity in the business of producing, or causing to be produced, watermelons for market.

(5) "Primary channel of trade" means watermelons shall be deemed and held to be in the primary channel of trade when such commodity is cut, gathered from the ground, or otherwise harvested or prepared for sale in any manner for commercial purposes, but watermelons shall cease to be in the primary channel of trade if and when they leave intrastate commerce.

(6) "Handler" is synonymous with shipper and means any person, except a common or contract carrier of watermelons owned by another person, engaged within this state as a distributor in the business of distributing watermelons in the primary channel of trade.

(7) "Distributor" means any person who engages in the operation of selling, marketing, or distributing, in the primary channel of trade, watermelons which he has produced, or purchased or acquired from a producer, or is marketing on behalf of a producer, whether as owner, agent, employee, broker, or otherwise, but shall not include a retailer as herein defined.

(8) "Retailer" means any person who purchases or acquires any watermelons for resale at retail to the general public, unless such retailer engages in the business of a distributor.

(9) "Marketing agreement" means an agreement between the department and distributors, producers, handlers, and others engaged in the handling of watermelons, regulating the handling of the commodity.

(10) "Marketing order" means an order issued by the department prescribing rules and regulations governing the distribution, or handling, in any manner, of watermelons in the primary channel of trade during any specified period or periods.

(11) "To handle" means to engage in the business of a handler as herein defined.

(12) "To retail" means to engage in the business of a retailer as herein defined.

(13) "To distribute" means to engage in the business of a distributor as herein defined.

(14) "Advertising and sales promotion," in addition to the ordinarily accepted meaning, means trade promotion and activities for the prevention,

modification, or removal of trade barriers which restrict the free flow of watermelons to market and may include the presentation of facts to and negotiations with the state, federal, and foreign governmental agencies on matters which affect the production and marketing of watermelons.

(15) "Container" means a crate, bag, box, basket, carton, package, bulk load, or other unit used in the packaging, transportation, sale, shipment, or any other unit used in the handling of watermelons.

(16) "Advisory council" means the advisory council or councils established pursuant to part III of this chapter.

(17) "General rules" means rules applicable to all marketing orders and marketing agreements issued and made effective by the department to provide uniform methods and procedures to facilitate the administration and enforcement of all marketing orders and marketing agreements. Uniform methods and procedures may include, but shall not be limited to, methods and procedures pertaining to the receiving, depositing, and expenditure of moneys received from assessments; the preparation, handling, and payment of claim schedules for the payment of bills, salaries, and other obligations; the establishment of maximum rates to be allowed for travel expenses of council members and council employees; the preparation, verification, and filing of evidence relating to violations of marketing orders, agreements, and marketing regulations; and other fiscal and administrative activities which the department finds are necessary to obtain reasonable uniformity, efficiency, and economy in the administration and enforcement of any marketing order or agreement.

(18) "Administrative rules" means rules applicable to a particular marketing order or agreement, issued and made effective by the department upon recommendation of the advisory council concerned, to provide methods and procedures to facilitate the administration and enforcement of the marketing order or agreement. Rules may include, but shall not be limited to, methods and procedures for the purpose of explaining or clarifying the provisions of the marketing order or agreement; providing information to producers and handlers subject to the provisions of the marketing order or agreement; and other similar procedural and explanatory provisions to enable such producers and handlers better to understand the program and their respective obligations thereunder and thereby assist in obtaining cooperation and compliance.

(19) "Seasonal marketing regulations" means marketing regulations, applicable to a particular marketing order or agreement, made effective by the department upon recommendation of the advisory council concerned for the purpose of carrying into effect by administrative order, the marketing regulatory authorizations and provisions of the marketing order or agreement as such authorizations or provisions may be applicable to or required by changing economic or marketing conditions and requirements from time to time during each marketing season in which the marketing order or agreement may operate. Seasonal marketing regulations shall not extend beyond the marketing regulatory



authorizations specified in the marketing order or agreement concerned.

**History.**—s. 4, ch. 63-292; ss. 14, 35, ch. 69-106; s. 227, ch. 71-377; s. 6, ch. 78-95.

**573.805 Required consent by industry.**—No marketing order or amendment directly or indirectly affecting or regulating watermelons in the primary channel of trade of this state shall become effective unless the marketing order or amendment thereto has been consented to by a majority of producers or handlers of such commodity in Florida, as provided in s. 573.812.

**History.**—s. 5, ch. 63-292.

**573.806 Petition of producers.**—Upon the application or petition of 10 or more producers who state they have reason to believe that the issuance of a marketing order will tend to effectuate the declared policy of part III of this chapter, the department may give due notice of, and an opportunity for, a public hearing upon a proposed marketing order.

**History.**—s. 6, ch. 63-292; ss. 14, 35, ch. 69-106.

**573.807 Petitioner's expense.**—Prior to the issuance of any marketing order, the department shall require applicants to deposit with it such amounts as the department may deem necessary to defray the expenses of preparing and making effective such marketing order. These funds shall be received, deposited and disbursed by the department. Any balance remaining shall be returned to the petitioners if the proposed order does not become effective. If such proposed order does become effective, the total amount deposited may be refunded from the funds collected under the order upon the recommendation of the advisory council and approval of the department.

**History.**—s. 7, ch. 63-292; ss. 14, 35, ch. 69-106.

**573.808 Public hearing.**—Due notice of any hearing shall be given to all persons who may be directly affected by any action of the department. These hearings shall be open to the public. All testimony shall be received under oath and a full and complete record of all proceedings at any hearing shall be made and filed by the department in its office. All interested persons shall have a period of not less than 7 days following the public hearing for filing written briefs with the department concerning such action.

**History.**—s. 8, ch. 63-292; ss. 14, 35, ch. 69-106.

**573.809 Findings; required to issue order.**—After such notice and hearing, the department shall issue a marketing order if it finds and sets forth that the order will tend to accomplish the objectives and purposes of part III of this chapter, and:

(1) The provisions are necessary in order to effect a reasonable correlation of the supply of watermelons affected with market demands therefor and the marketing order or amendments thereto will tend to reestablish or maintain a level of prices for watermelons which will provide a purchasing power for this commodity adequate to maintain enough producers to provide the quantities and qualities of wa-

termelons necessary to fulfill the normal requirements of consumers.

(2) The marketing order or amendments thereto will tend to approach such equality of purchasing power at as rapid a rate as is feasible in view of the market demand for watermelons.

(3) The marketing order or amendments thereto are in conformity with the provisions of part III of this chapter and will tend to effectuate the declared purposes and policies of part III of this chapter.

(4) The marketing order or amendments thereto will protect the interests of consumers of watermelons, by exercising the powers of part III of this chapter only to such extent as is necessary to establish the equality of purchasing power described in subsection (1).

**History.**—s. 9, ch. 63-292; ss. 14, 35, ch. 69-106.

**573.810 Criteria considered in making findings.**—In making the findings set forth in s. 573.809, the department shall take into consideration all facts available with respect to:

(1) The quantity of watermelons available for distribution.

(2) The quantity of watermelons normally required by consumers.

(3) The cost of producing watermelons as determined by available records, statistics, and surveys.

(4) The purchasing power of consumers as indicated by reports and indexes.

(5) The level of prices of other commodities which compete with or are utilized as substitutes for watermelons.

(6) The level of prices of watermelons, in relation to services and articles which farmers commonly buy.

(7) Hardship resulting to any watermelon producer by the issuance of any proposed marketing order which cannot be remedied under the provision of s. 573.823.

**History.**—s. 10, ch. 63-292; ss. 14, 35, ch. 69-106.

**573.811 Procedure for referendum.**—

(1) With respect to any referendum conducted under the provisions of part III of this chapter, the department shall, before calling and announcing a referendum, fix, determine, and publicly announce, at least 15 days in advance of the date on which ballots and copies of the proposed order shall be mailed to all agricultural producers or handlers affected who are in the state and whose names and addresses are known, the date by which ballots must be returned to the department. Ballots and copies of the proposed order may be obtained from county agricultural agents' offices in the marketing area by producers or handlers not receiving them by mail.

(2) It shall be the duty of producers or handlers affected, who vote in the referendum to send their marked ballots to the department, which shall have the ballots counted by qualified and impartial personnel in its office, and the department shall within 10 days after the closing date for submitting ballots in any referendum, certify in writing and publish the results in a newspaper of general circulation in

the state and in such other newspapers as the department may prescribe.

History.—s. 11, ch. 63-292; ss. 14, 35, ch. 69-106.

#### **573.812 Referendum.—**

(1) No marketing order or amendments directly affecting handlers shall become effective unless and until the department finds that the order has been approved by ballot by the handlers covered by the marketing order, who during a representative period determined by the department handled no less than 51 percent of the volume of watermelons produced or marketed within the production or marketing area covered by the order, as provided in subsection (3).

(2) No marketing order or amendments thereto directly affecting and regulating producers shall become effective unless and until the department finds that the order has been approved by ballot by the producers covered by the marketing order, who during a representative period determined by the department produced not less than 75 percent of the volume of watermelons covered by the marketing order, and who total by number not less than 75 percent of the watermelon producers so covered by the marketing order, as provided in subsection (3).

(3) All percentages determined by the department as required in this section shall be computed on the basis of persons voting in the referendum.

History.—s. 12, ch. 63-292; ss. 14, 35, ch. 69-106.

**573.813 Notice of effective date of marketing order.**—Before the issuance of any marketing order, or any suspension, amendment, or termination thereof, a notice shall be posted on a public bulletin board to be maintained by the department in the Division of Marketing of the department in the Nathan Mayo Building, Tallahassee, Leon County, and a copy of the notice shall be published in a newspaper of general circulation in the state and in such other newspaper or newspapers as the department may prescribe. Notices published in the newspaper or newspapers shall be sent by first-class mail, by the department to those newspapers designated by it, the same date that the notice is posted on the aforesaid bulletin board with instructions to publish the same as a legal advertisement the first day after receipt of the notice as such newspaper's policy for publishing legal advertisements provides. No marketing order, or any suspension, amendment, or termination thereof shall become effective until the termination of a period of 5 days from the date of posting and publication. It shall also be the duty of the department to mail a copy of the notice of said issuance to every person who files in the office of the department a written request for such notice.

History.—s. 13, ch. 63-292; ss. 14, 35, ch. 69-106.

#### **573.814 Advisory council.—**

(1) Any marketing order issued shall provide in it a method for the selection of an advisory council in the Department of Agriculture and Consumer Services and the term of office of such council members. The advisory council shall assist the department in the administration of any marketing order. Members of the advisory council and their alternates shall be appointed by the department. The

number of producers, handlers, or distributors, upon any advisory council shall be such number of producers, handlers, or distributors as the department finds is necessary to assist properly in the administration of the order; provided always, the majority of the members and alternate members of any advisory council shall be producers.

(2) No members or alternate members of any advisory council shall receive a salary, but shall be reimbursed for traveling expenses as provided in s. 112.061. The department may authorize the advisory council to employ necessary personnel, including professional and technical services, fix their compensation and terms of employment, and to incur expenses, to be paid by the department from moneys collected as herein provided, as the department may deem necessary and proper to enable the advisory council to perform properly its authorized duties.

History.—s. 14, ch. 63-292; s. 19, ch. 63-400; ss. 14, 35, ch. 69-106; s. 14, ch. 77-108.

**573.815 Advisory council; duties.**—The duties of any advisory council shall be advisory only, and may include the following:

(1) To recommend to the department administrative rules and regulations relating to marketing order.

(2) To receive and report to the department complaints or violations of the marketing order.

(3) To recommend to the department amendments to the marketing order.

(4) To assist the department in the assessment of members of the industry and in the collection of funds to cover expenses incurred by the department in the administration of the marketing order.

(5) To assist the department in the collection of information and data which the department may deem necessary to the proper administration of part III of this chapter.

History.—s. 15, ch. 63-292; s. 228, ch. 71-377.

**573.816 Advisory council; exemption from liability.**—The members and alternate members of any advisory council, duly appointed by the department, including employees of the council, shall not be held responsible individually in any way whatsoever to any producer, distributor, or other handler or any other person for errors in judgment, mistakes, or other acts, either of commission or omission as principal, agent, person, or employee, except for their own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act of any other member of any council.

History.—s. 16, ch. 63-292; ss. 14, 35, ch. 69-106.

**573.817 Possible subjects of marketing orders.**—Subject to the restrictions and limitations set forth herein, any marketing order issued by the department may contain any or all of the following provisions for regulating or providing methods for regulating producer marketing or the handling or any other of the operations of processing or distributing by handlers of watermelons within this state, but no others:

(1) Provisions for the establishment of plans and programs for advertising and sales promotion to maintain present markets or to create new or larger



markets for watermelons grown in Florida. The department is hereby authorized to prepare, issue, administer, and enforce plans and programs for promoting the sale of watermelons; provided that any plan or program shall be directed toward increasing the sale of the commodity without reference to a private brand or trade name.

(2) Provisions for carrying on research studies in the production or distribution of watermelons and for the expenditure of moneys for such purposes. In any research in production or distribution carried on hereunder, the department upon recommendation of the advisory council shall select the research project or projects to be carried on. These projects may be carried out by any research agency the department determines, based upon recommendations of the advisory council.

(3) Provisions relating to the prohibition of unfair trade practices. In addition to the unfair trade practices, now prohibited by law, applicable to the distribution or handling of watermelons within this state, the department is authorized to include in any marketing order issued provisions designed to correct any trade practices affecting the distributing or handling of watermelons within this state which the department finds are unfair and detrimental to the effectuation of the declared purposes of part III of this chapter, after a hearing, in which all interested persons are given an opportunity to be heard.

(4) Provisions establishing or providing for establishing, with respect to watermelons, either as delivered by producers to handlers, or as handled or otherwise prepared for market, or as marketed by producers or handlers:

(a) Grading standards of quality, condition, size, shape, maturity, pack, or any other criteria for indicating desirability of watermelons which standards may include minimum standards, provided the standards shall not be established below any minimum standards prescribed by law for this commodity.

(b) Uniform inspection, grading of, and proper labeling of watermelons in accordance with the standards so established.

(c) Fixing the size, weight, capacity, dimensions, or pack of the containers which may be used in the packaging, transportation, sale, shipment, or other handling of watermelons.

(5) Provisions for the establishment of surplus, stabilization, or byproduct pools for watermelons or of any grade, size, quality, or condition, and providing for the sale of the commodity in any pool and for the equitable distribution among the persons participating of the net returns derived from the sale of the commodity. Whenever the marketing order authorizes the establishment of any pool or pools, the department shall have power to receive the commodity from each producer or handler and to handle the same according to the grade, size, quality, or condition and to account to each producer or handler participating upon a pro rata basis for the net proceeds derived from the sale.

(6) Provisions incidental to and not inconsistent with the terms, conditions, and provisions specified

and necessary to effectuate the other provisions of such marketing order.

**History.**—s. 17, ch. 63-292; ss. 14, 35, ch. 69-106; s. 3, ch. 78-341.

**573.818 Cooperation with other governments.**—The department is authorized to confer with and cooperate with the legally constituted authorities of other states and of the United States, for the purposes of obtaining uniformity in the administration of federal and state marketing regulations, licenses or orders, and the department is authorized to conduct joint hearings, issue joint or concurrent marketing orders, and may exercise any administrative authority prescribed by part III of this chapter to effect uniformity of administration and regulation.

**History.**—s. 18, ch. 63-292; ss. 14, 35, ch. 69-106.

**573.819 Limited marketing orders.**—A marketing order issued by the department may be limited in application by prescribing the marketing areas or portions of the state in which a particular order shall be effective; provided that no marketing order shall be issued by the department unless it embraces all persons of a like class who are engaged in a specific and distinctive agricultural industry or trade within the prescribed marketing area or portion of the state in which a particular order shall be effective. The provisions of part III of this chapter shall not apply to any part of the state west of the Apalachicola River.

**History.**—s. 19, ch. 63-292; ss. 14, 35, ch. 69-106.

**573.820 Marketing agreement.**—In order to effectuate the declared policy of part III of this chapter, the department shall have the power to enter into marketing agreements, which agreements may contain any of those provisions contained in s. 573.817, with distributors, producers, and others engaged in the handling of watermelons, regulating the handling of the commodity, which marketing agreements shall be binding upon the signatories thereto exclusively. The execution of a marketing agreement shall in no manner affect the issuance, administration, or enforcement of any marketing order. The department may issue a marketing order without executing a marketing agreement, or may execute a marketing agreement and issue a marketing order covering the same commodity.

**History.**—s. 20, ch. 63-292; ss. 14, 35, ch. 69-106; s. 6, ch. 78-95.

**573.821 Assessment; funds; audit; loans.**—

(1) Every person engaged in the production, distributing, or handling of watermelons within this state, and directly affected by any marketing order, shall pay to the department at such times and in such installments as the department may prescribe, such person's pro rata share of necessary expenses, to provide funds to defray the necessary expenses incurred by the department in the formulation, issuance, administration, and enforcement of any marketing order. Each person's share of such expenses shall be that proportion which the total volume of watermelons produced, distributed, or handled by the person during the current marketing season, or part thereof covered by such marketing order, is of the total volume of the commodity produced, distrib-

uted, or handled by all such persons during the same current marketing season or part thereof. The department, after receiving the recommendations of the advisory council, shall fix the rate of assessment on the volume of watermelons sold or some other equitable basis. For convenience of collection, upon request of the department, handlers of the commodity shall pay producer assessments. Handlers paying assessments for and on behalf of any producers shall at their discretion, collect the producer assessments from any moneys owed by the handlers to the producers.

(2) The department may require every producer, distributor, or handler directly affected by any marketing order to deposit with it in advance cash or sufficient bond based upon the estimated volume of watermelons to be handled during the period or periods covered by the marketing order to defray the costs involved in the formulation, issuance, administration, and enforcement of any marketing order. At the close of each marketing season during which the marketing order is effective, the sum so deposited shall be adjusted to the amount which is chargeable against the producer, distributor, or handler upon the basis of the volume of watermelons handled during the period or periods. The department shall prescribe the rules and regulations with respect to assessment and collection of these funds.

(3) Any money so collected shall be used to defray actual expenses incurred by the department. Any moneys remaining in the fund, at the discretion of the department, may be refunded at the close of any marketing season upon a pro rata basis to all persons from whom the funds were collected. Upon termination by the department of any marketing order, all moneys remaining and not required to defray the expenses of the order shall be returned by the department upon a pro rata basis to all persons from whom the funds were collected.

(4) In the event of the levying and collecting of assessments, as provided herein, for each fiscal year in which assessment funds are received by the department, the department shall cause to be made a thorough annual audit of the books and accounts by a certified public accountant, such audit to be completed within 60 days after the end of the fiscal year. The department and all producers and handlers covered by the marketing order shall be properly advised of the details of the annual official audit of the accounts as shown by the certified public accountant within 30 days of such audit.

(5) Any assessment levied, in the specified amount as may be determined by the department, shall constitute a personal debt of every person so assessed and shall be due and payable to the department; the department may file a complaint against any person or persons in a state court of competent jurisdiction for the collection of the assessment.

*History.*—s. 21, ch. 63-292; ss. 14, 35, ch. 69-106; s. 229, ch. 71-377.

#### **573.822 Department; powers and duties.—**

(1) The department shall administer and enforce the provisions of part III of this chapter within the Division of Marketing in the department. In order to effectuate the declared purposes of part III of this chapter, the department is authorized to issue, administer, and enforce the provisions of any market-

ing agreement or order, regulating producer marketing and handling of watermelons in the primary channel of trade.

(2) The department shall have power to establish general rules and regulations for uniform application to all marketing orders and marketing agreements as may be necessary to facilitate the administration and enforcement of the marketing orders and agreements. These general rules shall not be applicable to the provisions of part III of this chapter relative to posting, publications and effective date. General rules shall be mailed to the advisory council for each marketing order or marketing agreement in active operation.

(3) Upon recommendation of the advisory council concerned, the department shall have power to establish administrative rules and regulations for each marketing order or marketing agreement issued and made effective as may be necessary to facilitate the administration and enforcement of each order or agreement.

(4) Upon recommendation of the advisory council concerned, the department shall have power to issue and make effective seasonal marketing regulations authorized by the provisions of any marketing order or marketing agreement necessary to carry out and make effective the purposes and provisions of any marketing order or agreement. Notice of any regulations issued by the department shall be given to all producers and handlers directly affected.

(5) Upon finding that any regulation issued pursuant to the provisions of a marketing order imposes an unfair burden upon any person or group, the department shall exempt such person or group from the provisions of such regulation and, upon finding that any regulation in effect under a marketing order does not tend to accomplish the purpose of part III of this chapter, the department shall suspend or terminate such regulation.

*History.*—s. 22, ch. 63-292; ss. 14, 35, ch. 69-106.

#### **573.823 Exemptions.—**

(1) The department may adopt the procedures pursuant to which certificates of exemption will be issued to producers or handlers.

(2) The department may issue certificates of exemption to any applicant who applies for an exemption and furnishes adequate evidence to the department, that by reason of a marketing order, the applicant has been adversely affected, unduly burdened or the result of the marketing order is confiscatory by reason of acts beyond the applicant's control or by acts beyond reasonable expectation.

(3) The department shall be permitted at any time to make a thorough investigation of any applicant's claim pertaining to exemption.

*History.*—s. 23, ch. 63-292; ss. 14, 35, ch. 69-106; s. 230, ch. 71-377.

**573.824 Termination of orders.**—The department shall suspend or terminate the marketing order or any provision of the marketing order, whenever it finds the provision or order does not tend to effectuate the declared purposes of part III of this chapter, within the standards and subject to the limitations and restrictions herein imposed and it further finds upon a referendum called by the department that 51 percent of the producers who are en-



gaged within the state in the production of watermelons for market, covered by the marketing order, and who produce for market more than 51 percent of the volume of such commodity produced within the state for market are opposed to the said marketing order; provided that the suspension or termination shall not be effective until the expiration of the current marketing season. If the department finds that the termination of any marketing order is requested in writing by more than 51 percent of the producers who are engaged within the state in the production of watermelons for market, covered by the marketing order, and who produce for market more than 51 percent of the volume of such commodity produced within the state for market, covered by the order, and the department further finds the marketing order obstructs or does not tend to carry out the declared policy and purposes of part III of this chapter it shall terminate or suspend for a specified period the marketing order or provision thereof; provided that the termination shall be effective only if announced on or before the date, prior to the end of the current marketing period, as may be specified in the order.

**History.**—s. 24, ch. 63-292; ss. 14, 35, ch. 69-106.

**573.825 Inspections.**—Any authorized inspector or other authorized person discharging his duties in the checking of compliance with the provisions of any marketing order may enter and inspect any premises, enclosure, building, or conveyance where he has reason to believe any watermelons subject to a marketing order are produced, stored, being prepared for market or marketed, and inspect or cause to be inspected representative samples of the commodity as may be necessary to determine whether or not any lot of watermelons is in compliance with applicable regulations of any marketing order.

**History.**—s. 25, ch. 63-292.

**573.826 Maintenance and production of records.**—

(1) The department may require any and all persons directly affected by and subject to the provisions of any marketing order to maintain books and records reflecting their operations under the marketing order, and to furnish to the department or its duly authorized or designated representative or representatives any information as may be from time to time requested by them relating to operations under said marketing order and to permit the inspection by the department or its duly authorized or designated representative or representatives of such portions of the books and records as relate to operations under the marketing order.

(2) Information obtained by any person shall be confidential and shall not be disclosed by him to any other person except to a person with like right to obtain it, or any attorney employed to give legal advice or by court order.

(3) The department or its duly authorized or designated representative or representatives, may hold hearings, take testimony, administer oaths, subpoena witnesses, and issue subpoenas for the production of books, records, or documents relevant and material to the subject matter of the hearings.

(4) No person shall be excused from attending

and testifying or from producing documentary evidence before the department or its duly authorized or designated representative or representatives, in obedience to the subpoena of the department on the ground or the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may be so required to testify, or produce evidence, documentary or otherwise, before the department in obedience to a subpoena issued pursuant to this part; provided, that no natural person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

**History.**—s. 26, ch. 63-292; ss. 14, 35, ch. 69-106.

**573.827 Penalties; violation; hearings.**—

(1) Every person who violates any provision of part III of this chapter, or any provision of any marketing agreement or order duly issued by the department, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.083. Each day during which any of the violations above referred to continue after the department has issued a cease and desist order against the violator shall constitute a separate offense. Any fine imposed by a court of competent jurisdiction shall be transmitted by the clerk of such court to the department for deposit.

(2) Upon the filing of a verified complaint with the department charging a violation of any provision of part III of this chapter, or of any provision of any marketing order issued by the department hereunder, or of any provision of any marketing agreement enforced by the department, and prior to institution of any court proceedings authorized, the department may, at its discretion, refer the matter to the Department of Legal Affairs or a prosecuting attorney of this state having jurisdiction for action pursuant to the provisions of part III of this chapter or proceed to consider the charges set forth in such verified complaint.

(3) If the department finds that no violation has occurred, it shall forthwith dismiss the complaint.

(4) If the department finds that a violation has occurred, it shall so enter its findings. Should the defendant or defendants thereafter fail, neglect, or refuse to desist from the violation within the time specified by the department, the department may thereupon file a complaint against the defendant or defendants in a court of competent jurisdiction.

(5) The Department of Legal Affairs of Florida, or any prosecuting attorney of this state having jurisdiction, may upon his own initiative and shall upon complaint of any person, if after investigation, he believes the violation to have occurred, bring an action in the name of the state in any court of competent jurisdiction within the state against any person violating any provision of part III of this chapter or any marketing order duly issued by the department or any marketing agreement enforced by the department.

(6) The several circuit courts of the state, sitting in chancery, are hereby vested with jurisdiction spe-

cifically to enforce and to enjoin and restrain any person from violating any provisions of part III of this chapter, or of any marketing order duly issued by the department or any marketing agreement enforced by the department in any circuit court; and in any such proceeding it shall not be necessary for the department to allege or prove that an adequate remedy at law does not exist. Circuit courts may issue a temporary restraining order and preliminary injunction, as in other actions for injunctive relief, and upon final hearing, if final decree be in favor of the department, it shall provide that the defendant or defendants pay its reasonable costs of each suit, including reasonable attorneys' fees to be fixed by the court. Action may be commenced either in the county where the defendant resides, or in the county where any other defendant resides, if more than one defendant, or in the county where any act of omission, or part thereof, complained of occurred.

(7) The provisions of part III of this chapter shall not be applicable to retailers of agricultural commodities except to the extent that any retailer also engages in the processing or distributing of agricultural commodities as defined in part III of this chapter.

(8) It shall be a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, for:

(a) Any person to willfully render or furnish a false or fraudulent report, statement or record required by the department, or any marketing agreement or marketing order effective thereunder.

(b) Any person engaged in the handling of any agricultural commodity or in the wholesale or retail trade thereof to fail or refuse to furnish to the department or its duly authorized agents, upon request, information concerning the name and address of the persons from whom he has received an agricultural commodity regulated by a marketing order issued and in effect hereunder, and the quantity of the commodity so received.

**History.**—s. 27, ch. 63-292; ss. 11, 14, 35, ch. 69-106; s. 588, ch. 71-136; s. 231, ch. 71-377; s. 6, ch. 78-95.

## PART IV

### SOYBEAN MARKETING

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**573.830 Short title.**—Part IV of this chapter may be known and cited as the "Florida Soybean Marketing Law."

**History.**—s. 1, ch. 70-258.

### **573.831 Legislative findings; declaration of policy.**—

(1) This law is passed:

(a) Because the marketing of soybeans in Florida in excess of reasonable and normal market demands therefor, disorderly marketing of such commodity, unfair methods of competition, and the inherent inability of individual producers to maintain present markets or to develop new and larger markets for Florida-produced soybeans result in an unreasonable and unnecessary economic waste of the agricultural wealth of this state. Such conditions jeopardize the continued production of adequate supplies of soybeans for the people of this state and other states and prevent soybean producers from obtaining a fair return from their labor, their farms, and their products. As a consequence, the purchasing power of such producers has been low in relation to that of persons engaged in other gainful occupations within this state and in all likelihood will continue to be so in the future unless these conditions are remedied. Soybean producers are thereby prevented from maintaining a proper and reasonable standard of living and from contributing their fair share to the support of the necessary governmental and educational functions, thus tending to increase unfairly the tax burdens of the other citizens of this state.

(b) Because these conditions vitally concern the health, peace, safety, and general welfare of the people of this state, it is hereby declared to be the policy of this state to aid soybean producers in preventing economic waste in the marketing of their commodity, to develop more efficient and equitable methods in the marketing of soybeans, and to aid soybean producers in restoring and maintaining their purchasing power at a more adequate, equitable, and reasonable level.

(2) The marketing of soybeans within this state is declared to be affected with a public interest. The provisions of this part are enacted in the exercise of the police powers of this state for the purpose of protecting the public health, peace, safety, and general welfare of the people.

**History.**—s. 2, ch. 70-258.

### **573.832 Purposes.**—The purposes of this part are:

(1) To enable soybean producers of this state, with the aid of the state, to correlate more effectively the marketing of their soybeans with market demands therefor.

(2) To establish and maintain orderly marketing of soybeans.



(3) To provide methods for the maintenance of present markets, or for the development of new and larger markets, for soybeans produced in Florida.

(4) To eliminate or reduce economic waste in the marketing of soybeans in Florida.

(5) To prevent, modify, or eliminate trade barriers which obstruct the free flow of soybeans to market.

History.—s. 3, ch. 70-258.

**573.833 Definitions.**—As used in this part:

(1) "Department" means the Department of Agriculture and Consumer Services.

(2) "Person" means an individual, firm, partnership, corporation, association, business trust, legal representative, or any other business unit.

(3) "Soybean" means all varieties and types of soybeans (*Glycine max*).

(4) "Producer" means any person engaged within this state in a proprietary capacity in the business of producing or causing to be produced, soybeans for market.

(5) Soybeans shall be deemed and held to be in the "primary channel of trade" when such commodity is cut, gathered from the ground, or otherwise harvested or prepared for sale in any manner for commercial purposes, but soybeans shall cease to be in the "primary channel of trade" if and when they leave intrastate commerce.

(6) "Handler" is synonymous with "shipper" and means any person, except a common or contract carrier of soybeans owned by another person, engaged within this state as a buyer or distributor in the business of buying or distributing soybeans in the primary channel of trade.

(7) "Distributor" means any person who engages in the operation of selling, marketing, or distributing, in the primary channel of trade, soybeans which he has produced, purchased or acquired from a producer, or is marketing on behalf of a producer, whether as owner, agent, employee, broker, or otherwise, but shall not include a retailer.

(8) "Buyer" means the person or organization, or agent for the person or organization, who buys, purchases, or takes possession of soybeans as one of the steps in the marketing of soybeans.

(9) "Marketing agreement" means an agreement between the department and distributors, producers, handlers, and others engaged in the handling of soybeans, regulating the handling of the commodity.

(10) "Marketing order" means an order issued by the department prescribing rules and regulations governing the distribution or handling, in any manner, of soybeans in the primary channel of trade during any specified period or periods.

(11) "To handle" means to engage in the business of a handler as herein defined.

(12) "To distribute" means to engage in the business of a distributor as herein defined.

(13) "Advertising and sales promotion," in addition to the ordinarily accepted meaning, means trade promotion and activities for the prevention, modification, or removal of trade barriers which restrict the free flow of soybeans to market and may include the presentation of facts to, and negotiations with, the state, federal, and foreign governmental

agencies on matters which affect the production and marketing of soybeans.

(14) "Advisory council" means the advisory administrative council or councils established pursuant to this part.

(15) "General rules" means rules applicable to all marketing orders and marketing agreements issued and made effective by the department to provide uniform methods and procedures to facilitate the administration and enforcement of all marketing orders and marketing agreements. Uniform methods and procedures may include, but shall not be limited to, methods and procedures pertaining to the receiving, depositing, and expenditure of moneys received from assessments; the preparation, handling, and payment of claim schedules for the payment of bills, salaries, and other obligations; the establishment of maximum rates to be allowed for travel expenses of council members and council employees; and the preparation, verification, and filing of evidence relating to violations of marketing orders, agreements, and marketing regulations; and other fiscal and administrative activities which the department finds are necessary to obtain reasonable uniformity, efficiency, and economy in the administration and enforcement of any marketing order or agreement.

(16) "Administrative rules" means rules applicable to a particular marketing order or agreement, issued and made effective by the department upon recommendation of the advisory council concerned, to provide methods and procedures to facilitate the administration and enforcement of the marketing order or agreement. Rules may include, but shall not be limited to, methods and procedures for the purpose of explaining or clarifying the provisions of the marketing order or agreement; providing information to producers and handlers subject to the provisions of the marketing order or agreement; and other similar procedural and explanatory provisions to enable such producers and handlers better to understand the program and their respective obligations thereunder and thereby assist in obtaining cooperation and compliance.

History.—s. 4, ch. 70-258; s. 6, ch. 78-95.

**573.834 Required consent by industry.**—No marketing order or amendment directly or indirectly affecting or regulating soybeans in the primary channel of trade of this state shall become effective unless the marketing order or amendment thereto has been consented to by a majority of producers or handlers of such commodity in Florida, as provided in s. 573.841.

History.—s. 5, ch. 70-258.

**573.835 Petition of producers.**—Upon the application or petition of 10 or more producers who state they have reason to believe that the issuance of a marketing order will tend to effectuate the declared policy of this part, the department shall give due notice of, and an opportunity for, a public hearing upon a proposed marketing order.

History.—s. 6, ch. 70-258.

**573.836 Petitioner's expense.**—Prior to the issuance of any marketing order, the department shall require applicants to deposit with it such amounts as the department may deem necessary to defray the expenses of preparing and making effective such marketing order. These funds shall be received, deposited, and disbursed by the department. Any balance remaining shall be returned to the petitioners if the proposed order does not become effective. If such proposed order does become effective, the total amount deposited may be refunded from the funds collected under the order upon the recommendation of the advisory council and approval of the department.

History.—s. 7, ch. 70-258.

**573.837 Public hearing.**—Due notice of any hearing shall be given to all persons who may be directly affected by any action of the department. These hearings shall be open to the public. All testimony shall be received under oath and a full and complete record of all proceedings at any hearing shall be made and filed by the department in the Mayo Building, Tallahassee. All interested persons shall have a period of not less than 7 days following the public hearing for filing written briefs with the department concerning such action.

History.—s. 8, ch. 70-258.

**573.838 Findings; required to issue order.**—After such notice and hearing, the department shall issue a marketing order if it finds and sets forth that the order will tend to accomplish the objectives and purposes of this part and that:

(1) The provisions are necessary in order to effect a reasonable correlation of the supply of soybeans affected with market demands therefor and the marketing order or amendments thereto will tend to re-establish or maintain a level of prices for soybeans which will provide a purchasing power for this commodity adequate to maintain enough producers to provide the quantities and qualities of soybeans necessary to fulfill the normal requirements of consumers.

(2) The marketing order or amendments thereto will tend to approach such equality of purchasing power at as rapid a rate as is feasible in view of the market demand for soybeans.

(3) The marketing order or amendments thereto are in conformity with the provisions of this part and will tend to effectuate the declared purposes and policies of this part.

(4) The marketing order or amendments thereto will protect the interests of consumers of soybeans by exercising the powers of this part only to such extent as is necessary to establish the equality of purchasing power described in subsection (1).

History.—s. 9, ch. 70-258.

**573.839 Criteria considered in making findings.**—In making the findings set forth in s. 573.838, the department shall take into consideration all facts available with respect to:

(1) The quantity of soybeans available for distribution.

(2) The quantity of soybeans normally required by consumers.

(3) The cost of producing soybeans as determined by available records, statistics, and surveys.

(4) The purchasing power of consumers as indicated by reports and indexes.

(5) The level of prices of other commodities which compete with or are utilized as substitutes for soybeans.

(6) The level of prices of soybeans in relation to services and articles which farmers commonly buy.

(7) Hardship resulting to any soybean producer by the issuance of any proposed marketing order which cannot be remedied under s. 573.852.

History.—s. 10, ch. 70-258.

#### **573.840 Procedure for referendum.**—

(1) With respect to any referendum conducted under this part, the department shall, before calling and announcing a referendum, fix, determine, and publicly announce, at least 15 days in advance of the date on which ballots and copies of the proposed order shall be mailed to all agricultural producers or handlers affected who are in the state and whose names and addresses are known, the date by which ballots must be returned to the department. Ballots and copies of the proposed order may be obtained from county agricultural agents' offices in the marketing area by producers or handlers not receiving them by mail.

(2) It shall be the duty of producers or handlers affected who vote in the referendum to send their marked ballots to the department, which shall have the ballots counted by qualified and impartial personnel of the department, and the department shall within 10 days after the closing date for submitting ballots in any referendum, certify in writing and publish the results in a newspaper of general circulation in the state and in such other newspapers as the department may prescribe.

History.—s. 11, ch. 70-258.

#### **573.841 Referendum.**—

(1) No marketing order or amendments directly affecting handlers shall become effective unless the department finds that the order has been approved by ballot by the handlers covered by the marketing order who, during a representative period determined by the department, handled no less than 51 percent of the volume of soybeans produced or marketed within the production or marketing area covered by the order, as provided in subsection (3).

(2) No marketing order or amendments thereto directly affecting and regulating producers shall become effective unless the department finds that the order has been approved by ballot by the producers covered by the marketing order who, during a representative period determined by the department, produced not less than 51 percent of the acreage of soybeans covered by the marketing order and who total by number not less than 65 percent of the soybean producers so covered by the marketing order, as provided in subsection (3).

(3) All percentages determined by the department as required in this section shall be computed on the basis of persons voting in the referendum.

History.—s. 12, ch. 70-258.



**573.842 Notice of effective date of marketing order.**—Before the issuance of any marketing order, or any suspension, amendment, or termination thereof, a notice shall be posted on a public bulletin board to be maintained by the department in the Division of Marketing, and a copy of the notice shall be published in a newspaper of general circulation in the state and in such other newspaper or newspapers as the department may prescribe. Notices published in the newspaper or newspapers shall be sent by first-class mail by the department to those newspapers designated by it the same date that the notice is posted on the aforesaid bulletin board, with instructions to publish the same as a legal advertisement the first day after receipt of the notice as such newspapers' policies for publishing legal advertisements provide. No marketing order, or any suspension, amendment, or termination thereof, shall become effective until the termination of a period of 5 days from the date of posting and publication. It shall also be the duty of the department to mail a copy of the notice of said issuance to every person who files with the department a written request for such notice.

*History.*—s. 13, ch. 70-258.

**573.843 Advisory council.**—

(1) Any marketing order issued shall provide in it a method for the selection of an advisory council and the term of office of the councilmen. The advisory council shall assist the department in the administration of any marketing order. Members of the advisory council and their alternates shall be appointed by the department. The number of producers, handlers, or distributors upon any advisory council shall be such number of producers, handlers, or distributors as the department finds necessary to assist properly in the administration of the order, but the majority of the members and alternate members of any advisory council shall be producers.

(2) No member or alternate member of any advisory council shall receive a salary, but shall be reimbursed for traveling expenses as provided in s. 112.061. The department may authorize the advisory council to employ necessary personnel, including professional and technical services, fix their compensation and terms of employment, and to incur expenses to be paid by the department from moneys collected as herein provided, as the department may deem necessary and proper to enable the advisory council to perform properly its authorized duties.

*History.*—s. 14, ch. 70-258; s. 1, ch. 70-439; s. 4, ch. 78-323.

*Note.*—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

**573.844 Same; duties.**—The duties of any advisory council shall be administrative only, and may include the following:

- (1) To recommend to the department administrative rules and regulations relating to the marketing order.
- (2) To receive and report to the department complaints or violations of the marketing order.
- (3) To recommend to the department amendments to the marketing order.
- (4) To assist the department in the assessment of members of the industry and in the collection of

funds to cover expenses incurred by the department in the administration of the marketing order.

(5) To assist the department in the collection of information and data which the department may deem necessary to the proper administration of this part.

*History.*—s. 15, ch. 70-258; s. 232, ch. 71-377; s. 4, ch. 78-323.

*Note.*—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

**573.845 Same; exemption from liability.**—The members and alternate members of any advisory council duly appointed by the department, including employees of the council, shall not be held responsible individually in any way whatsoever to any producer, distributor, or other handler or any other person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person, or employee, except for their own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act of any other member of any council.

*History.*—s. 16, ch. 70-258; s. 1, ch. 70-439; s. 4, ch. 78-323.

*Note.*—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

**573.846 Possible subjects of marketing orders.**—Subject to the restrictions and limitations set forth herein, any marketing order issued by the department may contain any of the following provisions for regulating, or providing methods for regulating, producer marketing or the handling or any other of the operations of processing or distributing by handlers of soybeans within this state, but no others:

(1) Provisions for the establishment of plans and programs for advertising and sales promotion to maintain present markets or to create new or larger markets for soybeans grown in Florida. The department is hereby authorized to prepare, issue, administer, and enforce plans and programs for promoting the sale of soybeans. Any such plan or program shall be directed toward increasing the sale of the commodity without reference to a private brand or trade name.

(2) Provisions for carrying on research studies in the production or distribution of soybeans and for the expenditure of moneys for such purposes. In any research in production or distribution carried on hereunder, the department, upon recommendation of the advisory council, shall select the research project or projects to be carried on. These projects may be carried out by any research agency the department determines, based upon recommendations of the advisory council.

(3) Provisions relating to the prohibition of unfair trade practices. In addition to the unfair trade practices now prohibited by law applicable to the distribution or handling of soybeans within this state, the department is authorized to include in any marketing order issued provisions designed to correct any trade practices affecting the distributing or handling of soybeans within this state which the department finds are unfair and detrimental to the effectuation of the declared purposes of this part, after a hearing in which all interested persons are given an opportunity to be heard.

(4) Provisions incidental to and not inconsistent

with the terms, conditions, and provisions specified and necessary to effectuate the other provisions of such marketing order.

History.—s. 17, ch. 70-258; s. 4, ch. 78-341.

**573.847 Cooperation with other governments.**—The department is authorized to confer with and cooperate with the legally constituted authorities of other states and of the United States for the purpose of obtaining uniformity in the administration of federal and state marketing regulations, licenses, or orders, and the department is authorized to conduct joint hearings, issue joint or concurrent marketing orders, and exercise any administrative authority prescribed by this part to effect uniformity of administration and regulation.

History.—s. 18, ch. 70-258.

**573.848 Limited marketing orders.**—A marketing order issued by the department may be limited in application by prescribing the marketing areas or portions of the state in which a particular order shall be effective. However, no marketing order shall be issued by the department unless it embraces all persons of a like class who are engaged in a specific and distinctive agricultural industry or trade within the prescribed marketing area or portion of the state in which a particular order shall be effective.

History.—s. 19, ch. 70-258.

**573.849 Marketing agreement.**—In order to effectuate the declared policy of this part, the department shall have the power to enter into marketing agreements which may contain any of those provisions contained in s. 573.846 with distributors, producers, and others engaged in the handling of soybeans, regulating the handling of the commodity, and which shall be binding upon the signatories thereto exclusively. The execution of a marketing agreement shall not affect the issuance, administration, or enforcement of any marketing order. The department may issue a marketing order without executing a marketing agreement, or may execute a marketing agreement and issue a marketing order covering the same commodity.

History.—s. 20, ch. 70-258; s. 6, ch. 78-95.

**573.850 Assessment; funds; audit; loans.**—

(1) Every person engaged in the production, distribution, or handling of soybeans within this state and directly affected by any marketing order shall pay to the department at such times and in such installments as the department may prescribe such person's pro rata share of necessary expenses to provide funds to defray the necessary expenses incurred by the department in the formulation, issuance, administration, and enforcement of any marketing order. Each person's share of such expenses shall be that proportion which the total volume of soybeans produced, distributed, or handled by the person during the current marketing season, or part thereof covered by such marketing order, is of the total volume of the commodity produced, distributed, or handled by all such persons during the same current marketing season or part thereof. The department, after receiving the recommendations of the advisory

council, shall fix the rate of assessment on the volume of soybeans sold or some other equitable basis. Such assessment shall not exceed 1 cent per bushel of soybeans subject to a marketing order or marketing agreement issued pursuant to this part. For convenience of collection and upon request of the department, handlers of the commodity shall pay producer assessments. Handlers paying assessments for and on behalf of any producers may collect the producer assessments from any moneys owed by the handlers to the producers.

(2) The department may require every producer, distributor, or handler directly affected by any marketing order to deposit with it in advance cash or sufficient bond based upon the estimated volume of soybeans to be handled during the period or periods covered by the marketing order to defray the costs involved in the formulation, issuance, administration, and enforcement of any marketing order. At the close of each marketing season during which the marketing order is effective the sum so deposited shall be adjusted to the amount which is chargeable against the producer, distributor, or handler upon the basis of the volume of soybeans handled during the period or periods. The department shall prescribe the rules and regulations with respect to assessment and collection of these funds.

(3) Any money so collected by the department shall be used to defray the actual expenses incurred by the department with respect to the soybean marketing order. Any moneys remaining in the fund, at the discretion of the department, may be refunded at the close of any marketing season upon a pro rata basis to all persons from whom the funds were collected. Upon termination by the department of any marketing order, all moneys remaining and not required to defray the expenses of the order shall be returned by the department upon a pro rata basis to all persons from whom the funds were collected.

(4) In the event of the levying and collecting of assessments, for each fiscal year in which assessment funds are received by the department, the department shall cause to be made a thorough annual audit of the books and accounts by a certified public accountant, and such audit shall be completed within 60 days after the end of the fiscal year. The department and all producers and handlers covered by the marketing order shall be properly advised of the details of the annual official audit of the accounts as shown by the certified public accountant within 30 days after completion of such audit.

(5) Any assessment levied in the specified amount as may be determined by the department shall constitute a personal debt of every person so assessed and shall be due and payable to the department. The department may file a complaint against any person or persons in a state court of competent jurisdiction for the collection of the assessment.

History.—s. 21, ch. 70-258; s. 1, ch. 70-439; s. 233, ch. 71-377.

**573.851 Department; powers and duties.**—

(1) The department shall administer and enforce the provisions of this part within the Division of Marketing. In order to effectuate the declared purposes of this part, the department is authorized to issue, administer, and enforce the provisions of any marketing agreement or order regulating producer



marketing and handling of soybeans in the primary channel of trade.

(2) The department shall have power to establish general rules and regulations for uniform application to all marketing orders and marketing agreements as may be necessary to facilitate the administration and enforcement of the marketing orders and agreements. These general rules shall not be applicable to the provisions of this part relative to posting, publications, and effective date. General rules shall be mailed to the advisory council for each marketing order or marketing agreement in active operation.

(3) Upon recommendation of the advisory council concerned, the department shall have power to establish administrative rules and regulations for each marketing order or marketing agreement issued and made effective as may be necessary to facilitate the administration and enforcement of each order or agreement.

(4) Upon recommendation of the advisory council concerned, the department shall have power to issue and make effective seasonal marketing regulations authorized by the provisions of any marketing order or marketing agreement necessary to carry out and make effective the purposes and provisions of any marketing order or agreement. Notice of any regulations issued by the department shall be given to all producers and handlers directly affected.

(5) Upon finding that any regulation issued pursuant to the provisions of a marketing order imposes an unfair burden upon any person or group, the department shall exempt such person or group from the provisions of such regulation, and, upon finding that any regulation in effect under a marketing order does not tend to accomplish the purpose of this part, the department shall suspend or terminate such regulation.

*History.*—s. 22, ch. 70-258.

**573.852 Assessment refund.**—Any person who has sold soybeans and had an assessment deducted from the sale price under terms of a marketing order issued pursuant to this part may by application in writing to the department secure a refund in the amount deducted. Such refund shall be payable only when the application shall have been mailed to the department within 60 days after the deduction. Application forms shall be made available and may be secured from the department, and each application shall have attached thereto an invoice of the sale. The department shall have 30 days from date of receipt to remit the refund. This section shall not be construed to require participation under any such marketing order, and any person who sells soybeans and does not desire to participate under such order shall be exempt from the assessment deductions herein referred to if such person notifies the department of such desire not less than 30 days prior to such sale.

*History.*—s. 23, ch. 70-258; s. 1, ch. 70-439.

**573.853 Termination of orders.**—The department shall suspend or terminate the marketing order or any provision of the marketing order whenever it finds the provision or order does not tend to effectuate the declared purposes of this part, within

the standards and subject to the limitations and restrictions herein imposed and it further finds upon a referendum called by the department that 51 percent of the producers who are engaged within the state in the production of soybeans for market, covered by the marketing order, and who produce for market more than 51 percent of the volume of such commodity produced within the state for market are opposed to the said marketing order; provided that the suspension or termination shall not be effective until the expiration of the current marketing season. If the department finds that the termination of any marketing order is requested in writing by more than 51 percent of the producers who are engaged within the state in the production of soybeans for market, covered by the marketing order, and who produce for market more than 51 percent of the volume of such commodity produced within the state for market, covered by the order, and the department further finds the marketing order obstructs or does not tend to carry out the declared policy and purposes of this part it shall terminate or suspend for a specified period the marketing order or provision thereof; provided that the termination shall be effective only if announced on or before the date, prior to the end of the current marketing period, as may be specified in the order.

*History.*—s. 24, ch. 70-258; s. 153, ch. 71-355.

**573.854 Inspections.**—Any authorized inspector or other authorized person discharging his duties in the checking of compliance with the provisions of any marketing order may enter and inspect any premises, enclosure, building, or conveyance when he has reason to believe any soybeans subject to a marketing order are produced, stored, being prepared for market, or marketed and inspect or cause to be inspected representative samples of the commodity as may be necessary to determine whether or not any lot of soybeans is in compliance with applicable regulations of any marketing order.

*History.*—s. 25, ch. 70-258.

**573.855 Maintenance and production of records.**—

(1) The department may require all persons directly affected by and subject to the provisions of any marketing order to maintain books and records reflecting their operations under the marketing order, to furnish to the department or its duly authorized or designated representative any information which may, from time to time, be requested by them relating to operations under said marketing order, and to permit the inspection by the department or its duly authorized or designated representative of such portions of the books and records as relate to operations under the marketing order.

(2) Information obtained by any person shall be confidential and shall not be disclosed by him to any other person except to a person with like right to obtain it or to any attorney employed to give legal advice or by court order.

(3) The department or its duly authorized or designated representative may hold hearings, take testimony, administer oaths, subpoena witnesses, and issue subpoenas for the production of books, records,

or documents relevant and material to the subject matter of the hearings.

(4) No person shall be excused from attending and testifying or from producing documentary evidence before the department or its duly authorized or designated representative in obedience to the subpoena of the department on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of it may tend to incriminate him or subject him to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may be so required to testify or produce evidence, documentary or otherwise, before the department in obedience to a subpoena issued pursuant to this section. No natural person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

**History.**—s. 26, ch. 70-258.

#### **573.856 Penalties; violation; hearings.—**

(1) Every person who violates any provision of this part or any provision of any marketing agreement or order duly issued by the department shall be guilty of a misdemeanor, and upon conviction, shall be punished by a fine of not less than \$200 or more than \$10,000. Each day during which any of the violations above referred to continue after the department has issued a cease and desist order against the violator shall constitute a separate offense. Any fine imposed by a court of competent jurisdiction shall be transmitted by the clerk of such court to the department.

(2) Upon the filing of a verified complaint with the department charging a violation of any provision of this part, of any marketing order issued by the department hereunder, or of any marketing agreement enforced by the department, and prior to institution of any court proceedings authorized, the department may refer the matter to the Department of Legal Affairs or a prosecuting attorney of this state having jurisdiction for action pursuant to the provisions of this part or proceed to consider the charges set forth in such verified complaint.

(3) If the department finds that no violation has occurred, it shall forthwith dismiss the complaint.

(4) If the department finds that a violation has occurred, it shall enter its findings and notify the parties to the complaint. Should the defendant or defendants thereafter fail, neglect, or refuse to desist from the violation within the time specified by the department, the department may thereupon file a complaint against the defendant or defendants in a court of competent jurisdiction.

(5) The Department of Legal Affairs or any prosecuting attorney of this state having jurisdiction may upon his own initiative, and shall upon complaint of any person, if, after investigation, he believes the violation to have occurred, bring an action in the name of the state in any court of competent jurisdiction within the state against any person violating any provision of this part or any marketing order duly issued by the department under this part or other marketing agreement enforced by the department under this part.

(6) The several circuit courts of the state are

hereby vested with jurisdiction specifically to enforce, and to enjoin and restrain any person from violating, any provisions of this part or of any marketing order duly issued by the department or any marketing agreement enforced by the department. In any such proceeding, it shall not be necessary for the department to allege or prove that an adequate remedy at law does not exist. Circuit courts may issue a temporary restraining order and preliminary injunction, as in other actions for injunctive relief, and upon final hearing, if final decree be in favor of the department, it shall provide that the defendant or defendants pay its reasonable costs of each suit, including reasonable attorneys' fees to be fixed by the court. Action may be commenced either in the county where the defendant resides, where any defendant resides, if more than one defendant, or where any act of omission, or part thereof, complained of occurred.

(7) The provisions of this part shall not be applicable to retailers of agricultural commodities except to the extent that any retailer also engages in the processing or distributing of agricultural commodities as defined in this part.

(8) It shall be a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, for:

(a) Any person willfully to render or furnish a false or fraudulent report, statement, or record required by the department or any marketing agreement or marketing order effective thereunder.

(b) Any person engaged in the handling of any soybeans or in the wholesale or retail trade thereof to fail or refuse to furnish to the department or its duly authorized agents, upon request, information concerning the name and address of the persons from whom he has received any soybeans regulated by a marketing order issued and in effect hereunder and the quantity of the commodity so received.

**History.**—s. 27, ch. 70-258; s. 1, ch. 70-439; s. 589, ch. 71-136; s. 234, ch. 71-377; s. 6, ch. 78-95.

## **PART V**

### **FLUE-CURED TOBACCO MARKETING**

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**573.857 Short title.**—Part V of this chapter may be known and cited as the "Florida Flue-cured Tobacco Marketing Law."

*History.*—s. 1, ch. 70-345.

**573.858 Purposes.**—The purposes of this part are:

(1) To enable flue-cured tobacco producers of this state, with the aid of the state, to correlate more effectively the marketing of their tobacco with market demands therefor.

(2) To establish and maintain orderly marketing of flue-cured tobacco.

(3) To provide methods for the maintenance of present markets, or for the development of new and larger markets, for flue-cured tobacco produced in Florida.

(4) To eliminate or reduce economic waste in the marketing of flue-cured tobacco in Florida.

(5) To prevent, modify, or eliminate trade barriers which obstruct the free flow of flue-cured tobacco to market.

*History.*—s. 2, ch. 70-345.

**573.859 Definitions.**—As used in this part:

(1) "Department" means the Department of Agriculture and Consumer Services.

(2) "Person" means an individual, firm, partnership, corporation, association, business trust, legal representative, or any other business unit.

(3) "Flue-cured tobacco" means all varieties and types of flue-cured tobacco grown in Florida.

(4) "Producer" means any person engaged within this state in a proprietary capacity in the business of producing, or causing to be produced, flue-cured tobacco for market.

(5) Flue-cured tobacco shall be deemed and held to be in the "primary channel of trade" when such commodity is harvested or prepared for sale in any manner for commercial purposes, but flue-cured tobacco shall cease to be in the "primary channel of trade" if and when it leaves intrastate commerce.

(6) "Handler" is synonymous with "shipper" and means any person, except a common or contract carrier of flue-cured tobacco owned by another person, engaged within this state as a buyer or distributor in the business of buying or distributing flue-cured tobacco in the primary channel of trade.

(7) "Distributor" means any person who engages in the operation of selling, marketing, or distributing, in the primary channel of trade, flue-cured tobacco which he has produced, purchased, or acquired from a producer, or is marketing on behalf of a producer, whether as owner, agent, employee, broker, or otherwise, but shall not include a retailer.

(8) "Buyer" means the person or organization or agent for the person or organization who buys, purchases, or takes possession of flue-cured tobacco as one of the steps in the marketing of flue-cured tobacco.

(9) "Marketing agreement" means an agreement

between the department and distributors, producers, handlers, and others engaged in the handling of flue-cured tobacco, regulating the handling of the commodity.

(10) "Marketing order" means an order issued by the department prescribing rules and regulations governing the distribution or handling, in any manner of flue-cured tobacco in the primary channel of trade during any specified period or periods.

(11) "To handle" means to engage in the business of a handler as herein defined.

(12) "To distribute" means to engage in the business of a distributor as herein defined.

(13) "Advertising and sales promotion," in addition to the ordinarily accepted meaning, means trade promotion and activities for the prevention, modification, or removal of trade barriers which restrict the free flow of flue-cured tobacco to market and may include the presentation of facts to, and negotiations with, the state, federal, and foreign governmental agencies on matters which affect the production and marketing of flue-cured tobacco.

<sup>1</sup>(14) "Advisory council" means the advisory administrative council or councils established pursuant to this part.

(15) "General rules" means rules applicable to all marketing orders and marketing agreements issued and made effective by the department to provide uniform methods and procedures to facilitate the administration and enforcement of all marketing orders and marketing agreements. Uniform methods and procedures may include, but shall not be limited to, methods and procedures pertaining to the receiving, depositing, and expenditure of moneys received from assessments; the preparation, handling, and payment of claim schedules for the payment of bills, salaries, and other obligations; the establishment of maximum rates to be allowed for travel expenses of council members and council employees; the preparation, verification, and filing of evidence relating to violations of marketing orders, agreements, and marketing regulations; and other fiscal and administrative activities which the department finds are necessary to obtain reasonable uniformity, efficiency, and economy in the administration and enforcement of any marketing order or agreement.

(16) "Administrative rules" means rules applicable to a particular marketing order or agreement, issued and made effective by the department upon recommendation of the advisory council concerned to provide methods and procedures to facilitate the administration and enforcement of the marketing order or agreement. Rules may include, but shall not be limited to, methods and procedures for the purpose of explaining or clarifying the provisions of the marketing order or agreement; providing information to producers and handlers subject to the provisions of the marketing order or agreement; and other similar procedural and explanatory provisions to enable such producers and handlers better to understand the program and their respective obligations thereunder and thereby assist in obtaining cooperation and compliance.

*History.*—s. 3, ch. 70-345; s. 6, ch. 78-95; s. 4, ch. 78-323.

<sup>1</sup>*Note.*—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

**573.860 Required consent by industry.**—No marketing order or amendment directly or indirectly affecting or regulating flue-cured tobacco in the primary channel of trade of this state shall become effective unless the marketing order or amendment thereto is consented to by a majority of producers or handlers of such commodity in Florida as provided in s. 573.867.

History.—s. 4, ch. 70-345.

**573.861 Petition of producers.**—Upon the application or petition of 10 or more producers who state they have reason to believe that the issuance of a marketing order will tend to effectuate the declared policy of this part, the department may give due notice of, and an opportunity for, a public hearing upon a proposed marketing order.

History.—s. 5, ch. 70-345.

**573.862 Petitioner's expense.**—Prior to the issuance of any marketing order, the department shall require applicants to deposit with it such amounts as the department may deem necessary to defray the expenses of preparing and making effective such marketing order. These funds shall be received, deposited, and disbursed by the department. Any balance remaining shall be returned to the petitioners if the proposed order does not become effective. If such proposed order does become effective, the total amount deposited may be refunded from the funds collected under the order upon the recommendation of the advisory council and approval of the department.

History.—s. 6, ch. 70-345.

**573.863 Public hearing.**—Due notice of any hearing shall be given to all persons who may be directly affected by any action of the department. These hearings shall be open to the public. All testimony shall be received under oath, and a full and complete record of all proceedings at any hearing shall be made and filed by the department in the Mayo Building, Tallahassee. All interested persons shall have a period of not less than 7 days following the public hearing for filing written briefs with the department concerning such action.

History.—s. 7, ch. 70-345.

**573.864 Findings; required to issue order.**—After such notice and hearing, the department shall issue a marketing order if it finds and sets forth that the order will tend to accomplish the objectives and purposes of this part and that:

(1) The provisions are necessary in order to effect a reasonable correlation of the supply of flue-cured tobacco affected with market demands therefor and the marketing order or amendments thereto will tend to reestablish or maintain a level of prices for flue-cured tobacco which will provide a purchasing power for this commodity adequate to maintain enough producers to provide the quantities and qualities of flue-cured tobacco necessary to fulfill the normal requirements of consumers.

(2) The marketing order or amendments thereto will tend to approach such equality of purchasing power at as rapid a rate as is feasible in view of the market demand for flue-cured tobacco.

(3) The marketing order or amendments thereto are in conformity with the provisions of this part and will tend to effectuate the declared purposes and policies of this part.

(4) The marketing order or amendments thereto will protect the interests of consumers of flue-cured tobacco by exercising the powers of this part only to such extent as is necessary to establish the equality of purchasing power described in subsection (1).

History.—s. 8, ch. 70-345.

**573.865 Criteria considered in making findings.**—In making the findings set forth in s. 573.864, the department shall take into consideration all facts available with respect to:

(1) The quantity of flue-cured tobacco available for distribution.

(2) The quantity of flue-cured tobacco normally required by consumers.

(3) The cost of producing flue-cured tobacco as determined by available records, statistics, and surveys.

(4) The purchasing power of consumers as indicated by reports and indexes.

(5) The level of prices of other commodities which compete with or are utilized as substitutes for flue-cured tobacco.

(6) The level of prices of flue-cured tobacco in relation to services and articles which farmers commonly buy.

(7) Hardship resulting to any flue-cured tobacco producer by the issuance of any proposed marketing order which cannot be remedied under s. 573.878.

History.—s. 9, ch. 70-345.

**573.866 Procedure for referendum.**—

(1) With respect to any referendum conducted under this part, the department shall, before calling and announcing a referendum, fix, determine, and publicly announce, at least 15 days in advance of the date on which ballots and copies of the proposed order shall be mailed to all agricultural producers or handlers affected who are in the state and whose names and addresses are known, the date by which ballots must be returned to the department. Ballots and copies of the proposed order may be obtained from county agricultural agents' offices in the marketing area by producers or handlers not receiving them by mail.

(2) It shall be the duty of producers or handlers affected who vote in the referendum to send their marked ballots to the department, which shall have the ballots counted by qualified and impartial personnel of the department, and the department shall, within 10 days after the closing date for submitting ballots in any referendum, certify in writing and publish the results in a newspaper of general circulation in the state and in such other newspapers as the department may prescribe.

History.—s. 10, ch. 70-345.

**573.867 Referendum.**—

(1) No marketing order or amendments directly affecting handlers shall become effective unless the department finds that the order has been approved by ballot by the handlers covered by the marketing order who, during a representative period deter-



mined by the department, handled no less than 51 percent of the volume of flue-cured tobacco produced or marketed within the production or marketing area covered by the order, as provided in subsection (3).

(2) No marketing order or amendments thereto directly affecting and regulating producers shall become effective until the department finds that the order has been approved by ballot by the producers covered by the marketing order who, during a representative period determined by the department, produced not less than 51 percent of the acreage of flue-cured tobacco covered by the marketing order and who total by number not less than 65 percent of the flue-cured tobacco producers so covered by the marketing order, as provided in subsection (3).

(3) All percentages determined by the department as required in this section shall be computed on the basis of persons voting in the referendum.

**History.**—s. 11, ch. 70-345.

**573.868 Notice of effective date of marketing order.**—Before the issuance of any marketing order, or any suspension, amendment, or termination thereof, a notice shall be posted on a public bulletin board to be maintained by the department in the Division of Marketing, and a copy of the notice shall be published in a newspaper of general circulation in the state and such other newspaper or newspapers as the department may prescribe. Notices published in the newspaper or newspapers shall be sent by first-class mail by the department to those newspapers designated by it the same date that the notice is posted on the aforesaid bulletin board, with instructions to publish the same as a legal advertisement the first day after receipt of the notice as such newspapers' policies for publishing legal advertisements provide. No marketing order or any suspension, amendment, or termination thereof shall become effective until the termination of a period of 5 days from the date of posting and publication. It shall also be the duty of the department to mail a copy of the notice of said issuance to every person who files with the department a written request for such notice.

**History.**—s. 12, ch. 70-345.

**573.869 Advisory council.**—

(1) Any marketing order issued shall provide in it a method for the selection of an advisory council and the term of office of the councilmen. The advisory council shall assist the department in the administration of any marketing order. Members of the advisory council and their alternates shall be appointed by the department. The number of producers, handlers, or distributors upon any advisory council shall be such number of producers, handlers, or distributors as the department finds necessary to assist properly in the administration of the order, but the majority of the members and alternate members of any advisory council shall be producers.

(2) No member or alternate member of any advisory council shall receive a salary, but shall be reimbursed for traveling expenses as provided in s. 112.061. The department may authorize the advisory council to employ necessary personnel, including professional and technical services, fix their com-

pensation and terms of employment, and incur expenses to be paid by the department from moneys collected as herein provided, as the department may deem necessary and proper to enable the advisory council to perform properly its authorized duties.

**History.**—s. 13, ch. 70-345; s. 1, ch. 70-439; s. 4, ch. 78-323.

**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

**573.870 Same; duties.**—The duties of any advisory council shall be administrative only, and may include the following:

(1) To recommend to the department administrative rules and regulations relating to the marketing order.

(2) To receive and report to the department complaints or violations of the marketing order.

(3) To recommend to the department amendments to the marketing order.

(4) To assist the department in the assessment of members of the industry and in the collection of funds to cover expenses incurred by the department in the administration of the marketing order.

(5) To assist the department in the collection of information and data which the department may deem necessary to the proper administration of this part.

**History.**—s. 14, ch. 70-345; s. 235, ch. 71-377; s. 4, ch. 78-323.

**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

**573.871 Same; exemption from liability.**—The members and alternate members of any advisory council duly appointed by the department, including employees of the council, shall not be held responsible individually in any way whatsoever to any producer, distributor, or other handler or any other person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person, or employee, except for their own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act of any other member of any council.

**History.**—s. 15, ch. 70-345; s. 1, ch. 70-439; s. 4, ch. 78-323.

**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

**573.872 Possible subjects of marketing orders.**—Subject to the restrictions and limitations set forth herein, any marketing order issued by the department may contain any of the following provisions, but no others, for regulating, or providing methods for regulating, producer marketing, the handling, or any other of the operations of processing or distributing by handlers of flue-cured tobacco within this state:

(1) Provisions for the establishment of plans and programs for advertising and sales promotion to maintain present markets or to create new or larger markets for flue-cured tobacco grown in Florida. The department is authorized to prepare, issue, administer, and enforce plans and programs for promoting the sale of flue-cured tobacco. Any such plan or program shall be directed toward increasing the sale of the commodity without reference to a private brand or trade name.

(2) Provisions for carrying on research studies in the production or distribution of flue-cured tobacco and for the expenditure of moneys for such purposes.

In any research in production or distribution carried on hereunder, the department, upon recommendation of the advisory council, shall select the research project or projects to be carried on. These projects may be carried out by any research agency the department determines, based upon recommendations of the advisory council.

(3) Provisions relating to the prohibition of unfair trade practices. In addition to the unfair trade practices now prohibited by law which apply to the distribution or handling of flue-cured tobacco within this state, the department is authorized to include in any marketing order issued provisions designed to correct any trade practices affecting the distributing or handling of flue-cured tobacco within this state which the department finds are unfair and detrimental to the effectuation of the declared purposes of this part after a hearing in which all interested persons are given an opportunity to be heard.

(4) Provisions incidental to and not inconsistent with the terms, conditions, and provisions specified and necessary to effectuate the other provisions of such marketing order.

History.—s. 16, ch. 70-345; s. 5, ch. 78-341.

**573.873 Cooperation with other governments.**—The department is authorized to confer with and cooperate with the legally constituted authorities of other states and of the United States for the purpose of obtaining uniformity in the administration of federal and state marketing regulations, licenses, or orders, and the department is authorized to conduct joint hearings, issue joint or concurrent marketing orders, and exercise any administrative authority prescribed by this part to effect uniformity of administration and regulation.

History.—s. 17, ch. 70-345.

**573.874 Limited marketing orders.**—A marketing order issued by the department may be limited in application by prescribing the marketing areas or portions of the state in which a particular order shall be effective. However, no marketing order shall be issued by the department unless it embraces all persons of a like class who are engaged in a specific and distinctive agricultural industry or trade within the prescribed marketing area or portion of the state in which a particular order shall be effective.

History.—s. 18, ch. 70-345.

**573.875 Marketing agreement.**—In order to effectuate the declared policy of this part, the department shall have the power to enter into marketing agreements which may contain any of those provisions contained in s. 573.872 with distributors, producers, and others engaged in the handling of flue-cured tobacco, regulating the handling of the commodity, and which shall be binding upon the signatories thereto exclusively. The execution of a marketing agreement shall not affect the issuance, administration, or enforcement of any marketing order. The department may issue a marketing order without executing a marketing agreement, or may execute a

marketing agreement and issue a marketing order covering the same commodity.

History.—s. 19, ch. 70-345; s. 6, ch. 78-95.

**573.876 Assessment; funds; audit; loans.**—

(1) Every person engaged in the production, distribution, or handling of flue-cured tobacco within this state and directly affected by any marketing order shall pay to the department at such times and in such installments as the department may prescribe such person's pro rata share of necessary expenses to provide funds to defray the necessary expenses incurred by the department in the formulation, issuance, administration, and enforcement of any marketing order. Each person's share of such expenses shall be that proportion which the total volume of flue-cured tobacco produced, distributed, or handled by the person during the current marketing season, or part thereof covered by such marketing order, is of the total volume of the commodity produced, distributed, or handled by all such persons during the same current marketing season or part thereof. The department, after receiving the recommendations of the advisory council, shall fix the rate of assessment on the number of acres or pounds of tobacco produced. Such assessment shall not exceed \$2 per acre or 10 cents per 100 pounds of flue-cured tobacco subject to a marketing order or marketing agreement issued pursuant to this part. For convenience of collection and upon request of the department, handlers of the commodity shall pay producer assessments. Handlers paying assessments for and on behalf of any producers may collect the producer assessments from any moneys owed by the handlers to the producers.

(2) The department may require every producer, distributor, or handler directly affected by any marketing order to deposit with it in advance cash or sufficient bond based upon the number of acres of flue-cured tobacco to be handled during the period or periods covered by the marketing order, to defray the costs involved in the formulation, issuance, administration, and enforcement of any marketing order. At the close of each marketing season during which the marketing order is effective, the sum so deposited shall be adjusted to the amount which is chargeable against the producer, distributor, or handler upon the basis of the acres of flue-cured tobacco handled during the period or periods. The department shall prescribe the rules and regulations with respect to assessment and collection of these funds.

(3) Any money so collected by the department shall be used to defray the actual expenses incurred by the department with respect to the flue-cured tobacco marketing order. Any moneys remaining in the fund, at the discretion of the department, may be refunded at the close of any marketing season upon a pro rata basis to all persons from whom the funds were collected. Upon termination by the department of any marketing order, all moneys remaining and not required to defray the expenses of the order shall be returned by the department upon a pro rata basis to all persons from whom the funds were collected.

(4) In the event of the levying and collecting of assessments, for each fiscal year in which assessment funds are received by the department, the department shall cause to be made a thorough annual



audit of the books and accounts by a certified public accountant, and such audit shall be completed within 60 days after the end of the fiscal year. The department and all producers and handlers covered by the marketing order shall be properly advised of the details of the annual official audit of the accounts as shown by the certified public accountant within 30 days of such audit.

(5) Any assessment levied in the specified amount as may be determined by the department, shall constitute a personal debt of every person so assessed and shall be due and payable to the department. The department may file a complaint against any person or persons in a state court of competent jurisdiction for the collection of the assessment.

*History.*—s. 20, ch. 70-345; s. 1, ch. 70-439; s. 236, ch. 71-377; s. 1, ch. 75-127.

#### **573.877 Department; powers and duties.—**

(1) The department shall administer and enforce the provisions of this part within the Division of Marketing. In order to effectuate the declared purposes of this part, the department is authorized to issue, administer, and enforce the provisions of any marketing agreement or order regulating producer marketing and handling of flue-cured tobacco in the primary channel of trade.

(2) The department shall have power to establish general rules and regulations for uniform application to all marketing orders and marketing agreements as may be necessary to facilitate the administration and enforcement of the marketing orders and agreements. These general rules shall not be applicable to the provisions of this part relative to posting, publications, and effective date. General rules shall be mailed to the advisory council for each marketing order or marketing agreement in active operation.

(3) Upon recommendation of the advisory council concerned, the department shall have power to establish administrative rules and regulations for each marketing order or marketing agreement issued and made effective as may be necessary to facilitate the administration and enforcement of each order or agreement.

(4) Upon recommendation of the advisory council concerned, the department shall have power to issue and make effective seasonal marketing regulations authorized by the provisions of any marketing order or marketing agreement necessary to carry out and make effective the purposes and provisions of any marketing order or agreement. Notice of any regulations issued by the department shall be given to all producers and handlers directly affected.

(5) Upon finding that any regulation issued pursuant to the provisions of a marketing order imposes an unfair burden upon any person or group, the department shall exempt such person or group from the provisions of such regulation, and, upon finding that any regulation in effect under a marketing order does not tend to accomplish the purpose of this part, the department shall suspend or terminate such regulation.

*History.*—s. 21, ch. 70-345.

#### **573.878 Exemptions.—**

(1) The advisory council may adopt, with approval of the department, procedures pursuant to which certificates of exemption will be issued to producers and handlers.

(2) The advisory council may issue certificates of exemption to any applicant who applies for an exemption.

*History.*—s. 22, ch. 70-345.

**573.879 Termination of orders.**—The department shall suspend or terminate the marketing order or any provision of the marketing order, whenever it finds the provision or order does not tend to effectuate the declared purposes of this part, within the standards and subject to the limitations and restrictions herein imposed and it further finds upon a referendum called by the department that 51 percent of the producers who are engaged within the state in the production of flue-cured tobacco for market, covered by the marketing order, and who produce for market more than 51 percent of the volume of such commodity produced within the state for market are opposed to the said marketing order; provided that the suspension or termination shall not be effective until the expiration of the current marketing season. If the department finds that the termination of any marketing order is requested in writing by more than 51 percent of the producers who are engaged within the state in the production of flue-cured tobacco for market, covered by the marketing order, and who produce for market more than 51 percent of the volume of such commodity produced within the state for market, covered by the order, and the department further finds the marketing order obstructs or does not tend to carry out the declared policy and purposes of this part, it shall terminate or suspend for a specified period the marketing order or provision thereof; provided that the termination shall be effective only if announced on or before the date, prior to the end of the current marketing period, as may be specified in the order, and all remaining funds shall be returned to the persons or groups who provided them on a pro rata basis.

*History.*—s. 23, ch. 70-345; s. 153, ch. 71-355.

**573.880 Inspections.**—Any authorized inspector or other authorized person discharging his duties in the checking of compliance with the provisions of any marketing order may, in the presence of the owner or an authorized representative of the individual or group who owns the premises, enter and inspect any premises, enclosure, building, or conveyance when he has reason to believe any flue-cured tobacco subject to a marketing order is produced, stored, being prepared for market, or marketed and inspect or cause to be inspected representative samples of the commodity as may be necessary to determine whether or not any lot of flue-cured tobacco is in compliance with applicable regulations of any marketing order.

*History.*—s. 24, ch. 70-345.

**573.881 Maintenance and production of records.—**

(1) The department may require all persons directly affected by and subject to the provisions of any marketing order to maintain books and records reflecting their operations under the marketing order, to furnish to the department or its duly authorized or designated representative any information which may from time to time be requested by it relating to operations under said marketing order, and to permit the inspection by the department or its duly authorized or designated representative or representatives of such portions of the books and records as relate to operations under the marketing order.

(2) Information obtained by any person shall be confidential and shall not be disclosed by him to any other person except to a person with like right to obtain it or to any attorney employed to give legal advice thereto or by court order.

(3) The department or its duly authorized or designated representative may hold hearings, take testimony, administer oaths, subpoena witnesses, and issue subpoenas for the production of books, records, or documents relevant and material to the subject matter of the hearings.

(4) No person shall be excused from attending and testifying or from producing documentary evidence before the department or its duly authorized or designated representative in obedience to the subpoena of the department on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of it may tend to incriminate him or subject him to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may be so required to testify or produce evidence, documentary or otherwise, before the department in obedience to a subpoena issued pursuant to this section. No natural person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

(5) No person who has received a certificate of exemption shall be required, prosecuted, subpoenaed, or otherwise forced to testify or to produce documentary or other evidence before the department or any representative of the department.

History.—s. 25, ch. 70-345.

**573.882 Penalties; violation; hearings.—**

(1) Any person who violates any provision of this part or any provision of any marketing agreement or order duly issued by the department is guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than \$200 or more than \$10,000. Each day during which any of the violations above referred to continue after the department has issued a cease and desist order against the violator shall constitute a separate offense. Any fine imposed and collected by a court of competent jurisdiction shall be transmitted by the clerk of such court to the department for deposit.

(2) Upon the filing of a verified complaint with the department charging a violation of any provision of this part, of any marketing order issued by the department hereunder, or of any marketing agreement enforced by the department, and prior to insti-

tution of any court proceedings authorized, the department may refer the matter to the Department of Legal Affairs or a prosecuting attorney of this state having jurisdiction for action pursuant to the provisions of this part or proceed to consider the charges set forth in such verified complaint.

(3) If the department finds that no violation has occurred, it shall forthwith dismiss the complaint.

(4) If the department finds that a violation has occurred, it shall enter its findings and notify the parties to the complaint. Should the defendant or defendants thereafter fail, neglect, or refuse to desist from the violation within the time specified by the department, the department may thereupon file a complaint against the defendant or defendants in a court of competent jurisdiction.

(5) The Department of Legal Affairs or any prosecuting attorney of this state having jurisdiction may upon his own initiative, and shall upon complaint of any person, if, after investigation, he believes the violation to have occurred, bring an action in the name of the state in any court of competent jurisdiction within the state against any person violating any provision of this part, any marketing order duly issued by the department, or any marketing agreement enforced by the department under the terms of this part.

(6) The several circuit courts of the state are hereby vested with jurisdiction specifically to enforce, and to enjoin and restrain any person from violating, any provisions of this part, any marketing order duly issued by the department under this part, or any marketing agreement enforced by the department in any circuit court; and in any such proceeding it shall not be necessary for the department to allege or prove that an adequate remedy at law does not exist. Circuit courts may issue a temporary restraining order and preliminary injunction, as in other actions for injunctive relief, and upon final hearing, if final decree be in favor of the department, it shall provide that the defendant or defendants pay it reasonable costs of each suit, including reasonable attorneys' fees to be fixed by the court. Action may be commenced either in the county where the defendant resides, where any other defendant resides, if more than one defendant, or where any act of omission, or part thereof, complained of occurred.

(7) The provisions of this part shall not be applicable to retailers of agricultural commodities except to the extent that any retailer also engages in the processing or distributing of agricultural commodities as defined in this part.

(8) It shall be a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, for:

(a) Any person willfully to render or furnish a false or fraudulent report, statement, or record required by the department or any marketing agreement or marketing order effective thereunder.

(b) Any person engaged in the handling of any flue-cured tobacco or in the wholesale or retail trade thereof to fail or refuse to furnish to the department or its duly authorized agents, upon request, information concerning the name and address of the persons from whom he has received any flue-cured tobacco regulated by a marketing order issued and in effect



hereunder and the quantity of the commodity so received.

**History.**—s. 26, ch. 70-345; s. 1, ch. 70-439; s. 591, ch. 71-136; s. 237, ch. 71-377; s. 6, ch. 78-95.

## PART VI

### PEANUT MARKETING

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**573.883 Short title.**—Part VI of this chapter may be known and cited as the "Florida Peanut Marketing Law."

**History.**—s. 1, ch. 72-135.

**573.884 Purposes.**—The purposes of this part are to:

- (1) Enable peanut producers of this state, with the aid of the state, to correlate more effectively the marketing of their peanuts with market demands therefor.
- (2) Establish and maintain orderly marketing of peanuts.
- (3) Provide methods for the maintenance of present markets, or for the development of new and larger markets, for peanuts produced in Florida.
- (4) Eliminate or reduce economic waste in the marketing of peanuts in Florida.
- (5) To provide representation in areas of economic importance to Florida peanut producers.

**History.**—s. 2, ch. 72-135.

**573.885 Definitions.**—As used in this part:

- (1) "Department" means the Department of Agriculture and Consumer Services.
- (2) "Person" means an individual, firm, partnership, corporation, association, business trust, legal representative, or any other business unit.
- (3) "Peanuts" means all varieties of *Arachis*

*hypogaea* grown in Florida that are subject to federal or state inspection.

(4) "Producer" means any person engaged within this state in a proprietary capacity in the business of producing, or causing to be produced, peanuts for market.

(5) Peanuts shall be deemed and held to be in the "primary channel of trade" when such commodity is harvested or prepared for sale in any manner for commercial purposes, but peanuts shall cease to be in the primary channel of trade if and when it leaves intrastate commerce.

(6) "Handler" is synonymous with "shipper" and means any person, except a common or contract carrier of peanuts owned by another person, engaged within this state as a buyer or distributor in the business of buying or distributing peanuts in the primary channel of trade.

(7) "Distributor" means any person who engages in the operation of selling, marketing, or distributing, in the primary channel of trade, peanuts which he has produced or purchased or acquired from a producer, or is marketing on behalf of a producer, whether as owner, agent, employee, broker, or otherwise, but shall not include a retailer.

(8) "Buyer" means the person, organization, or agent for the person or organization who buys, purchases, or takes possession of peanuts as one of the steps in the marketing of peanuts.

(9) "Marketing agreement" means an agreement between the department and distributors, producers, handlers, and others engaged in the handling of peanuts regulating the handling of the commodity.

(10) "Marketing order" means an order issued by the department prescribing rules and regulations governing the distribution or handling, in any manner, of peanuts in the primary channel of trade during any specified period or periods.

(11) "To handle" means to engage in the business of a handler as herein defined.

(12) "To distribute" means to engage in the business of a distributor as herein defined.

(13) "Advertising and sales promotion," in addition to the ordinarily accepted meaning, means trade promotion and activities for the prevention, modification, or removal of trade barriers which restrict the free flow of peanuts to market, and may include the presentation of facts to, and negotiations with, the state, federal, and foreign governmental agencies on matters which affect the production and marketing of peanuts.

(14) "Advisory council" means the Peanut Advisory Council established pursuant to this part.

(15) "General rules" means rules applicable to all marketing orders and marketing agreements, issued and made effective by the department, to provide uniform methods and procedures to facilitate the administration and enforcement of all marketing orders and marketing agreements. Uniform methods and procedures may include, but shall not be limited to, methods and procedures pertaining to the receiving, depositing, and expenditure of moneys received from assessments; the preparation, handling, and payment of claim schedules for the payment of bills, salaries, and other obligations; the establishment of maximum rates to be allowed for

travel expenses of council members and council employees; the preparation, verification, and filing of evidence relating to violations of marketing orders, agreements, and marketing regulations; and other fiscal and administrative activities which the department finds are necessary to obtain reasonable uniformity, efficiency, and economy in the administration and enforcement of any marketing order or agreement.

(16) "Administrative rules" means rules applicable to a particular marketing order or agreement, issued and made effective by the department upon recommendation of the advisory council, to provide methods and procedures to facilitate the administration and enforcement of the marketing order or agreement. Rules may include, but shall not be limited to, methods and procedures for the purpose of explaining or clarifying the provisions of the marketing order or agreement; providing information to producers and handlers subject to the provisions of the marketing order or agreement; and other similar procedural and explanatory provisions to enable such producers and handlers better to understand the program and their respective obligations thereunder and thereby assist in obtaining cooperation and compliance.

**History.**—s. 3, ch. 72-135; s. 6, ch. 78-95; s. 4, ch. 78-323.

**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

**573.886 Required consent by industry.**—No marketing order or amendment directly or indirectly affecting or regulating peanuts in the primary channel of trade of this state shall become effective unless the marketing order or amendment thereto is consented to by a majority of producers or handlers of such commodity in Florida, as provided in s. 573.893.

**History.**—s. 4, ch. 72-135.

**573.887 Petition of producers.**—Upon the application or petition of 10 or more producers who state they have reason to believe that the issuance of a marketing order will tend to effectuate the declared policy of this part, the department may give due notice of, and an opportunity for, a public hearing upon a proposed marketing order.

**History.**—s. 5, ch. 72-135.

**573.888 Petitioner's expense.**—Prior to the issuance of any marketing order, the department shall require applicants to deposit with it such amounts as the department may deem necessary to defray the expenses of preparing and making effective such marketing order. These funds shall be received, deposited, and disbursed by the department. Any balance remaining shall be returned to the petitioners if the proposed order does not become effective. If such proposed order does become effective, the total amount deposited may be refunded from the funds collected under the order upon the recommendation of the advisory council.

**History.**—s. 6, ch. 72-135.

**573.889 Public hearing.**—Due notice of any hearing shall be given to all persons who may be directly affected by an action of the department. Said hearing shall be open to the public. All testimony

shall be received under oath, and a full and complete record of all proceedings at any hearing shall be made and kept on file by the department. All interested persons shall have a period of not less than 7 days following the public hearing for filing written briefs with the department concerning such action.

**History.**—s. 7, ch. 72-135.

**573.89 Findings; required to issue order.**—After such notice and hearing, the department shall issue a marketing order if it finds and sets forth that the order will tend to accomplish the objectives and purposes of this part and:

(1) The provisions of said order are necessary in order to effect a reasonable correlation of the supply of peanuts affected with market demands therefor, and the marketing order or amendments thereto will tend to reestablish or maintain a level of prices for peanuts which will provide a purchasing power for this commodity adequate to maintain enough producers to provide the quantities and qualities of peanuts necessary to fulfill the normal requirements of consumers.

(2) The marketing order or amendments thereto will tend to approach such equality of purchasing power at as rapid a rate as is feasible in view of the market demand for peanuts.

(3) The marketing order or amendments thereto are in conformity with the provisions of this part and will tend to effectuate the declared purposes and policies of this part.

(4) The marketing order or amendments thereto will protect the interests of consumers of peanuts by exercising the powers of this part only to such extent as is necessary to establish the equality of purchasing power described in subsection (1).

**History.**—s. 8, ch. 72-135; s. 152, ch. 73-333.

**573.891 Criteria considered in making findings.**—In making the findings set forth in s. 573.89, the department shall take into consideration all facts available with respect to:

(1) The quantity of peanuts available for distribution.

(2) The quantity of peanuts normally required by consumers.

(3) The cost of producing peanuts, as determined by available records, statistics, and surveys.

(4) The purchasing power of consumers, as indicated by reports and indexes.

(5) The level of prices of other commodities which compete with, or are utilized as substitutes for, peanuts.

(6) The level of prices of peanuts in relation to services and articles which farmers commonly buy.

(7) Hardship resulting to any peanut producer by the issuance of any proposed marketing order which cannot be remedied under the provision of s. 573.904.

**History.**—s. 9, ch. 72-135.

**573.892 Procedure for referendum.**—

(1) With respect to any referendum conducted under the provisions of this part, the department shall, before calling and announcing a referendum, fix, determine, and publicly announce, at least 15 days in advance of the date on which ballots and



copies of the proposed order shall be mailed to all agricultural producers or handlers affected who are in the state and whose names and addresses are known, the date by which ballots must be returned to the department. Ballots and copies of the proposed order may be obtained from county agricultural agents' offices in the marketing area by producers or handlers not receiving them by mail.

(2) It shall be the duty of producers or handlers affected who vote in the referendum to send their marked ballots to the department which shall have the ballots counted by qualified and impartial personnel of the department, and the department shall, within 10 days after the closing date for submitting ballots in any referendum, certify in writing and publish the results in a newspaper of general circulation in the state and in such other newspapers as the department may prescribe.

*History.*—s. 10, ch. 72-135.

#### **573.893 Referendum.—**

(1) No marketing order or amendments directly affecting handlers shall become effective unless and until the department finds that the order has been approved by ballot by the handlers covered by the marketing order who, during a representative period determined by the department, handled no less than 51 percent of the volume of peanuts produced or marketed within the production or marketing area covered by the order, as provided in subsection (3).

(2) No marketing order or amendments thereto directly affecting and regulating producers shall become effective unless and until the department finds that the order has been approved by ballot by the producers covered by the marketing order who, during a representative period determined by the department, produced not less than 51 percent of the acreage of peanuts covered by the marketing order and who total by number not less than 65 percent of the peanut producers so covered by the marketing order, as provided in subsection (3).

(3) All percentages determined by the department as required in this section shall be computed on the basis of persons voting in the referendum.

*History.*—s. 11, ch. 72-135.

**573.894 Notice of effective date of marketing order.**—Before the issuance of any marketing order, or any suspension, amendment, or termination thereof, a notice shall be posted on a public bulletin board to be maintained by the department in the Division of Marketing, and a copy of the notice shall be published in a newspaper of general circulation in the state and in such other newspaper or newspapers as the department may prescribe. Notices published in the newspaper or newspapers shall be sent by first-class mail by the department to those newspapers designated by it the same date that the notice is posted on the aforesaid bulletin board, with instructions to publish the same as a legal advertisement the first day after receipt of the notice, as such newspaper's policy for publishing legal advertisements provides. No marketing order or any suspension, amendment, or termination thereof shall become effective until the termination of a period of 5 days from the date of posting and publication. It

shall also be the duty of the department to mail a copy of the notice of said issuance to every person who files with the department a written request for such notice.

*History.*—s. 12, ch. 72-135.

#### **573.895 Advisory council.—**

(1) Any marketing order issued shall provide in it a method for the selection of an advisory council and the term of office of each member. The advisory council shall advise the department in the administration of any marketing order. Members of the advisory council and their alternates shall be appointed by the Department of Agriculture and Consumer Services. The number of producers, handlers, or distributors upon any advisory council shall be such number of producers, handlers, or distributors as the department finds necessary properly to advise it in the administration of the order, but the majority of the members and alternate members of any advisory council shall be producers.

(2) No member or alternate member of any advisory council shall receive a salary, but shall be reimbursed for traveling expenses as provided in s. 112.061. The department may employ necessary personnel, including professional and technical services, fix their compensation and terms of employment, and incur expenses to be paid from moneys collected as herein provided.

*History.*—s. 13, ch. 72-135; s. 4, ch. 78-323.

*Note.*—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

**573.896 Advisory council; duties.**—The duties of any advisory council shall be advisory only and may include the following:

(1) To recommend to the department administrative rules and regulations relating to the marketing order.

(2) To receive and report to the department complaints or violations of the marketing order.

(3) To recommend to the department amendments to the marketing order.

(4) To advise the department in the assessment of members of the industry and in the collection of funds to cover expenses incurred by the department in the administration of the marketing order.

(5) To advise the department in the collection and dissemination of information and data which the department may deem necessary to the proper administration of this part.

*History.*—s. 14, ch. 72-135; s. 4, ch. 78-323.

*Note.*—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

**573.897 Advisory council; exemption from liability.**—The members and alternate members of any advisory council shall not be held responsible individually in any way whatsoever to any producer, distributor, or other handler or any other person for errors in judgment, mistakes, or other acts, either of commission or omission, except for their own individual acts of dishonesty or crime. No such member shall be held responsible individually for any act of any other member of the council.

*History.*—s. 15, ch. 72-135; s. 4, ch. 78-323.

*Note.*—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

**573.898 Possible subjects of marketing orders.**—Subject to the restrictions and limitations set forth herein, any marketing order issued by the department may contain any or all of the following provisions, but no others, for regulating, or providing methods for regulating, producer marketing, handling, or any other of the operations of processing or distributing by handlers of peanuts within this state.

(1) Provisions for the establishment of plans and programs for advertising and sales promotion to maintain present markets or to create new or larger markets for peanuts grown in Florida. The department is authorized to prepare, issue, administer, enter into contracts for, and enforce plans and programs for promoting the sale of peanuts. Any such plan or program shall be directed toward increasing the sale of the commodity without reference to a private brand or trade name.

(2) Provisions for carrying on research studies in the production or distribution of peanuts and for the expenditure of moneys for such purposes. In any research in production or distribution carried on hereunder, the department, upon recommendation of the advisory council, shall select the research project or projects to be carried on. These projects may be carried out by any research agency the department determines, based upon recommendations of the advisory council.

(3) Provisions for carrying on educational projects better to inform Florida peanut growers of the latest research data and legislation directly affecting the economic standing of producers of Florida peanuts.

(4) Provisions incidental to, and not inconsistent with, the terms, conditions, and provisions specified and necessary to effectuate the other provisions of such marketing order.

*History.*—s. 16, ch. 72-135.

**573.899 Cooperation with other governments.**—The department is authorized to confer with and cooperate with the legally constituted authorities of other states and of the United States for the purpose of obtaining uniformity in the administration of federal and state marketing regulations, licenses, or orders.

*History.*—s. 17, ch. 72-135.

**573.90 Limited marketing orders.**—A marketing order issued by the department may be limited in application by prescribing the marketing areas or portions of the state in which a particular order shall be effective, except that no marketing order shall be issued by the department unless it embraces all persons of a like class who are engaged in a specific and distinctive agricultural industry or trade within the prescribed marketing area or portion of the state in which a particular order shall be effective.

*History.*—s. 18, ch. 72-135.

**573.901 Marketing agreement.**—In order to effectuate the declared policy of this part, the department shall have the power to enter into marketing agreements, which agreements may contain any of those provisions contained in s. 573.898, with distributors, producers, and others engaged in the handling

of peanuts, regulating the handling of the commodity, which marketing agreements shall be binding upon the signatories thereto exclusively. The execution of a marketing agreement shall in no manner affect the issuance, administration, or enforcement of any marketing order. The department may issue a marketing order without executing a marketing agreement, or may execute a marketing agreement and issue a marketing order covering the same commodity.

*History.*—s. 19, ch. 72-135; s. 6, ch. 78-95.

**573.902 Assessment; funds; audit.**—

(1) Every person engaged in the production, distribution, or handling of peanuts within this state and directly affected by any marketing order shall pay to the department, at such times and in such installments as the department may prescribe, such person's pro rata share of necessary expenses to provide funds to defray the necessary expenses incurred by the department in the formulation, issuance, administration, and enforcement of any marketing order. Each person's share of such expenses shall be that proportion which the total volume of peanuts produced, distributed, or handled by the person during the current marketing season, or part thereof covered by such marketing order, is of the total volume of the commodity produced, distributed, or handled by all such persons during the same current marketing season or part thereof. The department, after receiving the recommendations of the advisory council, shall fix the rate of assessment on the number of tons of peanuts produced or some other equitable basis. Such assessment shall not exceed \$2 per ton of peanuts subject to a marketing order or marketing agreement issued pursuant to this part. For convenience of collection, upon request of the department, handlers of the commodity shall pay producer assessments. Handlers paying assessments for and on behalf of any producers shall, at their discretion, collect the producer assessments from any moneys owed by the handlers to the producers.

(2) The department may require every producer, distributor, or handler directly affected by any marketing order to deposit with it in advance cash or sufficient bond, based upon the number of tons of peanuts to be handled during the period or periods covered by the marketing order, to defray the costs involved in the formulation, issuance, administration, and enforcement of any marketing order. At the close of each marketing season during which the marketing order is effective, the sum so deposited shall be adjusted to the amount which is chargeable against the producer, distributor, or handler upon the basis of the tons of peanuts handled during the period or periods.

(3) Any money so collected shall be deposited in the general inspection trust fund of the state treasury. All moneys so collected shall be used, and are hereby appropriated, to defray the actual expenses incurred by the department as to each such marketing order. At the close of each fiscal period, the department shall, at its discretion and upon the recommendation of the advisory council, either refund all or a portion of any money which remains in such fund, upon a pro rata basis, to all persons from whom such funds were collected during the last fiscal peri-



od or carry all or a portion of such money over into the next succeeding fiscal period if the department finds that such money is required to defray subsequent expenses under the marketing order for which the funds were collected. Upon termination by the department of any such marketing order, all moneys remaining and not required by the department to defray the expenses of such order shall be returned by the department upon a pro rata basis to all persons from whom such funds were collected during the last fiscal period during which said funds were collected.

(4) Any assessment levied hereunder, in such specified amount as may be determined by the department pursuant to the provisions of this law, shall constitute a personal debt of every person so assessed and shall be due and payable to the department when payment is called for by the department. In the event of failure of such person or persons to pay any such assessment upon the date determined by the department, the department may file a complaint against such person or persons in a state court of competent jurisdiction for the collection thereof as provided in this law.

History.—s. 20, ch. 72-135.

#### **573.903 Department; powers and duties.—**

(1) The department shall administer and enforce the provisions of this part within the Division of Marketing. In order to effectuate the declared purposes of this part, the department is authorized to issue, administer, and enforce the provisions of any marketing agreement or order regulating producer marketing and handling of peanuts in the primary channel of trade.

(2) The department shall have power to establish general rules and regulations for uniform application to all marketing orders and marketing agreements as may be necessary to facilitate the administration and enforcement of the marketing orders and agreements. These general rules shall not be applicable to the provisions of this part relative to posting, publications, and effective date.

(3) Upon recommendation of the advisory council concerned, the department shall have power to establish administrative rules and regulations for each marketing order or marketing agreement issued and made effective as may be necessary to facilitate the administration and enforcement of each order or agreement.

(4) Upon recommendation of the advisory council concerned, the department shall have power to issue and make effective seasonal marketing regulations authorized by the provisions of any marketing order or marketing agreement necessary to carry out and make effective the purposes and provisions of any marketing order or agreement. Notice of any regulations issued by the department shall be given to all producers and handlers directly affected.

(5) Upon finding that any regulation issued pursuant to the provisions of a marketing order imposes an unfair burden upon any person or group, the department shall exempt such person or group from the provisions of such regulation, and, upon a find-

ing that any regulation in effect under a marketing order does not tend to accomplish the purpose of this part, the department shall suspend or terminate such regulation.

History.—s. 21, ch. 72-135.

**573.904 Exemptions.**—The department shall by rule adopt procedures by which certificates of exemption may be issued to producers and handlers and issue certification of exemption to any qualified applicant who complies with such rules or procedures adopted. This section shall not be construed to require participation under any such marketing order, and any person who sells peanuts and does not desire to participate under such order shall be exempt from the assessment deductions herein referred to if such person notifies the department of such desire in writing not less than 30 days prior to such sale.

History.—s. 22, ch. 72-135.

**573.905 Termination of orders.**—The department shall suspend or terminate the marketing order or any provision of the marketing order whenever it finds the provision or order does not tend to effectuate the declared purposes of this part within the standards and subject to the limitations and restrictions herein imposed and it further finds, upon a referendum called by it, that 51 percent of the producers who are engaged within the state in the production of peanuts covered by the marketing order and who produce more than 51 percent of the volume of such commodity produced within the state are opposed to the said marketing order. The suspension or termination shall not be effective until the expiration of the current marketing season. If the department finds that the termination of any marketing order is requested in writing by more than 51 percent of the producers who are engaged within the state in the production of peanuts covered by the marketing order and who produce more than 51 percent of the volume of such commodity produced within the state covered by the order and the department further finds the marketing order obstructs or does not tend to carry out the declared policy and purposes of this part, it shall terminate or suspend for a specified period the marketing order or provision thereof. The termination shall be effective only if announced on or before the date, prior to the end of the current marketing period, specified in the order.

History.—s. 23, ch. 72-135; s. 153, ch. 73-333.

**573.906 Inspections.**—Any authorized inspector or other authorized person discharging his duties in the checking of compliance with the provisions of any marketing order may enter and inspect any premises, enclosure, building, or conveyance where he has reason to believe any peanuts subject to a marketing order are produced, stored, being prepared for market, or marketed and inspect or cause to be inspected representative samples of the commodity as may be necessary to determine whether or

not any lot of peanuts is in compliance with applicable regulations of any marketing order.

History.—s. 24, ch. 72-135.

#### **573.907 Maintenance and production of records.—**

(1) The department may require any and all persons directly affected by and subject to the provisions of any marketing order to maintain books and records reflecting their operations under the marketing order, to furnish to the department or its duly authorized or designated representative or representatives any information as may be from time to time requested by it relating to operations under said marketing order, and to permit the inspection by the department or its duly authorized or designated representative or representatives of such portions of the books and records as relate to operations under the marketing order.

(2) Information obtained by any person shall be confidential and shall not be disclosed by him to any other person except to a person with like right to obtain it or any attorney employed to give legal advice or by court order.

(3) The department or its duly authorized or designated representative or representatives may hold hearings, take testimony, administer oaths, subpoena witnesses, and issue subpoenas for the production of books, records, or documents relevant and material to the subject matter of the hearings.

History.—s. 25, ch. 72-135.

#### **573.908 Penalties; violation; hearings.—**

(1) Any person who violates any provision of this part or any provision of any marketing agreement or order duly issued by the department is guilty of a misdemeanor of the first degree and shall be punished as provided by ss. 775.082 and 775.083. Each day during which any of the violations above referred to continue after the department has issued a cease and desist order against the violator shall constitute a separate offense. Any fine imposed by a court of competent jurisdiction shall be transmitted by the clerk of such court to the department for deposit in the appropriate account.

(2) Upon the filing of a verified complaint with the department charging a violation of any provision of this part, of any provision of any marketing order issued by the department hereunder, or of any provision of any marketing agreement enforced by the department, the department may, prior to institution of any court proceedings authorized, refer the matter to the Department of Legal Affairs or to a prosecuting attorney of this state having jurisdiction for action pursuant to the provisions of this part or proceed to consider the charges set forth in such verified complaint.

(3) If the department finds that no violation has occurred, it shall forthwith dismiss the complaint.

(4) If the department finds that a violation has occurred, it shall enter its findings and notify the parties to the complaint. Should the defendant or defendants thereafter fail, neglect, or refuse to desist from the violation within the time specified by the department, the department may thereupon file a complaint against the defendant or defendants in a court of competent jurisdiction.

(5) The Department of Legal Affairs, or any prosecuting attorney of this state having jurisdiction, may upon its own initiative and shall upon complaint of any person, if after investigation it believes the violation to have occurred, bring an action in the name of the state in any court of competent jurisdiction within the state against any person violating any provision of this part, any marketing order duly issued by the department, or any marketing agreement enforced by the department.

(6) The several circuit courts of the state, sitting in chancery, are hereby vested with jurisdiction specifically to enforce and to enjoin and restrain any person from violating any provisions of this part, of any marketing order duly issued by the department or any marketing agreement enforced by the department in any circuit court; and in any such proceeding, it shall not be necessary for the department to allege or prove that an adequate remedy at law does not exist. Circuit courts may issue a temporary restraining order and preliminary injunction as in other actions for injunctive relief, and upon final hearing, if final decree be in favor of the department, it shall provide that the defendant or defendants pay its reasonable costs of each suit, including reasonable attorneys' fees to be fixed by the court. Action may be commenced either in the county where the defendant resides, in the county where any other defendant resides, if more than one defendant, or in the county where any act of omission complained of, or part thereof, occurred.

(7) The provisions of this part shall not be applicable to retailers of agricultural commodities except to the extent that any retailer also engages in the processing or distributing of agricultural commodities as defined in this part.

(8) It shall be a misdemeanor for:

(a) Any person willfully to render or furnish a false or fraudulent report, statement, or record required by the department or any marketing agreement or marketing order effective thereunder.

(b) Any person engaged in the handling of any peanuts or in the wholesale or retail trade thereof to fail or refuse to furnish to the department or its duly authorized agents, upon request, information concerning the name and address of the persons from whom he has received any peanuts regulated by a marketing order issued and in effect hereunder and the quantity of the commodity so received.

History.—s. 26, ch. 72-135; s. 6, ch. 78-95.



## CHAPTER 574

## SALE OF LEAF TOBACCO

- 574.01 Administration of law.
- 574.02 Purpose of act.
- 574.03 Warehouseman; licenses and fees.
- 574.04 Council; membership; appointment; terms; chairman.
- 574.05 Council; compensation; expenses.
- 574.06 Opening date of marketing season.
- 574.07 Revocation of licenses.
- 574.08 Accounts of sales; weekly reports.
- 574.09 Department; records; penalty.
- 574.101 Certification of nonuse of prohibited pesticides.
- 574.11 Commissioner's certificate admissible as evidence.
- 574.12 Tobacco warehouses; charges, fees, penalties.
- 574.13 Penalty.
- 574.131 Injunction proceedings.
- 574.14 Rules.

**574.01 Administration of law.**—This act shall be administered within the Division of Marketing of the Department of Agriculture and Consumer Services.

*History.*—s. 14, ch. 59-154; ss. 14, 35, ch. 69-106.

**574.02 Purpose of act.**—The purpose of this act is to enable producers to have sufficient time to properly cure, prepare, and have an adequate time to market their leaf tobacco. Nothing herein shall prohibit a producer from selling his tobacco at a private sale at any time. The provisions of this act shall apply only to sales of leaf tobacco produced in the calendar year in which the sale is made.

*History.*—s. 1, ch. 59-154.

**574.03 Warehouseman; licenses and fees.**—

(1) A warehouseman operating a warehouse for the sale of flue-cured tobacco shall, on or before July 1 of each year, obtain from the Department of Agriculture and Consumer Services a state flue-cured tobacco warehouse license for the privilege of operating such warehouse.

(2) Each applicant, with his application for license, shall remit a license fee based upon total pounds sold during the previous year on the following scale:

- (a) Less than 1,000,000 lbs., \$100;
- (b) 1,000,000 lbs. and less than 2,000,000 lbs., \$200;
- (c) 2,000,000 lbs. and less than 3,000,000 lbs., \$300;
- (d) 3,000,000 lbs. and less than 4,000,000 lbs., \$400;
- (e) 4,000,000 lbs. and less than 5,000,000 lbs., \$500;
- (f) 5,000,000 lbs. and less than 6,000,000 lbs., \$600;
- (g) All in excess of 6,000,000 lbs., \$600 and 6 cents per thousand lbs.

(3) A warehouseman not operating a warehouse the previous year may procure a license by paying the license fee based upon the total estimated

pounds that the new warehouseman estimates he will market during the complete marketing season.

(4) A new warehouseman operating an old warehouse shall pay license fee based on sales of the preceding year by the previous warehouseman.

(5) The fees levied shall be based on official statistical data reported to the Department of Agriculture and Consumer Services by the United States Department of Agriculture.

(6) As a prerequisite to the issuance of a license under the provisions of this section, each applicant shall furnish evidence to the Department of Agriculture and Consumer Services that he has in force a standard fire and extended coverage insurance policy for the full-market value of the maximum amount of tobacco contained in his sales warehouse at any one time during the marketing season for which the license is sought. The insurance policy shall be written by an insurance company of the warehouseman's choice authorized to transact business in this state, and such insurance coverage shall be approved in form by the Department of Insurance, and a copy of the insurance policy shall be filed with the director of the Marketing Division of the Department of Agriculture and Consumer Services. The policy shall contain an endorsement requiring notification to the director of the Division of Marketing of the Department of Agriculture and Consumer Services by the insurance company at least 10 days prior to cancellation of their intention to cancel the policy.

*History.*—s. 2, ch. 59-154; ss. 14, 35, ch. 69-106; s. 1, ch. 72-188.

**574.04 Council; membership; appointment; terms; chairman.**—There is hereby created a Tobacco Advisory Council which shall consist of eight members as follows:

(1) The Commissioner of Agriculture or some employee of the Department of Agriculture and Consumer Services;

(2) One member of the Senate who is from one of the leaf tobacco producing senatorial districts of the state to be appointed by the President of the Senate;

(3) One member of the House of Representatives who is from one of the leaf tobacco producing counties of the state to be appointed by the Speaker of the House of Representatives;

(4) One member of the Florida Farm Bureau to be appointed by the president of the Florida Farm Bureau;

(5) One member of the Florida Tobacco Warehousemen's Association to be appointed by the governing body of the said association;

(6) Three members who are tobacco farmers or producers to be appointed by the Department of Agriculture and Consumer Services. Each such member shall be from a separate county.

The appointive members shall serve for a term of 2 years from date of appointment. The Commissioner

of Agriculture or his chosen representative shall be chairman of the council.

**History.**—s. 3, ch. 59-154; ss. 3, 14, 35, ch. 69-106; s. 1, ch. 70-46; s. 1, ch. 70-439.

**574.05 Council; compensation; expenses.—**

Members of the council shall serve without compensation but shall be entitled to per diem and travel expenses as provided by s. 112.061, which, together with any other operating expenses, shall be paid out of the General Inspection Trust Fund of the Department of Agriculture and Consumer Services.

**History.**—s. 4, ch. 59-154; s. 2, ch. 61-119; ss. 14, 35, ch. 69-106.

**574.06 Opening date of marketing season.—**

The Tobacco Advisory Council shall meet annually prior to the anticipated opening date for flue-cured tobacco warehouses. Such meeting shall be on the call of the chairman to survey the condition of the tobacco crop and to recommend an opening date of the market season. The chairman shall determine the time and place of the meeting. The council shall recommend to the Department of Agriculture and Consumer Services a date for the opening of the flue-cured tobacco marketing season.

**History.**—s. 5, ch. 59-154; ss. 14, 35, ch. 69-106; s. 2, ch. 72-188.

**574.07 Revocation of licenses.—**If any warehouseman shall hold a sale prior to the date determined by the department, the license of that warehouseman shall be revoked and shall not be reinstated or reissued in that calendar year. The revocation of license as provided herein shall be in addition to the penalty for the violation of the provisions of this act.

**History.**—s. 6, ch. 59-154; ss. 14, 35, ch. 69-106; s. 3, ch. 72-188.

**574.08 Accounts of sales; weekly reports.—**

Each warehouseman of flue-cured tobacco doing business in the state shall keep a correct daily account of the number of pounds of flue-cured tobacco sold by type upon the floor of his warehouse during the previous day. On or before Monday of each succeeding week, each warehouseman shall file with the Department of Agriculture and Consumer Services a statement under oath indicating the amount of all flue-cured tobacco sold by type on the floor of his warehouse during the previous week. The report made to the department shall be so arranged and classified as to show the number of pounds of tobacco sold for producers by state of origin and the average price per pound, the number of pounds sold for dealers and the average price per pound, the number of pounds sold by the warehouseman for his own account, and number of pounds sold for other warehousemen and the average price per pound. In addition thereto, each licensee shall make additional reports as required by law or rules adopted by the department.

**History.**—s. 7, ch. 59-154; ss. 14, 35, ch. 69-106; s. 4, ch. 72-188.

**574.09 Department; records; penalty.—**

(1) The Department of Agriculture and Consumer Services shall keep all weekly reports of sales as returned to it from each tobacco market in this state so far as to show the total number of pounds sold by type for producers by state of origin, for dealers, and

for warehousemen. The department shall keep such records open to inspection by the public and shall periodically cause the same to be published in the market news report of the Department of Agriculture and Consumer Services or through some other news media.

(2) Any warehouseman failing to file the report required by s. 574.08 shall be subject to a penalty of \$100 and, additionally, may be cited to show cause why his license should not be suspended or revoked.

**History.**—s. 8, ch. 59-154; ss. 14, 35, ch. 69-106; s. 590, ch. 71-136; s. 5, ch. 72-188.

**574.101 Certification of nonuse of prohibited pesticides.—**

Each producer of flue-cured tobacco, seeking to sell his tobacco through any warehouse licensed under the provision of s. 574.03 shall, before the first sale, obtain from the county agent in the county in which the tobacco is produced a certificate form to be completed by the producer, certifying that to the best of his knowledge and belief no pesticides prohibited by statute or rule were used in the growing of the tobacco which he seeks to sell. Such forms shall be made available to the respective county agents' offices by the Department of Agriculture and Consumer Services.

**History.**—s. 6, ch. 72-188.

**574.11 Commissioner's certificate admissible as evidence.—**The certificate of the commissioner under the seal of the department shall be admissible as evidence the same as if it were his deposition taken in form as provided by law.

**History.**—s. 10, ch. 59-154.

**574.12 Tobacco warehouses; charges, fees, penalties.—**

(1) The charges for auctioneer fees, weighing and handling and commissions for selling leaf tobacco upon the floor of the tobacco warehouses shall be determined by the Department of Agriculture and Consumer Services.

(2) The proprietor of each warehouse shall render to each seller of tobacco at his warehouse a bill plainly stating the amount charged for weighing and handling, the amounts charged for auction fees, and the amounts charged for commission on each sale.

(3) It is unlawful for any charges in excess of those named by the department to be made or accepted and any proprietor or person in charge of a leaf tobacco warehouse in this state violating this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 11, ch. 59-154; s. 1, ch. 65-415; ss. 14, 35, ch. 69-106; s. 592, ch. 71-136.

**574.13 Penalty.—**

(1) Any person violating the provisions of this act shall be deemed guilty of a misdemeanor and upon a conviction thereof shall be punished as provided by law.

(2) Any licensed warehouseman who receives flue-cured tobacco from a producer and offers same for sale without first having been furnished with a proper certificate required of producer by s. 574.101 shall be guilty of a misdemeanor and upon conviction



tion shall, for the first offense, be fined not less than \$250 and for subsequent offenses not less than \$500.

*History.*—s. 12, ch. 59-154; s. 593, ch. 71-136; s. 7, ch. 72-188.

**574.131 Injunction proceedings.**—In addition to the remedies provided in this chapter and notwithstanding the existence of any adequate remedy at law, the department is authorized to make application for injunction to a circuit court or circuit judge, and such circuit court or circuit judge shall have jurisdiction, upon hearing and for cause shown, to grant a temporary or permanent injunction, or

both, restraining any person from violating or continuing to violate any of the provisions of this chapter or any rule duly adopted by the department, such injunction to be issued without bond.

*History.*—s. 7, ch. 72-188.

**574.14 Rules.**—The Department of Agriculture and Consumer Services may adopt rules to implement, make specific, or interpret the provisions of this chapter.

*History.*—s. 8, ch. 72-188.

## CHAPTER 575

## CERTIFICATION SEED LAW

- 575.01 Definitions.
- 575.02 Certification of seed.
- 575.03 Fees for certification.
- 575.04 Unlawful terms.
- 575.05 Rules.
- 575.06 Employees.
- 575.07 Penalty.
- 575.08 Enforcement of chapter.
- 575.09 Short title.
- 575.10 Purpose.

**575.01 Definitions.**—As used in this chapter:

(1) The term "department" shall mean the Department of Agriculture and Consumer Services.

(2) The terms "certified seed" and "registered seed" shall mean seed that have been produced and labeled in accordance with the procedure and in compliance with the rules and regulations under this chapter.

(3) The term "foundation seed" shall mean seed that have been produced and labeled in accordance with the procedures and in compliance with the rules and regulations of any agency authorized by the laws of this state or the laws of another state. Foundation seed in Florida will be under the control of the Florida Foundation Seed Producers Association, Inc.

(4) The term "breeder seed" shall mean seed that are released directly from the breeder of experiment station who developed such seed. These are one class above foundation seed.

(5) The term "agricultural seed" shall include the seeds of grass, forage, cereal and fiber crops and any other seed commonly recognized within the state as agricultural or field seed.

(6) The term "vegetable seed" shall include the seeds of those crops which are grown in gardens or on truck farms, and are generally known and sold under the name of vegetable seed in this state.

(7) The term "grower" shall mean any resident of the state engaged in the business of farming or growing seed.

**History.**—s. 2, chs. 19364, 19432, 1939; CGL 1940 Supp. 4151(591), (607); s. 1, ch. 20627, 1941; s. 2, ch. 20251, 1941; s. 2, ch. 21942, 1943; s. 2, ch. 26961, 1951; s. 1, ch. 61-414; ss. 14, 35, ch. 69-106; s. 238, ch. 71-377.

**Note.**—Former s. 578.01.

**575.02 Certification of seed.**—Any grower of agricultural or vegetable seed, located in Florida, may make application to the department for inspection and certification of his crop for seed purposes, under rules and regulations covered by this chapter. The department, or its authorized agents, shall make all necessary inspections, issue official seals and tags for marking containers of "certified seed" and "registered seed" as are necessary to safeguard the privileges and service provided for in this chapter.

**History.**—s. 3, ch. 19432, 1939; CGL 1940 Supp. 4151(608); s. 3, ch. 26961, 1951; s. 2, ch. 61-414; ss. 14, 35, ch. 69-106.

**Note.**—Former s. 578.05.

**575.03 Fees for certification.**—The department may fix, assess and collect, or cause to be collected, fees for the certification inspection service, the same to be paid in such manner as it may direct. Such fees shall be large enough to meet the reasonable expenses incurred by the department in making such inspections as may be necessary for carrying out the provisions of this chapter.

**History.**—s. 4, ch. 19432, 1939; CGL 1940 Supp. 4151(609); s. 4, ch. 26961, 1951; s. 3, ch. 61-414; ss. 14, 35, ch. 69-106.

**Note.**—Former s. 578.06.

**575.04 Unlawful terms.**—It shall be unlawful for any person to sell, distribute, offer for sale, expose for sale, handle for sale, or solicit orders for the purchase of any agricultural or vegetable seed within this state, labeled "certified seed," "registered seed," "foundation seed," "breeder seed," or similar terms, unless it has been produced and labeled in accordance with the procedure and in compliance with the rules and regulations of an agent authorized by law.

**History.**—s. 5, ch. 19432, 1939; CGL 1940 Supp. 4151(610); s. 5, ch. 26961, 1951; s. 4, ch. 61-414.

**Note.**—Former s. 578.07.

**575.05 Rules.**—The department may make all necessary rules and standards to carry out the provisions of this chapter, after notice to all growers of certified seed in addition to any notice required by chapter 120.

**History.**—s. 12, ch. 19364, s. 6, ch. 19432, 1939; CGL 1940 Supp. 4151(601), (611); s. 6, ch. 26961, 1951; s. 5, ch. 61-414; ss. 14, 35, ch. 69-106; s. 6, ch. 78-95.

**575.06 Employees.**—The department may employ such assistants, inspectors, specialists and others as may be necessary to carry out the provisions of this chapter, to fix their salaries, and to pay same from such funds as may be available for the purpose.

**History.**—s. 11, ch. 19364, s. 7, ch. 19432, 1939; CGL 1940 Supp. 4151(600), (612); s. 7, ch. 26961, 1951; ss. 14, 35, ch. 69-106.

**Note.**—Former s. 578.03.

**575.07 Penalty.**—Any person, copartnership, association or corporation, and any officer, agent, servant or employee thereof, violating any of the provisions of this chapter or any of the rules and regulations promulgated hereunder, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083.

**History.**—s. 15, ch. 19364, s. 8, ch. 19432, 1939; CGL 1940 Supp. 8135(54), (55); s. 12, ch. 20251, 1941; s. 15, ch. 21942, 1943; s. 8, ch. 26961, 1951; s. 594, ch. 71-136.

**Note.**—Former s. 578.18.

**575.08 Enforcement of chapter.**—The department is vested with power and authority to enforce the provisions of this chapter and the rules and regulations made pursuant thereto by writ of injunction in the proper court as well as by criminal proceedings. It shall be the duty of the Department of Legal Affairs and the state attorneys to represent the department when called upon to do so. The department in the discharge of its duties and in the enforcement of the powers herein delegated may send for books



and papers, administer oaths and hear witnesses, and to that end it is made the duty of the various sheriffs throughout the state to serve all summons and other papers upon request of said department.

**History.**—s. 13, ch. 19364, s. 9, ch. 19432, 1939; CGL 1940 Supp. 4151(602), (613); s. 9, ch. 26961, 1951; ss. 11, 14, 35, ch. 69-106; s. 26, ch. 73-334.

**Note.**—Former s. 578.15.

**575.09 Short title.**—This chapter shall be known by the title of the "Florida Certification Seed

Law."

**History.**—s. 10, ch. 26961, 1951.

**575.10 Purpose.**—The purpose of this chapter is to maintain and make available to the public, through certification, high quality seed of superior crop plant varieties so grown and distributed as to insure genetic identity and genetic purity.

**History.**—s. 6, ch. 61-414.

## CHAPTER 576

## AGRICULTURAL FERTILIZERS

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**576.011 Definitions of words and terms.—**

When used in this chapter:

(1) The term "advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of commercial fertilizer.

(2) The term "brand" means a term, design, or trade mark used in connection with one or several grades of commercial fertilizer.

(3) The term "bulk fertilizer" means commercial fertilizer in a nonpackaged form.

(4) The term "commercial fertilizer" means any substance containing one or more recognized plant nutrients which is designed for use or claimed to have value in promoting plant growth or which is designed for use or claimed to have value in controlling soil acidity or alkalinity (except unmanipulated animal and vegetable manures).

(5) The term "coning" means the formation of a pyramidal pile or cone of bulk mixed fertilizer while being loaded into a transport vehicle.

(6) The term "dealer" means any person, other than the manufacturer, who offers for sale, sells, barter, or otherwise supplies commercial fertilizer.

(7) The term "deconing" means any accepted process employed by a manufacturer that will prevent or minimize the formation of a pyramidal pile during the loading of bulk mixed fertilizer into a transport vehicle.

(8) The term "deficiency" means the amount found by analysis less than that guaranteed.

(9) The term "department" means the Department of Agriculture and Consumer Services.

(10) The term "excess" means the amount found by analysis over and above that guaranteed on the label.

(11) The term "fertilizer-pesticide mixture"

means a commercial fertilizer containing a pesticide.

(12) The term "grade" means the percentages in mixed fertilizer of total nitrogen (N), available phosphoric acid ( $P_2O_5$ ), and the soluble potash ( $K_2O$ ), stated in whole numbers in the same terms, order, and percentages as in the "guaranteed analysis" form. Mixed fertilizer containing a total of 5 percent or less of total nitrogen (N), available phosphoric acid ( $P_2O_5$ ), and soluble potash ( $K_2O$ ) may be guaranteed in other than whole percentages; however, a minimum guarantee shall be established by rule.

(13) "Guaranteed analysis":

(a) "Primary plant nutrients."—The term "guaranteed analysis" means the minimum percentage of plant nutrients claimed in the following order and form:

1. Total Nitrogen ..... percent
2. Nitrate Nitrogen ..... percent
3. Ammoniacal Nitrogen ..... percent
4. Water Soluble Organic Nitrogen  
(and/or Urea Nitrogen)..... percent
5. Water Insoluble Nitrogen ..... percent
6. Available Phosphoric Acid ( $P_2O_5$ ) ..... percent
7. Soluble Potash ( $K_2O$ ) ..... percent

When urea is present it may be guaranteed as urea nitrogen or as water soluble organic nitrogen at the option of the registrant. When urea-formaldehyde is present, not more than 33 percent of the total nitrogen from this source may be claimed as urea nitrogen or water soluble organic nitrogen.

(b) "Secondary plant nutrients."—When a secondary plant nutrient is guaranteed, claimed, or advertised, the guarantee shall be expressed as the element (excluding liming materials and gypsum). Sulphur is to be specified as either "free" or "combined." Magnesium shall be guaranteed as to both total magnesium and water soluble magnesium. Minimum guarantees authorized for specialty fertilizer shall be established by rule of the department.

(c) "Other plant nutrient materials when sold as such."—

1. Unacidulated mineral phosphatic materials, basic slag, bone meal, and other phosphatic materials shall be guaranteed as to both total and available phosphoric acid, and, in addition thereto, unacidulated mineral phosphatic materials and basic slag shall be guaranteed as to degree of fineness.

2. Limestone and dolomite shall be guaranteed as to moisture and the degree of fineness and calcium carbonate, and, in addition thereto, dolomite shall be guaranteed as to magnesium carbonate.

3. Gypsum shall be guaranteed as to calcium sulphate content.

(d) "Authorized pesticides."—The name, the percentage by weight, and the pounds of active ingredients per ton of all authorized pesticides added shall be guaranteed.

(e) "Chlorine."—Chlorine shall be guaranteed as to maximum percentage content, when applicable, in commercial fertilizer.



(14) The term "label" means a display of written, printed, or graphic matter upon the immediate container of any commercial fertilizer or accompanying same when moved in bulk.

(15) The term "labeling" means all labels and other written, printed, or graphic matters upon an article or any of its containers or wrappers, or accompanying such article.

(16) The term "manufacturer" means a person engaged in the business of importing, preparing, mixing, blending, or manufacturing commercial fertilizer for sale, either direct to consumers or by or through other media of distribution, and the word "manufacture" means preparation, mixing, blending, or manufacturing.

(17) "Misbranded."—A commercial fertilizer is deemed to be misbranded:

(a) If its labeling is false or misleading in any particular. If a commercial fertilizer is alleged to be misbranded because the labeling is false or misleading there shall be taken into account the extent to which the labeling fails to prominently and conspicuously reveal facts relative to the proportions or absence of certain ingredients or other facts concerning ingredients which are of material interest to consumers.

(b) If it is sold, offered for sale, or distributed under the name of another fertilizer.

(c) If it is not labeled as required by law or rules prescribed under this chapter.

(d) If any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(e) If any constituent in whole or in part has been omitted.

(f) If its contents fail to meet the guaranteed analysis as expressed on the labeling under which it is sold, in excess of authorized tolerances.

(g) If it contains any poisonous, deleterious, or nonnutritive ingredient in sufficient amount to render it injurious to plants when used in accordance with directions for use on the label, or, if there are no directions given, when used in a generally acceptable manner.

(h) If any unauthorized substance has been substituted.

(18) The term "mixed fertilizer" means a fertilizer containing any combination or mixtures of commercial fertilizers designed for use or claimed to have value in promoting plant growth.

(19) The term "official sample" means any sample of commercial fertilizer taken by the department or its representative, in accordance with the provisions of this law or rules adopted hereunder, and designated as "official" by the department.

(20) "Organic."—The term "organic" means a material containing carbon and one or more elements other than hydrogen and oxygen essential for plant growth. When the term "organic" is utilized in the label, labeling, or advertisement of any commercial

fertilizer, it shall be qualified as either "synthetic organic" or "natural organic," with the percentage of each specified. This shall not apply to the guaranteed analysis as defined in this chapter. When the term "organic" is used, it must be clearly indicated that it refers only to the nitrogen or other applicable portion of the fertilizer.

(a) "Natural organic" is a by-product from processing of animal or vegetable substances that contain sufficient plant nutrients to be of value as fertilizers.

(b) "Synthetic organic" is a material that is manufactured chemically (by synthesis) from its elements or other chemicals, as contrasted to those found ready-made in nature.

(21) The term "percent" or "percentage" means the percentage by weight.

(22) The term "person" includes individual, partnership, association, firm, and corporation.

(23) The term "primary plant nutrient" means the nitrogen or any form of nitrogen, phosphoric acid, or potash, or any combination of these substances.

(24) The term "registrant" means the person who registers commercial fertilizer under the provisions of this chapter.

(25) The term "secondary plant nutrient" means any element or substance useful as plant nutrient other than the primary plant nutrients hereinabove defined.

(26) The term "specialty fertilizer" means commercial fertilizer in packages sold or offered for sale for home use.

(27) The term "tolerance" means the variation authorized by law or regulation from the guaranteed analysis.

(28) The term "ton" means a net weight of 2000 pounds avoirdupois.

(29) The term "unit of plant nutrient" means 1 percent by weight or 20 pounds per ton.

(30) The term "water insoluble nitrogen" means nitrogen not soluble in water and shall be so classified. All organic nitrogen soluble in water shall be classified as "water soluble organic nitrogen." However, soluble organic nitrogen derived from urea may be classified either as "urea nitrogen" or "water soluble organic nitrogen," at the option of the registrant. Nitrogen in the form of nitrate nitrogen shall be classified as "nitrate nitrogen." Nitrogen in the form of "ammoniacal nitrogen" shall be so classified.

(31) Words importing the singular number may extend and be applied to several persons or things, and words importing the plural number may include the singular.

**History.**—s. 1, ch. 65-348; s. 1, ch. 67-213; ss. 14, 35, ch. 69-106; s. 239, ch. 71-377; s. 1, ch. 76-35; s. 1, ch. 79-204.

#### 576.021 Registration.—

(1) Each commercial fertilizer shall be registered before being offered for sale or sold in this state. Upon approval by the department, a copy of the registration and a registration number series shall be furnished to the applicant. The application shall include the following information:

(a) The net weight of packages if sold only in packages of 25 pounds or less.

(b) The brand.

- (c) The guaranteed analysis.
- (d) The name and street address of the registrant.
- (e) The sources from which the nitrogen, phosphorous, and potassium are derived.
- (f) The sources of secondary plant nutrients if guaranteed, claimed, or advertised.

(2) No one shall be required to register any brand of commercial fertilizer which is already registered under this chapter by another person, provided the commercial fertilizer is in the original and unbroken container.

(3) Any change in or deviation from the information filed with the department upon registration of commercial fertilizer shall require a separate registration. The addition of secondary plant nutrients or authorized pesticides to a registered mixed fertilizer shall not require separate registration as long as such additions do not in any way change or qualify other requirements of the registration previously made. However, this exemption from separate registration shall not apply to specialty fertilizer.

(4) Registration may be handled by telegraph or telephone prior to delivery of the commercial fertilizer.

**History.**—s. 1, ch. 65-348; ss. 14, 35, ch. 69-106; s. 2, ch. 76-35.

#### **576.031 Labeling.—**

(1) Any commercial fertilizer distributed in this state in containers shall have placed on or affixed to the immediate and outside container, if there be one, a label setting forth in clearly legible and conspicuous form the information required in s. 576.021(1)(b)-(f), and the net weight.

(2) If distributed in bulk, five labels containing the information required in s. 576.021(1)(b)-(f), shall accompany delivery and be supplied to the purchaser at time of delivery with the delivery ticket which shall show the certified net weight.

(3) Each label shall bear the Florida registration number, provided the department may relieve a registrant of this requirement if the registrant has less than five registrations on file with the department.

(4) The form of the label shall be as prescribed by technical regulations.

**History.**—s. 1, ch. 65-348; ss. 14, 35, ch. 69-106.

#### **576.041 Inspection fees; records; bond.—**

(1) Every registrant shall pay to the department an inspection fee in the amount of 25 cents per ton for commercial fertilizer sold in the state, except raw ground phosphate rock, soft phosphate, colloidal phosphate, phosphatic clays and all other untreated phosphatic materials, gypsum, hydrated lime, limestone, and dolomite when sold or used for agricultural purposes, on which inspection fee shall be 10 cents per ton. However, there shall be paid by each registrant inspection fees in the amount of not less than \$50 annually for commercial fertilizer, except raw ground phosphate rock, soft phosphate, colloidal phosphate, phosphatic clays and all other untreated phosphatic materials, gypsum, hydrated lime, limestone, and dolomite when sold or used for agricultural purposes, on which inspection fees shall be not less than \$25 annually. All fees paid to the department, as herein provided, shall be paid by it into the State

Treasury to be placed in the General Inspection Trust Fund.

(2) Before the registration of a commercial fertilizer, the manufacturer or dealer shall make application to the department for a permit to report monthly the tonnage of commercial fertilizer sold in the state and make payment of inspection fee therefor. The issuance of permit is conditioned upon the applicant's maintaining records and a bookkeeping system that will accurately indicate the tonnage of commercial fertilizer sold by the registrant and consent to examination of his records and books by the department or its representative for a verification of the correctness of tonnage reports and inspection fees. Tonnage reports of sales and payment of inspection fee shall be made monthly on forms furnished by the department and submitted on or before the fifteenth day of the month succeeding the month covered by the reports. If the report is not filed and the inspection fee paid on the date due or if the report of tonnage is false, the amount of inspection fee due is subject to a penalty of 10 percent which may be added to the inspection fee due and constitutes a debt and becomes a claim and lien against the surety bond which is required as hereinafter provided. Failure to make an accurate statement of tonnage or to pay the inspection fee or comply as provided herein shall constitute sufficient cause for revocation of the permit and also for cancellation of all registrations on file for the registrant.

(3) In order to guarantee faithful performance of the provisions of subsection (2), the applicant for permit shall furnish to the department a surety bond in the amount of \$1,000, executed by some corporate surety company authorized to do business in Florida. The department shall examine and approve as to sufficiency all such bonds before acceptance. When the registrant ceases operation said bond shall be returned, provided there are no outstanding fees due and payable.

(4) In order to obtain information that will facilitate the collection of inspection fees and serve other useful purposes relating to fertilizer, the department may require manufacturers, registrants, and dealers to report movements of commercial fertilizer.

**History.**—s. 1, ch. 65-348; ss. 2, 3, ch. 67-213; ss. 14, 35, ch. 69-106.

#### **576.051 Inspection, sampling, analysis.—**

(1) Agents of the department are authorized to enter upon any public or private premise or carrier during regular business hours in the performance of their duties relating to commercial fertilizers and records pertaining to same.

(2) The department or its agent, is authorized and directed to sample, test, inspect, and make analyses of commercial fertilizer sold or offered for sale within this state within the provisions of this law and rules adopted hereunder, at time and place and to such an extent as it may deem necessary to determine whether such commercial fertilizers are in compliance with the provision of this law.

(3) The official analysis shall be made from the official sample. The department or its authorized agent, before making said official analysis, shall take a sufficient portion from the official sample for check analysis and shall place the same in a bottle sealed and identified by number, date, and initials of



the person preparing it. A sealed and identified sample, herein called "official check sample," shall be kept until the analysis is completed on the official sample. However, the registrant may obtain upon request a portion of said official sample. Upon completion of the analysis of the official sample, a true copy of the certificate of analysis shall be mailed to the registrant of the commercial fertilizer from which the official sample was taken and also to the dealer or agent, if any, and purchaser, if known. This certificate of analysis shall show all determinations of plant nutrient and pesticides that are claimed or guaranteed as specified in s. 576.011(11). If the official analysis conforms with the provisions of this law, the official check sample may be destroyed. If the official analysis does not conform with the provisions of this law, then the official check sample shall be retained for a period of 90 days from the date of the certificate of analysis of the official sample, and if within said time the manufacturer of the commercial fertilizer from which the official sample was taken, upon receipt of certificates, shall make demand for analysis of this official check sample by a referee chemist, a portion of the said official check sample sufficient for analysis shall be sent to a referee chemist mutually acceptable to the department and the registrant for analysis at the expense of the registrant. The referee chemist, upon completion of his analysis, shall forward to the department and to the manufacturer a certificate of analysis bearing a proper identification mark or number, and said certificate of analysis shall be verified by an affidavit of the person or laboratory making the analysis. If said certificate of analysis checks within three-tenths of 1 actual percent with the state chemist's analysis on each element for which analysis was made, then the mean average of the two analyses shall be accepted as final and binding on all concerned. However, if the referee's certificate of analysis shows a variation in any one or more elements for which an analysis was made greater than three-tenths of 1 actual percent, a portion of the official check sample sufficient for analysis shall be submitted to a second referee chemist mutually acceptable to the department and to the registrant from which the official sample was taken, upon demand of either of them at the expense of the party or parties requesting the referee analysis. The second referee chemist, upon completion of his analysis, shall make a certificate and report as provided above for the first referee chemist. The mean average of the two certificates of analysis nearest in conformity shall be accepted as final and binding on all concerned.

(4) The department, in determining for administrative purposes whether any commercial fertilizer is deficient in plant nutrient, shall be guided solely by the official sample as defined in s. 576.011(17) and obtained and analyzed as provided for in subsections (2) and (3) of this section.

(5) Certificates of analysis shall be admissible in any court or other legal procedure.

(6) If any error occurs in analyzing commercial fertilizer or reporting same, a corrected report shall be immediately prepared and furnished to the registrant and purchaser.

(7) In drawing any official sample and in making

any analysis the officially adopted methods and terminology of the Association of Official Analytical Chemists shall be used. In cases not covered by such officially adopted methods and terminology, the department shall, as soon as practicable, adopt and publish appropriate methods and terminology. In any instance in which the officially adopted methods and terminology of the Association of Official Analytical Chemists are not applicable to conditions, circumstances, or cases in the state, then the department shall, with the approval of the technical council, adopt by regulation methods and terminology which shall be official in the state.

**History.**—s. 1, ch. 65-348; ss. 14, 35, ch. 69-106; s. 3, ch. 76-35; s. 197, ch. 77-104.

**576.055 Deconing.**—The department may adopt, by rule, scientifically approved procedures and methods which would require each in-state manufacturer of commercial fertilizer to incorporate specified procedures designed to avoid coning during the loading of bulk mixed fertilizer into transport vehicles to reduce separation and segregation of fertilizer components intended for delivery to a purchaser. Rules adopted pursuant to this section shall be the official methods and terminology of the Association of Official Analytical Chemists or other such nationally recognized testing authorities.

**History.**—s. 2, ch. 79-204.

**576.061 Plant nutrient tolerances, deficiencies, and penalties.**—

(1) Tolerances shall be set by the department in technical rules and regulations.

(2) Deficiencies and penalties shall be as follows: When the commercial value of a mixed fertilizer which has been found to be deficient in primary plant nutrient equals or exceeds the amount guaranteed by the manufacturer, no penalty shall be assessed, provided no element of primary plant nutrient is deficient more than one-half of 1 percent when the guarantee does not exceed 10 percent nor more than 1 percent when the guarantee exceeds 10 percent. If the commercial value found fails to equal or exceed that which is guaranteed, a penalty shall be assessed based on the deficiency found, but in no instance shall the penalty be less than \$10. No overage in any secondary plant nutrient shall compensate for a deficiency in primary plant nutrient nor of another secondary plant nutrient. Where a deficiency is found in any plant nutrient, the buyer shall be entitled to collect an amount from the registrant of three times the commercial value of the deficiency found.

(3)(a) In tobacco brands of mixed commercial fertilizer, penalty for an excess of chlorine of more than 25 percent of the guarantee, a penalty of 100 percent of the commercial value of said mixed fertilizer shall be assessed. No penalty shall be assessed for an excess of chlorine of less than 25 percent of the guarantee and in no case shall a penalty be assessed unless the chlorine present is 1 percent or more.

(b) In brands of commercial fertilizer other than tobacco brands the penalty for excess in chlorine shall be one-eighth the penalties as set forth above for excess in tobacco brands.

(c) Within 60 days from the date of issuance of a

certificate of analysis from the state chemist and the notice of penalties assessed under the provisions of this chapter, a registrant shall make payment in full to the consumer, in cash, or by credit memo if and to the extent the consumer is indebted to the registrant or dealer. Any registrant who fails to make settlement in full to the consumer within the 60 days shall be liable for interest on the penalty of 1.5 percent per month from the date of issuance of the certificate of analysis. If a registrant demands an analysis of the official check sample by a referee chemist as provided in s. 576.051(3), the 60-day settlement requirement established by this paragraph shall be temporarily suspended pending a final determination. When the final and binding analysis has been established as provided in s. 576.051(3), it shall be the responsibility of the department to determine the amount of penalty, if any, due to the consumer and to notify in writing the registrant and the consumer of the final determination. The registrant shall have 10 days from the date of receipt of the final determination from the department to make settlement with the consumer and shall notify the department in writing of the terms of the settlement.

(d) If any fertilizer is found to be of short weight by an inspector of the department, the registrant within 30 days after receipt of notice of such short weight, shall make payment to the department an amount of three times the commercial value of the shortage to the consumer. Said penalty shall be deposited to the credit of the General Inspection Trust Fund from which there shall be paid to the consumer the amount of said penalty.

(e) In any case wherein the registrant, dealer or agent fails or refuses to make such payment to the consumer within the time required, the consumer may institute legal proceedings against such registrant, dealer or agent for recovery of penalties as in this chapter provided. Any judgment against a registrant, dealer or agent shall be double the amount of the penalty and shall include a reasonable attorney's fee and costs.

(f) Where a deficiency is found in a sample drawn from a lot of fertilizer in the hands of a "dealer" or "agency" said "dealer" or "agency" shall collect the amount due under said deficiency from the manufacturer and shall within 60 days pay to each person purchasing fertilizer from said lot his proportionate share of the amount collected and shall notify the department in writing that such payment has been made; provided, that, as to any individual sale by a dealer or agent of commercial fertilizer subject to penalties for deficiencies and such dealer or agent is unable to ascertain or determine the purchaser of such lot of fertilizer, then and in such case the dealer or agent shall pay the proportionate amount of penalties on such sale to the department to be placed in the State Treasury to the credit of the General Inspection Trust Fund.

(4) When it is determined by the department that a commercial fertilizer has been distributed without labeling as required under s. 576.031, there shall be paid to the department a penalty in the amount of \$10. Proceeds from any such penalty pay-

ments shall be deposited by the department in the General Inspection Trust Fund.

**History.**—s. 1, ch. 65-348; ss. 14, 35, ch. 69-106; s. 4, ch. 76-35; s. 3, ch. 79-204.

**576.071 Commercial value.**—The commercial value used in assessing penalties for any deficiency shall be the latest established by rule, consistent with market prices, and reviewed annually to keep the values consistent with current fertilizer market prices.

**History.**—s. 1, ch. 65-348.

**576.085 Minimum plant nutrient content.**—No one shall register any mixed fertilizer of which the primary plant nutrient constitutes less than 16 percent. However, the department, upon request from any manufacturer, may issue a permit to said manufacturer permitting him to manufacture mixed fertilizer of less than 16 percent primary plant nutrient, provided the manufacturer has complied with all provisions of this chapter and all regulations pertaining to "low analysis" mixed fertilizer.

**History.**—s. 1, ch. 65-348; ss. 14, 35, ch. 69-106; s. 5, ch. 76-35.

**576.091 Fertilizer Technical Council.**—

(1) **COMPOSITION.**—The Fertilizer Technical Council in the Department of Agriculture and Consumer Services shall be composed of three representatives of the Department of Agriculture and Consumer Services; the dean for research and the dean of extension services, Institute of Food and Agricultural Sciences, University of Florida; and the beef cattle, field crops, citrus, vegetable, commercial fertilizer and pesticide, and agricultural limestone members of the State Agricultural Advisory Council. The state chemist shall serve as secretary of the Fertilizer Technical Council.

(2) **MEETINGS.**—The technical council shall meet at the call of the chairman or secretary.

(3) **OFFICIAL ACTION.**—Official action of the technical council requires a majority vote of the council.

(4) **POWERS AND DUTIES.**—The Fertilizer Technical Council with respect to its field of work and that of the Divisions of Chemistry and Inspection of the department, shall have the powers and duties to consider and study the entire field of commercial fertilizer; to review and make recommendations to the department on any commercial fertilizer registration submitted to it by the department; to advise, counsel, and consult with the department and the directors of the Divisions of Chemistry and Inspection upon their request in connection with the promulgation, administration, and endorsement of all laws, rules and regulations relating to commercial fertilizer; to consider all matters submitted to it by the department or its secretary or other members of the council and to offer suggestions and make recommendations to the department on its own initiative in regard to changes in the laws, rules, and regulations relating to commercial fertilizer, as may be deemed advisable to secure the effective administration and enforcement of said laws and rules and regulations; to suggest or recommend on its own initiative, policies or practices for the administration of this chapter, which suggestions and recommendations the department shall duly consider.



(5) **MEETING PROCEEDINGS; RECORDS.**—In conducting its meetings, the technical council shall use accepted rules of procedure and the secretary shall keep a complete record of the proceedings of each meeting of the technical council, which proceedings shall show the names of the members present at each meeting and the actions taken at council meetings. Such record of proceedings of the council shall be kept on file with the secretary and in the office of the department and all such records and other documents relating to matters within the jurisdiction of the council shall be subject to inspection by the members of the council.

**History.**—s. 1, ch. 65-348; s. 1, ch. 69-8; ss. 14, 35, ch. 69-106; s. 154, ch. 71-355; s. 147, ch. 73-333; s. 6, ch. 76-35; s. 15, ch. 77-108; s. 4, ch. 78-323.

<sup>1</sup>**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

**576.101 Cancellation of registration.**—The department may deny or cancel registration of anyone who violates any of the provisions of this chapter.

**History.**—s. 1, ch. 65-348; ss. 14, 35, ch. 69-106; s. 6, ch. 78-95.

**576.111 Stop sale, stop use, removal or hold orders.**—

(1) When commercial fertilizer is being offered or exposed for sale in violation of any of the provisions of this chapter, the department, through its authorized representative, may issue and enforce a stop-sale, stop-use, removal, or hold order to the owner or custodian of said fertilizer ordering it to be held at a designated place until the law has been complied with and said fertilizer is released in writing by the department or its authorized representative or said violation has been disposed of by court order.

(2) Such written or printed notice is notice and warning to all persons, including but not limited to the owner or custodian thereof or his agents or employees, to scrupulously refrain from moving, bothering, altering, or interfering with said fertilizer or from altering, defacing, or in anywise interfering with such notice itself or permitting the same to be done.

(3) It shall be unlawful for any person to willfully violate any of the provisions of subsection (2) of this section.

(4) The department or its authorized representative shall release the commercial fertilizer so withdrawn when the provisions of this law have been complied with.

(5) Such owner or custodian, with the consent and authorization of the department, may relabel said fertilizer so that the label will conform to the product, or transfer and return said product to the manufacturer or supplier thereof for the purpose of bringing the product in compliance with the law; provided, that such relabeling or return to the manufacturer or supplier shall be under the direction and supervision of the department or its authorized representative.

**History.**—s. 1, ch. 65-348; s. 4, ch. 67-213; ss. 14, 35, ch. 69-106.

**576.122 Seizure, condemnation and sale.**—Any lot of commercial fertilizer not in compliance with the provisions of this law shall be subject to seizure on complaint of the department to the circuit court in the county in which said fertilizer is located. In the event the court finds said fertilizer to be in

violation of this law and orders it condemned, it shall be disposed of as the court may direct; provided, that in no instance shall the disposition of said commercial fertilizer be ordered by the court without first giving the owner or custodian an opportunity to apply to the court for release of said fertilizer or for permission to process or relabel it to bring it into compliance with this chapter.

**History.**—s. 1, ch. 65-348; ss. 14, 35, ch. 69-106.

**576.132 Recovery of damages.**—

(1) The department may file for penalties due for deficiencies in a court of competent jurisdiction upon 10 days' notice after the 60 days' payment period.

(2) When penalties are due and unpaid by a non-resident registrant, dealer or agent, the department may proceed by attachment as provided by law, in case of nonresident and absconding debtors, against any such commercial fertilizer, credits of such registrant, dealer or agent wherever same may be found within the limits of this state.

(3) When commercial fertilizer in lots of one or more tons is delivered in the same car, boat or other form of transport and consigned to more than one purchaser, analysis of one sample representing any one registered commercial fertilizer shall be considered representative of all the fertilizer of that registration and shall entitle each purchaser to the remedies provided by this chapter.

(4) Any certificate of analysis required or provided by this chapter, when properly verified, shall be competent evidence in any court of law or equity in this state.

**History.**—s. 1, ch. 65-348; ss. 14, 35, ch. 69-106.

**576.141 Sales or exchanges between manufacturers.**—Nothing in this chapter shall be construed to apply to sales or exchanges of commercial fertilizers between importers, manufacturers, or registrants.

**History.**—s. 1, ch. 65-348.

**576.151 Prohibited acts.**—The following acts, or the causing thereof, knowingly, are prohibited:

(1) The dissemination of any false advertisement or advertising matter with reference to the distribution or sale of commercial fertilizer.

(2) The refusal to permit entry or inspection or the taking of samples, as authorized by s. 576.051.

(3) The removal or disposal of a detained or "stop-sale" lot of commercial fertilizer or the stop-sale order pursuant to s. 576.111.

(4) The detaching, altering, defacing or destruction, in whole or in part, of any label or labeling provided for in this law or rules adopted hereunder.

(5) The placing or causing to be placed on labels any false advertisement or misleading statement.

(6) The misbranding of commercial fertilizer.

(7) The forging, counterfeiting, simulating, falsely representing, or improper use of any label authorized or required by s. 576.031, or any rule or regulation.

(8) The sale of unprocessed leather, hair, wool waste, or any other organic material as a commercial fertilizer or as an ingredient of any mixed fertilizer showing an activity of water insoluble nitrogen

less than prescribed by the Association of Official Analytical Chemists.

(9) The failure or refusal to do or perform any affirmative provision or the doing or performing of any prohibited provision of this chapter or of any rule or regulation promulgated pursuant to this chapter not expressly covered in this section.

**History.**—s. 1, ch. 65-348; s. 7, ch. 76-35.

**576.161 Criminal penalties.**—Whoever knowingly violates any of the provisions of this chapter by doing anything prohibited or by failing or refusing to do anything herein required to be done shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 1, ch. 65-348; s. 595, ch. 71-136.

**576.171 Remedy by injunction.**—In addition to the remedies provided in this chapter and notwithstanding the existence of any adequate remedy at law, the department is hereby authorized to make application for injunction to a circuit court and such court shall have jurisdiction upon hearing and for cause shown to grant a temporary or permanent injunction, or both, restraining any person from violating or continuing to violate any of the provisions of this chapter or rules and regulations hereunder and such injunction shall be issued without bond. A single act in violation of the provisions of this chapter shall be sufficient to authorize the issuance of an

injunction.

**History.**—s. 1, ch. 65-348; ss. 14, 35, ch. 69-106.

**576.181 Administration; rules; procedure.**—

(1) This chapter and all rules and regulations adopted and promulgated hereunder shall be administered and enforced by the department.

(2) The department is authorized by rule, to implement, make specific and interpret the provisions of this chapter, and specifically to determine the composition and uses of commercial fertilizer as defined in this chapter, including, without limiting the foregoing general terms, the taking and handling of samples, the establishment of tolerances, deficiencies, and penalties where not specifically provided for in this chapter; to prohibit the sale or use in fertilizer of any material proven to be detrimental to agriculture or of questionable value; to provide for the incorporation into commercial fertilizer of such other substances as pesticides and proper labeling of such mixture; and to prescribe the information which shall appear on the label other than specifically set forth in this chapter.

**History.**—s. 1, ch. 65-348; ss. 14, 35, ch. 69-106; s. 240, ch. 71-377; s. 6, ch. 78-95.

**576.191 Enforcing official.**—This chapter shall be administered by the Department of Agriculture and Consumer Services.

**History.**—s. 1, ch. 65-348; ss. 14, 35, ch. 69-106.



## CHAPTER 578

## SEED

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**578.011 Definitions; Florida Seed Law.—**  
When used in this chapter:

- (1) The term "person" shall include a partnership, corporation, company, society, association, or agency.
- (2) The term "department" shall mean the Department of Agriculture and Consumer Services.
- (3) The term "agricultural seed" shall include the seed of grass, forage, cereal and fibre crops, and chufas and any other seed commonly recognized within the state as agricultural or field seed and mixtures of such seed.
- (4) The term "vegetable seed" shall include the seed of those crops which are grown in gardens or on truck farms, and are generally known and sold under the name of vegetable seed in this state.
- (5) The term "lot of seed" means a definite quantity of seed identified by a lot number or other identification, every portion or bag of which is uniform, for the factors which appear in the labeling, within permitted tolerances.
- (6) The term "kind" means one or more related species or subspecies which singly or collectively is known by one common name; e. g. corn, beans, lespedeza.
- (7) The term "variety" means a subdivision of a kind characterized by growth, plant fruit, seed, or other characteristics by which it can be differentiated from other sorts of the same kind; e. g. Wattle's Prolific corn, Bountiful beans, Kobe lespedeza.
- (8) The term "pure seed" shall include all seed of the kind or kind and variety or strain under consideration, whether shriveled, cracked or otherwise injured, and pieces of broken seed larger than one-half the original size.
- (9) The term "inert matter" shall include broken seed when one-half in size or less; seed of legumes or crucifers with the seed coats removed; undeveloped and badly injured weed seed such as sterile dodder

which, upon visual examination, are clearly incapable of growth; empty glumes of grasses; attached sterile glumes of grasses (which must be removed from the fertile glumes except in Rhodes grass); dirt, stone, chaff, nematode, fungus bodies, and any matter other than seed.

(10) The term "other crop seed" shall include all seed of plants grown in this state as crops, other than the kind or kind and variety included in the pure seed, when not more than 5 percent of the whole of a single kind or variety is present, unless designated as weed seed.

(11) The term "weed seed" shall include the seed of all plants generally recognized as weeds within this state, and shall include prohibited and restricted noxious weed seed, bulblets and tubers.

(12) "Prohibited noxious weed seed" are the seed and bulblets of perennial weeds such as not only reproduce by seed or bulblets, but also spread by underground roots or stems and which, when established, are highly destructive and difficult to control in this state by ordinary good cultural practice.

(13) "Restricted noxious weed seed" are the seed of such weeds as are very objectionable in fields, lawns, or gardens of this state, but can be controlled by good cultural practice. Seed of poisonous plants may be included.

(14) The term "germination" means the percentage of seed capable of producing normal seedlings under ordinarily favorable conditions. Broken seedlings and weak, malformed and obviously abnormal seedlings shall not be considered to have germinated.

(15) The term "hard seed" means the percentage of seed which because of hardness or impermeability did not absorb moisture or germinate under prescribed tests but remain hard during the period prescribed for germination of the kind of seed concerned.

(16) The term "firm seed" are seed, other than hard seed, which neither germinate nor decay during the prescribed test period and under the prescribed test conditions.

(17) The term "labeling" includes all labels and other written, printed, or graphic representations, in any form whatsoever, accompanying and pertaining to any seed, whether in bulk or in containers, and includes invoices and other bills of shipment when sold in bulk.

(18) The term "advertisement" means all representations, other than those on the label, disseminated in any manner or by any means, relating to seed within the scope of this law.

(19) "Stop-sale" shall include any written or printed notice or order given or issued by the department to the owner or custodian of any lot of agricultural, vegetable, flower, or forest tree seed in the state, directing such owner or custodian not to sell, offer or expose such seed for sale within the state until the requirements of this law shall have been complied with and a written release has been issued.

Provided, such seed may be released to be sold for feed.

(20) The term "flower seed" includes seed of herbaceous plants grown for their blooms, ornamental foliage, or other ornamental parts, and commonly known and sold under the name of flower seed in this state.

(21) The term "processing" means cleaning, scarifying, or blending to obtain uniform quality and other operations which would change the purity or germination of the seed and, therefore, require retesting to determine the quality of the seed.

(22) The term "forest tree seed" includes seed of woody plants commonly known and sold as forest tree seed.

(23) The term "dealer" means any person who buys, sells or offers for sale any agricultural, vegetable, flower, or forest tree seed for seeding purposes, and shall include farmers who sell \$5,000 worth or more of cleaned, processed, packaged, and labeled seed in any one year.

(24) The term "record" shall include the symbol identifying the seed as to origin, amount, processing, testing, labeling and distribution, file sample of the seed, and any other document or instrument pertaining to the purchase, sale or handling of agricultural, vegetable, flower or forest tree seed.

(25) The terms "certified seed," "registered seed," and "foundation seed" mean seed that have been produced and labeled in accordance with the procedures and in compliance with the rules and regulations of any agency authorized by the laws of this state or the laws of another state.

(26) The term "breeder seed" means seed that are released directly from the breeder or experiment station that develops the seed. These seed are one class above foundation seed.

(27) The term "date of test" means the month and year the percentage of germination appearing on the label was obtained by laboratory test.

(28) The term "origin" means the state, District of Columbia, Puerto Rico, or possession of the United States, or the foreign country where the seed were grown, except for forest tree seed the term "origin" means the county or state forest service seed collection zone and the state where the seed were grown.

(29) The terms "mixed" or "mixture" mean seed consisting of more than one kind or variety, each present in excess of 5 percent of the whole.

(30) The term "treated" means that the seed has been given an application of a material or subjected to a process designed to control or repel disease organisms, insects or other pests attacking seed or seedlings grown therefrom to improve its planting value or to serve any other purpose.

(31) The term "hybrid" means the first generation seed of a cross produced by controlling the pollination and by combining:

- (a) Two or more inbred lines;
- (b) One inbred or a single cross with an open-pollinated variety; or
- (c) Two varieties or species, except open-pollinated

ed varieties of corn (*Zea mays*).

The second generation or subsequent generations from such crosses shall not be regarded as hybrids. Hybrid designations shall be treated as variety names.

(32) The term "type" means a group of varieties so nearly similar that the individual varieties cannot be clearly differentiated except under special conditions.

**History.**—s. 2, ch. 22694, 1945; s. 1, ch. 57-199; s. 1, ch. 61-436; s. 1, ch. 63-116; ss. 14, 35, ch. 69-106; ss. 1-3, ch. 69-144; s. 241, ch. 71-377.

#### 578.08 Registrations.—

(1) Every person, except as provided in subsection (4) and s. 578.14, before selling, distributing for sale, offering for sale, exposing for sale, handling for sale, or soliciting orders for the purchase of any agricultural, vegetable, flower, or forest tree seed or mixture thereof, in the state, shall first register with the department as a seed dealer, giving the name and location of each place of business at which such seed is sold, distributed for sale, offered for sale, exposed for sale or handled for sale and the name and address of each representative soliciting orders for purchase of any agricultural, vegetable, flower, or forest tree seed, and at the time of registration shall pay to the department an annual registration fee for each such place of business or each such representative based on the gross receipts from the sale of such seed for the last preceding license year as follows:

(a) Receipts less than \$1,000.01, fee.....	\$ 5
(b) Receipts more than \$1,000 and less than \$2,500.01, fee.....	10
(c) Receipts more than \$2,500 and less than \$5,000.01, fee.....	20
(d) Receipts more than \$5,000 and less than \$10,000.01, fee.....	35
(e) Receipts more than \$10,000 and less than \$20,000.01, fee.....	50
(f) Receipts more than \$20,000 and less than \$30,000.01, fee.....	75
(g) Receipts more than \$30,000 and less than \$40,000.01, fee.....	100
(h) Receipts more than \$40,000 and less than \$50,000.01, fee.....	150
(i) Receipts more than \$50,000 and less than \$70,000.01, fee.....	200
(j) Receipts more than \$70,000 and less than \$100,000.01, fee.....	250
(k) Receipts more than \$100,000 and less than \$150,000.01, fee.....	300
(l) Receipts more than \$150,000 and less than \$200,000.01, fee.....	400
(m) Receipts more than \$200,000 and less than \$300,000.01, fee.....	500
(n) Receipts more than \$300,000 and less than \$400,000.01, fee.....	600
(o) Receipts more than \$400,000 and less than \$500,000.01, fee.....	800
(p) Receipts more than \$500,000, fee.....	1,000
(q) For places of business not previously in operation, the fee shall be based on anticipated receipts for the first license year.	

(2) A receipt or acknowledgment from the department of such registration and payment of such fee or fees shall constitute a sufficient permit for



such dealer to engage in or continue in the business of selling, distributing for sale, offering or exposing for sale, handling for sale, or soliciting orders for the purchase of any agricultural, vegetable, flower, or forest tree seed within the state until July 1 next thereafter, subject to compliance with the other requirements of this law. However, the department shall have authority to suspend or revoke any such permit for the violation of any provision of this law or of any rule made and promulgated under authority hereof. Such registration shall expire on June 30 next thereafter and shall be renewed on July 1 of each year. If any person who is subject to the requirements of this section shall fail to comply herewith by August 1 of any year, the department shall have the authority to issue a stop-sale notice or order against such person which shall prohibit such person from selling or causing to be sold any agricultural, vegetable, flower, or forest tree seed until the requirements of this section are complied with.

(3) Every person selling, distributing for sale, offering for sale, exposing for sale, handling for sale, or soliciting orders for the purchase of any agricultural, vegetable, flower, or forest tree seed in the state other than as provided in s. 578.14, shall be subject to the requirements of this section. Provided, that Florida State Agricultural Experiment Stations shall not be subject to the requirements of this section.

(4) The provisions of this act shall not apply to farmers who sell uncleaned, unprocessed, unpackaged, and unlabeled seed, but shall apply to farmers who sell cleaned, processed, packaged, and labeled seed in amounts in excess of \$5,000 in any one year; provided that the first \$5,000 worth of cleaned, processed, packaged, and labeled seed of any farmer shall be exempted from the provisions of this act.

**History.**—s. 4, ch. 19364, 1939; CGL 1940 Supp. 4151(593); s. 8, ch. 20251, 1941; s. 8, ch. 21942, 1943; s. 8, ch. 22694, 1945; s. 1, ch. 26969, 1951; s. 2, ch. 57-199; s. 2, ch. 61-436; ss. 14, 35, ch. 69-106; s. 4, ch. 69-144; s. 6, ch. 78-95.

**578.09 Label requirements.**—Each container of agricultural, vegetable, or flower seed sold, offered for sale, exposed for sale, or distributed for sale within this state for sowing or planting purposes shall bear thereon or have attached thereto, in a conspicuous place, a single label containing all information required under this section, plainly written or printed in the English language, in century type, giving the following information:

(1) **FOR TREATED SEED.**—For all agricultural, vegetable, or flower seed treated as defined in this chapter:

(a) A word or statement indicating that the seed has been treated or description of process used.

(b) The commonly accepted coined, chemical or abbreviated chemical (generic) name of the applied substance and the words "poison treated" in red letters, in not less than ¼-inch type.

(c) A caution statement such as "Do not use for food, feed, or oil purposes."

(d) Rate of application or statement "Treated at manufacturer's recommended rate."

(e) If the seed is treated with an inoculant, the date beyond which the inoculant is not to be considered effective (date of expiration).

(2) **AGRICULTURAL SEED.**—

(a) Commonly accepted name of kind and variety of each agricultural seed component in excess of 5 percent of the whole, and the percentage by weight of each in the order of its predominance. Where more than one component is required to be named, the word "mixture" or the word "mixed" shall be shown conspicuously on the label.

(b) Lot number or other lot identification.

(c) Net weight.

(d) Origin, if known; if unknown, that fact shall be stated.

(e) Percentage by weight of all weed seed.

(f) The name and number per pound of each kind of restricted noxious weed seed.

(g) Percentage by weight of other crop seed.

(h) Percentage by weight of inert matter.

(i) For each named agricultural seed:

1. Percentage of germination, exclusive of hard seed;

2. Percentage of hard seed when present, if desired; and

3. The calendar month and year the test was completed to determine such percentages.

(j) Name and address of the person who labeled said seed or who sells, distributes, offers, or exposes said seed for sale within this state.

(3) **FOR VEGETABLE SEED IN CONTAINERS OF 8 OUNCES OR MORE.**—

(a) Name of kind and variety of seed.

(b) Net weight.

(c) Lot number or other lot identification.

(d) Percentage of germination.

(e) Calendar month and year the test was completed to determine such percentages.

(f) Name and address of the person who labeled said seed or who sells, distributes, offers or exposes said seed for sale within this state.

(g) For seed which germinate less than the standard last established by the department the words "below standard," in not less than 8-point type, must be printed or written in ink on the face of the tag, in addition to the other information required. Provided, that no seed marked "below standard" shall be sold which falls more than 20 percent below the standard for such seed which has been established by the department, as authorized by this law.

(h) The name and number of restricted noxious weed seed per pound.

(4) **FOR VEGETABLE SEED IN CONTAINERS OF LESS THAN 8 OUNCES.**—

(a) Name of kind and variety of seed.

(b) Name and address of person who labeled seed or who sells, distributes, offers, or exposes said seed for sale within this state.

(c) For seed which germinate less than standard last established by the department, the additional information must be shown:

1. Percentage of germination, exclusive of hard seed.

2. Percentage of hard seed when present, if desired.

3. Calendar month and year the test was completed to determine such percentages.

4. The words "below standard" in not less than 8-point type.

(d) No seed marked "below standard" shall be

sold which fall more than 20 percent below the established standard for such seed.

(5) **FOR FLOWER SEED IN PACKETS PREPARED FOR USE IN HOME GARDENS OR HOUSEHOLD PLANTINGS OR FLOWER SEED IN PREPLANTED CONTAINERS, MATS, TAPES, OR OTHER PLANTING DEVICES.—**

(a) For all kinds of flower seed:

1. The name of the kind and variety or a statement of type and performance characteristics as prescribed in the rules and regulations promulgated under the provisions of this chapter.

2. The calendar month and year the seed was tested or the year for which the seed was packaged.

3. The name and address of the person who labeled said seed, or who sells, offers, or exposes said seed for sale within this state.

(b) For seed of those kinds for which standard testing procedures are prescribed and which germinate less than the germination standard last established under the provisions of this chapter:

1. The percentage of germination exclusive of hard seed.

2. The words "below standard" in not less than 8-point type.

(c) For seed placed in a germination medium, mat, tape, or other device in such a way as to make it difficult to determine the quantity of seed without removing the seed from the medium, mat, tape, or device, a statement to indicate the minimum number of seed in the container.

(6) **FOR FLOWER SEED IN CONTAINERS OTHER THAN PACKETS PREPARED FOR USE IN HOME FLOWER GARDENS OR HOUSEHOLD PLANTINGS AND OTHER THAN PREPLANTED CONTAINERS, MATS, TAPES, OR OTHER PLANTING DEVICES.—**

(a) The name of the kind and variety or a statement of type and performance characteristics as prescribed in rules and regulations promulgated under the provisions of this chapter.

(b) The lot number or other lot identification.

(c) The calendar month and year that the seed were tested or the year for which the seed were packaged.

(d) The name and address of the person who labeled said seed or who sells, offers, or exposes said seed for sale within this state.

(e) For those kinds of seed for which standard testing procedures are prescribed:

1. The percentage germination exclusive of hard seed.

2. The percentage of hard seed, if present.

(f) For those seeds which germinate less than the standard last established by the department, the words "below standard" in not less than 8-point type must be printed or written in ink on the face of the tag.

(7) **DEPARTMENT TO PRESCRIBE UNIFORM ANALYSIS TAG.—**The department shall have the authority to prescribe a uniform analysis tag required by this section.

**History.**—s. 5, ch. 19364, 1939; CGL 1940 Supp. 4151(594); s. 3, ch. 20251, 1941; ss. 3, 13, ch. 21942, 1943; ss. 3, 12, ch. 22694, 1945; ss. 1-4, ch. 26926, 1951; s. 3, ch. 57-199; s. 3, ch. 61-436; ss. 14, 35, ch. 69-106; s. 5, ch. 69-144.

#### 578.091 Forest tree seed.—

(1) Each container of forest tree seed which is sold, offered for sale, exposed for sale, or transported within this state for sowing purposes shall bear thereon or have attached thereto in a conspicuous place a plainly written or printed label or tag in the English language, giving the following information:

(a) For all forest tree seed treated as defined in this law:

1. A word or statement indicating that the seed has been treated.

2. The commonly accepted coined, chemical or abbreviated chemical (generic) name of the applied substance or description of the process used.

3. The words "poison treated" in red letters at least one-fourth inch type and a caution statement such as "Do not use for food, feed, or oil purposes."

4. If the seed has been treated with an inoculant, the date beyond which the inoculant is not to be considered effective (date of expiration).

(b) For all forest tree seed subject to this law:

1. Common name of the species of seed (and subspecies, if appropriate).

2. The scientific name of the genus and species (and subspecies, if appropriate).

3. Lot number or other lot identification.

4. State of origin and forest tree seed collection zone in state if state is divided into zones.

5. Purity as a percentage of pure seed by weight.

6. For those species for which standard germination testing procedures are prescribed by the department, the following:

a. Percentage germination exclusive of hard seed.

b. Percentage of hard seed, if present.

c. Calendar month and year test was completed to determine such percentages.

7. In lieu of a., b., and c., of subparagraph 6., above, the seed may be labeled "Test is in process, results will be supplied upon request."

8. For those species for which standard germination testing procedures have not been prescribed by the department, the calendar year in which the seed was collected.

9. The name and address of the person who labeled said seed or who sells, offers, or exposes said seed for sale within this state.

(2) The information required by subsection (1) to be placed on labels attached to seed containers shall not be modified or denied in the labeling or on another label attached to the container. However, labeling of seed supplied under a contractual agreement may be by invoice accompanying the shipment or by an analysis tag attached to said invoice if each bag or other container is clearly identified by a lot number stenciled on the container or if the seed is in bulk. Each bag or container that is not so identified must carry complete labeling.

**History.**—s. 6, ch. 69-144; ss. 14, 35, ch. 69-106.

#### 578.10 Exemptions.—

(1) The provisions of s. 578.13 shall not apply to any common carrier in respect to any seed transported or delivered for transportation in the ordinary course of its business as a carrier. Provided, that such carrier is not engaged in processing or mer-



chandising seed subject to the provisions of this law.

(2) The provisions of ss. 578.09 and 578.13 do not apply:

(a) To seed or grain not intended for sowing or planting purposes.

(b) To seed in storage in, consigned to or being transported to seed cleaning or processing establishments for cleaning or processing only. Any labeling or other representation which may be made with respect to the unclean seed shall be subject to this law.

(3) No person shall be subject to the criminal penalties of this law for having sold, offered, exposed, or distributed for sale in this state any agricultural, vegetable, or forest tree seed which were incorrectly labeled or represented as to kind and variety or origin, which seed cannot be identified by examination thereof, unless he has failed to obtain an invoice or grower's declaration giving kind and variety and origin.

(4) When seeds are sold from a duly labeled container and taken therefrom in the presence of the purchaser, the container in which such seeds are delivered to the purchaser will not be required to have a label or tag unless so requested by the purchaser. This, however, shall not relieve or exempt any seed dealer from any liability imposed by the Florida Seed Law.

**History.**—s. 6, ch. 19364, 1939; CGL 1940 Supp. 4151(595); s. 5, ch. 20251, 1941; s. 5, ch. 21942, 1943; s. 5, ch. 22694, 1945; s. 2, ch. 26969, 1951; ss. 4, 9, ch. 57-199; s. 7, ch. 69-144.

#### **578.11 Duties, authority, and rules and regulations of the department.—**

(1) The duty of administering this law and enforcing its provisions and requirements shall be vested in the Department of Agriculture and Consumer Services, which is hereby authorized to employ such agents and persons as in its judgment shall be necessary therefor. It shall be the duty of the department, which may act through its authorized agents, to sample, inspect, make analyses of, and test agricultural, vegetable, flower, or forest tree seed transported, sold, offered or exposed for sale, or distributed within this state for sowing or planting purposes, at such time and place and to such extent as it may deem necessary to determine whether said agricultural, vegetable, flower or forest tree seed are in compliance with the provisions of this law, and to notify promptly the person who transported, distributed, sold, offered or exposed the seed for sale, of any violation.

(2) The department is authorized:

(a) To prescribe and adopt reasonable rules, after notice to registered dealers, the Florida Farm Bureau Federation, the Florida Fruit and Vegetable Association, and the Florida Cattlemen's Association in addition to any notice required by chapter 120, which shall have the full force and effect of law, for the enforcement of this act, governing the methods of sampling, inspecting, testing, and examining agricultural, vegetable, flower, or forest tree seed.

(b) To establish standards and tolerances to be followed in the administration of this law, which shall be in general accord with officially prescribed practices in interstate commerce.

(c) To prescribe uniform labels.

(d) To adopt prohibited and restricted noxious weed seed lists.

(e) To prescribe limitations for each restricted noxious weed to be used in enforcement of this act and to add or subtract therefrom from time to time as the need may arise.

(f) To make commercial tests of seed and to fix and collect charges for such tests.

(g) To list the kinds of flower and forest tree seed subject to this law.

(h) To prescribe such other rules and regulations as may be necessary to secure the efficient enforcement of this act.

(3) For the purpose of carrying out the provisions of this law, the department, through its authorized agents, is authorized:

(a) To enter upon any public or private premises, where agricultural, vegetable, flower, or forest tree seed is sold, offered, exposed, or distributed for sale during regular business hours, in order to have access to seed subject to this law and the rules and regulations hereunder.

(b) To issue and enforce a stop-sale notice or order to the owner or custodian of any lot of agricultural, vegetable, flower, or forest tree seed, which the department finds or has good reason to believe is in violation of any provisions of this law, which shall prohibit further sale, barter, exchange, or distribution of such seed until the department is satisfied that the law has been complied with and has issued a written release or notice to the owner or custodian of such seed. After a stop-sale notice or order shall be given or issued against or attached to any lot of seed and the owner or custodian of such seed shall have received confirmation that the same does not comply with this law, he shall have 15 days beyond the normal test period within which to comply with the law and obtain a written release of the seed. The provisions of this paragraph shall not be construed as limiting the right of the department to proceed as authorized by other sections of this law.

(c) To establish and maintain a seed laboratory and employ seed analysts and other personnel whose qualifications shall be approved by the State Chemist, and whose work shall be under the supervision and direction of the State Chemist, and to incur such other expenses as may be necessary to comply with these provisions.

**History.**—s. 7, ch. 19364, 1939; CGL 1940 Supp. 4151(596); s. 6, ch. 20251, 1941; s. 6, ch. 21942, 1943; s. 6, ch. 22694, 1945; s. 5, ch. 57-199; s. 4, ch. 61-436; ss. 14, 35, ch. 69-106; s. 8, ch. 69-144; s. 6, ch. 78-95.

**578.12 Stop-sale, stop use, removal, or hold orders.**—When agricultural, vegetable, flower, or forest tree seed is being offered or exposed for sale or held in violation of any of the provisions of this chapter, the department, through its authorized representative, may issue and enforce a stop-sale, stop use, removal, or hold order to the owner or custodian of said seed ordering it to be held at a designated place until the law has been complied with and said seed is released in writing by the department or its authorized representative. If seed is not brought into compliance with this law it shall be destroyed within

30 days or disposed of by the department in such a manner as it shall by regulation prescribe.

**History.**—s. 8, ch. 19364, 1939; CGL 1940 Supp. 4151(597); s. 7, ch. 20251, 1941; s. 7, ch. 21942, 1943; s. 7, ch. 22694, 1945; ss. 14, 35, ch. 69-106; s. 9, ch. 69-144; s. 1, ch. 77-174.

### 578.13 Prohibitions.—

(1) It shall be unlawful for any person to sell, distribute for sale, offer for sale, expose for sale, handle for sale, or solicit orders for the purchase of any agricultural, vegetable, flower, or forest tree seed within this state:

(a) Unless the test to determine the percentage of germination required by s. 578.09 shall have been completed within a period of 7 months, exclusive of the calendar month in which the test was completed, immediately prior to sale, exposure for sale, offering for sale, or transportation, except for germination test for seed in hermetically sealed containers which is provided for in s. 578.28.

(b) Not labeled in accordance with the provisions of this law, or having false or misleading labeling.

(c) Pertaining to which there has been a false or misleading advertisement.

(d) Containing noxious weed seeds subject to tolerances and methods of determination prescribed in the rules and regulations under this law.

(e) Unless a seed license has been obtained in accordance with the provisions of this law.

(f) Unless such seed conforms to the definition of a "lot of seed."

(2) It shall be unlawful for any person within this state:

(a) To detach, deface, destroy, or use a second time any label or tag provided for in this law or in the rules and regulations made and promulgated hereunder or to alter or substitute seed in a manner that may defeat the purpose of this law.

(b) To disseminate any false or misleading advertisement concerning agricultural, vegetable, flower, or forest tree seed in any manner or by any means.

(c) To hinder or obstruct in any way any authorized person in the performance of his duties under this law.

(d) To fail to comply with a stop-sale order or seizure order.

(e) To sell, distribute for sale, offer for sale, expose for sale, handle for sale, or solicit orders for the purchase of any agricultural, vegetable, flower, or forest tree seed labeled "certified seed," "registered seed," "foundation seed," "breeder seed," or similar terms, unless it has been produced and labeled under seal in compliance with the rules and regulations of any agency authorized by law.

(f) To fail to keep a complete record, including a file sample which shall be retained for 1 year after seed is sold, of each lot of seed and to make available for inspection such records to the department or its duly authorized agents.

(g) To use the name of the Department of Agriculture and Consumer Services or Florida State Seed Laboratory in connection with analysis tag, labeling advertisement, or sale of any seed in any manner whatsoever unless such seed are "certified seed."

**History.**—s. 4, ch. 20251, 1941; s. 4, ch. 21942, 1943; s. 4, ch. 22694, 1945; s. 6, ch. 57-199; s. 5, ch. 61-436; ss. 14, 35, ch. 69-106; s. 10, ch. 69-144.

**578.14 Packet vegetable and flower seed.**—When vegetable or flower seed are sold, offered for sale, or exposed for sale in packets of less than 8 ounces, the company who packs seed for retail sale shall register and pay fees as provided under s. 578.08.

**History.**—s. 9, ch. 20251, 1941; s. 9, ch. 21942, 1943; s. 9, ch. 22694, 1945; s. 6, ch. 61-436; s. 11, ch. 69-144.

**578.181 Penalties.**—Every violation of any of the provisions of ss. 578.011, 578.08-578.14, 578.22-578.25 shall be a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 15, ch. 22694, 1945; s. 596, ch. 71-136.

**578.20 Short title.**—Sections 578.011, 578.08-578.14, 578.181, 578.22-578.25 shall be known and cited as the "Florida Seed Law."

**History.**—s. 1, ch. 20251, 1941; s. 1, ch. 21942, 1943; s. 1, ch. 22694, 1945.

**578.22 Disposition of fees collected.**—All fees required and collected as provided in this chapter shall be paid into the State Treasury and placed to the credit of the General Inspection Trust Fund, from which fund the expenses incident to the enforcement of this law shall be paid.

**History.**—s. 11, ch. 21942, 1943; s. 10, ch. 22694, 1945; s. 3, ch. 26960, 1951; s. 2, ch. 61-119.

**578.23 Dealers' records to be kept available.**—Every seed dealer shall make and keep for a period of 3 years satisfactory records of all agricultural, vegetable, flower, or forest tree seed bought or handled to be sold, which records shall at all times be made readily available for inspection, examination or audit by the department or its duly authorized agents.

**History.**—s. 14, ch. 21942, 1943; s. 13, ch. 22694, 1945; ss. 14, 35, ch. 69-106; s. 12, ch. 69-144.

**578.24 Mixed varieties of seed oats prohibited.**—Oats consisting of mixed varieties shall not be sold for planting purposes in this state unless permitted by regulation promulgated by the department upon recommendation of the Florida Agricultural Experiment Station at Gainesville.

**History.**—s. 12, ch. 21942, 1943; s. 11, ch. 22694, 1945; ss. 14, 35, ch. 69-106.

**578.25 Use of disclaimer clause.**—The use of a disclaimer or nonwarranty clause in any invoice, advertising, labeling, or written, printed, or graphic matter pertaining to any seed shall not relieve or exempt any person from any provisions of the Florida Seed Law.

**History.**—s. 14, ch. 22694, 1945.

**578.26 Complaint, investigation, findings and recommendation prerequisite to legal action.**—

(1) When any farmer is damaged by the failure of agricultural, vegetable, flower, or forest tree seed to produce or perform as represented by the label attached to such seed as required by s. 578.09, as a prerequisite to his right to maintain a legal action against the dealer from whom such seed were purchased, such farmer shall make a sworn complaint against such dealer alleging damages sustained and file same with the department within 10 days after



defect or violation becomes apparent and send a copy of said complaint to said dealer by United States registered mail; provided that requirement for filing complaint therein set forth appears legibly typed or printed on the analysis label attached to the package containing such seed at the time of purchase by the farmer. A filing fee of \$10 shall be paid to the department with each complaint filed and shall be recovered from the dealer upon the recommendation of the arbitration council. Within 5 days after receipt of a copy of complaint, the dealer shall file with the department his answer to said complaint and send a copy of same to the farmer by United States registered mail.

(2) The department shall refer the complaint and the answer thereto to the arbitration council provided in s. 578.27, for investigation, findings, and recommendation on the matters complained of. Upon receipt of same the department shall transmit the findings and recommendation of the arbitration council to the farmer and to the dealer by United States registered mail.

**History.**—s. 1, ch. 26814, 1951; s. 7, ch. 57-199; ss. 14, 35, ch. 69-106; s. 13, ch. 69-144.  
cf.—s. 1.01 Defines "registered mail" to include certified mail.

#### **578.27 Arbitration council; composition; purpose; meetings; duties; expenses.—**

(1) The Department of Agriculture and Consumer Services shall appoint an arbitration council composed of five members and five alternate members, one member and one alternate to be appointed upon the recommendation of each of the following: the deans of extension and research, Institute of Food and Agricultural Sciences, University of Florida; president of the Florida Seedsmen and Garden Supply Association; president of the Florida Farm Bureau Federation; and the Commissioner of Agriculture. Each member and alternate shall continue to serve until replaced by the department. Each alternate member shall serve only in the absence of the member for whom he is an alternate. The council shall elect a chairman and a secretary from its membership. It shall be the duty of the chairman to conduct all meetings and deliberations held by the council and to direct all other activities of the council. It shall be the duty of the secretary to keep accurate and correct records on all meetings and deliberations and perform other duties for the council as directed by the chairman.

(2) The purpose of the arbitration council is to assist farmers and agricultural seed dealers in determining the validity of complaints made by farmers against dealers and recommend cost damages resulting from alleged failure of seed to produce as represented by label on the seed package.

(3) The arbitration council may be called into session by the department or upon the direction of the chairman to consider matters referred to it by the department.

(4)(a) When the department refers to the arbitration council any complaint made by a farmer against a dealer said council shall make a full and complete investigation of the matters complained of and at the conclusion of said investigation report its findings and make its recommendation of cost damages and file same with the department.

(b) In conducting its investigation the arbitration council or any member or members thereof is authorized to examine the farmer on his farming operation of which he complains and the dealer on his packaging, labeling, and selling operation of the seed alleged to be faulty; to grow to production a representative sample of the alleged faulty seed through the facilities of the state, under the supervision of the department when such action is deemed to be necessary; to hold informal hearings at a time and place directed by the chairman of the council upon reasonable notice to the farmer and the dealer.

(c) Any investigation made by less than the whole membership of the council shall be by authority of a written directive by the chairman and such investigation shall be summarized in writing and considered by the council in reporting its findings and making its recommendation.

(5) The members of the council shall receive no compensation for the performance of their duties hereunder, but the members of the council shall be reimbursed for travel expenses as provided in s. 112.061, when they attend a meeting or perform a service in conformity with the requirements of this section.

**History.**—s. 8, ch. 57-199; ss. 3, 14, 35, ch. 69-106; s. 1, ch. 71-1.

**578.28 Seed in hermetically sealed containers.**—The period of validity of germination tests is extended to the following periods for seed packaged in hermetically sealed containers, under conditions and label requirements set forth in this section:

(1) **GERMINATION TESTS.**—The germination test for agricultural and vegetable seed shall have been completed within the following periods, exclusive of the calendar month in which the test was completed, immediately prior to shipment, delivery, transportation, or sale:

(a) In the case of agricultural or vegetable seed shipped, delivered, transported, or sold to a dealer for resale, 18 months;

(b) In the case of agricultural or vegetable seed for sale or sold at retail, 24 months.

(2) **CONDITIONS OF PACKAGING.**—The following conditions are considered as minimum:

(a) *Hermetically sealed packages or containers.*—A container, to be acceptable under the provisions of this section, shall not allow water vapor penetration through any wall, including the wall seals, greater than 0.05 gram of water per 24 hours per 100 square inches of surface at 100°F. with a relative humidity on one side of 90% and on the other of 0%. Water vapor penetration (WVP) is measured by the standards of the U. S. Bureau of Standards as: gm H<sub>2</sub>O/24hr./100 sq. in./100°F/90%RH V.O%RH.

(b) *Moisture of seed packaged.*—The moisture of agricultural or vegetable seed subject to the provisions of this section shall not exceed the following:

Family	Kind	Maximum percent Seed Moisture
Gramineae	Sweet corn	8.0
	Kentucky bluegrass	6.0
	Creeping red fescue	3.0
	Perennial ryegrass	8.0

Liliaceae	Onion, leek, chive welsh onion	6.5
Chenopodiaceae	Beet, chard spinach	7.5 8.0
Cruciferae	Cabbage, broccoli, cauliflower, collards, chinese cabbage, kale, turnip, rutabaga, kohlrabi, brussels sprouts, mustard, radish	5.0
Leguminosae	Snap bean, lima bean, pea Crimson clover	7.0 8.0
Umbelliferae	Carrot, celery, celeriac Parsnip Parsley	7.0 6.0 6.5
Solanaceae	Tomato Pepper Eggplant	5.5 4.5 6.0
Cucurbitaceae	Cucumber, muskmelon, squash, pumpkin Watermelon	6.0 6.5
Compositae	Lettuce	5.5
All other agricultural or vegetable seed not listed above		6.0

A tolerance of 1 percent is applicable to the maximum percentage of moisture listed above and the percentage of moisture found by an official test. The percentage of moisture shall be determined by the air oven method.

(3) LABELING REQUIRED.—In addition to the labeling required by s. 578.09, seed packaged under the provisions of this section shall be labeled with the following information:

(a) Seed has been preconditioned as to moisture content.

(b) Container is hermetically sealed.

(c) "Germination test valid until (month, year)" may be used. (Not to exceed 24 months from date of test).

History.—s. 14, ch. 69-144.



## CHAPTER 580

## COMMERCIAL FEED AND FEEDSTUFFS

- 580.011 Title.
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**580.011 Title.**—This chapter shall be known as the "Florida Commercial Feed Law."

*History.*—s. 1, ch. 29755, 1955.

**580.021 Enforcement agency.**—This chapter shall be administered by the Department of Agriculture and Consumer Services, hereinafter referred to as the "department."

*History.*—s. 2, ch. 29755, 1955; s. 1, ch. 61-440; ss. 14, 35, ch. 69-106.

**580.031 Definition of words and terms.**—When used in this chapter the following terms shall have the meaning ascribed to them:

- (1) "Person" means individual, partnership, corporation, firm or association.
- (2) "Distribute" means to offer for sale, sell, barter, or exchange commercial feed or feedstuffs, or to supply, furnish, or otherwise provide commercial feed or feedstuffs for use in the state.
- (3) "Distributor" means any person who distributes commercial feed or feedstuffs.
- (4) "Commercial feed" means any material or combination of materials which are distributed for use as feed or for mixing in a feed for cats, cattle, chickens, chinchilla, deer, dogs, ducks, farm pond food fish, aviary birds, game birds, wild birds, geese, goats, guinea pigs, guinea fowl, hamsters, horses, mice, mink, monkeys, mules, nutria, pheasants, pigeons, rabbits, rats, sheep, swine, or turkeys, except:
  - (a) Unmixed and unprocessed whole seeds.
  - (b) Unground hay, straw, stover, silage, cobs, husks and hulls when unmixed with other material, provided that the department may by regulation prohibit the inclusion of nonnutritive ingredients in commercial mixed feeds other than customer-formula feeds.
  - (c) Individual chemical compounds when unmixed with other materials.
  - (d) Mixed feed for consumer's own use made entirely or in part from products raised on said consumer's farm, except as may be provided by regulations of the department.
- (5) "Ingredient" means each of the constituent

materials used to make a commercial feed.

(6) "Customer-formula feed" means a commercial feed that is mixed according to the formula of the customer, furnished in writing over the signature of the customer.

(7) "Brand name" or "product name" means the term, design, or trademark or any other specific designation under which a commercial feed or feedstuff is distributed.

(8) "Label" means a display of written, printed, or graphic matter upon or affixed to the container in which a product is distributed, or on the invoice accompanying the product.

(9) The term "labeling" means all labels and other written, printed, or graphic matters upon an article or any of its containers or wrappers, or accompanying such article; provided also, that if an article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device, sound, or in any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual.

(10) The term "advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of commercial feed or feedstuffs.

(11) "Ton" means a net weight of 2,000 pounds avoirdupois.

(12) "Percent" or "percentage" means percentage by weight.

(13) "Official sample" means any sample of commercial feed or feedstuff taken by the department or its authorized agent and designated as official by the department.

(14) "Special sample" means any sample of commercial feed or feedstuff taken by the department or its authorized agent which is not an "official sample."

(15) Words importing the singular number have the meaning of the plural and words importing the plural number have the meaning of the singular.

(16) Except as provided by law or regulation, all terms used in connection with commercial feed or feedstuffs shall have the meaning ascribed to them by the Association of American Feed Control officials.

(17) "Feedstuff" means edible materials which are distributed for animal consumption and which

contribute energy or nutrients, or both, to an animal diet.

**History.**—s. 3, ch. 29755, 1955; s. 2, ch. 61-440; s. 1, ch. 69-62; ss. 14, 35, ch. 69-106; s. 1, ch. 75-140; s. 1, ch. 79-66.

**580.041 Master registration; application; refusal or cancellation of registration.—**

(1) Each distributor of commercial feed shall obtain a master registration before his brands are distributed in Florida. The application for master registration shall be submitted to the department on forms furnished by the department and shall be accompanied by a label for each brand being distributed. A label to cover each new brand or to cover each change in labeling shall be mailed to the department at the time such new or changed brand is distributed in Florida. Said form shall provide that applicant will comply with labeling, inspection fee payment and all other provisions of this chapter and regulation hereunder. The application shall cover all branches listed by the distributor and be signed by the owner, a partner of a partnership, or an authorized officer or agent of a corporation. The department shall mail a copy of the master registration to the distributor to signify that administrative requirements have been met, but this shall not necessarily signify approval of labeling.

(2) A customer-formula feed shall be distributed only to the customer who requested it and shall not be redistributed.

(3) Failure of any distributor to comply with registration shall be considered prima facie evidence of an attempt to violate this chapter, and the department shall have full authority to sample, analyze and assess penalties where deficiencies are found for any feed distributed in Florida prior to registration.

(4) The department is empowered to refuse or to cancel the master registration of any distributor who violates or fails to comply with any of the provisions of this chapter or regulations hereunder, or for other good cause shown.

(5) The master registration shall remain in effect until canceled by the department or until withdrawn or discontinued by the registrant by written notice to the department.

**History.**—s. 4, ch. 29755, 1955; s. 3, ch. 61-440; ss. 2, 3, ch. 69-62; ss. 14, 35, ch. 69-106; s. 6, ch. 78-95.

**580.051 Labeling.—**

(1) Any commercial feed distributed in this state shall be accompanied by a legible label bearing the following information:

(a) An accurate statement of the net weight.

(b) The name and principal address of the distributor.

(c) The brand name or product name under which the commercial feed is distributed.

(d) The guaranteed analysis, listing the minimum percentage of crude protein, minimum percentage of crude fat, and maximum percentage of crude fiber, and, when more than 10 percent mineral ingredients are present, the minimum or maximum percentages of mineral elements or compounds as provided by regulation. Vitamin ingredients, when guaranteed, shall be shown in amounts and terms provided by regulation. For mineral feeds the list shall include the following: Maximum or minimum

percentages of calcium (Ca), phosphorus (P), salt (NaCl), iron (Fe), copper (Cu), cobalt (Co), manganese (Mn), and flourine (F) if ingredients used as sources of any of these constituents are declared. All mixtures containing mineral or vitamin ingredients, generally regarded as dietary factors essential for the normal nutrition of animals, and which are sold or represented for the primary purpose of supplying these minerals or vitamins as additions to rations in which these same mineral or vitamin factors may be deficient, shall be classified as mineral or vitamin supplements. The department may by regulation limit the use of active drug ingredients in commercial feeds and prescribe the labeling to be used to insure safe usage of such medicated feeds. Other nutritional substances or elements determinable by laboratory methods may be guaranteed by permission of or shall be guaranteed at the request of the department as may be provided by regulation. Products sold solely as mineral or vitamin supplements and guaranteed as specified in this section need not show guarantees for protein, fat and fiber.

(e) The common or usual name of each ingredient used in the manufacture of the commercial feed; however, the Commissioner, by regulation, may permit the use of collective terms for a group of ingredients which perform a similar function for commercial feed for poultry.

(f) For customer-formula feed the labeling shall also show the name and address of the customer ordering the formula.

(2) When a commercial feed is distributed in this state in bags or other containers, the label shall be placed on or affixed to the container; when a commercial feed is distributed in bulk the label shall accompany delivery and be furnished to the purchaser at time of delivery.

(3) There shall be paid to the department the amount of \$10 as penalty for the distribution of any commercial feed that is not accompanied with labeling required under this chapter, as may be determined by the department, and proceeds from any such penalty payments shall be deposited by the department in the General Inspection Trust Fund.

**History.**—s. 5, ch. 29755, 1955; s. 4, ch. 61-440; s. 2, ch. 61-119; s. 4, ch. 69-62; ss. 14, 35, ch. 69-106; s. 2, ch. 75-140.

**580.061 Inspection fees, payment thereof; enforcement; reporting system and bond requirement.—**

(1)(a) Each registrant or distributor of commercial feeds distributed in Florida shall make application to the department for a permit to report the tonnage of commercial feeds sold and pay the inspection fee of 25 cents per ton as in this chapter provided. The issuance of all permits will be conditioned on the applicant satisfying the department that he has a good bookkeeping system and keeps such records as may be necessary to indicate accurately the tonnage of commercial feeds sold in this state and as are satisfactory to the department and granting the authorized representatives of the department permission to examine such records and verify the tonnage statement. The tonnage report shall be monthly, quarterly, semiannually, or annually as determined by the department, and the inspection fee shall be due and payable on or before the 20th day of the



month covering the tonnage and kind of commercial feeds sold during the preceding reporting period. The report shall be on forms furnished by the department and shall show the number of tons of each type of feed as shown on the forms so furnished. If the report is not filed and the inspection fee paid on the date due or if the report of tonnage be false, the amount of inspection fee due is subject to a penalty of 10 percent or \$10, whichever is greater. Such penalty may be added to the inspection fee due and constitutes a debt and becomes a claim and lien against the surety bond which is required as herein-after provided. Failure to make an accurate statement of tonnage or to pay the inspection fee or comply as provided herein shall constitute sufficient cause for revocation of the permit and also for cancellation of the master registration on file for the permittee. In order to guarantee faithful performance with the provisions of this chapter, each applicant for permit shall post with the department a surety bond in such amount as shall be required by the department to cover fees for any given reporting period, which amount shall not be less than \$1,000, surety bond to be executed by a corporate surety company authorized to do business in Florida. The department shall approve all such bonds before acceptance.

(b) In the event the permittee for any reason discontinues operating under the provisions of subsection (1)(a), the said bond posted by the permittee as provided therein, shall continue in full force and effect. However, in the event of such discontinuance of operation, the permittee may by written notice of such discontinuance to the department setting forth the date of such discontinuance, in which event said bond shall remain in force and effect for a period of 6 months thereafter for the filing of any claim or claims against the same; and after such period of 6 months the bond shall stand canceled except as to such claim or claims as have been filed prior thereto.

(2) There shall be paid to the department for all commercial feed distributed in this state an inspection fee at the rate of 25 cents per ton; provided, that sales of commercial feeds to manufacturers or exchanges between them are hereby exempted if the commercial feeds so sold or exchanged are used solely in the manufacture of feeds which are registered; provided, further, that invoices for such sales or exchanges show the following: "For mixing in registered brands only"; and provided, further, that such sales or exchanges shall be supported by a written purchase order or confirmation of purchase, which in form shall be subject to the approval of the department, signed by the manufacturer to whom such feeds are invoiced, showing that such feeds were purchased for use solely in the manufacture of feeds which are registered. A registrant may be exempted from subsection (1)(a) if he submits a written statement that all sales made are to registered manufacturers and exemption from inspection fee payment is made on all shipments as herein provided. All fees collected by the department under this chapter shall be paid to the State Treasurer to the credit of the General Inspection Trust Fund. The department may employ all help necessary to carry out and enforce the provisions of this chapter and may desig-

nate any such employee to perform any duties necessary to carry out the terms of this chapter. All expenses and salaries shall be paid out of the General Inspection Trust Fund.

**History.**—s. 6, ch. 29755, 1955; s. 1, ch. 57-16; s. 2, ch. 61-119; s. 5, ch. 61-440; s. 5, ch. 69-62; ss. 14, 35, ch. 69-106.

**580.071 Adulteration.**—No person shall distribute an adulterated commercial feed or feedstuff. A commercial feed or feedstuff shall be deemed to be adulterated:

(1) If it contains any poisonous, deleterious, or nonnutritive ingredient in sufficient amount to render it injurious to the health of the animal fed or to man using food produced by animals being fed in accordance with directions for use on the label.

(2) If any valuable constituent has been in whole or in part omitted or abstracted therefrom or any less valuable substance substituted therefor.

(3) If its composition or quality falls below or differs from that which it is purported or is represented to possess by its labeling.

(4) If it contains added hulls, screenings, straw, cobs, or other high fiber material unless the name of each such material is stated on the label.

(5) If it contains a pesticide chemical, chemical additive, or drug in an amount in excess of the permissible tolerances established by the department.

**History.**—s. 7, ch. 29755, 1955; s. 6, ch. 61-440; s. 1, ch. 67-526; s. 6, ch. 69-62; ss. 14, 35, ch. 69-106; s. 2, ch. 79-66.

**580.081 Misbranding.**—No person shall distribute misbranded commercial feed or feedstuffs. A commercial feed or feedstuff shall be deemed to be misbranded:

(1) If its labeling is false or misleading in any particular.

(2) If it is distributed under the name of another commercial feed or feedstuff.

(3) If it is not labeled as required in s. 580.051 and in regulations prescribed under this chapter.

(4) If it purports to be, or is represented as, a commercial feed or feedstuff for which a definition of identity and standard of quality has been prescribed by regulation unless it conforms to such definition and standard.

(5) If any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness as compared with other words, statements, designs, or devices in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

**History.**—s. 8, ch. 29755, 1955; s. 7, ch. 61-440; s. 3, ch. 79-66.

**580.091 Inspection; sampling; analysis.**—

(1) It shall be the duty of the department, which may act through its authorized agent, to sample and inspect commercial feeds and feedstuffs distributed within this state at such time and place to such an extent as it may deem necessary to determine whether such commercial feeds or feedstuffs are in compliance with the applicable provisions of this chapter. The department, through its agent, is authorized to enter upon any public or business prem-

ises and in any vehicle of transport during regular business hours in order to have access to commercial feeds or feedstuffs and records relating to their transportation and sale, subject to the applicable provisions of this chapter and the rules pertaining thereto.

(2) It shall be the duty of the department to draw and to have analyses made of official and special samples.

(3) The methods of sampling and analysis shall be those adopted by the department.

(4) The department, in determining for administrative purposes whether a sample of commercial feed or feedstuff is in compliance with the applicable provisions of this chapter, shall be guided solely by the official sample as defined in s. 580.031(13) and obtained and analyzed as provided for in subsections (1), (2), and (3).

(5) When the inspection and analysis of an official sample indicate a commercial feed or feedstuff has been adulterated or misbranded, the results of analysis shall be forwarded by the department to the guarantor and the purchaser. On request, within 30 days from the date of report, the department shall furnish to the guarantor a portion of the sample concerned for check analysis. If requested by the guarantor within 60 days from the date of report, the department shall forward other portions of said sample to two referee chemists agreed upon by the department and the guarantor. The analysis fees of the referee chemists shall be paid by the guarantor. The average of analyses reported by the department and the two referee chemists shall become the official analysis.

**History.**—s. 9, ch. 29755, 1955; s. 8, ch. 61-440; ss. 14, 35, ch. 69-106; s. 4, ch. 79-66.

**580.101 Rules; standards, definitions.**—The department is authorized to adopt and promulgate such reasonable rules as, in its judgment, shall be necessary or helpful in the efficient enforcement of this chapter, and the department is authorized specifically to adopt rules establishing definitions and reasonable standards for commercial feeds or feedstuffs and permissible tolerances for pesticide chemicals, chemical additives, or drugs in or on commercial feeds or feedstuffs in such amount as will insure the safety of livestock and poultry and the products thereof used for human consumption and to adopt by reference the regulations of the Federal Food and Drug Administration that relate to the manufacture and distribution of medicated feeds.

**History.**—s. 10, ch. 29755, 1955; s. 9, ch. 61-440; s. 2, ch. 67-526; s. 7, ch. 69-62; ss. 14, 35, ch. 69-106; s. 6, ch. 78-95; s. 5, ch. 79-66.

**580.111 Detained commercial feeds and feedstuffs.**—

(1) **STOP-SALE, STOP-USE, REMOVAL, OR HOLD ORDERS.**—When the department has reasonable cause to believe any lot of commercial feed or feedstuff is in violation of any of the applicable provisions of this chapter or of any of the prescribed regulations under this chapter, it may issue and enforce a written or printed stop-sale, stop-use, removal, or hold order warning the possessor not to dispose of the commercial feed or feedstuff in any manner until written permission is given by the department

or a court of competent jurisdiction. The department shall release the commercial feed or feedstuff so withdrawn when the provisions and regulations have been complied with and all costs and expenses incurred in the withdrawal have been paid; provided that with the permission of the department any lot of commercial feed or feedstuff under said stop-sale, stop-use, removal, or hold order may be sold as such to a consumer who shall sign a statement professing that he, the consumer, had knowledge of the same at the time of purchase. If compliance is not obtained within a reasonable time, the department shall begin proceedings for condemnation.

(2) **CONDEMNATION AND CONFISCATION.**

—Any lot of commercial feed or feedstuff not in compliance with the applicable provisions of this chapter, or regulations hereunder, shall be subject to seizure on complaint of the department to the circuit judge or circuit court of the circuit in which the commercial feed or feedstuff is located. In the event the court finds the commercial feed or feedstuff to be in violation of the applicable provisions of this chapter, or regulations hereunder, and orders the condemnation of said commercial feed or feedstuff, it shall be disposed of in the manner provided by the circuit judge or circuit court in the order of condemnation; provided, that in no instance shall the disposition of the commercial feed or feedstuff be ordered by the court without first giving the claimant an opportunity to apply to the court for release of the commercial feed or feedstuff or for permission to process or relabel the commercial feed or feedstuff to bring it into compliance with the applicable provisions of this chapter.

**History.**—s. 11, ch. 29755, 1955; s. 10, ch. 61-440; s. 8, ch. 69-62; ss. 14, 35, ch. 69-106; s. 6, ch. 79-66.

**580.112 Certain acts prohibited.**—The following acts, or the causing thereof knowingly, within the state are prohibited:

(1) The distribution of any commercial feed or feedstuff that is adulterated or misbranded.

(2) The adulteration or misbranding of any commercial feed or feedstuff.

(3) The dissemination of any false advertisement or any other false advertising matter or material with reference to the distribution of any commercial feed or feedstuff.

(4) The refusal to permit entry or inspection, or to permit the taking of a sample, as authorized by s. 580.091.

(5) The removal or disposal of a detained or "stop-saled" lot of commercial feed or feedstuff pursuant to s. 580.111.

(6) The forging, counterfeiting, simulating, or falsely representing, or without proper authority using any label authorized or required by s. 580.051, or any rules or regulations promulgated pursuant to the provisions of this chapter.

(7) Placing, or permitting to be placed, any false advertisement or misleading fact or statement on labels as required under s. 580.051.

(8) The redistribution of a customer-formula commercial feed.

(9) The using or placing of fasteners which may be injurious to animals on any commercial feed or feedstuff or bags of any commercial feed or feedstuff,



except only those distributed exclusively for poultry.

(10) The failure or refusal to do or perform any affirmative provision, or the doing or performing of any prohibited provision of this chapter or of any rule or regulation promulgated pursuant to this chapter not expressly covered in this section.

*History.*—s. 13, ch. 61-440; s. 7, ch. 79-66.

**580.121 Penalties; duties of law enforcement officers.—**

(1) Any person violating any of the provisions of this chapter, or the rules and regulations issued hereunder, or who shall impede, obstruct, hinder, or otherwise prevent or attempt to prevent said department in the performance of its duty in connection with the provisions of this chapter, is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083. In all prosecutions under this chapter involving the composition of a lot of commercial feed or feedstuff, a certified copy of the official analysis signed by the authorized agent of the department shall be accepted by the court as prima facie evidence of the composition. Each state or county law enforcement officer shall make arrests for violations of this chapter or of any rule, regulation, or order promulgated or issued by the department under authority of this law, when such officer is notified of such violation by the department.

(2) Nothing in this chapter shall be construed as requiring the department to report for prosecution or for the institution of seizure proceedings as a result of minor violations of the chapter when it believes that the public interests will be best served by a suitable notice of warning in writing.

(3) The department is hereby authorized to apply for, and the court may grant, upon sufficient evidence, a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter, or any rule or regulation promulgated under the chapter, notwithstanding the existence of other remedies at law; said injunction to be issued without bond.

*History.*—s. 12, ch. 29755, 1955; s. 11, ch. 61-440; ss. 14, 35, ch. 69-106; s. 597, ch. 71-136; s. 8, ch. 79-66.

**580.131 Penalty payable to consumer.—**Any consumer who shall purchase without notice a feed which is below guarantee as is forthwith described shall recover in any legal or administrative action that may be instituted penalties or damages as follows:

(1) If the official analysis shall show that any feed bearing a guarantee of 20 percent protein, or less, falls more than 1 percent protein below the

guarantee, or, if the analysis shall show that any feed bearing a guarantee of more than 20 percent protein falls more than 2 percent protein below the guarantee, \$2 per ton for each percent protein deficiency shall be assessed against the guarantor.

(2) If the official analysis shall show that any feed is deficient in fat by more than five-tenths percent fat, \$2 per ton for each percent fat deficiency shall be assessed against the guarantor.

(3) If the official analysis shall show that any feed bearing a maximum guarantee of not more than 20 percent fiber shall exceed this guarantee by more than 1 percent fiber, or if the analysis shall show that any feed bearing a maximum guarantee of more than 20 percent fiber shall exceed this guarantee by more than 2 percent fiber, \$2 per ton for each percent fiber excess shall be assessed against the guarantor.

(4) If any feed is found by the department to be short in weight, 4 times the invoice value of the actual shortage shall be assessed against the guarantor. The department, in its discretion, may allow reasonable tolerances for short weight due to loss through handling and transporting.

(5) The minimum penalty under any of the foregoing provisions shall in no case be less than \$10, regardless of the monetary value of the deficiency.

(6) Within 60 days from the date of notice by the department to the registrant or the guarantor all penalties assessed under this section shall be paid to the department which shall deposit same in the State Treasury to the credit of the General Inspection Trust Fund, from which said General Inspection Trust Fund there shall be paid to the consumer, upon approval of the department, the amount of said penalties to which the said consumer is entitled under the provisions of this section.

*History.*—s. 13, ch. 29755, 1955; s. 2, ch. 61-119; ss. 14, 35, ch. 69-106; s. 9, ch. 79-66.

**580.141 Publications.—**The department may publish, in such forms as it may deem proper, information concerning the sales of commercial feeds or feedstuffs, together with such data on their production and use as it may consider advisable, and a summary report of the results of the analyses of official samples of commercial feeds or feedstuffs sold within the state as compared with the analyses guaranteed on the label; provided, however, that the information concerning production and use of commercial feeds or feedstuffs shall not disclose the operations of any person.

*History.*—s. 14, ch. 29755, 1955; s. 12, ch. 61-440; ss. 14, 35, ch. 69-106; s. 10, ch. 79-66.

## CHAPTER 581

## PLANT INDUSTRY

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**581.011 Definitions.**—As used in this chapter:

- (1) "Agent" means any person selling or distributing nursery stock under the partial or full control of a nurseryman.
- (2) "Authorized representative" means any designated employee, inspector, or collaborator of the division or the United States Department of Agriculture.
- (3) "Collaborator" means a person cooperating with the division in some capacity, who has been officially designated to perform certain duties for the division.
- (4) "Dealer" means any person not a grower of nursery stock in this state who buys or otherwise acquires nursery stock for the purpose of reselling or reshipping independently of any control of the nurseryman.
- (5) "Department" means the Department of Agriculture and Consumer Services of the state.
- (6) "Director" means the director of the Division of Plant Industry.
- (7) "Distribution" means the movement of nur-

sery stock from the property where it is grown or kept to any other property that is not contiguous thereto, regardless of the ownership of the properties concerned.

(8) "Division" means the Division of Plant Industry of the Department of Agriculture and Consumer Services.

(9) "Move" means to ship, offer for shipment, receive for transportation, carry, or otherwise transport.

(10) "Noxious weed" means any living stage, including, but not limited to, seeds and productive parts, of a parasitic or other plant of a kind, or subdivision of a kind, which may be a serious agricultural threat in Florida.

(11) "Nursery" means any grounds or premises on or in which nursery stock is grown, propagated, or held for sale or distribution.

(12) "Nurseryman" means any person engaged in the production of nursery stock for sale or distribution.

(13) "Nursery stock" means all plants, trees, shrubs, vines, bulbs, cuttings, grafts, scions, or buds grown or kept for or capable of propagation, distribution, or sale, unless specifically excluded by the rules of the department.

(14) "Official organ" means a printed document published by the division for notification to the public and industries in matters relating to division activities and in which official announcements may be made.

(15) "Person" means any individual, corporation, company, society, association, or other business entity.

(16) "Places" means vessels, railroad cars, automobiles, aircraft and other vehicles, buildings, docks, nurseries, orchards, and other premises where plants or plant products are grown, kept, or handled.

(17) "Plant pest" means any living stage of any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, or viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances which can directly or indirectly injure or cause disease or damage in any plants or parts thereof or any processed, manufactured, or other products of plants and which may be a serious agricultural threat in Florida.

(18) "Plants and plant products" means trees, shrubs, vines, forage and cereal plants, and all other plants and plant parts, including cuttings, grafts, scions, buds, fruit, vegetables, roots, bulbs, seeds, wood, lumber, and all products made therefrom.

(19) "Technical council" means the Plant Industry Technical Council.

**History.**—s. 2, ch. 12291, 1927; CGL 3831; s. 7, ch. 22858, 1945; s. 6, ch. 29767, 1955; s. 13, ch. 59-1; s. 1, ch. 59-261; ss. 14, 35, ch. 69-106; s. 242, ch. 71-377; s. 1, ch. 79-158.



Note.—Former s. 581.14.

**581.021 Continuance of powers, duties, etc., in department; location; privileges.—**

(1) This chapter shall be enforced by and under the control of the Department of Agriculture and Consumer Services as provided in chapter 570.

(2) The department, through the Division of Plant Industry, shall have and exercise all the powers, jurisdiction, duties, and authority exercised by, or required of, the State Plant Board, and the provisions of this chapter shall be applicable to the division within the department.

(3) The division and its employees shall be provided the same suitable quarters and faculty privileges, including but not limited to library facilities, by the University of Florida as the State Plant Board and its employees now enjoy.

History.—s. 2, ch. 59-261; ss. 14, 35, ch. 69-106; s. 6, ch. 78-95.

**581.031 Department; powers and duties.—**  
The department shall have the following powers and duties:

(1) To make all rules governing nurseries and the movement of nursery stock therein as may be necessary in the eradication, control, or prevention of the dissemination of plant pests or noxious weeds.

(2) To make and publish standard grades for nursery stock.

(3) To make rules governing the grading, marking, sale, and distribution of nursery stock by nurserymen, dealers, and agents.

(4) To provide rules under which nursery stock may be brought into this state from other states, territories, and foreign countries.

(5) To make such rules with reference to plants and plant products while in transit through this state as may be deemed necessary to prevent the introduction into and dissemination within this state of plant pests and noxious weeds.

(6) To declare a plant pest or noxious weed to be a nuisance as well as any plant or other thing infested or infected therewith or that has been exposed to infestation or infection and therefore likely to communicate same.

(7) To declare a quarantine against any area, place, nursery, grove, orchard, county or counties within this state, other states, territories, foreign countries or portion thereof in reference to plant pests or noxious weeds and prohibit the movement within this state from other states, territories, or foreign countries of all plants, plant products, or other things from such quarantined places or areas which are likely to carry such plant pests or noxious weeds if such quarantine is determined, after due investigation, to be necessary in order to protect the agricultural and horticultural interests of this state. In such cases, the quarantine may be made absolute or rules may be adopted prescribing the method and manner under which the prohibited articles may be moved into or within, sold, or otherwise disposed of in this state.

(8) To make and publish reasonable rules governing the application for, and issuance and revocation of, certificates of inspection.

(9) To enter into cooperative arrangements with any person, municipality, county, and other depart-

ment of this state and boards, officers, and authorities of other states and the United States for inspection with reference to plant pests and noxious weeds for the control and eradication thereof and contribute a just proportionate share of the expenses incurred under such arrangements.

(10) To publish at regular intervals, to be determined by it, an official organ of the department for public distribution. It may from time to time publish and distribute to the public such further information as may be deemed necessary.

(11) To revoke certificates of inspection to nurserymen, dealers, and agents in the state.

(12) To purchase all necessary materials, supplies, office and field equipment and other things and make such other expenditures as may be essential and necessary in carrying out the provisions of this chapter within the limits of the amount appropriated by law.

(13) To enforce the provisions of this chapter by writ of injunction in the proper court as well as by criminal proceedings.

(14) To test nursery stock to determine freedom from specific diseases and to register such stock. Nursery stock found free of the diseases for which it was tested may be propagated by the department, if authorized by the owner, and reproductive parts distributed in limited quantities to qualified persons for further propagation under procedures prescribed by the department when recommended by the industry concerned. The department may prescribe standards and procedures for the propagation and distribution of new or superior strains of plants when not provided for by other agencies and upon recommendation of the industry concerned. The department may prescribe a fee for such services, provided the fee shall not exceed the cost of the services rendered, and may sell at a reasonable price any plant or plant part that may result from the propagation of tested plants as sources of propagating material for distribution to the industry. Also, the department may sell in the best interest of the state any fruit produced incidental to such propagation.

(15) To inspect, or cause to be inspected by duly authorized representatives, plants, plant products, or other things and substances that may, in its opinion, be capable of disseminating or carrying plant pests or noxious weeds, and for this purpose shall have power to enter into or upon any place and to open any bundle, package, or other container containing, or thought to contain, plants or plant products or other things capable of disseminating or carrying plant pests or noxious weeds.

(16) To carry on investigations of methods of control, eradication, and prevention of dissemination of plant pests or noxious weeds.

(17) To supervise, or cause to be supervised, the treatment, cutting, and destruction of plants, plant parts, fruit, soil, containers, equipment, and other articles capable of harboring plant pests or noxious weeds, if they are infested or located in an area which may be suspected of being infested or infected due to its proximity to a known infestation, or if they came from a situation where they were reasonably exposed to infestation, when necessary to prevent or control the dissemination of plant pests or noxious

weeds or to eradicate same and to make rules therefor.

(18) To inspect, or cause to be inspected, all nurseries in the state at such intervals as it may deem best and to keep a complete, accurate, and current list of all certified nurseries to include:

- (a) Name of nursery.
- (b) Name of the nursery's owner.
- (c) Mailing address of nursery.
- (d) Location of nursery.
- (e) Type of crop grown.
- (f) Size in acreage of nursery.
- (g) Type of dealer.

(19) To demand of any person who has in his possession plants or plant products or other things likely to carry plant pests or noxious weeds to give full information as to the origin and source of same, and it shall be a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, for such person to refuse to give the information demanded, if able to do so.

(20) To intercept and inspect or cause to be inspected, while in transit or after arrival at destination, all plants, plant products, or other things likely to carry plant pests or noxious weeds being moved into this state from another state, territory, or foreign country, and, if, upon inspection, the same be found to be infested or infected with a plant pest or noxious weed or if such material is believed to be likely to communicate or transmit same or is being or has been transported in violation of any of the rules of the department, then said plants, plant products, or other things may be treated when necessary and released, returned to the sender, or destroyed.

(21) To make and issue certificates of inspection to nurserymen, dealers and agents in the state, after proper inspection of their nursery stock, authorizing them to do business as nurserymen, dealers or agents within the state.

(22) To collect or accept from other agencies or individuals specimens of arthropods, nematodes, fungi, bacteria, parasitic plants, or other organisms for positive identification, and to provide suitable space for their storage and maintenance. The department arthropod collection will be known as the "Florida State Collection of Arthropods."

(23) To provide, when requested by farmers, growers, or other interested parties, special inspections, special certifications, special investigations, or other plant regulatory activities not otherwise specifically provided for in these statutes; and as authorized, to prescribe the fee for such services, provided that the fee shall not exceed the cost of the service rendered, including the salaries and expenses of the personnel involved.

(24) To prescribe the duties of assistants, authorized representatives, inspectors, and other employees as may be required and delegate to such assistants, authorized representatives, inspectors, and other employees such powers and authority as may be deemed proper within the limits of the powers and authority conferred upon the said director by this chapter.

(25) To enter into cooperative arrangements with any person, firm, agency, company, or other entity for the production and distribution of organ-

isms, pesticides, chemical compounds, or other methods of control investigated, discovered, or developed by, or with the assistance of, the department through the Division of Plant Industry and to accept a royalty or other remuneration for its services or contributions, any proceeds from which shall be deposited in the Nursery Inspection Fee Fund.

**History.**—s. 3, ch. 59-261; s. 1, ch. 61-409; ss. 1, 2, ch. 65-202; ss. 14, 35, ch. 69-106; s. 1, ch. 70-38; s. 1, ch. 70-49; s. 1, ch. 70-439; s. 598, ch. 71-136; s. 1, ch. 75-165; s. 1, ch. 76-95; s. 1, ch. 77-174; s. 3, ch. 77-386; s. 6, ch. 78-95; s. 2, ch. 79-158.

**581.041 Director of Division of Plant Industry; powers and duties.**—The director shall have authority to carry out any of the powers and duties of the department as authorized in s. 581.031, or as directed by the department.

**History.**—s. 4, ch. 59-261; s. 2, ch. 61-409; ss. 14, 35, ch. 69-106.  
cf.—s. 570.33 Qualifications and duties of director of Division of Plant Industry.

**581.071 Principal responsible for agent, etc.**—In construing and enforcing the provisions of this chapter, the act, omission or failure of any official, agent or other person acting for or employed by any association, partnership, corporation or other principal within the scope of his employment or office shall in every case be deemed the act, omission or failure of such association, partnership, corporation or other principal as well as that of the individual.

**History.**—s. 12, ch. 12291, 1927; CGL 3840; s. 7, ch. 59-261.  
**Note.**—Former s. 581.10.

**581.083 Introduction of plant pests or noxious weeds.**—The introduction into this state of any plant pest or noxious weed is prohibited, except under special permit issued by the department through the division, which shall be the sole issuing agency for such special permits.

**History.**—s. 7, ch. 12291, 1927; CGL 3836; s. 8, ch. 59-261; s. 3, ch. 61-409; s. 2, ch. 70-49; s. 1, ch. 73-82; s. 1, ch. 77-174; s. 3, ch. 79-158.  
**Note.**—Former s. 581.05.

**581.091 Information to department.**—Any person, including a common carrier, who receives plants, plant products, or other things sold, given away, carried, shipped, or delivered for carriage or shipment within this state, as to which provisions of this chapter and the rules adopted pursuant thereto have not been complied with, shall immediately inform the director or an authorized representative of the division and isolate and hold the said plant, plant product, or other thing unopened or unused subject to such inspection or other disposition as may be provided by the director.

**History.**—s. 8, ch. 12291, 1927; CGL 3837; s. 9, ch. 59-261; s. 4, ch. 79-158.  
**Note.**—Former s. 581.06.

**581.101 Quarantines.**—

(1) When the department under the provisions of this chapter declares a quarantine against any place, nursery, grove, orchard, or county of this state, another state or territory, or a foreign country as to a plant pest or noxious weed, it is unlawful thereafter, until such quarantine is removed, for any person to introduce into this state, or to move, sell, or otherwise dispose of within this state, any plant, plant product, or other thing included in such quarantine, except under such rules as may be prescribed by the department.



(2) Any plant, plant product, or other thing included under a quarantine which is moved, sold, or otherwise disposed of within the state in violation of this section, and any plant propagated from such plant, plant product, or other thing, is contraband and shall be confiscated and destroyed by the department without compensation.

**History.**—s. 9, ch. 12291, 1927; CGL 3838; s. 10, ch. 59-261; ss. 14, 35, ch. 69-106; s. 3, ch. 70-49; s. 1, ch. 70-439; s. 244, ch. 71-377; s. 1, ch. 77-98; s. 1, ch. 77-386; s. 5, ch. 79-158.

**Note.**—Former s. 581.07.

**581.111 Emergency.**—An emergency is any situation wherein the department has declared a plant pest or noxious weed to be a public nuisance or when in the opinion of the department a plant pest or noxious weed endangers or threatens the horticultural and agricultural interest of the state.

**History.**—s. 11, ch. 59-261; ss. 14, 35, ch. 69-106; s. 6, ch. 78-95; s. 6, ch. 79-158.

**581.121 Nursery stock; sale, etc.**—It is unlawful for any nurseryman, dealer or agent to sell, give away, carry, ship or deliver for carriage or shipment any nursery stock except in compliance with the provisions of this chapter and the rules and regulations made pursuant to law.

**History.**—s. 10, ch. 12291, 1927; CGL 3839; s. 12, ch. 59-261.

**Note.**—Former s. 581.08.

**581.122 Nursery stock; thefts and trespass.**—

(1) It is unlawful for any person, with intent to injure or defraud, to take, carry away, or damage any plant, plant product, or nursery stock contained in any nursery without the consent of the owner of the nursery or his agent.

(2) It is unlawful for any person to enter the premises of any nursery whenever the nursery is not open for business, without the written or oral consent of the owner of the nursery or his agent.

**History.**—s. 2, ch. 76-95.

**581.131 Certificate of inspection.**—Before any nurseryman, dealer, or agent shall sell or distribute, or offer for sale or for distribution, any nursery stock in this state, he shall apply to the director of the division and obtain a certificate of inspection indicating that he has complied with the provisions of this chapter and the lawful rules made and promulgated by the department. Each application for a certificate of inspection shall be accompanied by a certificate fee in such amount as shall be determined by the department; and upon the issuance of such certificate, it shall be renewed annually thereafter on its anniversary date upon satisfactory showing to the director of the division that the provisions of this law and the rules of the department have been complied with and upon the payment of an annual renewal fee in such amount as shall be determined by the department; provided, however, that neither such certificate of inspection nor annual renewal fee shall exceed \$200; provided further, that the department may exempt from the payment of a certificate fee those nurserymen whose nursery stock is used exclusively for planting on their own property; provided further, that all applications for annual renewal of certificates of inspection required by this section shall be made not later than the anniversary date of the certificate being renewed, and any such

application received after such date shall be accompanied by a penalty or late filing fee not to exceed \$5.

**History.**—s. 4, ch. 29767, 1955; s. 13, ch. 59-261; s. 2, ch. 61-119; s. 1, ch. 63-115; s. 1, ch. 65-539; ss. 14, 35, ch. 69-106; s. 1, ch. 74-10; s. 7, ch. 79-158.

**Note.**—Former s. 581.081.

**581.141 Certificate of inspection; revocation and suspension.**—

(1) **REVOCATION.**—If it shall be determined by the department that any nurseryman, dealer, or agent is selling or offering for sale, or is distributing or offering to distribute, nursery stock in violation of the provisions of this chapter, the department may revoke his certificate of inspection or annual renewal thereof.

(2) **SUSPENSION.**—The department may refuse or suspend the certification of any nursery stock or plant product when it shall be determined that plant pests exist on such stock or product, or that the nursery or site is in such condition with regard to growth and cultivation that an efficient inspection for plant pests cannot be made.

**History.**—s. 5, ch. 29767, 1955; s. 14, ch. 59-261; ss. 14, 35, ch. 69-106; s. 1, ch. 70-39; s. 1, ch. 70-439; s. 6, ch. 78-95.

**Note.**—Former s. 581.082.

**581.142 Viable nursery stock; requirements for sale.**—

(1) It shall be unlawful to sell or offer for sale any plant or nursery stock unless such plant or nursery stock is viable and meets the basic requirements of a viable plant or viable nursery stock, at the time and place of sale.

(2) Nursery stock or a plant that is capable of living and accomplishing the purpose for which it is grown, whether foliage, flowers, fruit or special use shall be considered viable.

(3) The basic requirements of viable nursery stock or a viable plant are as follows:

(a) Same must be free of physiological and pathological defects to the extent that all essential parts may function normally.

(b) The root system must have adequate roots or the ability to produce them to support normal performance of all essential parts of the plant. The root system must be adequately protected to prevent excessive loss of moisture while in storage and transit.

(c) Trunk and branches must be capable of transporting fluids throughout the plant and be free from any infirmity of a permanent nature which would interfere with this function. Any damaged branches must be capable of being pruned without seriously deterring growth of the plant.

(d) Leaves must be capable of performing essential manufacturing functions, such as photosynthesis. In the case of deciduous plants, when void of leaves, must have the ability to put out new leaves capable of functioning normally.

**History.**—ss. 1-6, ch. 63-260; ss. 14, 35, ch. 69-106; s. 599, ch. 71-136; s. 6, ch. 78-95; s. 11, ch. 79-158.

**581.151 Control of spreading decline.**—The department is empowered to join with the U.S. Department of Agriculture or to proceed independently in a program to control and eradicate, wherever possible, spreading decline resulting from a burrowing

nematode (*Radopholus similis* (Cobb) Thorne) in the state.

**History.**—s. 15, ch. 59-261.

**581.161 Fumigation or treatment of plants and plant products.**—The division is authorized to supervise or cause the fumigation or treatment of plants and plant products infested or infected by plant pests. Fumigation may be performed by employees of the division or other persons supervised by an authorized representative of the division. Persons engaged in fumigation or treatment of plants and plant products shall not be required to be licensed by any other board or agency notwithstanding the provisions of any other law.

**History.**—s. 1, ch. 31392, 1956; s. 16, ch. 59-261; ss. 14, 35, ch. 69-106; s. 8, ch. 79-158.

**Note.**—Former s. 581.16.

**581.171 Printed copies as evidence.**—Printed copies of all acts, rules, regulations, standard grades of nursery stock, quarantines or notices of the department which shall be published under the authority of the department shall be admitted as sufficient evidence of such acts, rules, regulations, standard grades of nursery stock, quarantines or notices in all courts and on all occasions whatsoever; provided the correctness of such copies be certified by the department.

**History.**—s. 5, ch. 12291, 1927; CGL 3834; s. 3, ch. 29767, 1955; s. 17, ch. 59-261; ss. 14, 35, ch. 69-106.

**Note.**—Former s. 581.03.

**581.181 Notice of infection of plants; destruction.**—

(1) If the director or his authorized representative finds, on examination, any plant or plant product infested or infected with plant pests or noxious weeds, he shall notify in writing the owner or person having charge of such premises to that effect, and the owner or person in charge shall, within 10 days after such notice, cause the removal and destruction of the infested and infected plant or plant product if it is incapable of successful treatment; otherwise, such owner or person in charge shall cause it to be treated as directed in the notice by the director or an authorized representative of the division. No damage shall be awarded to the owner for the destruction of the infested or infected plant or plant product under the provisions of this chapter.

(2) In case the owner or person in charge shall refuse or neglect to comply with the terms of the notice within 10 days after receiving it, the director or his authorized representative may, under authority of the department, proceed to treat or destroy the infested or infected plant or plant product. The expense thereof shall be assessed, collected, and enforced against the owner by the department.

**History.**—s. 18, ch. 59-261; s. 6, ch. 61-409; ss. 14, 35, ch. 69-106; s. 4, ch. 70-49; s. 9, ch. 79-158.

**581.182 Citrus plants and citrus plant products from other states, territories, or foreign countries.**—

(1) It is unlawful for any person to introduce into this state from another state, territory, or foreign country any citrus plant or citrus plant product or propagation therefrom without a permit issued by the department. Any such citrus plant or citrus

plant product or propagation therefrom introduced into the state from another state, territory, or foreign country without a permit issued by the department, or any plants propagated thereafter from such materials, are unlawful and declared to be contraband and shall be confiscated and destroyed. No compensation shall be allowed for any plant, product, or propagation confiscated and destroyed pursuant to this section.

(2) Application for a permit to introduce into this state from another state, territory, or foreign country any citrus plant or citrus plant product or propagation therefrom shall be made on an application form to be formulated by the department.

(3) In considering an application for a permit to introduce into this state from another state, territory, or foreign country any citrus plant or citrus plant product or propagation therefrom, the department shall consider the following guidelines:

(a) Only budwood of clones not available in Florida will be introduced, and no citrus budwood will be permitted entry if the desired clone is known to be reproducible by seed. Not more than 25 buds of any single clone will be permitted entry.

(b) The clones introduced must:

1. Have been evaluated by the Citrus Budwood Registration Committee as having desirable and superior characteristics to warrant testing under Florida field conditions prior to possible release as a new clone; or

2. Be of a type desirable:

a. For research; or

b. As a breeding stock to be used by the agricultural experiment stations in Florida.

(c) The parent trees from which the imported citrus budwood is to be taken must be free, or apparently free, from serious citrus pests. Whenever possible, budwood must be taken from plants adequately tested and certified free of disease at the point of origin.

(d) Each shipment of imported citrus budwood must be accompanied by a special permit issued by the Division of Plant Industry of the Department of Agriculture and Consumer Services and must be sent directly to the Division of Plant Industry in Gainesville, Florida.

(e) All introduced citrus budwood must be grown for a minimum of 2½ years in a secure Division of Plant Industry greenhouse or screenhouse that has been made as insect-proof as feasible, or under other acceptable conditions mutually agreed upon by the division and the importer of budwood. It shall be isolated from other citrus as much as possible. During this period, introduced budwood shall be subject to tests for tristeza, vein enation, yellow vein, exocortis, psorosis, xyloporosis, stubborn, tatter leaf, and all other known citrus virus diseases for which there are reliable tests. Such tests will be started as soon as possible after arrival of the budwood in Florida. After a complete determination, the budwood will be released to the person or institution responsible for its growing, testing, propagation, and distribution.

(f) At the end of no less than 2½ years, or when tests are completed, new clones will be evaluated by the Citrus Budwood Registration Committee. If the committee recommends the release and distribution of any clone to the industry, a portion of this clone



will be validated and maintained in a Division of Plant Industry planting.

History.—s. 1, ch. 76-189.

**581.183 New citrus varieties.**—It is unlawful for any person to sell or propagate for sale any tree which represents a new citrus variety brought into the state after July 1, 1977, as defined by law or by rule adopted by the department, if the tree was propagated or is being propagated by graft or budwood from a tree which the Department of Agriculture and Consumer Services has not indexed and certified as free from citrus diseases, including, but not limited to, tristeza, necrotic ring spot, exocortis, xyloporosis, psorosis, and vein enation. The cost of indexing shall be paid by the person desiring to have the tree indexed. Any tree offered for sale or sold which was propagated from a tree which is not indexed is contraband and shall be confiscated and destroyed by the department without compensation.

History.—s. 2, ch. 77-98; s. 2, ch. 77-386.

**581.185 Preservation of native flora of Florida.**—

(1) PROHIBITIONS; PERMITS.—

(a) With regard to any plant on the Endangered Plant List provided in subsection (2), it is unlawful for any person:

1. To willfully injure or destroy any such plant growing on the private land of another without first obtaining the written permission of the owner of the land or his legal representative.

2. To willfully injure or destroy any such plant growing on any public land or water without first obtaining the written permission of the superintendent or custodian of such land or water and a permit from the department as provided in this section.

3. To willfully harvest, collect, pick, or remove less than three individual plants of a given species listed on the Endangered Plant List from the private land of another without first obtaining the written permission of the owner of the land or his legal representative or from any public land or water without first obtaining the written permission of the superintendent or custodian of such land or water.

4. To willfully harvest, collect, pick, or remove three or more individual plants of a given species listed on the Endangered Plant List from any native habitat without first obtaining the written permission of the owner of the land or his legal representative or, in the case of public land or water, the written permission of the superintendent or custodian of such land or water, and a permit from the department as provided in this section.

5. To transport, carry, or convey on any public road or highway or sell or offer for sale in any place any such plant collected in violation of this section.

(b) With regard to any plant on the Threatened Plant List provided in subsection (3), it is unlawful for any person:

1. To willfully harvest, collect, pick, remove, injure, or destroy any such plant growing on the private land of another without first obtaining the written permission of the owner of the land or his legal representative or to willfully harvest, collect, pick, remove, injure, or destroy any such plant growing on any public land or water without first obtaining the

written permission of the superintendent or custodian of such land or water.

2. To transport, carry, or convey on any public road or highway or sell or offer for sale in any place any such plant collected in violation of this section.

(c) The purpose of the permitting requirements imposed under paragraph (a) is to encourage the propagation of endangered or depleted species of flora and provide an orderly and controlled procedure for restricting harvesting of native flora from the wilds, thus preventing wanton exploitation or destruction of Florida native plant populations. Permits shall be issued according to rules adopted by the Department of Agriculture and Consumer Services, except that the written permission of the owner, superintendent, or custodian required by paragraph (a) must be presented as a prerequisite to the issuance of a permit. The department may require such additional justification as it deems necessary when a permit is sought with respect to any plant on the Endangered Plant List which is of very limited distribution, is very rare, or is in imminent danger of becoming extinct in the wilds. Permits may be granted subject to conditions deemed necessary by the department to minimize environmental damage, provide for natural regeneration, protect against erosion or hazard of fire, and ensure that the plants removed are harvested, transported, and stored in such a way that they will be likely to survive and meet the purpose intended when they reach their ultimate destination.

(d) Any person willfully destroying, injuring, harvesting, collecting, picking, or removing any endangered or threatened plant; transporting, carrying, or conveying any such endangered or threatened plant on any public road or highway; or selling or offering for sale on any place any such endangered or threatened plant must have the permit, if applicable, and the written permission required by this section in his immediate possession at all times when engaged in any of such activities.

(2) ENDANGERED PLANT LIST.—The following plants shall be included in the Endangered Plant List:

- (a) *Catopsis* sp. (bromeliad);
- (b) *Guzmania* sp. (bromeliad);
- (c) *Tillandsia fasciculata* (wild pine bromeliad);
- (d) *Cereus gracilis* (prickly apple cactus);
- (e) *Cereus robinii* (tree cactus);
- (f) *Cyrtopodium punctatum* (cowhorn or cigar orchid);
- (g) *Encyclia boothiana* (*Epidendrum boothianum*) (dollar orchid);
- (h) *Ionopsis utricularioides* (delicate ionopsis orchid);
- (i) *Maxillaria crassifolia* (orchid);
- (j) *Polyrrhiza lindenii* (ghost orchid);
- (k) *Asplenium auritum* (auricled spleenwort) (fern);
- (l) *Blechnum occidentale* (sinkhole fern);
- (m) *Campyloneurum angustifolium* (narrow swamp fern);
- (n) *Dennstaedtia bipinnata* (cuplet fern);
- (o) *Ophioglossum palmatum* (hand fern);
- (p) *Roystonea elata* (Florida royal palm);

- (q) *Coccothrinax argentata* (silver palm);
- (r) *Rhododendron austrinum* (orange azalea);
- (s) *Rhododendron chapmanii* (Chapman's rhododendron);
- (t) *Guaiacum sanctum* (lignum vitae);
- (u) *Zephyranthes atamasco* (atamasco lily or zephyr lily);
- (v) *Cassia keyensis* (Key cassia);
- (w) *Chionanthus pygmaeus* (fringe tree or gray-beard);
- (x) *Ribes echinellum* (Miccosukee gooseberry);
- (y) *Strumpfia maritima* (pride-of-big-pine);
- (z) *Taxus floridana* (Florida yew);
- (aa) *Torreya taxifolia* (Florida torreya);
- (bb) *Sarracenia*—all species native to the state (pitcher plants);
- (cc) *Magnolia ashei* (Ashe magnolia);
- (dd) *Magnolia pyramidata* (pyramidal magnolia).

(3) **THREATENED PLANT LIST.**—The following plants shall be included in the Threatened Plant List:

- (a) *Bromeliads*—all species of the bromeliad family, sometimes known as air plants, or wild pines, native to the state except *Tillandsia usneoides*, the Spanish moss, and *Tillandsia recurvata*, the ball moss, which are specifically excluded from this section, and except those included in the Endangered Plant List under subsection (2);
- (b) *Cacti*—all native species of cacti, except the spreading or prostrate-growing species of *Opuntia*, which are specifically excluded from this section, and except those included in the Endangered Plant List under subsection (2);
- (c) *Orchids*—all species of the orchid family, both epiphytic and terrestrial, native to the state, except those included in the Endangered Plant List under subsection (2);
- (d) *Ferns*—all species of the fern families native to the state, except *Osmunda* (cinnamon and royal fern) and *Pteridium aquilinum* (common bracken), which are specifically excluded from this section, and except those included in the Endangered Plant List under subsection (2);
- (e) *Ilex*—all species (holly), except *Ilex glabra* (gallberry), which is specifically excluded from this section;
- (f) *Palms*—all species of the palm family native to the state, except *Serenoa repens* (saw palmetto) and except those included in the Endangered Plant List under subsection (2);
- (g) *Peperomia*—all species native to the state (pepper);
- (h) *Rhododendron*—all native species (azalea), except those included in the Endangered Plant List under subsection (2);
- (i) *Zamia*—all species native to the state (coontie);
- (j) *Zephyranthes*—all white species (zephyr lily), except those included in the Endangered Plant List under subsection (2);
- (k) *Annona glabra* (pond apple);
- (l) *Aristolochia tomentosa* (Dutchman's pipe);
- (m) *Asimina pygmaea* (pink pawpaw);
- (n) *Calycanthus floridus* (strawberry bush);
- (o) *Catesbaea parviflora* (dune lily-thorn);

- (p) *Ceratiola ericoides* (sand cedar);
- (q) *Cercis canadensis* (redbud);
- (r) *Chionanthus virginicus* (fringe tree or gray-beard);
- (s) *Chrysophyllum olivaeforme* (satinleaf);
- (t) *Cienfuegosia heterophylla* (yellow hibiscus);
- (u) *Clusia rosea* (balsam apple);
- (v) *Commelina gigas* (giant dewflower);
- (w) *Cordia sesbestena* (geiger tree);
- (x) *Cornus florida* and *Cornus alternifolia* (dogwood);
- (y) *Cupania glabra* (cupania);
- (z) *Epigaea repens* (trailing arbutus);
- (aa) *Erythronium americanum* (dogtooth lily or violet);
- (bb) *Eugenia confusa* and *E. simpsonii* (redberry and Simpson eugenia);
- (cc) *Garberia fruticosa* (garberia);
- (dd) *Gordonia lasianthus* (loblolly bay);
- (ee) *Illicium floridanum* and *Illicium parviflorum* (anise shrubs);
- (ff) *Jacquinia keyensis* (joewood);
- (gg) *Kalmia hirsuta* (wicky);
- (hh) *Kalmia latifolia* (mountain laurel);
- (ii) *Liatris ohlingerae* (gayfeather);
- (jj) *Licaria triandra* (gulf licaria);
- (kk) *Lietneria floridana* (corkwood);
- (ll) *Lilium catesbaei* (pine lily);
- (mm) *Lobelia cardinalis* (cardinal flower);
- (nn) *Malus angustifolia* (crabapple);
- (oo) *Mimusops emarginata* (dilly);
- (pp) *Nemastylis floridana* (fall-flowering ixia);
- (qq) *Asclepias curtisii* (sandhill milkweed);
- (rr) *Pavonia spinifex* (yellow hibiscus);
- (ss) *Cucurbita okeechobeensis* (Okeechobee gourd);
- (tt) *Pinckneya pubens* (fever tree);
- (uu) *Piscidia piscipula* (fish-fuddle or Jamaican dogwood);
- (vv) *Scaevola plumieri* (scaevola);
- (ww) *Smilax smallii* (Jackson vine);
- (xx) *Sphenostigma coelestina* (Bartram's ixia);
- (yy) *Suriana maritima* (bay cedar);
- (zz) *Swietenia mahagoni* (mahogany);
- (aaa) *Tetrazygia bicolor* (tetrazygia);
- (bbb) *Thespesia populnea* (mahoe);
- (ccc) *Tournefortia gnaphalodes* (sea-lavender) and *Tournefortia hirsutissima* (tournefortia).

#### (4) REVIEW.—

(a) Beginning in 1980, a comprehensive review of this section and of the lists of plants provided in subsections (2) and (3) shall be made by the department and the Endangered Plant Advisory Council at 4-year intervals. The department shall report to the Legislature its findings and recommendations and those of the Endangered Plant Advisory Council by January 31 prior to the convening of the regular legislative session following each such review; however, an initial review and report under this section shall be made by January 31, 1980.

(b) The department shall notify the Legislature prior to the next ensuing regular legislative session of any species of plant that should be placed on the Endangered Plant List or the Threatened Plant List which is in danger of disappearing from its native habitat within the foreseeable future throughout all



or a significant portion of the range of the species because of:

1. Present or threatened destruction, modification, or curtailment of the range of the species.
2. Overutilization of the species for commercial, scientific, or education purposes.
3. Disease or predation.
4. Any other natural or manmade factor affecting the continued existence of the species.

(c) In carrying out reviews and arriving at recommendations under paragraphs (a) and (b), the department and the advisory council shall use the best scientific and commercial data available and shall consult with interested persons and organizations.

(5) **DEFENSE.**—In any prosecution under this section it shall be a defense that plants or the flowers, roots, bulbs, or other parts thereof transported, carried, or conveyed or sold or offered for sale by the party were legally imported from another country. In any prosecution under this section involving the destruction, injuring, harvesting, collecting, picking, or removing of any plant on the Endangered Plant List or the Threatened Plant List without written permission, it shall be an affirmative defense that actual permission was given prior to such destruction, injury, harvesting, collection, picking, or removal. In any prosecution under this section involving the destruction, injuring, harvesting, collecting, picking, or removing of any plant on the Endangered Plant List without written permission and a permit, it shall be an affirmative defense that written permission and a permit had in fact been granted prior to such destruction, injury, harvesting, collection, picking, or removal.

(6) **SALES BY NURSERYMEN.**—Licensed, certified nurserymen who grow from seeds or by vegetative propagation any of the native plants on the Endangered Plant List provided in subsection (2) or the Threatened Plant List provided in subsection (3) are specifically permitted to sell these commercially grown plants and shall not be in violation of this section if they do so, as it is the intent of this section to preserve and encourage the growth of these native plants which are rapidly disappearing from the state.

(7) **LOGGING AND UTILITY OPERATIONS.**—Any person or business removing, trimming, or transporting any of the native plants on the Endangered Plant List provided in subsection (2), or the Threatened Plant List provided in subsection (3), as an incidental part of installing or maintaining a public utility service as defined in s. 876.37(3) or as an incidental part of a logging operation shall not be in violation of this section.

(8) **DUTIES OF PLANT INSPECTORS.**—Plant inspectors of the department shall, as part of their regular inspection of nurseries and roadside stands, be on the alert for any of the native plants on the Endangered Plant List provided in subsection (2) or the Threatened Plant List provided in subsection (3), which plants appear suddenly in a given nursery in a mature stage or a stage showing several years of growth, and are empowered to request proof of where and how the plants were obtained.

(9) **AGENTS OF DIVISION.**—Agents of the Division of Plant Industry shall have the authority to

enter upon properties where harvesting or storage of endangered or threatened plants is suspected, to inspect vehicles which may be transporting endangered or threatened plants, and to preserve and take custody of plants harvested or moved in violation of this section, in order to assure compliance with the provisions of this section.

(10) **NOTICE OF HIGHWAY CONSTRUCTION.**—The Department of Transportation shall notify the Department of Agriculture and Consumer Services and the Endangered Plant Advisory Council created by s. 581.186 of advertised bids for highway construction at the time those bids are first advertised, describing the project, the location of the project, and the representative of the Department of Transportation who can answer questions regarding the project and the plant life immediately affected by the construction. The Department of Agriculture and Consumer Services shall seek and utilize the services of the Endangered Plant Advisory Council and of any other state agencies, clubs, associations, or organizations or individuals that may offer support and services for the preservation of the plants on the Endangered Plant List or Threatened Plant List that may be affected by the construction project and shall provide by rule for the appropriate disposal of such plants.

**History.**—s. 1, ch. 78-72; s. 160, ch. 79-164.

### **581.186 Endangered Plant Advisory Council; organization; meetings; quorum; compensation.—**

(1) The Endangered Plant Advisory Council is hereby created, consisting of five persons to be appointed by the Commissioner of Agriculture. One member shall be a representative of the Florida Federation of Garden Clubs, Inc.; one member shall be a representative of the Florida Nurserymen and Growers Association, Inc.; one member shall be a representative of the Committee for Rare and Endangered Plants and Animals; one member shall be a representative of the Florida Forestry Association; and one member shall be a botanist from a Florida university. Members shall be appointed for terms of 4 years, except that the terms of members initially appointed shall expire on June 1, 1980.

(2) Immediately after their appointment, the members of the council shall meet and organize by the election of a chairman, a vice chairman, and a secretary, each for a term of 1 year.

(3) The council shall meet at the call of its chairman or the department, or at the request of a majority of its membership, and at such times as may be prescribed by its rules.

(4) A majority of the members of the council shall constitute a quorum for all purposes, and an act by a majority of the members present at any meeting at which there is a quorum shall constitute an official act of the advisory council.

(5) The members of the advisory council shall receive no compensation for their services, except that they shall be entitled to receive travel allowances and per diem as provided in s. 112.061 when actually traveling on the business of the council.

(6) The council shall advise the department concerning revising and updating of this section and of

the Endangered Plant List and the Threatened Plant List.

(7) The Division of Plant Industry, the Department of Natural Resources, the Department of Transportation, and the Game and Fresh Water Fish Commission shall cooperate with the council whenever necessary to aid it in carrying out its duties under this section.

**History.**—s. 2, ch. 78-72.

**581.187 Exemptions from s. 581.185.**—All Florida Indians, as defined in s. 285.11, shall be exempt from the prohibitions and penalties of s. 581.185.

**History.**—s. 3, ch. 78-72.

**581.188 Sale of cypress products prohibited without permit.**—No person shall sell or offer for sale articles made from unfinished cross-sectional slabs cut from the buttress of trees of the species *Taxodium distichum*, commonly known as cypress, without first obtaining a permit from the Department of Agriculture and Consumer Services, pursuant to s. 581.185. This section shall not apply to the owner of the property on which the cypress trees are growing.

**History.**—s. 1, ch. 79-238.

**581.191 Appropriations.**—The department shall include in its legislative budget request the estimated amounts needed to carry out the purposes of this chapter and the Legislature shall appropriate from the General Revenue Fund such amounts as it deems necessary for these purposes.

**History.**—s. 14, ch. 12291, 1927; CGL 3841; s. 134, ch. 26869, 1951; s. 19, ch. 59-261; s. 1, ch. 61-59.

**Note.**—Former s. 581.11.

**581.201 Injunction.**—A single act in violation of the provisions of this chapter shall be sufficient to authorize the issuance of an injunction. The department is not required to furnish bond when making complaint for injunction. The Department of Legal Affairs, the state attorneys, and all public prosecutors in each county shall represent the department when called upon to do so. The department in the

discharge of its duties and in the enforcement of powers herein delegated may send for books, records, and papers, administer oaths and hear witnesses, and to that end the various sheriffs throughout the state shall serve all summonses and other papers upon request of the department.

**History.**—s. 20, ch. 59-261; s. 7, ch. 61-409; ss. 11, 14, 35, ch. 69-106; s. 26, ch. 73-334.

**581.211 Penalties for violations.**—Any person who shall violate any provisions or requirement of this chapter or of the rules made hereunder or of any notice given pursuant hereto, who shall forge, counterfeit, destroy, or wrongfully or improperly use any certificate or permit provided for in this chapter or in the rules made pursuant hereto, or who shall interfere with or obstruct any director or authorized representative of the department in the performance of his duties shall be deemed guilty of a misdemeanor of the first degree, except that any person who shall import from other states, territories, or countries, without a special permit from the Division of Plant Industry, plants or propagative plant parts of the subfamily Aurantioideae (after Swingle and Reese which includes all species of citrus) is guilty of a felony of the third degree, and any person who has in his or her possession such unauthorized imported plants or propagative plant parts shall be deemed guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 11, ch. 12291, 1927; CGL 7854; s. 21, ch. 59-261; s. 600, ch. 71-136; s. 3, ch. 76-95; s. 4, ch. 78-72; s. 10, ch. 79-158.

**Note.**—Former s. 581.09.

**581.212 Handling of moneys received.**—All moneys received by the department under the provisions of this chapter, other than appropriated funds, shall be deposited in the State Treasury to the credit of the special account known as the plant industry account within the General Inspection Trust Fund and shall be used by the department to defray its expenses in carrying out the duties imposed on it by this chapter.

**History.**—s. 2, ch. 65-539.

## CHAPTER 582

## SOIL AND WATER CONSERVATION

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- 582.49 Discontinuance of soil and water conservation district.
- 582.01 Definitions.**—Wherever used or referred to in this chapter unless a different meaning clearly appears from the context:
- (1) "District" or "soil conservation district" or "soil and water conservation district" means a governmental subdivision of this state, and a body corporate and politic, organized in accordance with the provisions of this chapter, for the purpose, with the powers, and subject to the provisions set forth in this chapter. The term "district" or "soil conservation district," when used in this chapter, shall mean and include a "soil and water conservation district." All districts heretofore or hereafter organized under this chapter shall be known as soil and water conservation districts and shall have all the powers set out herein.
- (2) "Supervisor" means one of the members of the governing body of a district, elected in accordance with the provisions of this chapter.
- (3)(a) "Department" means the Department of Agriculture and Consumer Services.
- <sup>1</sup>(b) "Council" means the Soil and Water Conservation Council.
- (c) "Commissioner" means commissioner of agriculture.
- (4) "Landowner" or "owner of land" includes any person who shall hold legal or equitable title to any lands lying within a district organized under the provisions of this chapter.
- (5) "Land occupier" or "occupier of land" includes any person, other than the owner, who shall be in possession of any lands lying within a district organized under the provisions of this chapter, whether as lessee, renter, tenant, or otherwise.
- (6) "Qualified elector" includes any person qualified to vote in general elections under the constitution and statutes of this state.
- (7) "Due notice," in addition to notice required pursuant to the provisions of chapter 120, means notice published at least twice, with an interval of at least 7 days between the two publication dates, in a newspaper or other publication of general circulation within the appropriate area or, if no such publication of general circulation be available, by posting at a reasonable number of conspicuous places within



the appropriate area, such posting to include, where possible, posting at public places where it may be customary to post notices concerning county or municipal affairs generally. At any hearing held pursuant to such notice, at the time and place designated in such notice, adjournment may be made from time to time without the necessity of renewing such notice for such adjourned dates.

**History.**—s. 3, ch. 18144, 1937; s. 1, ch. 19473, 1939; CGL 1940 Supp. 4151(474); s. 1, ch. 65-334; s. 1, ch. 67-207; s. 1, ch. 70-392; s. 1, ch. 74-53; s. 6, ch. 78-95; s. 4, ch. 78-323.

**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

**582.02 Lands a basic asset of state.**—The farm, forest and grazing lands of the state are among the basic assets of the state and the preservation of these lands is necessary to protect and promote the health, safety, and general welfare of its people; improper land-use practices have caused and have contributed to, and are now causing and contributing to a progressively more serious erosion of the farm and grazing lands of this state by fire, wind and water; the breaking of natural grass, plant, and forest cover has interfered with the natural factors of soil stabilization, causing loosening of soil and exhaustion of humus, and developing a soil condition that favors erosion; the top soil is being burned, washed and blown out of fields and pastures; there has been an accelerated washing of sloping fields; these processes of erosion by fire, wind and water speed up with removal of absorptive topsoil, causing exposure of less absorptive and less protective but more erosive subsoil; failure by any landowner or occupier to conserve the soil and control erosion upon his lands causes destruction by burning, washing and blowing of soil and water from his lands onto other lands and makes the conservation of soil and control erosion of such other lands difficult or impossible.

**History.**—s. 2, ch. 18144, 1937; CGL 1940 Supp. 4151(473).

**582.03 Consequence of soil erosion.**—The consequences of such soil erosion in the form of soil washing and soil blowing are the silting and sedimentation of stream channels, reservoirs, dams, ditches, and harbors; the loss of fertile soil material in dust storms; the piling up of soil on lower slopes, and its deposit over alluvial plains; the reduction in productivity or outright ruin of rich bottom lands by overwash or poor subsoil material, sand; deterioration of soil and its fertility, deterioration of crops grown thereon, and declining acre yields despite development of scientific processes for increasing such yields; loss of soil and water which causes destruction of food and cover for wildlife; a blowing and washing of soil into streams which silts over spawning beds, and destroys water plants, diminishing the food supply of fish; a diminishing of the underground water reserve, which causes water shortages, intensifies periods of drought, and causes crop failure; and increase in the speed and volume of rainfall runoff, causing severe and increasing floods, which bring suffering, disease, and death; impoverishment of families attempting to farm eroding and eroded lands; damage to roads, highways, railways, farm

buildings, and other property from floods and from dust storms; and losses in navigation, hydroelectric power, municipal water supply, drainage facilities, irrigation developments, farming and grazing.

**History.**—s. 2, ch. 18144, 1937; CGL 1940 Supp. 4151(473); s. 1, ch. 65-334.

**582.04 Appropriate corrective methods.**—To control or prevent soil erosion and prevent floodwater and sediment damages, and further the conservation, development and utilization of soil and water resources and the disposal of water, it is necessary that land-use practices contributing to soil wastage and soil erosion be discouraged and discontinued, and appropriate soil-conserving land-use practices and works of improvement for flood prevention or the conservation, development and utilization of soil and water resources and the disposal of water be adopted and carried out; among the works of improvement and procedures necessary for widespread adoption, are the carrying on of engineering operations, such as the construction of terraces, terrace outlets, check-dams, desilting basins, floodwater retarding structures, channel improvements, floodways, dikes, ponds, ditches, and the like; the utilization of strip-cropping, lister furrowing, contour cultivating, and contour furrowing; land drainage; land irrigation, seeding and planting of waste, sloping, abandoned, or eroded lands to water conserving and erosion-preventing plants, trees, and grasses; forestation and reforestation; rotation of crops; soil stabilization with trees, grasses, legumes, and other thick-growing, soil-holding crops; the addition of soil amendments, manurial materials and fertilizers for the correction of soil deficiencies or for the promotion of increased growth of soil protecting crops; retardation of runoff by increasing absorption of rainfall; retirement from cultivation of steep, highly erosive areas and areas now badly gullied or otherwise eroded; fish and wildlife or recreational developments; and control of artesian wells.

**History.**—s. 2, ch. 18144, 1937; CGL 1940 Supp. 4151(473); s. 1, ch. 65-334; s. 1, ch. 69-235.

**582.05 Legislative policy for conservation.**—It is the policy of the legislature to provide for control and prevention of soil erosion, and for the prevention of floodwater and sediment damages, and for furthering the conservation, development and utilization of soil and water resources, and the disposal of water, and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety and general welfare of the people of this state.

**History.**—s. 2, ch. 18144, 1937; CGL 1940 Supp. 4151(473); s. 1, ch. 65-334; s. 2, ch. 69-235.

**582.055 Powers and duties of the Department of Agriculture and Consumer Services; rules.**—

(1) The provisions of this chapter shall be administered by the Department of Agriculture and Consumer Services.

(2) The department is authorized to adopt rules to implement, make specific, and interpret the provisions of this chapter.

(3) The department is authorized to receive gifts, appropriations, materials, equipment, lands, and facilities and to manage, operate, and disburse them for the use and benefit of the soil and water conservation districts of the state.

(4) The department shall provide for the execution of surety bonds for all employees who are entrusted with funds or property, and it shall provide for an annual audit of the accounts of receipts and disbursements.

(5) The department may furnish information and call upon any state or local agencies for cooperation in carrying out the provisions of this chapter.

**History.**—s. 2, ch. 70-392.

#### **582.06 Soil and Water Conservation Council; powers and duties.—**

(1) The Soil and Water Conservation Council in the Department of Agriculture and Consumer Services is hereby created.

(2) The council shall be composed of nine members from among farmers of at least 5 years' continuous practice of farming at time of appointment who have been practicing soil conservation and who shall be appointed by the department. No two members shall be appointed from the same congressional district. Terms of the members of the council shall be for 4 years; except that for the initial terms of the four new members appointed after June 14, 1978, one member shall be appointed for a term of 1 year, one member for a term of 2 years, one member for a term of 3 years, and one member for a term of 4 years. The chairman of the council shall be selected by the members of the council at a meeting to be called immediately upon appointment of the original members of the council and annually thereafter. The secretary of the council shall be the administrative officer of soil and water conservation.

(3) The council shall meet at the call of its secretary, at the request of a majority of its membership or of the department, and at such times as may be prescribed by its rules, not less frequently, however, than quarterly.

(4) A majority of the members of the council shall constitute a quorum for all purposes, and an act by a majority of such quorum at any meeting shall constitute an official act of the council.

(5) The members of the council shall receive no compensation for their services, except that they shall receive per diem as provided in s. 112.061 and their legal traveling expenses when actually engaged in the business of the council.

(6) The powers and duties of the council shall be as follows:

(a) To consider and study the entire field of soil and water conservation;

(b) To advise, counsel, and consult with the department and the administrative officer upon request in connection with the promulgation, administration, and enforcement of all laws, rules, and regulations relating to soil and water conservation;

(c) To consider all matters submitted to it by the department or the administrative officer;

(d) To offer suggestions and recommendations to the department and the administrative officer on its own initiative in regard to changes in the laws, rules, and regulations relating to soil and water conserva-

tion as may be deemed advisable to secure the effective administration and enforcement of said laws, rules, and regulations relating to the work of the department in soil and water conservation; and

(e) To keep a complete record of all its proceedings showing the names of the members present at each meeting and any action taken by the council and to file and maintain such records in the department as public records.

**History.**—s. 4, ch. 18144, 1937; s. 2, ch. 19473, 1939; CGL 1940 Supp. 4151(475); s. 1, ch. 28094, 1953; s. 24, ch. 57-1; s. 19, ch. 63-400; s. 2, ch. 67-207; ss. 14, 35, ch. 69-106; s. 3, ch. 69-235; s. 3, ch. 70-392; s. 1, ch. 70-439; s. 16, ch. 77-108; s. 6, ch. 78-95; s. 1, ch. 78-261; s. 4, ch. 78-323.

**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

**Note.**—Former s. 582.07.

#### **582.08 Additional powers of department.—**

The Department of Agriculture and Consumer Services shall have the following additional duties and powers:

(1) To offer such assistance as may be appropriate to the supervisors of soil and water conservation districts, organized as provided in s. 582.10, in the carrying out of any of their powers and programs.

(2) To keep the supervisors of each of the several districts organized under the provisions of this chapter informed of the activities and experience of all other such districts, and to facilitate an interchange of advice and experience between such districts and cooperation between them.

(3) To coordinate the programs of the several soil and water conservation districts so organized so far as this may be done by advice and consultation.

(4) To secure the cooperation and assistance of the United States and any of its agencies, and of agencies and counties of this state, in the work of such districts, including the receipt and expenditure of state, federal, and other funds or other contributions.

(5) To disseminate information throughout the state concerning the activities and programs of the soil and water conservation districts so organized and to encourage the formation of such districts in areas where their organization is desirable.

**History.**—s. 4, ch. 18144, 1937; s. 2, ch. 19473, 1939; CGL 1940 Supp. 4151(475); s. 3, ch. 67-207; s. 4, ch. 69-235; s. 4, ch. 70-392.

**582.09 Administrative officer of soil and water conservation.—**The department may employ an administrative officer of soil and water conservation, and such technical experts and such other employees, permanent and temporary, as it may require and shall determine their qualifications, duties, and compensation.

**History.**—s. 4, ch. 18144, 1937; s. 2, ch. 19473, 1939; CGL 1940 Supp. 4151(475); s. 3, ch. 67-207; s. 5, ch. 70-392.

#### **582.10 Creation of soil and water conservation districts.—**

(1) Any 25 owners of land lying within the limits of the territory proposed to be organized into a district may file a petition with the Department of Agriculture and Consumer Services, asking that a soil and water conservation district be organized to function in the territory described in the petition. Such petition shall set forth:

(a) The proposed name of said district.

(b) That there is need, in the interest of the pub-

lic health, safety, and welfare, for a soil and water conservation district to function in the territory described in the petition.

(c) A description of the territory proposed to be organized as a district, which description shall not be required to be given by metes and bounds or by legal subdivisions, but shall be deemed sufficient if generally accurate.

(d) A request that the department duly define the boundaries for such district; that a referendum be held within the territory so defined on the question of the creation of a soil and water conservation district in such territory; and that the department determine that such a district be created.

(2) Where more than one petition is filed covering parts of the same territory the department may consolidate all or any petitions.

**History.**—s. 5, ch. 18144, 1937; s. 3, ch. 19473, 1939; CGL 1940 Supp. 4151(476); s. 3, ch. 67-207; ss. 14, 35, ch. 69-106.

**582.11 Hearing upon question of creation; notice, etc.**—Within 30 days after such a petition has been filed with the Department of Agriculture and Consumer Services, it shall cause due notice to be given of a proposed hearing upon the question of the desirability and necessity, in the interest of the public health, safety, and welfare, of the creation of such district, upon the question of the appropriate boundaries to be assigned to such district, upon the propriety of the petition and other proceedings taken under this chapter, and upon all questions relevant to such inquiries. All owners and occupiers of land within the limits of the territory described in the petition, and of lands within any territory considered for addition to such described territory, and all other interested parties, shall have the right to attend such hearings and to be heard. If it shall appear upon the hearing that it may be desirable to include within the proposed district territory outside of the area within which due notice of the hearing has been given, the hearing shall be adjourned and due notice of further hearing shall be given throughout the entire area considered for inclusion in the district and such further hearing held. After such hearing, if the department shall determine, upon the facts presented at such hearing and upon such other relevant facts and information as may be available that there is need, in the interest of the public health, safety, and welfare, for a soil and water conservation district to function in the territory considered at the hearing, it shall make and record such determination, and shall define, by metes and bounds or by legal subdivisions, the boundaries of such district. In making such determination and in defining such boundaries, the department shall give due weight and consideration to the topography of the area considered and of the state, the composition of soils therein, the distribution of erosion, the prevailing land-use practices, the desirability and necessity of including within the boundaries the particular lands under consideration and the benefits such lands may receive from being included within such boundaries, the relation of the proposed area to existing watersheds and agricultural regions, and to other soil and water conservation districts already organized or proposed for organization under the provisions of this chapter, and such other physical,

geographical, and economic factors as are relevant, having due regard to the legislative determinations set forth in this chapter. The territory to be included within such boundaries need not be contiguous. If the department shall determine after such hearing, after due consideration of the said relevant facts, that there is no need for a soil and water conservation district to function in the territory considered at the hearing, it shall make and record such determination and shall deny the petition. After 6 months shall have expired from the date of the denial of any such petition, subsequent petitions covering the same or substantially the same territory may be filed as aforesaid and new hearings held and determinations made thereon.

**History.**—s. 5, ch. 18144, 1937; s. 3, ch. 19473, 1939; CGL 1940 Supp. 4151(476); s. 3, ch. 67-207; ss. 14, 35, ch. 69-106.

**582.12 Referendum for creation, etc.**—After the Department of Agriculture and Consumer Services has made and recorded a determination that there is need, in the interest of the public health, safety, and welfare, for the organization of a district in a particular territory and has defined the boundaries thereof, it shall consider the question whether the operation of a district within such boundaries with the powers conferred upon soil and water conservation districts in this chapter is administratively practicable and feasible. To assist the department in the determination of such administrative practicability and feasibility, the department, within a reasonable time after entry of the finding that there is need for the organization of the proposed district and the determination of the boundaries thereof, shall hold a referendum within the proposed district upon the proposition of the creation of the district, and cause due notice of such referendum to be given. The question shall be submitted by ballots upon which the words "For creation of a soil and water conservation district of the lands below described and lying in the County (ies) of ....., (and) ....." and "Against creation of a soil and water conservation district of the lands below described and lying in the County (ies) of ....., (and) ....." shall appear with a square before each proposition and a direction to insert an X mark in the square before one or the other of said propositions as the voter may favor or oppose creation of such district. The ballot shall set forth the boundaries of such proposed district as determined by the department. All owners of lands lying within the boundaries of the territory, as determined by the department, shall be eligible to vote in such referendum. Only such landowners shall be eligible to vote.

**History.**—s. 5, ch. 18144, 1937; s. 3, ch. 19473, 1939; CGL 1940 Supp. 4151(476); s. 3, ch. 67-207; ss. 14, 35, ch. 69-106.

**582.13 Expenses of referendum.**—The Department of Agriculture and Consumer Services shall pay all expenses for the issuance of such notices and the conduct of such hearings and referenda, and shall supervise the conduct of such hearings and referenda. It shall issue appropriate regulations governing the conduct of such hearings and referenda, and providing for the registration prior to the date of the referendum of all eligible voters, or prescribing some other appropriate procedure for the deter-



mination of those eligible as voters in such referendum. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as provided in s. 582.12, and said referendum shall have been fairly conducted.

**History.**—s. 5, ch. 18144, 1937; s. 3, ch. 19473, 1939; CGL 1940 Supp. 4151(476); ss. 14, 35, ch. 69-106.

**582.14 Results of referendum; publication, etc.**—The Department of Agriculture and Consumer Services shall publish the result of such referendum and shall thereafter consider and determine whether the operation of the district within the defined boundaries is administratively practicable and feasible. If the department shall determine that the operation of such district is not administratively practicable and feasible, it shall record such determination and deny the petition. If the department shall determine that the operation of such district is administratively practicable and feasible, it shall record such determination and shall proceed with the organization of the district in the manner hereinafter provided. In making such determination the department shall give due regard and weight to the attitude of the owners and occupiers of lands lying within the defined boundaries, the number of landowners eligible to vote in such referendum who shall have voted, the proportion of the votes cast in such referendum in favor of the creation of the district to the total number of votes cast, the approximate wealth and income of the landowners and occupiers of the proposed district, the probable expense of carrying on erosion-control operations within such district, and such other economic and social factors as may be relevant to such determination having due regard to the legislative determinations set forth in this chapter; provided, however, that the department shall not determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible unless at least a majority of the votes cast in the referendum upon the proposition of creation of the district shall have been cast in favor of the creation of such district.

**History.**—s. 5, ch. 18144, 1937; s. 3, ch. 19473, 1939; CGL 1940 Supp. 4151(476); ss. 14, 35, ch. 69-106.

**582.15 Organization of district, etc.—**

(1) If the Department of Agriculture and Consumer Services shall determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible, any five of the petitioners who signed the petition for the creation of the proposed district may present to the Department of State an application signed by them which shall set forth (and such application need contain no details other than the mere recitals):

(a) That a petition for the creation of the district was filed with the Department of Agriculture and Consumer Services pursuant to the provisions of this chapter, and that the proceedings specified in this chapter were taken pursuant to such petition; that the application is being filed in order to complete the organization of the district under this chapter;

(b) The name which is proposed for the district; and

(c) The location selected by the department to be the principal office of the supervisors of the district.

The application shall be accompanied by a statement by the Department of Agriculture and Consumer Services, which shall certify (and such statement need contain no detail other than the mere recitals) that a petition was filed, notice issued, and hearing held as aforesaid; that the department did duly determine that there is need, in the interest of the public health, safety, and welfare, for a soil and water conservation district to function in the proposed territory and did define the boundaries thereof; that notice was given and a referendum held on the question of the creation of such district, and that the result of such referendum showed a majority of the votes cast in such referendum to be in favor of the creation of the district; that thereafter the department did duly determine that the operation of the proposed district is administratively practicable and feasible. The said statement shall set forth the boundaries of the district as they have been defined by the department.

(2) The Department of State shall examine the application and statement and, if it finds that the name proposed for the district is not identical with that of any other soil and water conservation district of this state or so nearly similar as to lead to confusion or uncertainty, it shall receive and file them and shall record them in an appropriate book of record in its office. If the Department of State shall find that the name proposed for the district is identical with that of any other soil and water conservation district of this state, or so nearly similar as to lead to confusion and uncertainty, it shall certify such fact to the Department of Agriculture and Consumer Services and to the five petitioners and the petitioners shall thereupon submit to the Department of State a new name for the said district not subject to such defects. Upon receipt of such new name, free of such defects, the Department of State shall record the application and statement, with the name so modified, in an appropriate book of record in its office. The Department of State shall make and issue a certificate under the seal of the state, of the due organization of the said district, and shall record such certificate with the application and statement. The boundaries of such district shall include the territory as determined by the Department of Agriculture and Consumer Services.

(3) After 6 months shall have expired from the date of entry of a determination by the Department of Agriculture and Consumer Services that operation of a proposed district is not administratively practicable and feasible, and denial of a petition pursuant to such determination, subsequent petitions may be filed as aforesaid, and action taken thereon in accordance with the provisions of this chapter.

**History.**—s. 5, ch. 18144, 1937; s. 3, ch. 19473, 1939; CGL 1940 Supp. 4151(476); s. 7, ch. 22858, 1945; s. 1, ch. 25407, 1949; s. 3, ch. 67-207; ss. 10, 14, 35, ch. 69-106.

cf.—s. 582.17 Presumption as to establishment.

s. 582.30 Discontinuance of districts.

s. 582.31 Certification of results of referendum; dissolution.

**582.16 Addition of territory to district or removal of territory therefrom.**—Petitions for including additional territory or removing territory

within an existing district may be filed with the Department of Agriculture and Consumer Services, and the proceedings provided for in this chapter in the case of petitions to organize a district shall be observed in the case of petitions for such inclusion or removal. The department shall prescribe the form for such petition, which shall be as nearly as may be in the form prescribed in this chapter for petitions to organize a district. If the petition is signed by a majority of the landowners of such area, no referendum need be held. In referenda upon petitions for such inclusions or removals, all owners of land lying within the proposed area to be added or removed shall be eligible to vote.

**History.**—s. 5, ch. 18144, 1937; s. 3, ch. 19473, 1939; CGL 1940 Supp. 4151(476); s. 2, ch. 25407, 1949; s. 3, ch. 67-207; ss. 14, 35, ch. 69-106.

**582.17 Presumption as to establishment.**—In any suit, action or proceeding involving the validity or enforcement of, or relating to, any contract, proceeding, or action of the district, the district shall be deemed to have been established in accordance with the provisions of this chapter upon proof of the issuance of the aforesaid certificate by the Department of State. A copy of such certificate duly certified by the Department of State shall be admissible in evidence in any such suit, action, or proceeding and shall be proof of the filing and contents thereof.

**History.**—s. 5, ch. 18144, 1937; s. 3, ch. 19473, 1939; CGL 1940 Supp. 4151(476); ss. 10, 35, ch. 69-106.

**582.18 Election of supervisors of each district.**—

(1) The election of supervisors for each soil and water conservation district shall be held every 2 years. The elections shall be held at the time of the second primary election provided for by s. 100.091. The office of the supervisor of soil and water conservation district is a nonpartisan office and candidates for such office are prohibited from campaigning or qualifying for election based on party affiliation. Candidates for supervisor for each district shall be nominated by nominating petition subscribed by 25 or more qualified electors of such district. Candidates shall obtain signatures on petition forms prescribed by the Department of State and furnished by the appropriate qualifying officer. In multicounty districts the appropriate qualifying officer is the Secretary of State; in single-county districts the appropriate qualifying officer is the supervisor of elections. Such forms may be obtained at any time after the first Tuesday after the first Monday in January preceding the election, but prior to the 92nd day prior to the date of the first primary. Each petition shall be submitted, prior to noon of the 92nd day preceding the first primary election, to the supervisor of elections of the county for which such petition was circulated. The supervisor of elections shall check the signatures on the petition to verify their status as electors in the district. Prior to the first date for qualifying, the supervisor of elections shall determine whether the required single-county signatures have been obtained and shall so notify the candidate. In the case of a multicounty candidate, the supervisor of elections shall check the signatures on petitions and shall, prior to the first date for qualifying for office, certify to the Department of State the

number shown as registered electors of the district. The Department of State shall determine if the required number of signatures has been obtained for multicounty candidates and shall so notify the candidate. If the required number of signatures has been obtained for the name of the candidate to be placed on the ballot, the candidate shall, during the time prescribed for qualifying for office in s. 99.061, submit a copy of the notice to, and file his qualification papers with, the qualifying officer and take the oath prescribed in s. 99.021. Nominees who collect or expend campaign contributions shall conduct their campaigns for supervisor of soil and water conservation districts in accordance with the provisions of chapter 106. Candidates who neither receive contributions nor make expenditures, other than expenditures for verification of signatures on petitions, are exempt from the provisions of chapter 106 requiring establishment of bank accounts and appointment of a campaign treasurer, but shall file periodic reports as required by s. 106.07. The names of all nominees on behalf of whom such nominating petitions have been filed shall appear upon ballots in accordance with the general election laws. All qualified electors residing within the district shall be eligible to vote in such election. The candidates who shall receive the largest number of the votes cast from each group of candidates, as provided in s. 100.071, in such election shall be the elected supervisors from such group for such district. In the case of a newly created district participating in a regular election for the first time, three groups of candidates shall be elected for terms of 4 years and two groups shall be elected for initial terms of 2 years. Those elected shall assume office on the first Tuesday after the first Monday in January following the election.

(2) After the issuance of a certificate of organization of a soil and water conservation district by the Department of State, or in the event of a vacancy resulting from death, resignation, removal, or otherwise, all vacancies shall be filled by appointment by the remaining supervisors of the district until the next regular election.

**History.**—s. 6, ch. 18144, 1937; s. 4, ch. 19473, 1939; CGL 1940 Supp. 4151(477); s. 2, ch. 28094, 1953; s. 3, ch. 67-207; ss. 10, 14, 35, ch. 69-106; s. 1, ch. 72-114; s. 2, ch. 74-53; s. 2, ch. 78-261.

**582.19 Qualifications and tenure of supervisors.**—

(1) The governing body of the district shall consist of five supervisors, elected as provided hereinabove.

(2) The supervisors shall designate a chairman and may, from time to time, change such designation by majority vote. The term of office of each supervisor shall be 4 years, except that two supervisors shall be elected to serve for initial terms of 2 years, respectively, from the date of their election as provided in this chapter. A supervisor shall hold office until his successor has been elected and qualified. The selection of successors to fill an unexpired term shall be in accordance with s. 582.18(2). Selection for a full term in a newly created district shall be by election of the qualified electors of the district. A majority of the supervisors shall constitute a quorum and the concurrence of a majority of the supervisors in any matter within their duties shall be required for its

determination. A supervisor shall receive no compensation for his services, but he shall, with approval of the supervisors of the district, be reimbursed for traveling expenses as provided in s. 112.061.

(3) The supervisors may utilize the services of the county agricultural agents and the facilities of the county agricultural agents' offices insofar as practicable and feasible and may employ such additional employees and agents, permanent and temporary, as they may require, and determine their qualifications, duties and compensation. The supervisors may delegate to their chairman, to one or more supervisors, or to one or more agents, or employees such powers and duties as they may deem proper. The supervisors shall furnish to the Department of Agriculture and Consumer Services, upon request, copies of such rules, regulations, orders, contracts, forms and other documents as they shall adopt or employ, and such other information concerning their activities as it may require in the performance of its duties under this chapter.

(4) The supervisors shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and others issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements. Any supervisors may be removed by the governor of this state upon notice and hearing, for neglect of duty or malfeasance in office, but for no other reason.

(5) The supervisors may invite the legislative body of any municipality or county located within or near the territory comprised within the district to designate a representative to advise and consult with the supervisors of the district on all questions of program and policy which may affect the property, water supply, or other interest of such municipality or county.

**History.**—s. 7, ch. 18144, 1937; s. 5, ch. 19473, 1939; CGL 1940 Supp. 4151(478); s. 3, ch. 28094, 1953; s. 19, ch. 63-400; s. 3, ch. 67-207; ss. 14, 35, ch. 69-106; s. 3, ch. 74-53.  
cf.—s. 113.07 Bonds of officials.

#### **582.20 Powers of districts and supervisors.—**

A soil and water conservation district organized under the provisions of this chapter shall constitute a governmental subdivision of this state, and a public body corporate and politic, exercising public powers, and such district and the supervisors thereof, shall have the following powers, in addition to others granted in other sections of this chapter:

(1) To conduct surveys, investigations, and research relating to the character of soil erosion and floodwater and sediment damages, to the conservation, development and utilization of soil and water resources and the disposal of water, and to the preventive and control measures and works of improvement needed; to publish the results of such surveys, investigations, or research; and to disseminate information concerning such preventive and control measures and works of improvement; provided, however, that in order to avoid duplication of research activities, no district shall initiate any research program except in cooperation with the government of this state or any of its agencies, or with the United States or any of its agencies;

(2) To conduct demonstrational projects within the district on lands owned or controlled by this state or any of its agencies, with the cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the owner and occupiers of such lands or the necessary rights or interests in such lands, in order to demonstrate by example the means, methods, and measures by which soil and soil resources may be conserved, and soil erosion in the form of soil blowing and soil washing may be prevented and controlled, and works of improvement for flood prevention or the conservation, development and utilization of soil and water resources, and the disposal of water may be carried out;

(3) To carry out preventive and control measures and works of improvement for flood prevention or the conservation, development and utilization of soil and water resources, and the disposal of water within the district, including, but not limited to, engineering operations, methods of cultivation, the growing of vegetation, changes in use of land, and the measures listed in s. 582.04 on lands owned or controlled by this state or any of its agencies, with the cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the owner and the occupiers of such lands or the necessary rights or interests in such lands;

(4) To cooperate, or enter into agreements with, and within the limits of appropriations duly made available to it by law, to furnish financial or other aid to, any agency, governmental or otherwise, or any owner or occupier of lands within the district, in the carrying on of erosion control or prevention operations and works of improvement for flood prevention or the conservation, development and utilization, of soil and water resources and the disposal of water within the district, subject to such conditions as the supervisors may deem necessary to advance the purposes of this chapter;

(5) To obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, bequest, devise or otherwise, any property, real or personal, or rights or interests therein; to maintain, administer, and improve any properties acquired, to receive income from such properties and to expend such income in carrying out the purposes and provisions of this chapter; and to sell, lease, or otherwise dispose of any of its property or interests therein in furtherance of the purposes and the provisions of this chapter;

(6) To make available, on such terms as it shall prescribe, to landowners and occupiers within the district, agricultural and engineering machinery and equipment, fertilizer, seeds and seedlings, and such other material or equipment, as will assist such landowners and occupiers to carry on operations upon their lands for the conservation of soil resources and for the prevention or control of soil erosion and for flood prevention or the conservation, development and utilization, of soil and water resources and the disposal of water;

(7) To construct, improve, operate and maintain such structures as may be necessary or convenient



for the performance of any of the operations authorized in this chapter;

(8) To develop comprehensive plans for the conservation of soil and water resources and for the control and prevention of soil erosion and for flood prevention or the conservation, development and utilization of soil and water resources, and the disposal of water within the district, which plans shall specify in such detail as may be possible the acts, procedures, performances, and avoidances which are necessary or desirable for the effectuation of such plans, including the specification of engineering operations, methods of cultivation, the growing of vegetation, cropping programs, tillage practices, and changes in use of land; control of artesian wells; and to publish such plans and information and bring them to the attention of owners and occupiers of lands within the district.

(9) To take over, by purchase, lease, or otherwise, and to administer any soil-conservation, erosion-control, erosion-prevention project, or any project for flood-prevention or for the conservation, development and utilization of soil and water resources, and the disposal of water, located within its boundaries undertaken by the United States or any of its agencies, or by this state or any of its agencies; to manage as agent of the United States or any of its agencies, or of the state or any of its agencies, any soil-conservation, erosion-control, erosion-prevention, or any project for flood-prevention or for the conservation, development, and utilization of soil and water resources, and the disposal of water within its boundaries; to act as agent for the United States, or any of its agencies, or for the state or any of its agencies, in connection with the acquisition, construction, operation or administration of any soil-conservation, erosion-control, erosion-prevention, or any project for flood-prevention or for the conservation, development and utilization of soil and water resources, and the disposal of water within its boundaries; to accept donations, gifts, and contributions in money, services, materials, or otherwise, from the United States or any of its agencies, or from this state or any of its agencies, or from others, and to use or expend such moneys, services, materials or other contributions in carrying on its operations;

(10) To sue and be sued in the name of the district; to have a seal, which seal shall be judicially noticed; to have perpetual succession unless terminated as provided in this chapter; to make and execute contracts and other instruments necessary or convenient to the exercise of its powers; upon a majority vote of the supervisors of the district, to borrow money and to execute promissory notes and other evidences of indebtedness in connection therewith, and to pledge, mortgage, and assign the income of the district and its personal property as security therefor, the notes and other evidences of indebtedness to be general obligations only of the district and in no event to constitute an indebtedness for which the faith and credit of the state or any of its revenues are pledged; to make, amend, and repeal rules and regulations not inconsistent with this chapter to carry into effect its purposes and powers.

(11) As a condition to the extending of any benefits under this chapter to, or the performance of

work upon, any lands not owned or controlled by this state or any of its agencies, the supervisors may require contributions in money, services, materials, or otherwise to any operations conferring such benefits, and may require landowners and occupiers to enter into and perform such agreements or covenants as to the permanent use of such lands as will tend to prevent or control erosion and prevent flood-water and sediment damages thereon;

(12) No provisions with respect to the acquisition, operation, or disposition of property by public bodies of this state shall be applicable to a district organized hereunder unless the Legislature shall specifically so state. The property and property rights of every kind and nature acquired by any district organized under the provisions of this chapter shall be exempt from state, county, and other taxation.

**History.**—s. 8, ch. 18144, 1937; CGL 1940 Supp. 4151(479); s. 7, ch. 22858, 1945; s. 2, ch. 65-334; s. 3, ch. 67-207; s. 5, ch. 69-235.

#### **582.21 Adoption of land-use regulations.—**

(1) The supervisors of any district shall have authority to formulate regulations governing the use of lands within the district in the interest of conserving soil and soil resources, and preventing and controlling soil erosion. The supervisors may conduct such public meetings and public hearings upon tentative regulations as may be necessary to assist them in this work. The supervisors shall not have authority to adopt such land-use regulations until after they shall have caused due notice to be given of their intention to conduct a referendum for submission of such regulations to the owners of lands lying within the boundaries of the district, for their indication of approval or disapproval of such proposed regulations, and until after the supervisors have considered the result of such referendum. Copies of such proposed regulations shall be available for the inspection of all eligible voters during the period between publication of such notice and the date of the referendum. The notices of the referendum shall recite the contents of such proposed regulations, or shall state where copies of such proposed regulations may be examined. The question shall be submitted by ballots, upon which the words "For approval of proposed land-use regulations for the conservation of soil and prevention of erosion" and "Against approval of proposed land-use regulations for conservation of soil and prevention of erosion" shall appear, with a square before each proposition and a direction to insert an X mark in the square before one or the other of said propositions as the voter may favor or oppose approval of such proposed regulations. The supervisors shall supervise such referendum, shall prescribe appropriate regulations governing the conduct thereof, and shall publish the result thereof. All owners of lands within the district shall be eligible to vote in such referendum. Only such landowners shall be eligible to vote. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

(2) The supervisors shall not adopt such proposed regulations unless at least a majority of the votes

cast in such referendum shall have been cast for approval of the said proposed regulations. The approval of the proposed regulations by a majority of the votes cast in such referendum shall not be deemed to require the supervisors to adopt such proposed regulations. Land-use regulations adopted pursuant to the provisions of this section by the supervisors of any district shall be binding and obligatory upon all owners and occupiers of land within such districts.

(3) Land-use regulations adopted pursuant to the provisions of this section shall not be amended, supplemented, or repealed except in accordance with the procedure prescribed in this section for adoption of land-use regulations. Referenda of adoption, amendment, supplementation, or repeal of land-use regulations shall not be held more often than once in 6 months.

**History.**—s. 9, ch. 18144, 1937; CGL 1940 Supp. 4151(480); s. 6, ch. 78-95.

**582.22 Regulations; contents.**—The regulations to be adopted by the supervisors under the provisions of this chapter may include:

(1) Provisions requiring the carrying out of necessary engineering operations, including the construction of terraces, terrace outlets, check dams, dikes, ponds, ditches, and other necessary structures;

(2) Provisions requiring observance of particular methods of cultivation including contour cultivating, contour furrowing, lister furrowing, sowing, planting, strip cropping, changes in cropping systems, seeding, and planting of lands to water-conserving and erosion-preventing plants, trees and grasses, forestation, and reforestation;

(3) Specifications of cropping programs and tillage practices to be observed;

(4) Provisions requiring the retirement from cultivation of highly erosive areas or of areas on which erosion may not be adequately controlled if cultivation is carried on;

(5) Provisions for such other means, measures, operations and programs as may assist conservation of soil resources and prevent or control soil erosion in the district, having due regard to the legislative findings set forth in this chapter.

The regulations shall be uniform throughout the territory comprised within the district except that the supervisors may classify the lands within the district with reference to such factors as soil type, degree of slope, degree of erosion threatened or existing, cropping and tillage practices in use, and other relevant factors, and may provide regulations varying with the type or class of land affected, but uniform as to all lands within each class or type. Copies of land-use regulations adopted under the provisions of this chapter shall be printed and made available to all owners and occupiers of lands lying within the district.

**History.**—s. 9, ch. 18144, 1937; CGL 1940 Supp. 4151(480).

**582.23 Performance of work under the regulations by the supervisors.**—

(1) The supervisors may go upon any lands within the district to determine whether land-use regulations adopted are being observed. Where the supervi-

sors of any district shall find that any of the provisions of land-use regulations adopted are not being observed on particular lands, and that such nonobservance tends to increase erosion on such lands and is interfering with the prevention or control of erosion on other lands within the district, the supervisors may present to the circuit court for the county or counties within which the lands of the defendant may lie, a petition, duly verified, setting forth the adoption of the land-use regulations, the failure of the defendant landowner or occupier to observe such regulations, and to perform particular work, operations, or avoidances as required thereby, and that such nonobservance tends to increase erosion on such lands and is interfering with the prevention or control of erosion on other lands within the district, and praying the court to require the defendant to perform the work, operations, or avoidances within a reasonable time and to order that if the defendant shall fail so to perform the supervisors may go on the land, perform the work or other operations or otherwise bring the condition of such lands into conformity with the requirements of such regulations, and recover the costs and expenses thereof, with interest, from the owner of such land. Upon the presentation of such petition the court shall cause process to be issued against the defendant, and shall hear the case. If it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a special master to take such evidence as it may direct and report the same to the court within his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made.

(2) The court may dismiss the petition; or it may require the defendant to perform the work, operations, or avoidances, and may provide that upon the failure of the defendant to initiate such performance within the time specified in the order of the court, and to prosecute the same to completion with reasonable diligence, the supervisors may enter upon the lands involved and perform the work or operations, or otherwise bring the conditions of such lands into conformity with the requirements of the regulations and recover the costs and expenses thereof, with interest at the rate of 5 percent per annum, from the owner of such lands.

(3) The court shall retain the jurisdiction of the case until after the work has been completed. Upon completion of such work pursuant to such order of the court the supervisors may file a petition with the court, a copy of which shall be served upon the defendant in the case, stating the costs and expenses sustained by them in the performance of the work and praying judgment therefor with interest. The court shall have jurisdiction to enter judgment for the amount of such costs and expenses, with interest at the rate of 5 percent per annum until paid, together with the costs of suit, including a reasonable attorney's fee to be fixed by the court.

**History.**—s. 10, ch. 18144, 1937; CGL 1940 Supp. 4151(481); s. 26, ch. 73-334.

**582.24 Board of adjustment.**—Where the supervisors of any district organized under the provisions of this chapter shall adopt an ordinance prescribing land-use regulations, said supervisors shall

constitute, and be ex officio members of, a board of adjustment to hear and consider petitions which may be submitted to such board by any landowner in the district praying for relief from any of the provisions of the said land-use regulations.

**History.**—s. 11, ch. 18144, 1937; s. 6, ch. 19473, 1939; CGL 1940 Supp. 4151(482).

**582.25 Rules of procedure of board.**—The board of adjustment shall adopt rules to govern its procedures, which rules shall be in accordance with the provisions of this chapter and with the provisions of any ordinance adopted pursuant to this chapter. The board shall designate a chairman from among its members, and may, from time to time, change such designation. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Any three members of the board shall constitute a quorum. The chairman, or in his absence such other member of the board as he may designate to serve as acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep a full and accurate record of all proceedings and of all documents filed in its office, which shall be a public record.

**History.**—s. 11, ch. 18144, 1937; s. 6, ch. 19473, 1939; CGL 1940 Supp. 4151(482).

**582.26 Petition to board to vary from regulations.**—Any landowner or occupier may file a petition with the board of adjustment alleging that there are great practical difficulties or unnecessary hardship in the way of his carrying out upon his lands the strict letter of the land-use regulations prescribed by ordinance approved by the supervisors and praying the board to authorize a variance from the terms of the land-use regulations in the application of such regulations to the lands occupied by the petitioner. Copies of such petition shall be filed by the petitioner with the Department of Agriculture and Consumer Services. The Department of Agriculture and Consumer Services shall have the right to appear and be heard at such hearing. Any owner or occupier of lands lying within the district who shall object to the authorizing of the variance prayed for may intervene and become a party to the proceedings. If the board shall determine that there are great practical difficulties or unnecessary hardship in the way of applying the strict letter of any of the land-use regulations upon the lands of the petitioner, it shall have power by order to authorize such variance from the terms of the land-use regulations, in their application to the lands of the petitioner, as will relieve such great practical difficulties or unnecessary hardship and will not be contrary to the public interest, and such that the spirit of the land-use regulations shall be observed, the public health, safety, and welfare secured, and substantial justice done.

**History.**—s. 11, ch. 18144, 1937; s. 6, ch. 19473, 1939; CGL 1940 Supp. 4151(482); s. 3, ch. 67-207; ss. 14, 35, ch. 69-106; s. 6, ch. 78-95.

**582.28 Cooperation between districts.**—The supervisors of any two or more districts organized under the provisions of this chapter may cooperate

with one another in the exercise of any or all powers conferred in this chapter.

**History.**—s. 12, ch. 18144, 1937; CGL 1940 Supp. 4151(483).

**582.29 State agencies to cooperate.**—Agencies of this state which shall have jurisdiction over, or be charged with, the administration of any state-owned lands, and of any county, or other governmental subdivision of the state, which shall have jurisdiction over, or be charged with the administration of, any county-owned or other publicly owned lands, lying within the boundaries of any district organized under this chapter, shall cooperate to the fullest extent with the supervisors of such districts in the effectuation of programs and operations undertaken by the supervisors under the provisions of this chapter. The supervisors of such districts shall be given free access to enter and perform work upon such publicly owned lands. The provisions of land-use regulations adopted shall be in all respects observed by the agencies administering such publicly owned lands.

**History.**—s. 13, ch. 18144, 1937; CGL 1940 Supp. 4151(484).

**582.30 Discontinuance of districts; referendum.**—

(1) Any time after 5 years from the organization of a district under the provisions of this chapter, any 25 owners of land lying within the boundaries of such district may file a petition with the Department of Agriculture and Consumer Services praying that the operations of the district be terminated and the existence of the district discontinued. The department may conduct such public meetings and public hearings upon petition as may be necessary to assist it in the consideration thereof. Within 60 days after such a petition has been received by the department it shall give due notice of the holding of a referendum, and shall supervise such referendum, and issue appropriate regulations governing the conduct thereof, the question to be submitted by ballots upon which the words "For terminating the existence of the ..... (Name of the soil and water conservation district to be here inserted)" and "Against terminating the existence of the ..... (Name of the soil and water conservation district to be here inserted)" shall appear with a square before each proposition and a direction to insert an X mark in the square before one or the other of said propositions as the voter may favor or oppose discontinuance of such district. All owners of lands lying within the boundaries of the district shall be eligible to vote in such referendum. Only such landowners shall be eligible to vote. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

(2) If two-thirds or more of the qualified voters in such referendum shall have voted for the discontinuance of the district, the department shall certify to the supervisors of the district the result of such referendum and that the continued operation of the



district is not administratively practicable and feasible.

**History.**—s. 14, ch. 18144, 1937; s. 7, ch. 19473, 1939; CGL 1940 Supp. 4151(485); s. 3, ch. 67-207; ss. 14, 35, ch. 69-106.

**582.31 Certification of results of referendum; dissolution.**—Upon receipt from the Department of Agriculture and Consumer Services of a certification that the department has determined that the continued operation of the district is not administratively practicable and feasible, pursuant to the provisions of this chapter, the supervisors shall forthwith proceed to terminate the affairs of the district. The supervisors shall dispose of all property belonging to the district at public auction and shall pay over the proceeds of such sale to be converted into the State Treasury, which amount shall be placed to the credit of the department for the purpose of liquidating any legal obligations said district may have at the time of its discontinuance. The supervisors shall thereupon file an application, duly verified, with the Department of State for the discontinuance of such district, and shall transmit with such application the certificate of the Department of Agriculture and Consumer Services setting forth the determination of the department that the continued operation of such district is not administratively practicable and feasible. The application shall recite that the property of the district has been disposed of and the proceeds paid over as in this section provided, and shall set forth a full accounting of such properties and proceeds of the sale. The Department of State shall issue to the supervisors a certificate of dissolution and shall record such certificate in an appropriate book of record in its office.

**History.**—s. 14, ch. 18144, 1937; s. 7, ch. 19473, 1939; CGL 1940 Supp. 4151(485); s. 3, ch. 67-207; ss. 10, 14, 35, ch. 69-106.

**582.32 Continuance of existing contracts, etc.—**

(1) Upon issuance of a certificate of dissolution all land-use regulations theretofore adopted and in force within such districts shall be of no further force and effect. All contracts theretofore entered into, to which the district or supervisors are parties, shall remain in force and effect for the period provided in such contracts. The Department of Agriculture and Consumer Services shall be substituted for the district or supervisors as party to such contracts. The department shall be entitled to all benefits and subject to all liabilities under such contracts and shall have the same right and liability to perform, to require performance, and to modify or terminate such contracts by mutual consent or otherwise, as the supervisors of the district would have had. Such dissolution shall not affect the lien of any judgment entered under the provisions of this chapter, nor the pendency of any action instituted under the provisions of this chapter, and the department shall succeed to all the rights and obligations of the district or supervisors as to such liens and actions.

(2) The department shall not be required to entertain petitions for the discontinuance of any district nor conduct referenda upon such petitions nor make determinations pursuant to such petitions in

accordance with the provisions of this chapter, more often than once in 5 years.

**History.**—s. 14, ch. 18144, 1937; s. 7, ch. 19473, 1939; CGL 1940 Supp. 4151(485); s. 3, ch. 67-207; ss. 14, 35, ch. 69-106.

**582.331 Establishment of watershed improvement districts within soil and water conservation districts authorized.**—Watershed improvement districts may be formed as subdistricts of soil and water conservation districts, in accordance with the provisions of this chapter, for the development and execution of plans and projects for works of improvement for the control and prevention of soil erosion, flood prevention, conservation, development, and utilization of soil and water resources, disposal of water, fish and wildlife or recreational development, preservation and protection of land and water resources, and protection and promotion of the health, safety, and general welfare of the people of this state.

**History.**—s. 6, ch. 69-235.

**582.34 Petition for establishment; provisions.—**

(1) The owners of the major portion of land lying within the limits of a proposed watershed improvement district may file a petition with the supervisors of the soil and water conservation district in which the proposed watershed improvement district is situated asking that a watershed improvement district be organized to function in the area described in the petition.

(2) The petition shall set forth:

(a) The proposed name of the watershed improvement district.

(b) That there is need, in the interest of the public health, safety, and welfare for a watershed improvement district to function in the area described in the petition.

(c) A description of the area proposed to be organized as a watershed improvement district, which description shall be deemed sufficient if generally accurate.

(d) That the land within the area described in the petition is contiguous and is situated in the same watershed.

(e) The maximum millage rate, including not more than 1 mill for maintenance, expressed in mills on each dollar of assessed valuation at which taxes may be levied for any 1 fiscal year for the purposes of the watershed improvement district or to amortize indebtedness or bonds.

(f) A request that the area described in the petition be established as a watershed improvement district.

(3) Land lying within the limits of one watershed improvement district shall not be included in another watershed improvement district.

**History.**—s. 6, ch. 69-235.

**582.35 Notice and hearing on petition; determination of need for district; boundaries.**—Within 60 days after a petition has been filed with the supervisors of the soil and water conservation district, the supervisors shall cause due notice to be given of a public hearing upon the practicability and feasibility of creating the proposed watershed im-

provement district. All owners of land within the proposed district and all other interested parties shall have the right to attend such a hearing and to be heard. If the supervisors determine from the hearing that there is need, in the interest of public health, safety, and welfare, for the organization of the proposed district, they shall record such determination and shall define the boundaries of the watershed improvement district.

History.—s. 6, ch. 69-235.

**582.36 Determination of feasibility of proposed district; referendum.**—After the supervisors have determined that a need for the proposed watershed improvement district exists, have defined the boundaries of the proposed district, and have obtained the approval of the Department of Agriculture and Consumer Services for the formation of the proposed district, the supervisors shall consider the question of whether the operation of the proposed district is administratively practicable and feasible. To assist the supervisors in determining such question, a referendum shall be held by the supervisors upon the proposition of the creation of the proposed district. Due notice of such referendum shall be given by the supervisors, and ballots therefor shall be in substantially the form set forth in s. 582.12, but the proposed district and name thereof shall be substituted for the soil and water conservation district, and the millage rate to be approved by the electors who are owners of freeholds within the proposed district not wholly exempt from taxation shall be included. At such referendum each owner of land lying within the proposed district shall be entitled to cast one vote, in person or by proxy, for each acre or fractional part thereof of land within the proposed district belonging to such owner, except that only one vote may be cast for each such acre or fractional part thereof regardless of whether the legal title thereto is held in single or multiple ownership. The supervisors may prescribe such rules and regulations governing the conduct of the hearing and referendum as they deem necessary.

History.—s. 6, ch. 69-235; ss. 14, 35, ch. 69-106.

**582.37 Consideration of results of referendum; declaration of organization of district.**—The results of the referendum shall be considered by the supervisors in determining whether the operation of the proposed watershed improvement district is administratively practicable and feasible. If the supervisors determine that the operation of the proposed district is not administratively practicable and feasible, they shall record such determination and deny the petition. If the supervisors determine that the operation of the proposed district is administratively practicable and feasible, they shall record such determination in the manner hereinafter provided; provided, however, that the supervisors shall not be authorized to determine that the operation of the proposed district is administratively practicable and feasible unless at least a majority of the votes cast in the referendum, representing not less than a majority of the land area within the proposed dis-

trict, shall have been cast in favor of the creation of the watershed improvement district.

History.—s. 6, ch. 69-235.

**582.38 Organization of district; certification to clerks of circuit courts; limitation on tax rate.**

—If the supervisors determine that the operation of the proposed watershed improvement district is administratively practicable and feasible, they shall declare the watershed improvement district to be duly organized and shall record such fact in their official minutes. Following such entry in their official minutes, the supervisors shall certify the fact of the creation of the district to the Department of Agriculture and Consumer Services, and shall furnish a copy of such certification to the clerk of the circuit court of each county in which any portion of the watershed improvement district is situated for recordation in the public land records of each such county. The watershed improvement district shall thereupon constitute a governmental subdivision of this state and a public body corporate and politic. The rate at which taxes for any one fiscal year may be levied for the purposes of the watershed improvement district shall be subject to the limitations set forth in s. 582.44.

History.—s. 6, ch. 69-235; ss. 14, 35, ch. 69-106.

**582.39 Establishment of watershed improvement district situated in more than one soil and water conservation district.**

—If a proposed watershed improvement district is situated in more than one soil and water conservation district, copies of the petition for the establishment of such district shall be presented to the board of supervisors of each of the soil and water conservation districts in which the proposed district is situated, and the supervisors of all such soil and water conservation districts affected shall act jointly as a board of supervisors with respect to all matters concerning the watershed improvement district, including its creation. Such watershed improvement district shall be organized in like manner and shall have the same powers and duties as a watershed improvement district situated entirely in one soil and water conservation district.

History.—s. 6, ch. 69-235.

**582.40 Change of district boundaries; additions, detachments, transfers of land from one district to another; change of district name.**

(1) Any one or more owners of land may petition the board of supervisors of the soil and water conservation district in which a watershed improvement district is situated to have their lands added to the watershed improvement district. The petition shall also be signed by the owners of a majority of the land area within the watershed improvement district, and shall be subject to approval by the board of directors of the watershed improvement district. The petition shall describe the land desired to be annexed and state the number of acres of land involved and other information pertinent to such proposal.

(2) Within 30 days after such petition is filed, the board shall cause due notice to be given of a hearing on the petition. All interested parties shall have a right to attend the hearing and be heard. The board shall determine whether the lands described in the

petition or any portion thereof shall be included in the watershed improvement district. If it is determined that such land should be added, the board shall certify this fact to the Department of Agriculture and Consumer Services and furnish a copy of such certification to the clerk of the circuit court of each county in which any portion of the added lands is situated for recordation in the public land records of each such county.

(3) The owner or owners of land which is not benefited by its inclusion in a watershed improvement district may petition the board of supervisors of the soil and water conservation district in which the watershed improvement district is situated to have such land excluded from the district. The petition shall describe the land and state the reasons why it should be excluded. A hearing shall be held within 60 days after the petition is received. Due notice of the hearing shall be given by the board. If it is determined by the board that such land is not benefited by its inclusion in the watershed improvement district, such land shall be excluded from the district. The board shall certify such determination to the Department of Agriculture and Consumer Services and shall furnish a copy of such certification to the clerk of the circuit court of each county in which any portion of such excluded land is situated for recordation in the public land records of each such county.

(4) Landowners desiring a transfer of their land from one watershed improvement district to another may file a petition for such transfer with the board of supervisors of the soil and water conservation district in which the watershed improvement district is situated. The board of supervisors may hold such hearings as it deems appropriate to enable it to make a determination as to the desirability of the proposed transfer of land. If the board makes a determination in favor of such transfer of land, it shall certify such determination, setting out the new boundaries of the watershed improvement districts involved, to the Department of Agriculture and Consumer Services, and shall furnish a copy of such certification to the clerk of the circuit court of each county in which the affected watershed improvement districts are situated for recordation in the public land records of each such county.

(5) Landowners within a watershed improvement district desiring a change of name of such district may file a petition for such change of name with the board of supervisors of the soil and water conservation district in which the watershed improvement district is situated. If the board approves the change of name, it shall certify the fact of such change of name to the Department of Agriculture and Consumer Services, and shall furnish a copy of such certification to the clerk of the circuit court of the county or counties in which the watershed improvement district is situated for recordation in the public land records of each such county.

**History.**—s. 6, ch. 69-235; ss. 14, 35, ch. 69-106.

#### **582.41 Board of directors of district.—**

(1) Petitions to nominate candidates for directors of the watershed improvement district may be filed with the board of supervisors of the soil and water conservation district in which the watershed im-

provement district is situated. No such nominating petition shall be accepted by the board unless it is signed by at least ten owners of land lying within the watershed improvement district or by a majority of such owners if there be less than 10. Such owners may sign more than one nominating petition to nominate more than one candidate for director. No person shall be eligible to be a director unless he is an owner of land within the watershed improvement district in which he seeks election.

(2) Within 30 days after a watershed improvement district is established, the board of supervisors of the soil and water conservation district in which the watershed improvement district is situated, or the joint board if more than one district is affected, shall cause an election to be held for the election of a board of three directors of the watershed improvement district. Due notice of such election shall be given by the board to supervisors. At such election each owner of land lying within the watershed improvement district shall be entitled to cast one vote, in person or by proxy, for each acre or fractional part thereof of land within the watershed improvement district belonging to such owner, except that only one vote may be cast for each such acre or fractional part thereof regardless of whether the legal title thereto is held in single or multiple ownership. The three persons receiving the highest number of votes shall be declared elected as directors. The first board of directors shall determine by lot from among its membership one member to serve a term of 3 years, one member to serve a term of 2 years, and one member to serve a term of 1 year; thereafter, as these initial terms expire, the members of the board of directors shall be elected for terms of 3 years. Vacancies occurring before the expiration of a term shall be filled for the unexpired term by appointment by the remaining members of the board of directors with the approval of the board of supervisors. The board of directors shall, under the supervision of the board of supervisors, be the governing body of the watershed improvement district. The board of directors shall annually elect from its membership a chairman and vice chairman.

(3) A director shall receive compensation for his service at the rate of \$10 per day for those days on which he renders services pursuant to this chapter. A director shall also be entitled to expenses in the same amount and extent as provided for public officers and employees of the state in s. 112.061.

**History.**—s. 6, ch. 69-235.

**582.42 Officers, agents, and employees; surety bonds; annual audit.**—The board of directors may, with the approval of the board of supervisors of the soil and water conservation district in which the watershed improvement district is situated, or the joint board if more than one district is affected, employ such officers, agents, and other employees as they may require, and shall determine their qualifications, duties, and compensation. The board of directors shall provide for the execution of surety bonds for such officers, agents, and employees as shall be entrusted with funds or property of the watershed improvement district, and for the making



and publication of an annual audit of the accounts of the district.

History.—s. 6, ch. 69-235.

**582.43 Status and general powers of districts; power to levy tax; power to construct, operate, improve and maintain works of improvement; power to obtain necessary lands or interests therein.**—A watershed improvement district organized under the provisions of this chapter shall constitute a governmental subdivision of this state, and a public body corporate and politic, exercising public powers. Such district shall exercise its powers and duties under the supervision of the board of supervisors of the soil and water conservation district in which it is situated, or the joint board if more than one district is affected. The watershed improvement district shall have all of the powers of such soil and water conservation district, and in addition thereto shall have authority to levy a tax, as hereinafter provided, to be used for the purposes of the watershed improvement district; to acquire by purchase, gift, grant, bequest, devise, or other legal means, including by eminent domain proceedings in accordance with chapter 73, such lands or interests therein as are necessary for the exercise of any authorized function of the district, including needed or necessary real property outside of the district needed in connection with the administration of this law; to borrow money and issue bonds as hereinafter provided; and to construct, improve, operate, and maintain such structures and works as may be necessary for the performance and carrying on of any function authorized by this law.

History.—s. 6, ch. 69-235.

**582.44 Levy of taxes; procedure, etc.**—The board of directors of the district is authorized to levy annually a uniform ad valorem tax on all taxable property in the district as determined for county taxing purposes, not to exceed the amount necessary to provide the funds necessary for the purpose of maintaining, operating, and administering such district and obtaining necessary rights-of-way for the works of said district; provided, however, that such tax shall not exceed the rate of 3 mills on the dollar of the assessed value of such property or such rate approved by the qualified electors of said district pursuant to s. 582.36. The said district shall be deemed a district within the purview of former ss. 193.03 and 193.031, whether within the purview and intention of said sections or not, for the purposes of the assessment, collection, and distribution of the taxes herein provided for. Upon the equalization of the county tax rolls the governing board of the district shall be furnished with the same information furnished by the property appraiser to the taxing authorities of the county and taxing districts for use in determining the millages to be imposed by them. Upon the determination by the board of the taxing district of the millages to be imposed by it, it shall forthwith notify the boards of county commissioners of the counties wherein the said district lies, who shall include such millages in their directives to the property appraisers. Upon receipt of these millages the property appraisers shall impose and assess such taxes in the usual manner, to be collected and dis-

tributed in the usual manner. For purposes of taxation the district shall be treated as a taxing district. Such district tax assessments shall be liens against the properties assessed as is provided for in s. 197.056. The taxes of the district when distributed in the usual manner shall be paid into the district's depository to the credit of the said district to be expended in the usual manner for like district. Expenditures from such funds shall be made with the approval of the board of supervisors of the soil and water conservation district or districts in which the watershed improvement district is situated on requisition by the chairman or vice chairman of the board of directors of the watershed improvement district.

History.—s. 6, ch. 69-235; s. 1, ch. 77-102; s. 201, ch. 77-104.

**582.45 Fiscal powers of governing body; bonds, etc.**—The board of directors of any watershed improvement district shall have power, subject to the conditions and limitations of this chapter, to incur indebtedness and issue bonds of the watershed improvement district; however, such bonds shall be issued in full conformity with s. 12, Art. VII, of the Revised State Constitution, and chapter 100 insofar as said chapter relates to bond elections under said s. 12, Art. VII of the Constitution.

History.—s. 6, ch. 69-235.

**582.46 Additional powers and authority.**—The authority and powers herein granted watershed improvement districts shall be additional to those of the soil and water conservation district in which the watershed improvement district is situated. The soil and water conservation district shall be authorized, notwithstanding the creation of the watershed improvement district, to continue to exercise its authority within the boundaries of the watershed improvement district.

History.—s. 6, ch. 69-235.

**582.47 Watershed improvement district to coordinate work with flood control districts.**—The board of directors of any watershed improvement district located within the Southwest Florida Water Management District created by chapter 61-691, Laws of Florida, or the Central and Southern Florida Flood Control District created by chapter 25270, Laws of Florida, 1949, shall consult and advise with the boards of such districts in order to coordinate the work of the districts involved.

History.—s. 6, ch. 69-235.

**582.48 Discontinuance of watershed improvement district.**—

(1) At any time after 5 years from the organization of a watershed improvement district, the owners of not less than 25 percent of the land area within such district may file a petition with the board of supervisors of the soil and water conservation district or districts in which the watershed improvement district is situated requesting that the existence of the watershed improvement district be discontinued. The petition shall state the reasons for discontinuance, and that all maintenance and operation assurances and other obligations of the district have been met. A copy of such petition shall be fur-

nished to the Department of Agriculture and Consumer Services.

(2) After giving due notice of a hearing on such petition, the board of supervisors may conduct such hearing on the petition as may be necessary to assist it in making a determination.

(3) Within 60 days after the petition is filed, a referendum shall be held by the board of supervisors substantially as provided for in ss. 582.36 and 582.37. No informalities in the conduct of the referendum or in any matters relating to the referendum shall invalidate it or its results if due notice of the referendum has been given.

(4) If a majority of the votes cast in such referendum, representing a majority of the land area within the watershed improvement district, shall have been cast in favor of the discontinuance of the watershed improvement district, and the board of supervisors determines that all maintenance and operation assurances and other obligations of the district have

been met, the watershed improvement district shall be discontinued. A copy of such determination and discontinuance shall be certified to the Department of Agriculture and Consumer Services and to the clerk of the circuit court of each county in which any portion of the watershed improvement district is situated for recordation in the public land records of such county.

**History.**—s. 6, ch. 69-235; ss. 14, 35, ch. 69-106.

**582.49 Discontinuance of soil and water conservation district.**—If any soil and water conservation district in which a watershed improvement district is situated is discontinued, the Department of Agriculture and Consumer Services shall thereafter serve in the same supervising capacity over the watershed improvement district as was theretofore served by the board of supervisors of such soil and water conservation district.

**History.**—s. 6, ch. 69-235; ss. 14, 35, ch. 69-106.

## CHAPTER 583

## CLASSIFICATION AND SALE OF EGGS, POULTRY, ETC.

- 583.01 Definitions.
- 583.02 Labeling, marking, and advertising eggs; sales between dealers.
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- 583.18 Inspection by department.
- 583.181 Disposal of dead poultry and hatchery residue.
- 583.19 Sale of unsound, etc., fowls prohibited.
- 583.20 Penalties for violations of chapter.

**583.01 Definitions.**—In construing this chapter, where the context permits, the words, phrases, or term:

(1) "Department" shall mean the Department of Agriculture and Consumer Services.

(2) "Dealer" in eggs shall mean any person, firm, or corporation selling or offering for sale in this state 30 dozen or more eggs or its equivalent in any one week.

(3) "Eggs" within the intent and purposes of this chapter shall be construed to mean all edible shell eggs, frozen whole eggs, frozen yolks, frozen whites, and frozen egg products.

(4) "Shell eggs" within the intent and purposes of this chapter are construed to mean all edible eggs still in their original shell and shall be classified as follows:

(a) "Cold storage eggs" mean eggs which have been in cold storage for a period of 30 days or longer.

(b) "Unclassified eggs" shall mean eggs which do not meet the grades and standards of qualification as set up by the department because they have never been graded for internal quality and size. No declaration shall be made in the sale of such eggs as to quality grade or size, and such eggs shall not be offered at retail in the 1 dozen-type cartons.

(c) "Shell-treated eggs" are eggs whose shells have been treated with oil or other substance in the interest of preserving their internal quality.

(d) "Fresh eggs" means eggs of grade A or better quality which have not been held in cold storage for a period of 30 days or longer.

(5) "Frozen eggs, frozen whole eggs, frozen mixed eggs," are the food prepared by freezing liquid eggs.

(6) "Liquid eggs, mixed eggs, liquid whole eggs, mixed whole eggs," are eggs of the domestic hen,

broken from the shells, and with yolks and whites in their natural proportions as so broken. They may be mixed, or mixed and strained.

(7) "Egg yolks, liquid egg yolks, yolks, liquid yolks," are yolks of eggs of the domestic hen so separated from the whites thereof as to contain a total egg solid content which conforms with the specifications prescribed by the definition and standard of identity established by the United States Egg Products Inspection Act, Public Law 91-597 [84 Stat. 1620], and the Florida Food, Drug and Cosmetic Law.

(8) "Frozen yolks, frozen egg yolks," are the food prepared by freezing egg yolks.

(9) "Egg whites, liquid egg whites, whites, liquid whites," are whites of eggs of the domestic hen separated from the yolks thereof and conform with specifications prescribed or to be prescribed by the definition and standard of identity established by the United States Egg Products Inspection Act, Public Law 91-597 [84 Stat. 1620], and the Florida Food, Drug and Cosmetic Law.

(10) "Frozen whites, frozen egg whites," are the food prepared by freezing egg whites.

(11) "Frozen egg products," are frozen whole eggs, frozen whites or frozen yolks or any combination thereof to which have been added salt, sugar or other foods and noninjurious food additives.

(12) "Graded eggs" are eggs whose quality has been determined by candling, and only after candling may a grade be declared by any dealer or packer of shell eggs. However, it is understood that, should some new method be devised and approved by the department that is accepted commercially by the industry, it shall be within the authority of the department to allow such new method for determining internal quality in place of the now universally accepted candling operation.

(13) "Dealer" in poultry shall mean any person, firm, or corporation, including processors and retailers, engaged in the business of selling, offering for sale or holding for the purpose of sale in this state any dressed poultry in excess of 100 pounds in any one week, that are free from disease.

(14) "Broker" shall mean any person, firm or corporation who sells dressed poultry in this state for a dealer on a commission basis.

(15) "Processor" shall mean any person, firm or corporation slaughtering and dressing poultry for commercial purposes.

(16) "Poultry" shall mean all kinds of poultry and shall include chickens, turkeys, ducks, guineas, geese, pigeons, and other domesticated food birds.

(17) "Carton" within the intent and purpose of this chapter shall be construed to mean any container of paper, cardboard or other material used as a carrier of eggs where each egg has an individual cell in lots of any amount from one-half dozen to 3 dozen. It is understood that paper bags or other containers where eggs are packed in bulk without separation



between individual eggs shall in no way be construed as being a carton as intended in this chapter.

**History.**—s. 1, ch. 16012, 1933; ss. 1, 2, ch. 16982, 1935; s. 1, ch. 17170, 1935; CGL 1936 Supp. 4126(1),(2), 4151(379); s. 1, ch. 24106, 1947; s. 1, ch. 57-151; s. 1, ch. 61-413; ss. 14, 35, ch. 69-106; s. 245, ch. 71-377; ss. 1, 4, ch. 73-81.

**583.02 Labeling, marking, and advertising eggs; sales between dealers.**—It is unlawful for any dealer:

(1)(a) To offer for sale or sell in this state any case of eggs, or partial case of eggs or any carton containing eggs which fails to carry labeling to show grade, size, name, and address of packer.

(b) In the event a dealer who is a holder of a certificate shall sell or consign eggs to another dealer in Florida who also holds a certificate, the department may permit the consignor or original seller to deliver to the consignee the eggs so sold or consigned without labeling provided said eggs are accompanied by proper bill of lading, and provided further that the consignee, immediately upon receipt of such eggs and prior to selling or offering them for sale, shall affix to each case the labeling required by this chapter.

(2) To offer for sale or sell eggs in bulk (not in cases or cartons) from any open case, box, basket, or other receptacle holding said eggs in bulk without displaying conspicuously on every such case, box, basket, or other receptacle a placard or heavy cardboard not smaller than 7 inches by 7 inches in size, on which shall be legibly and plainly printed in letters not smaller than 1 inch in height, wording showing whether said eggs offered for sale or sold are "cold storage eggs," "unclassified eggs," or "graded eggs," and also stating the grade and standard to which the eggs contained therein conform.

(3) To offer eggs for sale in any newspaper advertisement, circular, radio, or other form of advertising without plainly designating in such advertisement the grade and standard to which the eggs being offered for sale properly belong.

**History.**—s. 2, ch. 16012, 1933; ss. 2, 3, ch. 16982, 1935; CGL 1936 Supp. 4126(2),(3); s. 2, ch. 57-151; s. 2, ch. 61-413; ss. 14, 35, ch. 69-106; s. 2, ch. 73-81.

**583.022 Unlawful acts; producers or dealers.**—It is unlawful for a producer or dealer to hold or store eggs for sale or processing at a temperature in excess of 60° F. and a satisfactory relative humidity. Retail stores may openly display eggs without refrigeration provided that the internal temperature shall not at any time exceed the 60° F. specified.

**History.**—s. 1, ch. 71-3.

**583.03 Department to fix grades and standards, etc.**—The Department of Agriculture and Consumer Services may determine, establish, and promulgate, from time to time, reasonable grades and standards of quality for eggs to be sold or offered for sale in the state, such as will promote honest and fair dealing in the interest of the consumer; and it may alter or modify such grades and standards of quality from time to time, as honest and fair dealing in the interest of the consumer may require; provided, however, that the grades and standards of quality so fixed by the department shall be based upon requirements not exceeding the requirements necessary to meet the grades and standards of quality prescribed by the United States Department of Agriculture, or

which may hereafter be prescribed by such United States Department of Agriculture, and the tolerance to be allowed shall be the same as is allowed in each grade or standard of quality by the United States Department of Agriculture.

**History.**—s. 9, ch. 16982, 1935; CGL 1936 Supp. 4126(9); ss. 14, 35, ch. 69-106.

**583.04 Promulgation of regulations.**—The department may make and promulgate such regulations as may be necessary to carry out the provisions of this chapter.

**History.**—s. 8, ch. 16012, 1933; s. 10, ch. 16982, 1935; CGL 1936 Supp. 4126(10); ss. 14, 35, ch. 69-106.

**583.05 Powers of department in making inspections.**—For the purpose of carrying out the provisions of this chapter, the department, through its authorized inspectors or agents, is authorized:

(1)(a) To enter on any business day during the usual hours of business, any store, market or other building, or place where eggs are sold, offered for sale, or held for the purpose of sale, in order to ascertain by inspection whether in the exhibition of such eggs all of the provisions and conditions of this chapter or any rule or regulation duly promulgated in relation to the sale, offering for sale, or holding for the purpose of sale have been complied with.

(b) Upon good and sufficient cause to believe that any of the provisions of this chapter are being violated, to stop and inspect any truck or other vehicle engaged in the transportation of eggs upon the highway to be sold, offered for sale, or held for the purpose of sale in the state, and to make such examination or inspection thereof as is necessary to ascertain whether all of the provisions of this chapter or any rule or regulation duly promulgated thereunder relating to the quality and wholesomeness, grade and standard required by the provisions of this law have been complied with.

(c) To enter on any business day during the usual hours of business, any restaurant kitchen, hotel dining room kitchen, or the kitchen of any other public eating place where eggs and egg products are served as food, in order to ascertain by inspection whether in the serving of such eggs or egg products as food all of the provisions and conditions of this chapter or any rule or regulation duly promulgated in relation thereto have been complied with; provided that no such restaurant, hotel dining room, or other public eating place where eggs or egg products are served as food shall not be construed to be a dealer and do not come under the provisions of this law except in order to permit inspection of eggs or egg products for the protection of the public health and to insure that the provisions of this law are being complied with by the dealer from which such eggs or egg products were purchased.

(2) To issue and enforce a stop sale notice or order to the owner or custodian of any lot of eggs which the department or its inspectors or agents find, or have good reason to believe, is in violation of any of the provisions of ss. 583.01, 583.05, 583.09, 583.12, 583.14, 583.18, 583.20 or any regulation issued hereunder which shall prohibit further sale, barter, ex-

change or distribution of eggs until the department is satisfied that the law has been complied with and has issued a written release or notice to the owner or custodian of such eggs.

**History.**—s. 11, ch. 16982, 1935; CGL 1936 Supp. 4126(11); s. 2, ch. 24106, 1947; s. 3, ch. 57-151; ss. 14, 35, ch. 69-106.

**583.06 Employment of assistants.**—The department may employ such assistants as are necessary to carry out and enforce the provisions of this chapter, such assistants to be paid out of the general inspection trust fund.

**History.**—s. 12, ch. 16982, 1935; CGL 1936 Supp. 4126(12); s. 2, ch. 61-119; ss. 14, 35, ch. 69-106.

**583.09 Certification of dealers.**—It is unlawful for any person to sell or offer for sale eggs as a dealer unless such person has obtained from the department a certificate to be issued free of charge authorizing such person to engage in the selling of eggs as such dealer in the state. Such certificate shall be subject to revocation by the department for cause. All such certificates shall be permanent registration and effective until revoked; provided that all certificates heretofore or hereafter issued shall serve as valid certificates until replaced with permanent certificates by the department.

**History.**—s. 4, ch. 16012, 1933; s. 6, ch. 16982, 1935; CGL 1936 Supp. 4126(6); s. 3, ch. 24106, 1947; s. 21, ch. 57-1; s. 4, ch. 57-151; ss. 14, 35, ch. 69-106.

**583.10 Records, inspection, invoices and information; penalty.**—

(1) Egg dealers shall keep for a period of 2 years all invoices, manifests, bills of lading, warehouse receipts, receiving and delivery receipts, record of checks issued, bank deposits, bank account statements, and paid checks, ledgers, books of accounts, memoranda or other equivalent information, relating to the purchase, sale, or transfer of eggs, showing the name of the seller or consignor, the name of the purchaser or consignee, the quantity and source and make such records readily available to a duly authorized representative of the department during all business hours for the purpose of inspection, examination and audit.

(2) The department may for cause require any dealer so granted a certificate to mail to the office of the Department of Agriculture and Consumer Services at Tallahassee, duplicate copies of all invoices or equivalent information, showing the consignor, the consignee, the quantity, source, grades, and standards of eggs included in each purchase or sale, or such other information as the department may require; and the department may prescribe the forms to be used to give such information.

(3) Any person violating this section, upon conviction shall be punished as provided in s. 583.20.

**History.**—s. 5, ch. 16012, 1933; s. 7, ch. 16982, 1935; CGL 1936 Supp. 4126(7); s. 1, ch. 59-425; ss. 14, 35, ch. 69-106; s. 3, ch. 73-81.

**583.11 Eggs in interstate commerce excepted.**—This chapter shall not apply to any shipment of eggs while the same constitutes a bona fide shipment in interstate commerce, but this chapter shall apply at the very instant when an interstate shipment comes to rest within the state and the police power

may be exerted thereon, or whenever such interstate shipment loses its character as such.

**History.**—s. 8, ch. 16982, 1935; CGL 1936 Supp. 4126(8).

**583.12 Live, dressed, and ready-to-cook poultry.**—Live, dressed, and ready-to-cook poultry is classified as:

(1) Live poultry, construed to mean fowl, not diseased, to be slaughtered for human consumption.

(2) Florida dressed, construed to mean any fowl, free of disease, slaughtered, and offered for sale in Florida, that have not been hard-chilled or frozen.

(3) Shipped (state of origin) dressed, construed to mean any fowl, free of disease, produced, and slaughtered outside of Florida, that have not been hard-chilled or frozen.

(4) Quick-frozen, or frozen, construed to mean any fowl that have been processed, packed, sealed and frozen in strict conformity with accepted standards for quick-freezing, or frozen, that have not developed any appearance of cold storage stock and show no evidence of deterioration from freezing.

(5) Storage (or cold storage) fowl, construed to mean all fowl free from disease and regardless of where slaughtered that show evidence of deterioration from freezing or that have been held at low temperature for 60 days or more.

(6) "Ready-to-cook poultry" means any dressed poultry from which the protruding pinfeathers, vestigial feathers (hair or down as the case may be), head, shanks, crop, oil gland, trachea, esophagus, entrails, reproductive organs, and lungs have been removed, and with or without giblets, and which is ready to cook without need of further processing. Ready-to-cook poultry also means any cut-up, or disjointed portion of such poultry or any edible part thereof.

**History.**—s. 2, ch. 17170, 1935; CGL 1936 Supp. 4151(380); s. 4, ch. 24106, 1947; s. 1, ch. 67-477; s. 202, ch. 77-104.

**583.13 Labeling and advertising dressed poultry as to classification, grade, and standard.**—

(1) It is unlawful for any dealer or broker to sell, offer for sale, or hold for the purpose of sale in the state any dressed or ready-to-cook poultry in bulk unless such poultry is packed in a container clearly bearing a label, not less than 3 inches by 5 inches, on which shall be plainly and legibly printed, in letters not less than one quarter inch or 24-point type in height, the classification, grade and standard of such poultry contained therein. Grade may be expressed in terms of plant grade "A," "B" or "C" or the grade of another state whose standards of quality, by law, are equal to the standards of quality provided by this law and rules promulgated hereunder.

(2) It is unlawful to sell unpackaged dressed or ready-to-cook poultry at retail unless same is labeled by a placard immediately adjacent thereto or unless each bird is individually labeled to show classification, grade and standard. The size of the print used on such placard shall be 72-point or larger.

(3) It is unlawful to sell packaged dressed or ready-to-cook poultry at retail unless same is labeled to show classification, grade, and standard, net weight and the name and address of the dealer. The

size of the type on the label shall be 10-point or larger.

(4) It is unlawful for any person, firm or corporation to use dressed or ready-to-cook poultry in bulk in the preparation of food served to the public, or to hold same for the purpose of such use, unless such poultry when received was packed in a container clearly bearing a label, not less than 3 by 5 inches, on which was plainly and legibly printed, in letters not less than one quarter inch in height, the classification, grade and standard of such poultry contained therein. Grade may be expressed in terms of plant grade "A," "B" or "C" or the grade of another state whose standards of quality, by law, are equal to the standards of quality provided by this law and rules promulgated hereunder.

(5) It is unlawful for any person, firm, or corporation to offer dressed or ready-to-cook poultry for sale in any newspaper advertisement, circular, radio, television, or other form of advertising without plainly designating in such advertisement the classification, grade, and standard of such poultry.

**History.**—s. 3, ch. 17170, 1935; CGL 1936 Supp. 4151(381); s. 5, ch. 57-151; s. 2, ch. 67-477.

**583.14 Certification of poultry dealers.**—It is unlawful to sell, offer for sale, or hold for the purpose of sale any poultry as a dealer or broker unless such person has obtained from the department a certificate authorizing such person to engage in the business of selling poultry in Florida. Such certificate shall be subject to revocation by the department for cause. All such certificates shall be permanent registration and effective until revoked; provided that all certificates heretofore or hereafter issued shall serve as valid certificates until replaced with permanent certificates by the department.

**History.**—s. 4, ch. 17170, 1935; CGL 1936 Supp. 4151(382); s. 5, ch. 24106, 1947; s. 22, ch. 57-1; s. 6, ch. 57-151; ss. 14, 35, ch. 69-106.

**583.16 Interstate shipments exempt.**—This law shall not apply to any shipment of live or dressed poultry while the same constitutes a bona fide shipment in interstate commerce, but shall apply at the very instant when an interstate shipment comes to rest within the state and the police power may be asserted thereon, or whenever such interstate shipment loses its character as such.

**History.**—s. 6, ch. 17170, 1935; CGL 1936 Supp. 4151(384).

**583.17 Grades and standards for fowls.**—

(1) The department may determine, establish and promulgate, from time to time, reasonable grades and standards of quality as to each or all of the classifications for fowl to be sold or offered for sale in the state, such as will promote honest and fair dealing in the interest of the consumer; and it may alter or modify such grades and standards of quality from time to time, as honest and fair dealing in the interest of the consumer may require; provided, however, that the grades and standards of quality so fixed by the department shall be based upon requirements not exceeding the requirements necessary to meet the grades and standards of quality prescribed by the United States Department of Agriculture, or which may hereafter be prescribed by such United States Department of Agriculture, and the tolerance

to be allowed shall be the same as is allowed in each grade or standard of quality by the United States Department of Agriculture.

(2) The department may also make and promulgate such regulations as may be necessary to carry out the provisions of this law.

**History.**—ss. 7, 8, ch. 17170, 1935; CGL 1936 Supp. 4151(385), (386); ss. 14, 35, ch. 69-106.

**583.18 Inspection by department.**—The inspectors or agents of the department, in carrying out the provisions of this law:

(1)(a) May enter on any business day during the usual hours of business, any store, market or other building, or place where poultry is sold, offered for sale, or held for the purpose of sale, in order to ascertain by inspection whether in the exhibition of such poultry all of the provisions and conditions of this chapter or any rule or regulation duly promulgated in relation to the sale, offering for sale, or holding for the purpose of sale have been complied with.

(b) May, upon good and sufficient cause to believe that any of the provisions of this law are being violated, stop and inspect any truck or other vehicle engaged in the transportation of poultry upon the highway, to be sold, offered for sale, or held for the purpose of sale in Florida, and to make such examination or inspection thereof as is necessary to ascertain whether all of the provisions of this chapter or any rule or regulation duly promulgated thereunder relating to the quality and wholesomeness, grade, and standard required by the provisions of this law have been complied with.

(2) May issue and enforce a stop-sale notice or order, or a stop-use notice or order, to the owner or custodian of any lot of poultry which the department or its inspectors or agents find, or have good reason to believe, are in violation of any of the provisions of this law or any regulation issued hereunder, which shall prohibit further sale, barter, exchange, distribution, or use of such poultry until the department is satisfied that the law or regulation has been complied with and has issued a written release or notice to the owner or custodian of such poultry.

(3) May enter on any business day during the usual hours of business any restaurant kitchen, hotel dining room kitchen, or the kitchen of any other public eating place where dressed poultry is used in the preparation of food served to the public, and to make such examination and inspection thereof as is necessary to ascertain whether all of the provisions of this chapter or any rule or regulation duly promulgated thereunder relating to the quality and wholesomeness, grade, and standard required by the provisions of this law have been complied with.

(4) The possession of more than 100 pounds of dressed poultry in any one week by any dealer or broker or any person, firm or corporation using dressed poultry in the preparation of food served to the public, shall be deemed held for the purpose of sale or for the purpose of use in the preparation of food served to the public.

**History.**—ss. 9, 10, ch. 17170, 1935; CGL 1936 Supp. 4151(387), (388); s. 6, ch. 24106, 1947; s. 11, ch. 25035, 1949; s. 8, ch. 57-151; s. 2, ch. 61-119; ss. 14, 35, ch. 69-106; s. 1, ch. 74-180.



**583.181 Disposal of dead poultry and hatchery residue.—**

(1) **DEFINITIONS.**—As used in this section, where the context permits:

(a) "Poultry producer" means any person, firm, or corporation growing chickens, turkeys, ducks, or other fowl.

(b) "Egg producer" means any person, firm, or corporation producing eggs.

(c) "Poultry hatchery" means any person, firm, or corporation engaged in the business of hatching eggs of chickens, turkeys, ducks, or other fowl.

(d) "Hatchery residue" means dead chicks, down, egg shells, or unhatched and unused eggs.

(2) **SANITARY DISPOSAL OF DISEASED POULTRY AND HATCHERY RESIDUE.**—Every poultry producer, egg producer, and poultry hatchery doing business in this state shall provide on its premises for the sanitary disposal of birds which die from causes other than slaughter and of hatchery residue in a manner so as to prevent the spread of disease. Such sanitary disposal may include incineration, processing for feeding to swine, burial in sanitary disposal pits, or other methods which may be approved by the Department of Agriculture and Consumer Services. However, dead birds and hatchery residue may be moved from the premises to approved rendering plants or permitted garbage feeding establishments if transported in containers sufficiently sealed so as to prevent spillage thereof. Hatchery residue may be moved to sanitary land fills.

(3) **POWERS AND DUTIES.**—In the discharge of its duties under this section, the Department of Agriculture and Consumer Services shall have the power:

(a) To promulgate rules and regulations prescribing satisfactory facilities and equipment for the handling, destruction, and disposal of dead birds and hatchery residue so as to prevent the spread or dissemination of diseases of poultry.

(b) To enter upon any premises where poultry is kept by poultry producers, poultry hatcheries, and egg producers and make such inspections as are necessary to insure the proper disposal of dead birds and hatchery residue as required by this section.

(c) To quarantine any premises found to be in violation of this section or the regulations adopted

hereunder.

(4) **EXEMPTIONS.**—The provisions of this section do not apply to poultry producers or egg producers with flocks of 500 birds or less, unless it is determined by the department that such producer's means of disposal constitutes a disease threat.

(5) **PENALTY.**—Any person who violates the provisions of this section or the rules and regulations adopted hereunder shall be guilty of a misdemeanor of the second degree, punishable as provided in ss. 775.082 and 775.083.

**History.**—ss. 1-3, 4A, ch. 71-143; s. 1, ch. 72-115.

**583.19 Sale of unsound, etc., fowls prohibited.**—It is unlawful for any person to sell fowl, live or dressed, which is unsound, unhealthful, unwholesome, diseased, or otherwise unfit for human consumption.

**History.**—s. 11, ch. 17170, 1935; CGL 1936 Supp. 4151(389).

**583.20 Penalties for violations of chapter.—**

(1) Any person violating any provision of this chapter, or any rule or regulation promulgated by the department within this chapter, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. In addition thereto, the department may revoke the certificate of any dealer convicted of any violation of this chapter.

(2) In addition to the remedies provided in this chapter and notwithstanding the existence of any adequate remedy at law, the department is hereby authorized to apply by a bill in equity to a circuit court or circuit judge and such circuit court or circuit judge shall have jurisdiction upon hearing and for cause shown to grant a temporary or permanent injunction, or both, restraining any person from violating or continuing to violate any of the provisions of ss. 583.01, 583.05, 583.09, 583.12, 583.14, 583.18, 583.20 or from failing or refusing to comply with the requirements of said ss. 583.01, 583.05, 583.09, 583.12, 583.14, 583.18, 583.20 or any rule or regulation duly promulgated as in s. 583.04 authorized. Such injunction shall be issued without bond.

**History.**—s. 13, ch. 16982, 1935; s. 12, ch. 17170, 1935; CGL 1936 Supp. 4151(390), 7688(1), 8135(19); s. 7, ch. 24106, 1947; s. 24, ch. 57-1; ss. 14, 35, ch. 69-106; s. 601, ch. 71-136.

## CHAPTER 585

## ANIMAL INDUSTRY

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- 585.01 Definitions.**—In construing this chapter, where the context permits, the word, phrase, or term:
- (1) "Domestic animal" shall include any equine or bovine animal, goat, sheep, swine, dog, poultry, or other domesticated beast or bird.
  - (2) "Cattle" shall include any bull, steer, ox, cow, heifer, calf, or any other animal subject to infestation by cattle fever ticks.
  - (3) "Owner" shall include any owner, custodian, or other person in charge of cattle.
  - (4) "Department" means the Department of Agriculture and Consumer Services of the state.
  - (5) "Director" means the director of the Division of Animal Industry who may be known as the state veterinarian.
  - (6) "Division" means the Division of Animal Industry of the Department of Agriculture and Consumer Services.
  - (7) "Technical council" means the Animal Industry Technical Council.
  - (8) "Dairy cattle" means animals of the genus

*Bos* raised for the commercial production of milk or milk products for human consumption.

**History.**—s. 5, ch. 9201, 1923; s. 2, ch. 17273, 1935; CGL 1936 Supp. 3321, 3323(2); s. 1, ch. 25358, 1949; s. 1, ch. 59-457; ss. 14, 35, ch. 69-106; s. 246, ch. 71-377; s. 1, ch. 78-57.

**585.011 Department control; continuance of powers, duties, rules, orders, etc.—**

(1) This chapter shall be enforced by and under the control of the department as provided in chapter 570.

(2) The department, through the Division of Animal Industry, shall have and exercise all the powers, jurisdiction, duties, and authority now exercised by, or required of, the Florida Livestock Board, and the provisions of this chapter shall be applicable to the division within the department.

**History.**—s. 2, ch. 59-457; ss. 14, 35, ch. 69-106; s. 6, ch. 78-95.

**585.08 General powers of the department; rules and regulations.**—The Division of Animal Industry is authorized to:

(1) Establish, maintain, and enforce quarantine areas within the state, or the entire state, and restrict, regulate or prohibit the movement or transportation of domestic animals and all other animals or cattle found, determined or suspected by the department to be carriers of any contagious, infectious, or communicable disease, or cattle fever ticks, into, from and within such areas, when necessary for tick eradication, or for the carrying out of any of the purposes of this chapter, and for the prevention or the control of the spread or dissemination of cattle fever ticks or any contagious, infectious, or communicable disease among domestic animals and cattle.

(2) Prescribe quarantine areas, their locations and boundaries, for the purpose of eradicating the cattle fever tick (*Margaropus annulatus*) and controlling and preventing the propagation and spread of the same, and to restrict, regulate, and prohibit the movement or transportation of domestic animals or cattle into, within, or out of such quarantine areas, when deemed necessary for the prevention or the control of the spread or dissemination of the cattle fever tick (*Margaropus annulatus*).

(3) Make, promulgate, amend, repeal, and enforce rules and regulations:

(a) For the carrying out of the provisions, purposes and requirements of this chapter;

(b) Governing the introduction of domestic animals into or within the state, which rules and regulations, when deemed necessary by the department, may require that all domestic animals moved into the state be covered by an official health certificate and requisite test chart approved by the livestock sanitary officer of the state or county of origin; and

(c) Governing the disposal or destruction of carcasses of domestic and other animals, which are condemned or die from or while afflicted with any contagious, infectious, or communicable disease, in such manner as to prevent the spread or continuance of such contagion or infection.

(4) Condemn and destroy any domestic animals or herds of same, or other animals affected with any contagious, infectious, or communicable disease, or which have been exposed to, and are liable to spread,

any contagious, infectious, or communicable disease.

(5) Condemn and destroy any barn, yard, shed, corral, or pen which, in the opinion of the department is liable to convey the said infection or contagion.

**History.**—ss. 5, 11, ch. 7345, 1917; RGS 2105, 2110, 2111; s. 6, ch. 9201, 1923; CGL 3322, 3323(6), 3339, 3340; ss. 5, 6, ch. 17273, 1935; s. 4, ch. 23775, 1947; s. 2, ch. 25358, 1949; s. 3, ch. 59-457; s. 1, ch. 61-408; ss. 14, 35, ch. 69-106; s. 1, ch. 70-257.

cf.—s. 585.41 Violation of rules and regulations of department.

**585.09 Procedure for condemnation of domestic animals and property by department.**—

Condemnation and destruction of domestic animals, barns, yards, sheds, corrals, and pens, as provided in s. 585.08 shall take place only after a fair appraisal of the value of the property, which value shall be determined by the department and the owner; provided, however, should the department and the owner be unable to agree on such value, the value shall then be determined by three disinterested appraisers, one to be appointed by the department, one by the owner of the property, and the third to be selected by these two. The appraised price, subject to the provisions of s. 585.10, shall be paid by the department as other expenses are paid. If the owners or person in charge of such domestic animal, barn, yard, shed, corral, or pen fails or refuses to name his or her appraiser within 5 days after requested by the department to do so, or refuses to permit the same to be condemned and destroyed, the department may make an order to the sheriff of the county wherein the property lies, directing him to destroy such domestic animal, barn, yard, shed, corral, or pen, in the manner to be prescribed by such order, which order shall be executed by said sheriff forthwith. Upon the destruction of the said property by the said sheriff, the department shall have the right to recover, from the owner of the property destroyed, all costs and expenses incurred by it in connection therewith.

**History.**—s. 11, ch. 7345, 1917; RGS 2111; s. 11, ch. 9201, 1923; CGL 3340; s. 5, ch. 23775, 1947; s. 4, ch. 59-457; ss. 14, 35, ch. 69-106.

**585.10 Condemned and destroyed animals; limitation on payment to owner.**—The department

may indemnify and reimburse the owners of all animals condemned and destroyed by order of the department in cases in which such animals have reacted to the tuberculin test or the agglutination blood test for brucellosis (Bang's disease), or in which such animals have been exposed to, and are liable to spread, tuberculosis and brucellosis. However, when cattle are involved, such indemnity or reimbursement shall not exceed the sum of \$50 for grade cattle, \$100 for registered purebred cattle, and \$100 for dairy cattle, except in the case of complete cattle herd liquidation, in which event such indemnity or reimbursement shall not exceed the sum of \$100 for any one animal.

**History.**—s. 1, ch. 18152, 1937; CGL 1940 Supp. 3348(23); s. 1, ch. 22886, 1945; s. 5, ch. 59-457; ss. 14, 35, ch. 69-106; s. 2, ch. 70-257; s. 1, ch. 70-439; s. 1, ch. 76-206; s. 2, ch. 78-57.

**585.11 Cooperation with United States authorities.**—The department may cooperate with:

(1) The authorities of the United States in the enforcement of all acts of Congress for the control, prevention, suppression and extirpation of contagious, infectious, and communicable diseases affect-



ing domestic animals or cattle and in connection therewith may:

(a) Appoint inspectors of the United States Department of Agriculture as temporary assistant state veterinarians or livestock inspectors; provided, they shall first consent to act without compensation or profit from the state;

(b) Accept aid or assistance from the United States in conducting the work of tuberculosis, brucellosis, and hog cholera eradication or control, or from any of its officers, representatives, or agents, in carrying out such work.

(2) The officials of the United States Department of Agriculture in tuberculosis, brucellosis, and hog cholera eradication or control work and the owners of domestic animals or cattle, who accept indemnity for animals found to be diseased and slaughtered in accordance with the Special Acts of Congress now in effect and appropriating funds for this purpose, or that may hereafter be available from such source.

(3) The United States Department of Agriculture in carrying out the provisions of the National Poultry Improvement Plan and the National Turkey Improvement Plan in Florida, and in connection therewith, may promulgate rules and regulations necessary to carry out the provisions of the National Poultry Improvement Plan and the National Turkey Improvement Plan in Florida.

**History.**—s. 12, ch. 7345, 1917; RGS 2112; s. 12, ch. 9201, 1923; CGL 3341; s. 7, ch. 17273, 1935; CGL 1936 Supp. 3323(7); s. 1, ch. 22581, 1945; s. 3, ch. 25358, 1949; s. 6, ch. 59-457; s. 2, ch. 61-408.

**585.14 Information concerning, and control of, livestock diseases.**—The department shall collect, preserve, and disseminate information concerning infectious, contagious, communicable, and other diseases of domestic animals, their origin, locality, nature, appearance, manner of dissemination or contagion, and method of treatment required for the successful eradication and control thereof. The division shall take such measures through the director as may be necessary and proper for the control, suppression, eradication, and prevention of the spread thereof and to protect domestic animals in the state therefrom. The department shall also quarantine such domestic animals as it shall find, or have reason to believe, to be infected with or exposed to any such disease.

**History.**—s. 4, ch. 7345, 1917; RGS 2104; s. 4, ch. 9201, 1923; CGL 3320; s. 7, ch. 59-457; s. 3, ch. 61-408; ss. 14, 35, ch. 69-106.

**585.15 Dangerous transmissible diseases.**—The following named diseases and any other contagious, infectious, or communicable diseases now or hereafter proclaimed by the department to be of a dangerous transmissible nature, shall be known as dangerous transmissible diseases: Glanders, anthrax, blackleg, contagious pleuropneumonia, rinderpest or cattle plague, hemorrhagic septicemia, foot and mouth disease or aphthous fever, southern cattle fever or Texas fever, sheep or cattle scabies, hog cholera, swine plague, swine erysipelas, fowl plague or fowl pest, rabies, dourine, tuberculosis, brucellosis, vesicular exanthema, atrophic rhinitis, sheep scrapie, equine piroplasmosis, laryngotracheitis, in-

fectious bronchitis, newcastle disease, coxliomyiasis (screwworm infestation), or domestic animals or cattle infested with or infected by the cattle fever tick or ticks.

**History.**—s. 3, ch. 17273 1935; CGL 1936 Supp. 3323(3); s. 4, ch. 25358, 1949; s. 8, ch. 59-457; s. 1, ch. 63-356; ss. 14, 35, ch. 69-106.

#### **585.155 Whole-herd and calf vaccination.**—

(1) All female calves to be used for dairy breeding purposes born in Florida after July 1, 1977, shall be vaccinated with brucella abortus vaccine under the supervision of an approved veterinarian. The age at which such calves shall be officially vaccinated shall be 2 to 6 months. Vaccination should be performed as soon as possible after 2 months of age to reduce the problem of residual titers.

(a) All calves so vaccinated shall be permanently identified at the time of vaccination with the official shield tattoo "V," patented by the United States Department of Agriculture, in the right ear, preceded by the numeral of the quarter of the year and followed by the last numeral of the year.

(b) Duplicate reports covering such vaccination shall be immediately furnished to the department and shall constitute the official record of vaccination.

(2) In addition to the identification of vaccinated calves as outlined in subsection (1), each calf receiving brucella abortus vaccine shall be individually identified at the time of vaccination, if not already identified by tattoo or brand, by a tattoo in the right ear, or by brand letters or numbers, and by an official vaccination ear tag. Such identification shall include the designated state prefix, followed by the letter "V," and a number to individually identify the vaccinated animal. Such identification shall be accurately recorded on the official vaccination report. Registration tattoos or individual brand numbers may be substituted for the official ear tags.

(3) Upon approval and funding by the United States Department of Agriculture of a program of whole-herd vaccination for brucellosis, each owner of a cattle herd in this state shall enroll such herd in a program of whole-herd brucellosis vaccination. Dairy cattle herds owned by a person operating a dairy farm as defined in s. 502.012 shall be exempt from the provisions of this subsection. Those cattle herds that are in the process of being certified and qualified or which are certified and qualified as of October 1, 1979, may also be exempted from the provisions of this subsection. In granting such exemptions to a certified or qualified cattle herd or a cattle herd that is in the process of being certified or qualified, the Department of Agriculture and Consumer Services shall give consideration to the establishment of areas of low brucellosis incidence which can be recognized by the United States Department of Agriculture as 'having Class "A" or Class "B" status under the Uniform Methods and Rules for Brucellosis Control and Eradication. The Department of Agriculture and Consumer Services may make all necessary rules to carry out the provisions of this subsection.

(4) Only an approved vaccine produced under license of the United States Department of Agriculture shall qualify for vaccination purposes under this section.

(5) Any person who violates any provision of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 1, ch. 77-202; s. 1, ch. 79-102.

**Note.**—The word "having" was inserted by the editors.

**585.16 Powers of division in connection with certain diseases.**—Whenever any of the diseases enumerated in s. 585.15 or any disease now or hereafter proclaimed by the department to be of a dangerous or transmissible nature, shall exist anywhere within the state, or whenever it is deemed necessary or advisable to dip, examine, test, identify, treat, or destroy, the division may, or through its representatives and agents, dip, examine, test, identify, treat, or destroy, any infected, exposed, suspected, or susceptible animal and any goods, products or materials that may carry contagion, or may quarantine on or in, for or against any premises, areas, or localities within the state; provided that provisions of this chapter shall not apply to game animals.

**History.**—s. 4, ch. 17273, 1935; CGL 1936 Supp. 3323(4); s. 8, ch. 23775, 1947; s. 9, ch. 59-457; s. 2, ch. 63-356; ss. 14, 35, ch. 69-106.

**585.17 Care of domestic animals or cattle with transmissible diseases and liability therefor.**—Any person, firm or corporation who knowingly sells or offers for sale or knowingly or willfully transports or moves, or knowingly or willfully allows or permits any domestic animal or cattle to stray or drift within the state, knowing such animal or cattle to be suffering from, afflicted with or affected with any of the diseases enumerated in s. 585.15, or who knowingly or willfully transports or moves or knowingly or willfully allows or permits any domestic animal or cattle to stray or drift from any quarantine area, or who knowingly or willfully sprays or dips any domestic animal or cattle in an effort to destroy any evidence of the cattle fever tick infestation upon said domestic animals or cattle, without first obtaining permission of the division, shall be liable in damages, in addition to the penal provisions of this chapter, to the department for the expense incurred by said department by reason thereof, or to any owner of domestic animals or cattle who might be injured thereby; provided, however, that the division may issue written permission for the movement or transportation of such animals or cattle.

**History.**—s. 9, ch. 7345, 1917; RGS 2109; CGL 3338; s. 5, ch. 17273, 1935; CGL 1936 Supp. 3323(5); s. 9, ch. 23775, 1947; s. 5, ch. 25358, 1949; s. 10, ch. 59-457.

**585.18 Diseased animals.**—No person who has knowledge of the existence of any contagious, infectious or communicable disease in or among domestic animals or livestock, or who shall have knowledge that any such animal or livestock is afflicted with or suffering from any such disease, shall conceal or attempt to conceal such diseased animal or livestock or knowledge that such diseased animal or livestock is afflicted with or suffering from any such disease, from the division, its agents and employees, or shall remove or attempt to remove such animal or livestock from the reach, care or control of the division, its agents and employees.

**History.**—s. 8, ch. 7345, 1917; RGS 2108; CGL 3337; s. 11, ch. 59-457.

**585.19 Practitioners of veterinary medicine and owners of domestic animals or cattle to report communicable diseases, infection by or infestation of domestic animals or cattle with the cattle fever tick.**—All practitioners of veterinary medicine, and the owner of any domestic animal or cattle afflicted with or suffering from any contagious, infectious, or communicable disease, or who know of or suspect the infection of any domestic animal or cattle or the infestation thereof with the cattle fever tick, immediately upon gaining such information of the existence of any such disease in or among such domestic animals or cattle, or the infection of any such domestic animal or cattle or infestation thereof with the cattle fever tick, shall report the same to the division, within the department. All such reports shall be in writing and shall describe the diseased domestic animal or cattle or the domestic animal or cattle infected by or infested with the cattle fever tick, and shall give the name and address of the owner or person in charge thereof and the place where the same are kept.

**History.**—s. 7, ch. 7345, 1917; RGS 2107; CGL 3336; s. 6, ch. 25358, 1949; s. 12, ch. 59-457; s. 4, ch. 61-408.

**585.20 Injection of germs into animals.**—No person may inject or otherwise administer to any domestic animal that is producing or that is to be used as food for man, any virus or other substance containing pathogenic or disease producing germs of a kind that is virulent for man or for animals except upon written permission to do so from the division.

**History.**—s. 9, ch. 17273, 1935; CGL 1936 Supp. 3323(9); s. 13, ch. 59-457.

**585.21 Sale of biological products.**—It is unlawful for any person to manufacture for sale, sell or offer for sale any biological product intended for diagnostic or therapeutic purposes with animals except upon written permission to do so from the division and unless such product is officially approved by the United States Department of Agriculture.

**History.**—s. 8, ch. 17273, 1935; CGL 1936 Supp. 3323(8); s. 1, ch. 57-140; s. 14, ch. 59-457.

**585.22 Public notice of general quarantines.**—Whenever the department shall place any area of the state under general quarantine, it shall forthwith give public notice thereof, which notice shall in general terms define the quarantine lines established, by causing said notice to be published, at least once, in a newspaper to be selected by the department within the county wherein the said quarantined area lies, and by posting a copy of said notice at the door of the courthouse of said county; provided, however, if said quarantined area lies within more than one county notice shall be published in each county affected thereby. The provisions of this section shall not apply to quarantines for tick eradication.

**History.**—s. 5, ch. 7345, 1917; RGS 2105; s. 6, ch. 9201, 1923; CGL 3322; s. 15, ch. 59-457; ss. 14, 35, ch. 69-106.

**585.23 Owners of livestock and premises under quarantine to comply with rules and regulations.**—All owners, custodians, or persons in charge of quarantined domestic animals and all owners, tenants, custodians, or persons in charge, or in possession of any lot, yard, pasture, field, stall, enclo-

sure, barn, or building, which has been quarantined, shall comply with all rules and regulations prescribed by the department within a reasonable time, and clean and disinfect such animals or premises, and shall destroy carriers, or cause, or means of communicating any contagious, infectious, or communicable diseases affecting such animals or infecting such premises.

**History.**—s. 21, ch. 7345, 1917; RGS 2119; CGL 3345; s. 16, ch. 59-457; ss. 14, 35, ch. 69-106.  
cf.—s. 585.40 Violation of quarantine regulations.

#### **585.24 Cattle fever tick eradication; quarantine.—**

(1) Whenever the department decides to place any area under quarantine for the purpose of cattle fever tick eradication, public notice thereof shall be given by publishing said notice once each week, in at least one newspaper of general circulation to be selected by the department in each county within said quarantine area, for 2 successive weeks (two publications being sufficient), before work is to commence, and by posting copies of said notice at the door of the courthouse in each county, at least 8 days before the commencement of work. The time within which any right of appeal, as hereinafter provided, from any order of the department placing any area under quarantine for the purpose of cattle fever tick eradication, shall begin to run, shall be from date of issuance of said order and not the date of publication of said notice.

(2) Upon any such area being freed of the cattle fever tick, the director shall enter his findings of such facts upon a report to the department and the technical council.

**History.**—s. 8, ch. 9201, 1923; CGL 3324; s. 10, ch. 23775, 1947; s. 7, ch. 25358, 1949; s. 17, ch. 59-457; ss. 14, 35, ch. 69-106.  
cf.—s. 585.40 Violations of quarantine regulations.

#### **585.25 Same; vats, corrals, buffer fences, acquisition of lands and equipment, and dipping schedules.—**

Whenever the department shall have placed any area under cattle fever tick quarantine:

(1) The department shall construct, or cause to be constructed, or procure all necessary vats, corrals, pens, and equipment, and shall be authorized and empowered to purchase or lease, upon such terms and conditions as approved by it, such lands, facilities, and equipment as may be necessary to effectively and systematically prevent, suppress, and control the spread of the cattle fever tick. The division is hereby authorized and empowered to construct or erect buffer or quarantine fences when deemed advisable by the department.

(2) The department shall fix the date when systematic dipping of cattle or other domestic animals, which shall include horses and mules, in the quarantined area or any portion thereof, shall begin, and the said regulation shall contain a schedule showing each dipping vat by name or number and the date on which the first systematic dipping of domestic animals or cattle, which shall include horses and mules, is to be held at each such vat, and the date of each subsequent dipping. Notice of adoption of such regulation and schedule shall be given by publishing said notice in some newspaper published in or near said area, once each week for 2 successive weeks (two publications being sufficient), and by posting a copy

of said notice 8 days before dipping shall begin, at the courthouse door in the county or as near as may be convenient to each and every dipping vat to be used. Each owner of domestic animals or cattle, which shall include horses and mules, then or thereafter being within said area, shall dip such domestic animals or cattle, which shall include horses and mules, at the dipping vat described in the regulation and schedule as shall be most convenient upon the dates specified for dipping, respectively, and to dip all such domestic animals or cattle, which shall include horses and mules, every 14 days from and after the date of the first dipping, unless otherwise permitted by division director, until such time as the department shall discontinue dipping in such area or be relieved of such dipping by permission of the division director.

**History.**—s. 11, ch. 9201, 1923; CGL 3327; s. 11, ch. 23775, 1947; s. 8, ch. 25358, 1949; s. 18, ch. 59-457; s. 5, ch. 61-408; ss. 14, 35, ch. 69-106.

**585.26 Same; pasture rotation method.—**The department may employ the pasture rotation method of tick eradication in conjunction with fever tick eradication in this state. Whenever the department shall adopt the said pasture rotation method and shall require the removal, from the area in which systematic tick eradication work is being carried on, of cattle of any owner, custodian, or person in charge of such cattle, the said department shall furnish the necessary assistants required to remove such cattle; or in lieu thereof may, at its election, pay to such owner the actual, necessary or reasonable expense incurred by him in complying with the requirements of the department in removing such cattle from such area as hereinbefore provided.

**History.**—ss. 11, 13, ch. 9201, 1923; CGL 3327, 3329; s. 19, ch. 59-457.

**585.28 Same; arbitration of costs, etc.—**In the event the owner fails or refuses to dip his cattle or other domestic animals, which shall include horses and mules, or to have them inspected, the division may collect, drive, dip, and inspect such cattle or other domestic animals, which shall include horses and mules, and one-half of the expenses so incurred by the department shall become a charge against the owner and if not paid within 30 days, the department shall have a lien upon said cattle or other domestic animals, which shall include horses and mules, to secure said charge against the owner.

**History.**—s. 11, ch. 9201, 1923; CGL 3327; s. 7, ch. 22858, 1945; s. 13, ch. 23775, 1947; s. 20, ch. 59-457.

#### **585.30 Same; procedure where owner fails or refuses to dip.—**

(1) Any cattle, within any tick eradication area, which are not dipped in accordance with the rules and regulations of the department and under the department's supervision shall be taken into custody, dipped, and retained in its custody, at some place to be selected by the director, until redeemed or sold as hereinafter provided.

(2) The division and its agents and employees may enter into any range, premises, pen, pasture, barn, or inclosure or place where cattle may be found and take into custody, remove, dip and pen any cattle which have not been dipped in accordance with the requirements of this chapter, and the rules and



regulations of the department, and all expenses so incurred by the department, including expenses for penning, feeding and dipping, shall be a lien upon said cattle. If said expenses be not forthwith paid and the cattle redeemed by the owner, the division shall notify the sheriff of the county wherein said cattle are held, by written notice thereof, stating the time and place said cattle were taken into custody, the number thereof and any marks and brands thereon, and the name of the owner if known.

(3) Upon receipt of the notice aforesaid the said sheriff shall forthwith give public notice, to whom it may concern and to the owner if known, that on a day and hour to be specified in said notice, which shall not be less than 10 days nor more than 20 days from and after the first publication of said notice as hereinafter provided, he will offer for public sale and sell for cash to the highest bidder, the cattle described in said notice. Said notice shall also state the time and place such cattle were taken into custody, the number thereof and any marks and brands thereon. Said sale shall be held at the place where said cattle are situate or penned. Said public notice shall be given by publishing the same in some newspaper published in the county wherein said cattle are penned, if there be such newspaper, for two publications, the first of which shall be not less than 10 days prior to the date of sale, and by publishing a copy of said notice, at least 10 days prior to sale, at the courthouse door and at two dipping vats near where the cattle were taken into custody. A copy of said notice shall also be served upon the owner or one of them if more than one, or their agent, in the manner provided by law for service of summons, at least 10 days before sale, if such owner or his agent, together with his address, be known to the sheriff and he resides or can be found within the state.

(4) If such cattle shall not be redeemed before the sale thereof by payment of all costs and expenses incurred by the department in taking into custody, feeding, penning, and dipping of such cattle, and all sheriff's costs, then such sheriff shall offer for sale and shall sell and deliver to the highest bidder for cash all such cattle and shall deduct from the proceeds thereof all sheriff's costs, and shall pay to the department all costs and expenses incurred in taking into custody, penning, feeding, and dipping such cattle, and forthwith pay into the fine and forfeiture fund of such county the balance of such proceeds; and such sale and delivery shall vest in the purchaser an absolute title and right of possession of such cattle, superior to all other title, liens and claims, except any lien for unpaid taxes on such cattle.

(5) If the former owner shall, within 12 months from and after the date of such sale, file with and establish to the satisfaction of the county commissioners of such county his claim to the net proceeds arising from said sale, the county commissioners shall deliver to such claimant the amount of such net balance.

(6) The term "sheriff's costs," as used in this section, shall be taken and held to mean such costs as sheriffs are allowed by law for similar services, and the term "expenses of keeping and feeding" shall be taken and held to mean the actual, reasonable and necessary expenses for such keeping and feeding in-

curred, to be shown by a sworn, itemized statement thereof filed with the clerk of the circuit court.

**History.**—s. 12, ch. 9201, 1923; CGL 3328; s. 21, ch. 59-457; ss. 14, 35, ch. 69-106.

#### **585.34 Inspection and transportation of meats in Florida.—**

(1) Any person engaged in the slaughter of meat-producing animals within the state may make application to the department for a permit to transport and sell his products at any place within the limits of the state.

(2) The department, on receipt of such application described above, shall cause to be made a thorough investigation of the sanitary conditions existing in such establishment, the efficiency of the inspection provided and the manner in which the food products of such establishment are slaughtered and prepared. If such establishment is found to be operating in accordance with the regulations of the department, a numbered permit shall be issued to the person making application for same.

(3) Municipal corporations may establish and maintain the inspection of slaughterhouses, abattoirs, meat-packing plants, meat and meat food products, at establishments located within their corporate limits, and elsewhere within the counties in which such municipal corporations are located and within all other counties immediately adjoining the counties in which said municipalities are located respectively, for the purpose of ascertaining whether or not meats and meat food products intended for distribution in said municipalities are fit for human consumption. No person shall be employed as such inspector unless qualified by education and experience and is a permanent resident of the state.

(4) The officials of all municipalities maintaining such inspections may, in such municipalities and counties, fix and collect fees for such inspection of such establishments and any and all meat animals and meat food products so inspected, which may be necessary to the maintenance of such inspection service, but no further inspection charge shall be made within the state.

(5) No permit shall be issued to any establishment except where the meat inspection is conducted under the supervision of the department or its duly designated representatives.

(6) The numbered permit shall be the establishment's official state number, and such number may be used to identify all passed meats and meat food products prepared in such establishment. Such permit may be revoked by the department at any time when the establishment issued such permit violates any of the regulations prescribed for efficient inspection and sanitation.

(7) All meat carcasses inspected and passed shall be branded with a rubber stamp bearing the number of the establishment and the words "Florida inspected and passed."

(8) The department may make and adopt all necessary rules and regulations for the efficient inspection, preparation, and handling of meats and meat food products in such establishments, and for the disposal of all condemned meats, and such rules and regulations shall govern the inspection of all meats

and meat food products at establishments operating under this section.

(9) There shall be required by law only one inspection of meat or meat food products as herein defined, which may be an inspection by the United States Department of Agriculture or the department; provided, however, that inspection by local municipal authorities as permitted by this law shall be considered as state inspection within this provision.

(10) When any meat or meat food product that has been inspected as provided by this law and marked "inspected and passed," shall be placed or packed in any can, pot, tin, canvas, or other receptacle or covering in any establishment where inspection under the provisions of this law is maintained, the person preparing such meat or meat food product shall cause a label to be attached to said can, pot, tin, canvas or other receptacle or covering under the supervision of an inspector, which label shall state that the contents thereof have been "inspected and passed" under the provisions of this law; and no inspection of meat or meat food products deposited or enclosed in a can, pot, tin, canvas, or other receptacle or covering in any establishment where inspection is maintained under the provisions of this law shall be deemed to be complete until such meat or meat food product has been sealed or enclosed in said can, pot, tin, canvas or other receptacle or covering under supervision of an inspector; and no such meat or meat food product shall be sold by any person in the state under any false or deceptive name; but established trademarks that are usual to such products and which are not false or deceptive, and which shall be approved by the department are permitted. The department shall confiscate and cause to be destroyed all such labels that are found to be false or deceptive.

(11) No establishment may be operated in the state for the purpose of slaughtering animals, or for the manufacture of meat food products unless such establishment is operated under federal inspection, state inspection, or approved municipal inspection. No dressed carcasses of animals intended for food purposes, parts thereof, prepared meats or meat food products shall be sold, offered for sale, exposed for sale or be possessed for sale within the state, unless the same shall bear the "inspected and passed" stamp of an establishment operating under federal inspection, state inspection or approved municipal inspection.

(12) When it is deemed necessary in order to safeguard the public health, the department shall cause to be made an ante-mortem inspection of any animals before they are slaughtered for food purposes. Satisfactory facilities shall be provided for conducting such inspection and for separating from the passed animals those deemed unfit for immediate slaughter. If any owner or person in charge is about to slaughter for food purposes any animal which the department believes may be affected with disease, the department shall notify the owner or person in charge of said animals to refrain from slaughtering them for food purposes until the ante-mortem examination is completed. Any owner or person slaughtering animals for food purposes after such notifica-

tion by the department shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. No owner or person shall be required to refrain from slaughtering animals for a period longer than 72 hours.

(13) The department may provide postmortem inspection of all animals slaughtered for food purposes in any establishment in the state. The head, tongue, tail, thymus glands, viscera, and other parts and blood used in the preparation of meat, food, meat food products, or medicinal products shall be retained in such manner as to preserve their identity until after the postmortem examination has been completed. Carcasses and parts thereof found to be sound, healthful and wholesome after inspection and otherwise fit for human food shall be passed and may be marked in the following manner: "Florida inspected and passed," or with the inspection legend of an approved and municipal inspection department, to which has been added the words "Florida approved." This mark may also include any number given the establishment. Each carcass or part thereof which is found on postmortem inspection to be unsound, unhealthful, unwholesome, or otherwise unfit for human food, shall be marked conspicuously by the inspector at the time of inspection with the words, "Florida inspected and condemned," or with the condemned brand of an approved municipal inspection department and such carcass or parts thereof, under the supervision of the inspector, shall be rendered unfit for human consumption in a manner approved by the department.

(14) Inasmuch as it cannot be determined for certain, by any present known method of inspection, whether meat is unwholesome unless the organs and other tissues of an animal are inspected when slaughtered, and as meat and products thereof from uninspected animals may be unfit for human food, the department shall seize and destroy for human food purposes any meat or meat food product that does not bear the "Inspected and passed" stamp, brand, mark, or label, as provided by this law; provided nothing herein shall affect the transportation of dead and condemned carcasses of animals to rendering plants; nor the transportation of dressed carcasses of calves for inspection to points where inspection is maintained in accordance with the provisions of this article; nor meat or meat products to which a statement is attached in accordance with the provisions of this law.

(15) The dressed carcasses of all animals intended for human consumption, parts thereof, meats, or meat food products, inspected and marked in accordance with this law may be transported or sold anywhere in the state without restriction, except that imposed upon meat or meat food products bearing the inspection stamp of the United States Department of Agriculture.

(16) It is unlawful for any person, except employees of the United States Department of Agriculture, the department or a municipal inspection department, to possess, keep or use any mark, stamp, or brand provided or used for marking, stamping, or branding the carcass of any animal, parts thereof, meats or meat food products, or to possess, keep or use any mark, stamp or brand having thereon a de-

vice or words the same or similar in character, or import to the marks, stamps, or brands provided or used by the United States Department of Agriculture, the department or of any municipal inspection department for marking, stamping, or branding the carcasses of animals or parts thereof intended for food purposes, meats, or meat food products.

(17) Every establishment in Florida, where animals are slaughtered or where meat or meat food products are prepared or processed for human consumption shall be maintained and operated in a clean and sanitary manner and inspection conducted in accordance with the provisions of this law and the regulations of the department and in the event that an establishment is not so maintained and operated the department may suspend inspection in any establishment having state inspection or municipal inspection.

(18) Nothing contained in this law shall restrict or prevent a retail meat market as a part of its retail meat business and as a consequence of same or an incident to same, from making or preparing or selling prepared meat or meat food products that are made or prepared on its own premises from meats which bear the inspected and passed stamp of federal inspection, state inspection or approved municipal inspection; provided, that said prepared meat or meat food products are sold on the premises of said retail meat market and are not made or prepared by cooking or drying. No application is required of such retail meat markets, or the owners or operators thereof for the inspection service provided for in this law and no such inspection service is required to enable them to make, prepare or sell such prepared meat or meat food products. Nothing contained in this law shall prohibit a retail meat market from selling or offering for sale meat, prepared meat, meat products, or meat food products which bear the inspected and passed stamp of federal inspection, state inspection or approved municipal inspection.

(19) It is unlawful to sell any cold storage meat that has been imported into the state from without the United States, herein referred to as foreign cold storage meat, without having first obtained a permit from the department and without having submitted all such meat for inspection and examination at port of entry and paid inspection fee required therefor. The department shall cause all such meat to be inspected upon arrival and shall establish such bacteriological or chemical standards as it deems proper to determine the wholesomeness and fitness of such meat for human consumption; any meats found unfit for human consumption shall be marked conspicuously with the words "Fla. inspected and condemned" and the sale thereof for human food is prohibited. All meats inspected and passed for food, as provided in this subsection, shall be marked with a stamp of such size and design as shall be required by the rules and regulations established by the department for the enforcement of this section, and shall bear the words "foreign cold storage meat inspected and passed." Such meat, when displayed for sale, shall bear placard showing that it is foreign cold storage meat, which placard shall also contain the name of the country of origin. Such meats shall at all times be subject to reinspection. The department is

hereby authorized to collect reasonable fees for inspection service provided for in this subsection.

(20) The department shall make available a qualified inspector at each slaughterhouse or meat packing or processing plant in the state at all times when the same is operating, in order that no loss or delay may result to such slaughterhouse or packing plant by reason of the unavailability of a qualified inspector. Should any such slaughtering, or meat processing or packing be conducted at such slaughterhouses or plants at hours considered overtime for state employees, or on legal holidays, then the owner or operator of the establishment shall, by contract or agreement with the department make arrangements to defray the additional or overtime costs for salaries and expenses for inspectors to conduct the necessary meat inspection during such overtime periods.

(21) Any person, firm, or corporation violating any of the provisions of this law, for which violation a specific penalty is not otherwise prescribed herein, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(22) Animals slaughtered on the farm for home use by the owner thereof are exempt from this section. Also exempt are animals delivered by the owner to an establishment for custom slaughter or processing for use exclusively in the household of such owner, provided that such custom slaughterer or processor does not engage in the business of buying or selling any carcasses, parts of carcasses, meat, or meat food products capable of use as human food.

(23) No person, firm, or corporation shall engage in the business of buying, selling, transporting, or receiving for transportation in intrastate commerce any dead, dying, disabled, or diseased animals, any parts of the carcasses of any animals that died otherwise than by slaughter, or any inedible meat or meat product that is capable of use as human food unless such animals, parts, or products have been visibly denatured by an approved method such as dye, except in accordance with such regulations as the department may prescribe to assure that such animals, or parts or products thereof, will be prevented from being used for human food purposes.

**History.**—ss. 1-8, ch. 17096, 1935; CGL 1936 Supp. 3348(15)-(22); ss. 1, 2, ch. 23080, 1945; ss. 1, 2, ch. 26831, 1951; s. 1, ch. 28255, 1953; s. 24, ch. 59-457; ss. 1, 2, ch. 69-31; ss. 14, 35, ch. 69-106; s. 602, ch. 71-136; s. 1, ch. 73-56.

#### **585.3401 Imported beef and pork; prohibition on purchase; penalty.—**

(1) No fresh or frozen beef or pork imported from, or to be imported from, outside the United States and its dependencies which has not been inspected by the United States Department of Agriculture or the Florida Department of Agriculture and Consumer Services, or which will not be inspected by the United States Department of Agriculture or the Florida Department of Agriculture and Consumer Services and does not comply with standards set by the United States Department of Agriculture or the Florida Department of Agriculture and Consumer Services for fresh or frozen beef or pork produced in the United States, shall be purchased, or caused to be purchased, by any agency of the state or of any municipality, political subdivision, school district, or special district for consumption in this state or for



distribution for consumption in this state. Bid invitations issued by any agency of the state or of any municipality, political subdivision, school district, or special district for the purchase of fresh or frozen beef or pork shall specify that only domestic beef or pork or imported beef or pork which complies with the provisions of this subsection will be accepted. The supplier or vendor shall certify on the invoice that the fresh or frozen beef or pork or imported beef or pork supplied is either domestic or complies with the provisions of this subsection.

(2) Any person who knowingly violates or causes to be violated the provisions of this section shall be personally liable to the affected public agency for any funds spent in violation of the provisions of this section.

History.—s. 1, ch. 77-61; s. 1, ch. 78-71.

#### **585.341 Inspection of establishments and poultry meat and poultry food products for wholesomeness.—**

##### **(1) DEFINITIONS.—**

(a) "Person" means any natural person, partnership, association, corporation, trust, estate, or other legal entity or business unit.

(b) "Poultry meat" means the carcasses or parts thereof of any poultry.

(c) "Poultry food product" means a food product which contains poultry meat and one or more other food products.

(d) "Establishment" means any building or structure in which the slaughtering of poultry, canning or manufacturing of poultry food products is carried on, the ground upon which such building or structure is erected, and so much ground adjacent thereto as is used in carrying on the business of such establishment, including drains, gutters, waste disposal, and cesspools used in connection with the establishment.

(e) "Equipment" means all machinery, fixtures, containers, vessels, tools, implements, and apparatus used in and about an establishment.

(f) "Department" means the Department of Agriculture and Consumer Services.

(2) **INSPECTION FOR WHOLESOMENESS.—**The department is hereby authorized to adopt and maintain an adequate system of wholesomeness inspection as to poultry meat, poultry food products offered for sale in this state and of establishments. This wholesomeness inspection program may require postmortem and ante-mortem inspection of all poultry slaughtered and offered for sale as food in this state, except those plants under inspection by the United States Department of Agriculture.

(3) **DUTIES OF DEPARTMENT.—**In the discharge of its duty under this act, the department shall have the power:

(a) To make and promulgate such rules as may be necessary to carry out the provisions of this act.

(b) To employ inspectors necessary to enforce this act and the rules and regulations promulgated hereunder.

(4) **PERMIT.—**Any person operating an establishment as defined in subsection (1)(d), except establishments operating under inspection of the United States Department of Agriculture, shall make application to the department for a permit to operate

such an establishment. The department, on receipt of such application, shall cause to be made a thorough investigation of the sanitary conditions existing in such establishment and the manner in which poultry and poultry food products are slaughtered and prepared. If such establishment is found to be operating in accordance with the regulations pursuant to this act, a numbered permit shall be issued to the person making application for same.

(5) **DESIGNATION FOR WHOLESOMENESS.—**Employees of the department assigned to inspect poultry meat, poultry food products, and establishments shall, under the rules and regulations prescribed by the department, mark, stamp, or otherwise designate with the words, "Florida inspected for wholesomeness," any poultry meat or poultry food products found on inspection to be wholesome and fit for human consumption.

(6) **DESIGNATION FOR UNWHOLESOMENESS.—**If, upon inspection of any establishment, any diseased poultry or any unwholesome poultry meat or poultry food product is found, such poultry, poultry meat, or poultry food product shall be condemned, properly marked, stamped, or otherwise designated with the word, "condemned," and treated in such a way it cannot thereafter be used for human consumption.

##### **(7) UNSANITARY CONDITIONS; CORRECTIVE MEASURES.—**

(a) If, upon inspection, it is found that any establishment, or any part of any establishment, or any equipment, is in an unclean or unsanitary condition or is being conducted or used in such a manner as to make it probable that the poultry meat or poultry food products therein or produced therein may be rendered unwholesome, or is being conducted or used in violation of this act, the employees making such inspection shall report the unsanitary condition to the department, and shall at the same time notify in writing the owner, lessee, or manager of the establishment.

(b) Upon receipt of such report, the department shall notify the permitted establishment of the result of the inspection and direct that the unsanitary condition be corrected within the time specified in the notice; provided that the time so specified shall not be less than five days, unless the unsanitary condition mentioned in said notice is of such character and nature as can be removed immediately, or the continued existence shall be a hazard and a danger to the health of the community, or dangerous to consumers of the product, in which event such unsanitary condition shall be corrected within a time less than 5 days as directed by the department.

(c) If, upon the expiration of the time specified in the notice, the condition so reported to exist has not been corrected, the department may order the permit suspended or revoked and the establishment closed. It is unlawful to operate an establishment, or any part thereof, which has been closed and the permit suspended or revoked by the department, until the unsanitary condition reported to exist has been corrected to the satisfaction of the department and the permit reestablished by order of the department.

##### **(8) UNLAWFUL ACTS.—**

(a) It is unlawful for any representative of a per-

mitted establishment to give or offer to give, directly or indirectly, to an employee of the department, anything of value, monetary or otherwise, with intent to influence such employee in the discharge of his duties under the provisions of this act.

(b) It is unlawful and a violation of this act for any person, without specific authority in writing from the department to make, duplicate, reproduce, use or possess any stamp, mark, tag, permit, or emblem in imitation of an official state stamp, mark, tag, permit, or emblem that is used, or that is authorized to be used, by the department for stamping, marking, or otherwise identifying poultry as having been inspected and marked, stamped, or otherwise designated as being wholesome and fit for human consumption.

(9) **DESIGNATION OF WHOLESOMENESS IN LABELING, ADVERTISING AND DISPLAY.**—The term, "Florida inspected for wholesomeness," may be used in labeling, advertising, and displaying poultry or poultry food products offered for sale under the provisions of this act.

(10) **PENALTIES AND INJUNCTION.**—Any person who shall fail to obtain a permit herein required, or who shall refuse to comply with the terms of this act and the rules and regulations promulgated hereunder, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083. Notwithstanding remedies by law should any person violate or refuse to comply with the terms of this act and shall continue to engage in any of the businesses covered by this act, the department is authorized and directed to obtain an injunction without bond against such violator.

(11) **EXEMPTIONS.**—Stewing fowl and poultry slaughtered on the farm for home use are exempt. Also exempt is any establishment which slaughters less than 1,000 head of poultry per year.

(12) **INEDIBLE POULTRY.**—No person, firm, or corporation shall engage in the business of buying, selling, transporting, or receiving for transportation in intrastate commerce any dead, dying, disabled, or diseased poultry, any parts of the carcasses of poultry that died otherwise than by slaughter, or any inedible poultry or poultry product that is capable of use as human food unless such poultry, parts, or products have been visibly denatured by an approved method such as dye, except in accordance with such regulations as the department may prescribe to assure that such poultry, or parts or products thereof, will be prevented from being used for human food purposes.

**History.**—s. 1, ch. 65-406; s. 3, ch. 69-31; ss. 14, 35, ch. 69-106; s. 603, ch. 71-136; s. 247, ch. 71-377; s. 6, ch. 78-95.

#### **585.343 Regulation of custom slaughterers and processors; permits.**

(1) Custom slaughterers or processors shall operate under department supervision. Each such custom slaughtering or processing establishment shall be maintained in a proper sanitary condition whereby meat or meat food products shall be produced in a wholesome manner, as required in the regulations of the United States Department of Agriculture adopted as the regulations of the Florida Department of Agriculture and Consumer Services.

(2) Any person, firm, or corporation operating

under the provisions of this section shall obtain a custom slaughtering or processing establishment permit from the department before engaging in the business of slaughtering, manufacturing, or processing of meat or meat food products. Said permit shall be issued upon application to the department on forms furnished by the department and upon conditions prescribed by the rules of the department. The department may suspend any permit issued under this section upon violation of any sanitary regulation by the establishment. The owner of the permit so suspended may at any time apply for the reinstatement of such permit, and the department shall immediately reinstate such permit if it is found upon inspection that adequate measures have been taken to comply with and maintain the sanitary conditions of the establishment in compliance with regulations.

**History.**—s. 1, ch. 73-56; s. 6, ch. 78-95.

**585.35 Power of department to enter private premises for purpose of inspection, etc.**—For the purpose of carrying out the provisions and requirements of this chapter, and all rules and regulations made pursuant thereto, the department, and all its employees duly authorized, are empowered to enter upon any grounds or premises in this state for the purpose of inspection, quarantine or disinfection, or to carry out any other provisions of this chapter.

**History.**—s. 16, ch. 7345, 1917; RGS 2116; CGL 3343; s. 25, ch. 59-457.

**585.36 Department charged with enforcement of law; duties of state attorneys.**—The department shall see that the provisions of this chapter are carried out, and may require the state attorney in any circuit or county to institute suits, civil or criminal, for the purpose of enforcing or carrying out the terms of this chapter and the rules of the department and preventing violations thereof, and any person or officer charged with any duty under this chapter may be compelled to perform the same by mandamus, injunction or other extraordinary remedy upon the application and in the name of the department. Injunction shall issue without bond.

**History.**—s. 13, ch. 7345, 1917; RGS 2113; CGL 3342; s. 26, ch. 59-457; s. 8, ch. 61-408; s. 26, ch. 73-334.

**585.37 Courts have power to enforce provisions by mandamus or injunction.**—The circuit courts of this state shall have the power to enforce any of the provisions of this chapter, and any rule or regulation of the department pursuant thereto by mandamus, or temporary or permanent injunction, either or both, upon the application of the director, against any person who shall violate any provision of this chapter or any such rule or regulation.

**History.**—s. 20, ch. 7345, 1917; RGS 2118; CGL 3344; s. 27, ch. 59-457.

**585.38 Injuring property used in the eradication of diseases of cattle, etc.**—Any person who shall injure, destroy, or attempt to destroy any property or equipment or facilities owned by any individual, firm, company, corporation, or county or any property or equipment or facilities owned by the department or the state, used or intended to be used in the prevention, control, suppression, or eradication of any infectious, contagious, or communicable diseases affecting domestic animals, shall be guilty of a

misdeemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 21, ch. 7345, 1917; RGS 5555; CGL 7741; s. 28, ch. 59-457; s. 604, ch. 71-136.

**585.39 Interference with department employees.**—Any person who forcibly assaults, resists, opposes, prevents, impedes, or interferes with the duly authorized inspector or representatives of the department in the execution of their duties, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 16, ch. 7345, 1917; RGS 5552; s. 4, ch. 8508, 1921; CGL 7738; s. 29, ch. 59-457; s. 605, ch. 71-136.

**585.40 Violation of quarantine regulations.**—Whenever the department places any area under quarantine, it shall be unlawful for any person, while such quarantine exists, to take, drive, or transport any cattle, hogs or other domestic animals, either out of or into such quarantined locality without permission of the division director; any person violating any of the provisions of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 17, ch. 7345, 1917; RGS 5553; s. 5, ch. 8508, 1921; CGL 7739; s. 30, ch. 59-457; ss. 14, 35, ch. 69-106; s. 606, ch. 71-136.

**585.401 Emergency; rules and regulations.**—An emergency is defined as any situation wherein the department has declared a livestock pest or communicable, contagious, or infectious disease of livestock to be a public nuisance or when in the opinion of the said department a livestock pest or disease endangers or threatens the livestock interests of the state.

**History.**—s. 31, ch. 59-457; ss. 14, 35, ch. 69-106; s. 6, ch. 78-95.

**585.41 Violation of administrative rules or regulations.**—Any person who violates or fails to keep and perform any rule or regulation of the department shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 19, ch. 7345, 1917; RGS 5554; s. 6, ch. 8508, 1921; CGL 7740; s. 10, ch. 17273, 1935; CGL 1936 Supp. 7742(4); s. 34, ch. 59-457; s. 607, ch. 71-136.

**585.432 Screwworm control; eradication.**—

(1) The department shall formulate a program and promulgate all rules and regulations necessary for the successful implementation and administration of a comprehensive program for the control and eradication of screwworms within this state, and for the conduct of research and experimentation incidental thereto.

(2) In the discharge of its duty under this law the department shall have the power:

(a) To establish, maintain, and enforce quarantine areas within the state, or the entire state, and restrict, regulate, or prohibit the movement of all animals found and determined by the department to be carriers of the screwworm in any state of its life cycle when necessary for screwworm eradication, or for the carrying out of any of the purposes of this law;

(b) To acquire by gift, lease, purchase, or otherwise, facilities for breeding sterile screwworm flies; and to secure their controlled distribution;

(c) To employ such persons, and to make such contracts, as are necessary to carry out the purposes of this law.

**History.**—ss. 1-5, ch. 57-200; s. 35, ch. 59-457; s. 9, ch. 61-408.

**585.44 Purchase, distribution and administration of brucellosis (Bang's disease) vaccine.**—

(1) The department is hereby authorized and required to purchase brucellosis (Bang's disease) vaccine in such units as deemed advisable at the lowest and best bid or bids, from one or more reliable manufacturers producing a high quality product.

(2) The department shall distribute through employees of the division, licensed veterinarians, and recognized and approved agents of the state and federal governments, brucellosis (Bang's disease) vaccine without cost thereof to any owner of cattle in Florida making application therefor upon blanks to be furnished by the department and approved by the administrator of said vaccine.

(3) Whenever said vaccine is distributed as provided in subsection (2), the administrator thereof shall identify each and every animal to which said vaccine is so administered by means of a permanent identification. The department shall designate one or more proper means of identification to be used for this purpose. It shall be unlawful for any person to administer said vaccine to any animal bearing such identification or to any animal known to said administrator to have been so identified.

**History.**—s. 2, ch. 22517, 1945; s. 136, ch. 26869, 1951; s. 36, ch. 59-457.

**585.45 Right to declaratory judgment.**—Any owner or custodian of any cattle or other domestic animals, which shall include horses and mules, which the department has required to be dipped or inspected, shall have the right to a judicial declaration as to the validity of the order by bringing an action for declaratory judgment in the circuit court. If the order is affirmed, the cost shall be paid by the person applying for the declaration. In disposing of said cases the court shall have the power and authority to issue subpoenas to any witness the court may deem necessary or that may be applied for by respective parties to said cause.

**History.**—s. 15, ch. 23775, 1947; s. 37, ch. 59-457; s. 34, ch. 63-512.

**585.47 Failure of veterinarians or the owners of domestic animals or cattle afflicted or suffering with contagious, infectious or communicable diseases, or infected by or infested with the cattle fever tick, to report the same.**—Any practitioner of veterinary medicine in the state, or the owner of any domestic animal or cattle afflicted with or suffering from any contagious, infectious or communicable disease, or infected by or infested with the cattle fever tick, who, upon gaining such information of the existence of any such disease or the infection by or infestation with the cattle fever tick, in, on or among such domestic animals or cattle, willfully fails to report the same to the division, within the department, in writing, as required under the provisions of s. 585.19, shall be guilty of a felony



of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 9, ch. 25358, 1949; s. 38, ch. 59-457; s. 10, ch. 61-408; s. 608, ch. 71-136.

**585.48 Policy and purpose of ss. 585.49-585.53, and 585.59.**—Because of the existing and increasing possibility of the occurrences of highly contagious and infectious diseases in the livestock of this state which threaten to destroy the same, and because certain known agents and vectors are instrumental in the spread of certain highly infectious and contagious diseases in livestock, it is hereby found and declared to be necessary to regulate the feeding of garbage.

**History.**—s. 1, ch. 28313, 1953; s. 39, ch. 59-457.

**585.49 Definitions; ss. 585.48-585.53 and 585.59.**—As used in ss. 585.48-585.53 and 585.59:

(1) The word "garbage" shall mean all refuse matter, animal or vegetable, byproducts of a restaurant, kitchen, or slaughterhouse; and shall include every accumulation of animal, fruit or vegetable matter, liquid, or otherwise. The word "garbage" shall also include the word "swill" as commonly used; provided, however, the word "garbage" shall not include fruit or vegetable matter which does not contain or has not been in contact or mixed with raw meats.

(2) The term "carcasses of domestic animals" means all or any part or portion of any dead domestic animal not slaughtered for human consumption.

**History.**—ss. 2, 3, ch. 28313, 1953; s. 40, ch. 59-457.

**585.50 Garbage feeding prohibited unless sterilized.**—It shall be unlawful for any person, firm, partnership or corporation (including municipalities and counties) to feed garbage to animals unless such garbage has been heated, cooked, treated or processed under such temperature, pressure, process, or method, and for such a period of time as is necessary to render the same free of any infectious or contagious disease which might either affect the domestic animals of this state or the citizens of this state. The department is authorized to promulgate rules and regulations covering the method of heating, cooking, treating or processing, and to prescribe the temperature and time for such heating, cooking, treating and processing as may be determined by scientific research; provided, however, that the requirements of ss. 585.48-585.53, and 585.59, shall not apply to an individual who feeds his own animals only the garbage from his own household.

**History.**—s. 4, ch. 28313, 1953; s. 41, ch. 59-457.

**585.51 Permitting of feeders of garbage.**—No person, firm, partnership, or corporation shall feed garbage without first having applied for and obtained a permit from the department. Each permit shall expire as of July 1 of each year.

**History.**—s. 5, ch. 28313, 1953; s. 42, ch. 59-457.

**585.52 Requirement regarding the collection, transportation and distribution of garbage.**—Every permitted feeder of garbage shall keep and furnish the department such information as it may by rule and regulation require regarding

the collection, transportation, distribution, and processing of garbage, and further such permitted feeder shall be required to keep and maintain sanitary at all times his vehicles used in the collection, transportation, and distribution of garbage under such rules and regulations as may be required. The department is authorized to promulgate such other rules and regulations as may be necessary to effectuate the purpose of ss. 585.48-585.53, 585.59.

**History.**—s. 6, ch. 28313, 1953; s. 43, ch. 59-457.

**585.53 Permit revocation.**—Every permitted feeder of garbage who shall violate the laws of this state or the rules and regulations promulgated by the department pursuant thereto shall have his permit revoked, canceled, or suspended.

**History.**—s. 7, ch. 28313, 1953; s. 44, ch. 59-457; s. 6, ch. 78-95.

**585.59 Penalties for violation.**—

(1) Any person violating the provisions of ss. 585.48-585.53 shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Any person, firm or corporation violating the provisions of ss. 585.48-585.53 shall not be allowed to recover compensation from the department for the confiscation or destruction of any hogs fed uncooked garbage.

**History.**—ss. 15, 16, ch. 28313, 1953; s. 4, ch. 57-140; s. 45, ch. 59-457; s. 609, ch. 71-136.

**585.60 Definitions for ss. 585.61-585.621, 585.64, and 585.65.**—In construing ss. 585.61-585.621, 585.64, and 585.65, wherever the context permits, the words, phrases or terms:

(1) "Domestic animal" shall include any equine or bovine animal, goat, sheep, swine, dog, poultry, or other domesticated beast or bird.

(2) "Poultry" shall include all domesticated birds which serve man as a source of food, either eggs or meat.

**History.**—s. 1, ch. 29889, 1955; s. 46, ch. 59-457.

**585.61 Domestic animal diagnostic disease laboratories.**—

(1) There is hereby created and established a domestic animal disease diagnostic laboratory in Orange County, or in a county adjacent to Orange County, for the purposes of diagnosing diseases of domestic animals, determining their cause and methods of control and eradication of such diseases and furnishing such information for use in Florida.

(2) There is hereby created and established an equine disease diagnostic laboratory in Marion County for the purposes of diagnosing diseases of domestic animals, determining their cause and methods of control and eradication of such diseases and furnishing such information for use in Florida.

**History.**—s. 2, ch. 29889, 1955; s. 47, ch. 59-457; s. 1, ch. 67-311.

**585.62 Poultry diagnostic disease laboratories.**—There is hereby created and established five poultry diagnostic disease laboratories in the following locations in Florida, to wit: One in Pasco County, which is now being operated by the agricultural experiment station; one in Dade County; one in Flagler County; one in Jackson County; one in Nassau Coun-

ty; for the purposes of diagnosing diseases of poultry, determining the cause and methods of control and eradication of such diseases and furnishing such information for use in Florida.

**History.**—s. 3, ch. 29889, 1955; s. 48, ch. 59-457.

**585.621 Poultry and domestic animal disease diagnostic laboratory in Suwannee County.**—

(1) There is hereby created and established a Poultry and Domestic Animal Disease Diagnostic Laboratory in Suwannee County, for the purposes of diagnosing diseases of poultry and domestic animals, determining their causes and methods of control and eradication of such diseases and furnishing such information for use in Florida.

(2) The land used for the laboratory shall be conveyed to the state without cost by fee simple deed by the Board of County Commissioners of Suwannee County.

(3) The construction and operation of the laboratory shall be under the supervision and control of the Department of Agriculture and Consumer Services as provided in s. 585.64.

(4) The services of the laboratory shall be available as provided in s. 585.65.

**History.**—s. 1, ch. 63-476; ss. 14, 35, ch. 69-106.

**585.64 Poultry diagnostic disease laboratories; construction and operation under supervision of department.**—The construction of the five new laboratories and the operation of all the laboratories established by ss. 585.61 and 585.62, shall be under the supervision and control of the department. It shall be the duty of the department to operate the said laboratories in an efficient manner so that persons, firms and corporations who maintain domestic animals or poultry in Florida may obtain prompt reliable diagnosis of domestic animal or poultry diseases in Florida, and recommendations for the control and eradication of such diseases, to the end that diseases of domestic animals and poultry may be reduced and controlled, and if scientifically possible, eradicated. The department shall from time to time adopt rules and regulations for the use of the services of the laboratories.

**History.**—s. 5, ch. 29889, 1955; s. 49, ch. 59-457.

**585.65 Availability of services of laboratories.**—Any person, firm, or corporation who maintains domestic animals or poultry in the state may use the services of the laboratories under the terms of ss. 585.61 and 585.62 and under the rules and regulations for such use as adopted from time to time by the department. The department shall require any user of its services to pay handling, packing, postage and transportation charges necessary in rendering the services requested, which shall be deposited in the State Treasury to the credit of the special account known as the animal industry account within the General Inspection Trust Fund.

**History.**—s. 6, ch. 29889, 1955; s. 51, ch. 59-457; s. 2, ch. 61-119.

**585.661 Appropriation.**—The department shall include in its legislative budget request the estimated amounts needed to carry out the purposes of this chapter and the Legislature shall appropriate from the general revenue fund such amounts as it deems necessary for these purposes.

**History.**—s. 50, ch. 59-457; s. 4, ch. 61-59.

**585.671 Control and eradication of infectious anemia and piroplasmosis.**—

(1) The department shall formulate a program and promulgate all rules and regulations necessary for the successful implementation and administration of a comprehensive program for the control and eradication of infectious anemia and piroplasmosis within this state, and for the conduct of research and experimentation incidental thereto.

(2) In the discharge of its duty, the department shall have the power:

(a) To employ such persons and to make such contracts as are necessary to carry out the purpose of this law.

(b) To negotiate with officials of institutions of research and to make such contracts as are necessary for the conduct of research for the purpose of developing and effectuating improved methods of diagnosis, control, and eradication of infectious anemia and piroplasmosis. Toward this end it may employ such competent guidance as it deems necessary in negotiating said contracts.

**History.**—ss. 1, 2, ch. 63-442; ss. 14, 35, ch. 69-106.

## CHAPTER 586

## HONEY CERTIFICATION AND HONEYBEES

- 586.01 Short title.
- 586.02 Definitions.
- 586.03 Inspection and certification of honey.
- 586.04 Fees for certification.
- 586.05 Unlawful to use words "certified," "registered," or "inspected."
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- 586.07 Employees.
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- 586.10 Powers of department over honeybees.
- 586.11 Certificate of inspection to accompany shipments.
- 586.12 Authority to enter depots, etc., to make inspections.
- 586.13 Department may require removal, destruction, etc., of exposed or infected bees.
- 586.14 Compensation for destroyed property.
- 586.15 Penalty for violation.

**586.01 Short title.**—This chapter shall be known as the Florida Honey Certification Law.

**History.**—s. 9, ch. 28167, 1953.

**586.02 Definitions.**—As used in this chapter:

(1) The term "department" shall mean the Department of Agriculture and Consumer Services of the state.

(2) The term "certified honey" shall include honey which is principally of one type or variety, such as tupelo, orange blossom, saw palmetto, gallberry, or mangrove as shall have been inspected during its period of production, extraction, and preparation for market by the department or its authorized agents and found to be reasonably free from a mixture of other types or varieties of honey, and meet other requirements as specified in the rules and regulations issued by the department under the provisions of this chapter.

(3) The term "honey" shall mean only the natural food product made by honeybees from the nectar of flowers or the saccharine exudation of plants, containing no additives.

**History.**—s. 1, ch. 28167, 1953; ss. 14, 35, ch. 69-106; s. 250, ch. 71-377; s. 1, ch. 74-284.

**586.03 Inspection and certification of honey.**—

(1) Any producer of honey located in Florida may make application to the department for inspection and certification of his honey crop under such rules and regulations as the department may issue.

(2) The department shall issue such certificates of inspection and designate or provide such official tags or labels for marking containers of "certified tupelo honey," "certified orange blossom honey," or certified honey of other identifiable types or varieties, and establish such standards of grade and quality,

as are necessary to safeguard the privileges and service provided for in this chapter.

**History.**—s. 2, ch. 28167, 1953; ss. 14, 35, ch. 69-106.

**586.04 Fees for certification.**—The department may fix, assess, and collect, or cause to be collected, fees for the certification inspection service, the same to be paid in such manner as it may direct. Such fees shall be large enough to meet the reasonable expenses incurred by the department in making such inspection as may be necessary for certification.

**History.**—s. 3, ch. 28167, 1953; ss. 14, 35, ch. 69-106.

**586.05 Unlawful to use words "certified," "registered," or "inspected."**—It is unlawful to use the terms "certified," "registered," or "inspected," or any form or modification of such terms which tends to convey to the purchaser of such honey that the same has been certified, on tags, labels, or containers, either orally or in writing, or in advertising material intended to promote the sale of honey, except when such honey shall have been inspected and certified to under the provisions of this chapter by the department or by its authorized agents.

**History.**—s. 4, ch. 28167, 1953; ss. 14, 35, ch. 69-106.

**586.051 Requirement of purity.**—It is unlawful to sell, label, or advertise any product as "honey" unless it is pure honey as defined in s. 586.02.

**History.**—s. 2, ch. 74-284.

**586.06 Rules and regulations.**—The department may make all necessary rules and regulations to carry out the provisions of this chapter.

**History.**—s. 5, ch. 28167, 1953; ss. 14, 35, ch. 69-106.

**586.07 Employees.**—The department may employ such assistants, inspectors, specialists, and others as may be necessary to carry out the provisions of this chapter, fix their salaries and pay same from such funds as may be available for the purpose.

**History.**—s. 6, ch. 28167, 1953; ss. 14, 35, ch. 69-106.

**586.08 Penalty.**—Any person, copartnership, association, or corporation, and any officer, agent, servant, or employee, thereof, violating any of the provisions of this act shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083. Each 55 gallon drum of honey, or its equivalent in smaller containers, falsely tagged, labeled, or otherwise falsely designated in contravention of this act shall constitute a separate offense.

**History.**—s. 7, ch. 28167, 1953; s. 610, ch. 71-136.

**586.09 Enforcement of chapter.**—The department is vested with power and authority to enforce the provisions of this act and the rules and regulations made pursuant thereto by writ of injunction in the proper court as well as by criminal proceedings. It shall be the duty of the Department of Legal Affairs and the state attorneys to represent the department when called upon to do so. The department in



the discharge of its duties and in the enforcement of the powers herein delegated may send for books and papers, administer oaths and hear witnesses, and to that end it is made the duty of the various sheriffs throughout the state to serve all summonses and other papers upon request of said department.

**History.**—s. 8, ch. 28167, 1953; ss. 11, 14, 35, ch. 69-106; s. 26, ch. 73-334. cf.—s. 30.231 Fees of sheriffs.

**586.10 Powers of department over honeybees.**—The department may deal with American and European foulbrood, Isle of Wight disease, and all other contagious or infectious diseases of honeybees which may be prevented, controlled, or eradicated; and may make, promulgate and enforce such rules, ordinances and regulations, and do and perform such acts, through its agents or otherwise, as may be necessary to control, eradicate, or prevent the introduction, spread, or dissemination of any and all contagious diseases of honeybees, as far as may be possible, and all such rules, ordinances and regulations shall have the force and effect of law.

**History.**—s. 1, ch. 61-415; ss. 14, 35, ch. 69-106.

**586.11 Certificate of inspection to accompany shipments.**—All honeybees (except bees in combless packages) and used beekeeping equipment shipped or moved into the state, or shipped or moved within the state, shall be accompanied by a permit issued by the department. Before any bees (except bees in combless packages) or used beekeeping equipment is shipped or moved from any other state into the state, the owner thereof shall make application on forms provided by the department for a permit. The application shall be accompanied by a certificate of inspection signed by the state entomologist, state apiary inspector, or corresponding official of the state from which such bees or equipment are shipped or moved. Such certificate shall certify that all of the colonies, apiaries, and beeyards owned or operated by the applicant, his agents or representatives, have been inspected annually at a time when the bees are actively rearing brood, including one inspection within the period of 30 days immediately preceding the date of shipment or movement into Florida, and that no American foulbrood or other contagious or infectious diseases have been found in any colony, apiary, beeyard, or other places where bees or equipment have been held by the applicant, within the period of 2 years immediately preceding the date of shipment or movement into Florida; provided that when honeybees are to be shipped into this state from other states or countries wherein no official apiary inspector or state entomologist is available, the department may issue permit for such shipment upon presentation of suitable evidence showing such bees to be free from disease.

**History.**—s. 2, ch. 61-415; ss. 14, 35, ch. 69-106.

**586.12 Authority to enter depots, etc., to make inspections.**—The department, and its agents and employees, may enter any depot, express

office, storeroom, warehouse, or premises for the purpose of inspecting any honeybees or beekeeping fixtures or appliances therein or thought to be therein, for the purpose of ascertaining whether said bees or fixtures are infected with any contagious or infectious disease, or which they may have reason to believe have been, or are being transported in violation of any of the provisions of this chapter.

**History.**—s. 3, ch. 61-415; ss. 14, 35, ch. 69-106.

**586.13 Department may require removal, destruction, etc., of exposed or infected bees.**—The department, through its agents or employees, may require the removal from this state of any honeybees or beekeeping fixtures which have been brought into the state in violation of the provisions of this chapter, or if finding any honeybees or fixtures infected with any contagious or infectious disease, or if finding that such bees or fixtures have been exposed to danger of infection by such a disease, may require the destruction, treatment or disinfection of such infected or exposed bees, hives, fixtures or appliances.

**History.**—s. 4, ch. 61-415; ss. 14, 35, ch. 69-106.

**586.14 Compensation for destroyed property.**—Whenever bees, hives, or other equipment is ordered destroyed pursuant to s. 586.13, the department shall appraise the property to be destroyed. If the department and the owner are unable to agree on the value, the department shall appoint a disinterested appraiser, the owner shall appoint a disinterested appraiser and these two appraisers shall appoint a third disinterested appraiser who shall appraise the property. When the property is destroyed, the department shall pay any Florida resident beekeeper whose property is destroyed, a sum equal to 50 percent of the appraised value of the property destroyed; however, such compensation shall not exceed the sum of \$20 per honeybee colony. For the purposes of this section the "property" shall include bees, hive, frames, and other equipment.

**History.**—s. 5, ch. 61-415; ss. 14, 35, ch. 69-106; s. 1, ch. 75-213.

**586.15 Penalty for violation.**—Whoever violates any of the provisions of ss. 586.10 through 586.14, or whoever violates any of the rules and regulations promulgated by the department in accordance with the provisions of said sections, shall, for the first offense be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and upon a second conviction thereof shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. It shall be the duty of the sheriffs and the Florida Highway Patrol officers to enforce the provisions of said sections relating to the movement of bees, used bee equipment into the state, as well as movement thereof within the state.

**History.**—s. 6, ch. 61-415; ss. 14, 35, ch. 69-106; s. 611, ch. 71-136.

## CHAPTER 588

## LEGAL FENCES AND LIVESTOCK AT LARGE

- 588.01 Requirements of general fence.
- 588.011 Legal fence; requirements.
- 588.07 Prohibition of stakes, etc.
- 588.08 Right to land not in issue.
- 588.09 Legally enclosed land; fenced and posted.
- 588.10 Posted notices; requirement.
- 588.11 Owner to maintain fences and notices.
- 588.12 Livestock at large; legislative findings.
- 588.13 Definitions.
- 588.14 Duty of owner.
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- 588.17 Disposition of impounded livestock.
- 588.18 Livestock at large; fees.
- 588.19 Failure to secure purchaser or insufficient funds to defray certain costs.
- 588.20 Report of sale and disposition of proceeds.
- 588.21 Duty of commissioners to provide places for impounding of livestock and transportation of same.
- 588.22 Duty of impounder.
- 588.23 Right of owner.
- 588.24 Penalty.
- 588.25 Application; limitation.

**588.01 Requirements of general fence.**—All fences or enclosures of land shall be substantially constructed, whether with rails, logs, post and railing, iron, steel, or other material, and not less than 5 feet high; to the extent of 2 feet from the ground there shall not be a space between the material used in the construction of any fence greater than 4 inches; provided, that when any fence or enclosure shall be made with a trench or a ditch, the same shall be 4 feet wide; and in that case the fence shall be 5 feet high from the bottom of the ditch to the top of the fence.

*History.*—RS 875; s. 1, ch. 5038, 1901; GS 1233; RGS 2364; CGL 3773.

**588.011 Legal fence; requirements.**—

(1) Any fence or enclosure at least 3 feet in height made of barbed or other wire consisting of not less than three strands of wire stretched securely on posts, trees, or other supports, standing not more than 20 feet apart, shall be considered as a legal fence.

(2) Any fence or enclosure made of any other material which meets substantially the minimum requirements or specifications mentioned in subsection (1) shall be considered as a legal fence.

(3) Legal fences may include gateways or openings therein provided:

(a) That any such gateways shall be equipped with gates which are so constructed as to meet the minimum requirements or specifications of a legal fence; or

(b) That any such opening shall be equipped with a cattle or livestock guard at least 6 feet in width extending to each end of the opening.

(4) The requirements of s. 588.01, shall constitute and be a legal fence to prevent the intrusion of swine where the running at large of swine is not prohibited by law.

*History.*—ss. 1-3, 8, ch. 25357, 1949.

**588.07 Prohibition of stakes, etc.**—No planter or other person not having a lawful fence shall fix or cause to be fixed in any of his enclosures, any canes or stakes or anything that shall or may kill or maim, hurt, or destroy any cattle, horses, sheep, goat, or swine, under penalty of \$10 for every such offense, to be recovered before the proper court; one-half of the penalty thereof shall go to the informer and the other half to the county.

*History.*—s. 3, June 11, 1823; RS 878; GS 1239; RGS 2370; CGL 3779.

**588.08 Right to land not in issue.**—In all trials to be had by virtue of this chapter, the right to the land on which the trespass or damages shall be said to be done, of the party in possession thereof, shall not be brought into question, but the same shall be taken for granted for all intents and purposes.

*History.*—s. 5, June 11, 1823; RS 879; GS 1240; RGS 2371; CGL 3780.

**588.09 Legally enclosed land; fenced and posted.**—

(1) Land shall be legally enclosed land, or posted land, when enclosed by a legal fence, and when there shall be placed along the boundary of said land in the manner herein provided posted notices to the public; provided that it shall not be necessary to erect any fence along any portion of the boundaries of the land formed by any ocean, gulf, bay, river, creek, or lake.

(2) The fences, enclosures and the posted notices, when erected, placed, and maintained as herein required shall be notice to the public that the land enclosed thereby is private property upon which unauthorized entry for any purpose is prohibited and shall constitute a warning to unauthorized persons to remain off of or to depart from said land.

*History.*—ss. 4, 6, ch. 25357, 1949.

**588.10 Posted notices; requirement.**—Posted notices to the public as required by s. 588.09 shall be signs upon which there shall appear prominently, in letters of not less than 2 inches in height, the word "posted," and in addition thereto there shall appear the name of the owner, lessee, or occupant of said land. Said posted notices shall be placed along, on, or close within the boundaries of any legally enclosed or posted land in a manner and in such position as to be clearly noticeable from the outside of the enclosure, and said notices shall be placed not farther than 500 feet apart along, and at each corner, of the boundaries of the land, and also at each gateway or opening of the fence enclosing the same. Said notices shall be placed along all boundaries formed by the waters mentioned herein on trees or posts close to the banks of said waters in position so as they may

be noticeable to persons approaching the boundary formed by said waters.

History.—s. 5, ch. 25357, 1949.

#### 588.11 Owner to maintain fences and notices.

—The owner of legally enclosed land shall maintain in reasonable good condition the fence or enclosure around such land and shall maintain in legible condition any and all posted notices as required by ss. 588.09, 588.10, but a substantial or reasonably effective compliance with the provisions of ss. 588.011, 588.09, 588.10, disregarding minor or inconsequential differences in the size, shape, or condition thereof, shall be sufficient for the purpose of evidencing the legal enclosure of said land.

History.—s. 7, ch. 25357, 1949.

#### 588.12 Livestock at large; legislative findings.

—There is hereby found and declared a necessity for a statewide livestock law embracing all public roads of the state and necessity that its application be uniform throughout the state, except as hereinafter provided.

History.—s. 1, ch. 25236, 1949.

**588.13 Definitions.**—In construing ss. 588.12-588.25 the following words, phrases, or terms shall be held to mean:

(1) "Livestock" shall include all animals of the equine, bovine, or swine class, including goats, sheep, mules, horses, hogs, cattle, and other grazing animals.

(2) "Owner" shall include any person, association, firm, or corporation, natural or artificial, owning or having custody of or in charge of livestock.

(3) Livestock "running at large" or "straying" shall mean any livestock found or being on any public road of this state and either apparently a neglected animal or not under manual control of a person.

(4) "Public roads" as used herein shall mean those roads within the state which are, or may be, maintained by the state, a political subdivision of the state, or a municipality, including the full width of the right-of-way, except those maintained, and expressly exempted from provisions of this chapter, by ordinance of the county or municipality having jurisdiction.

History.—s. 2, ch. 25236, 1949; ss. 23, 35, ch. 69-106; s. 1, ch. 77-200; s. 230, ch. 79-400.

**588.14 Duty of owner.**—No owner shall permit livestock to run at large on or stray upon the public roads of this state.

History.—s. 3, ch. 25236, 1949.

**588.15 Liability of owner.**—Every owner of livestock who intentionally, willfully, carelessly, or negligently suffers or permits such livestock to run at large upon or stray upon the public roads of this state shall be liable in damages for all injury and property damage sustained by any person by reason thereof.

History.—s. 4, ch. 25236, 1949.

**588.16 Authority to impound livestock running at large or strays.**—It shall be the duty of the sheriff or his deputies or any other law enforcement

officer of the county, the county animal control center, or state highway patrolmen, where livestock is found to be running at large or straying, to take up, confine, hold, and impound any such livestock, to be disposed of as hereinafter provided.

History.—s. 5, ch. 25236, 1949; s. 2, ch. 77-200.

#### 588.17 Disposition of impounded livestock.

(1) Upon the impounding of any livestock by the sheriff or his deputies or any other law enforcement officers of the county, the county animal control center, or state highway patrolmen, the sheriff shall forthwith serve written notice upon the owner, advising such owner of the location or place where the livestock is being held and impounded, of the amount due by reason of such impounding, and that unless such livestock be redeemed within 3 days from date thereof that the same shall be offered for sale.

(2) In the event the owner of such livestock is unknown or cannot be found, service upon the owner shall be obtained by once publishing a notice in a newspaper of general circulation where the livestock is impounded (Sundays and holidays excluded). If there be no such newspaper then by posting of the notice at the courthouse door and at two other conspicuous places within said county.

Such notice shall be in substantially the following form:

"To Whom It May Concern:

You are hereby notified that the following described livestock (giving full and accurate description of same, including marks and brands) is now impounded at (giving location where livestock is impounded) ..... and the amount due by reason of such impounding is ..... dollars. The above described livestock will, unless redeemed within 3 days from date hereof, be offered for sale at public auction to the highest and best bidder for cash.

.....(Date).....

.....(Sheriff).....

of ..... County, Florida"

(3) Unless the impounded livestock is redeemed within 3 days from date of notice, the sheriff shall forthwith give notice of sale thereof which shall be held not less than 5 days nor more than 10 days (excluding Sundays and holidays) from the first publication of the notice of sale. Said notice of sale shall be published in a newspaper of general circulation in the said county (excluding Sundays and holidays) and by posting a copy of such notice at the courthouse door. If there be no such newspaper then by posting such copy at the courthouse door and at two other conspicuous places in said county.

Such notice of sale shall be in substantially the following form:

"(Name of owner, if known, otherwise 'To Whom It May Concern') you are hereby notified that I will offer for sale and sell at public sale to the highest and best bidder for cash the following described livestock (giving full and accurate description of each head of livestock) at ..... o'clock, ..... m. (the hour of sale to be between 11 a.m. and 2 p.m. Eastern Standard Time) on the ..... day of ..... at the following place ..... (which place shall be where the livestock is impounded or at the place provided by the county



commissioners for the taking up and keeping of such livestock) to satisfy a claim in the sum of ..... for fees, expenses for feeding and care and costs hereof.

.....(Date).....

.....(Sheriff).....

of ..... County, Florida”

History.—s. 6, ch. 25236, 1949; s. 3, ch. 77-200.

**588.18 Livestock at large; fees.**—The fees allowed for impounding, serving notice, care and feeding, advertising, and disposing of impounded animals, shall be as follows:

(1) For impounding each animal, the sum of \$10 and mileage incurred, at the rate of 14 cents per mile.

(2) For serving any notice and making return thereon, the sum of \$5 and mileage incurred, at the rate of 14 cents per mile.

(3) For feed and care of impounded animals the sum of \$2.50 per day per animal.

(4) For advertising or posting notices of sale of impounded animals, the same as provided by law for advertising property for sale under process.

(5) For sale or other dispositions of impounded animals, the sum of \$5.

(6) For report of sale of impounded animals, the sum of \$2.50.

History.—s. 7, ch. 25236, 1949; s. 1, ch. 74-54.

**588.19 Failure to secure purchaser or insufficient funds to defray certain costs.**—If there be no bidder for such livestock at the sale aforesaid, the sheriff shall either offer the livestock for adoption or kill, or cause to be killed, the same and shall dispose of the carcass thereof; if there be any money received by him on account of the said disposal, the same shall be disbursed in the manner hereinafter provided; and, if there be no ready sale for said carcass, the sheriff shall forthwith deliver the carcass to a public institution of the county, state, or municipality within said county or to any private charitable institution, in the order herein set forth, according to their needs.

History.—s. 8, ch. 25236, 1949; s. 4, ch. 77-200.

**588.20 Report of sale and disposition of proceeds.**—

(1) The sheriff, upon making a sale or other disposal as herein provided, shall forthwith make a written return thereof to the clerk of the circuit court of such county, with a full and accurate description of the livestock sold or disposed of by him, to whom, and the sale price thereof, which report shall be filed by said clerk.

(2) At the time of making his return the sheriff shall pay over to the clerk of the circuit court the entire proceeds of the sale.

(3) The clerk of the circuit court shall pay all costs and fees as allowed in s. 588.18 if there be any balance remaining, such balance shall be paid to the owner of such livestock, provided the owner shall make satisfactory proof of ownership to the board of county commissioners within 90 days from the date the sheriff reports the sale. If proof of ownership, as aforesaid, be not made within the time mentioned, the clerk shall pay such proceeds into the fine and forfeiture fund of said county. The clerk shall keep

a permanent record of all sales, disbursements, and distributions made under ss. 588.12-588.25.

(4) If the amount realized from the sale or other disposition of the animal is insufficient to pay all fees, costs and expenses as provided in ss. 588.12-588.25, the deficit shall be paid by the county from its fine and forfeiture fund.

History.—s. 9, ch. 25236, 1949.

**588.21 Duty of commissioners to provide places for impounding of livestock and transportation of same.**—The county commissioners of the several counties of Florida shall establish and maintain pounds or suitable places for the keeping of any livestock taken up and impounded hereunder until the same shall be sold, redeemed, or otherwise disposed of, which pounds or other suitable places may be a part of or operated in conjunction with a county animal control center. In any case, such county commissioners shall provide truck transportation for the impounded animals.

History.—s. 10, ch. 25236, 1949; s. 5, ch. 77-200.

**588.22 Duty of impounder.**—The sheriff or county animal control center, whichever is designated by the board of county commissioners, shall provide feed for the impounded animals and see that such livestock shall have feed and water not less than twice a day and that all milk cows and milk goats are milked twice a day. The sheriff or county animal control center shall employ poundmasters, guards, or other persons as may be necessary to protect, feed, care for, and have custody of, the impounded animals and the sheriff or county animal control center shall be entitled to the fees herein allowed for such feed and care.

History.—s. 11, ch. 25236, 1949; s. 6, ch. 77-200.

**588.23 Right of owner.**—The owner of any impounded livestock shall have the right at any time before sale thereof to redeem the same by paying to the sheriff all impounding expenses, including fees, keeping charges, advertising, or other costs incurred therewith which sum shall be deposited by the sheriff with the clerk of the circuit court who shall pay all fees and costs as allowed in s. 588.18. In the event there is a dispute as to the amount of such costs and expenses, the owner may give bond with sufficient sureties to be approved by the sheriff, in an amount to be determined by the sheriff, but not exceeding the fair cash value of such livestock, conditioned to pay such costs and damages; thereafter, within 10 days, the owner shall institute suit in equity to have the damage adjudicated by a court of equity or referred to a jury if requested by either party to such suit.

History.—s. 12, ch. 25236, 1949.

**588.24 Penalty.**—Any owner of livestock who unlawfully, intentionally, knowingly or negligently permits the same to run at large or stray upon the public roads of this state or any person who shall release livestock, after being impounded, without authority of the impounder, shall be guilty of a mis-

demeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

*History.*—s. 13, ch. 25236, 1949; s. 612, ch. 71-136.

**588.25 Application; limitation.**—The provisions of ss. 588.12-588.25 shall not apply to counties having special laws or general laws of local application requiring the confinement and restraint of livestock; provided, however, where the provisions of such special laws or general laws of local application do not prohibit livestock from running upon or straying upon the public highways, or the provisions of such special laws or general laws of local application

do not provide for liability of owners of livestock for damages and injuries caused by such livestock, or provide less severe penalties than imposed by s. 588.24, the provisions of this act shall apply in each such case as if the provisions hereof were inserted in full in any such special law or general law of local application. Provided, further, that if any such special law or general law of local application is found unconstitutional or in any way inoperative, then this act shall be in full force and effect in the county, or counties, affected.

*History.*—s. 14, ch. 25236, 1949.

## CHAPTER 589

## FORESTRY

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**589.01 Florida Forestry Council.**—The Florida Forestry Council, hereinafter called the council, in the Division of Forestry of the Department of Agriculture and Consumer Services, shall be composed of five members, appointed by the Department of Agriculture and Consumer Services for terms of 4 years, beginning October 1, 1970.

(1) There shall be one member of the council from each of the following areas of forestry:

- (a) The pulp and paper manufacturing industry.
- (b) A forest products industry other than paragraph (a).
- (c) A timber or timber products dealer.
- (d) An individual forest landowner.

(e) An active member of a statewide conservation organization having as one of its principal objectives the conservation and development of the forest resource.

(2) Not less than two or more than three nominations shall be made for each membership on the council, and any statewide organization representing an area of forestry represented on the council may make nominations.

(3) The council shall meet at the call of its chairman or secretary, at the request of a majority of its membership or of the Department of Agriculture and Consumer Services, and at such times as may be prescribed by its rules, not less frequently, however, than quarterly.

(4) A majority of the members of the council shall constitute a quorum for all purposes, and an act by a majority of such quorum at any meeting shall constitute an official act of this council.

(5) The members of this council shall receive no compensation for their services, except that they shall receive per diem as provided in s. 112.061 and their legal traveling expenses when actually engaged on the business of this council.

(6) The powers and duties of the council shall be as follows:

(a) To consider and study the entire field of forestry;

(b) To advise, counsel, and consult with the Department of Agriculture and Consumer Services and the Director of the Division of Forestry upon request in connection with the promulgation, administration, and enforcement of all laws, rules, and regulations relating to forestry;

(c) To consider all matters submitted to it by the Department of Agriculture and Consumer Services or the Director of the Division of Forestry;

(d) To offer suggestions and recommendations to the Department of Agriculture and Consumer Services and the Director of the Division of Forestry on its own initiative in regard to changes in the laws, rules, and regulations relating to forestry as may be deemed advisable to secure the effective administration and enforcement of said laws, rules, and regulations relating to the work of the division;

(e) To keep a complete record of all its proceedings showing the names of the members present at each meeting and any action taken by the council and to file and maintain such records in the Division of Forestry as a public record.

**History.**—s. 1, ch. 12283, 1927; CGL 4151(1); s. 1, ch. 20419, 1941; ss. 14, 35, ch. 69-106; s. 1, ch. 70-306; s. 1, ch. 70-439; s. 204, ch. 77-104; s. 18, ch. 77-108; s. 6, ch. 78-95; s. 4, ch. 78-323.

**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

cf.—Ch. 590 Forest Protection.  
Ch. 591 Forest Development.

#### 589.011 Use of state forest lands.—

(1) The Division of Forestry of the Department of Agriculture and Consumer Services may grant privileges, permits, leases, and concessions for the use of state forest lands, timber, and forest products for purposes not inconsistent with the provisions of this chapter.



(2) The Division of Forestry is authorized to grant easements for rights-of-way, over, across, and upon state forest lands for the construction and maintenance of poles and lines for the transmission and distribution of electrical power, pipelines for the distribution and transportation of oils and gases, and for telephone and telegraphic purposes and for public roads, under such conditions and limitations as the division may impose.

**History.**—ss. 1-4, ch. 25324, 1949; s. 1, ch. 59-168; ss. 14, 35, ch. 69-106; s. 251, ch. 71-377.

**589.02 Headquarters and meetings of council.**—The official headquarters of said council shall be in Tallahassee, but it may hold meetings at such other places in the state as it may determine by resolutions or as may be selected by a majority of the members of said council in any call for a meeting. The annual meeting of the council shall be held on the first Monday in October of each year. Special meetings may be called at any time by the president or upon the written request of a majority of the members. The said council shall annually select from its members a president, a vice president and secretary, said election to be held at the annual meetings of the council. A majority of the members of said council shall constitute a quorum for said purposes.

**History.**—ss. 1, 2, ch. 12283, 1927; CGL 4151(1),(2); ss. 14, 35, ch. 69-106; s. 4, ch. 78-323.

**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

**589.03 Compensation and allowances.**—Members of the council shall receive no compensation for the services which they may render under the provisions of this chapter; provided, however, that they shall be reimbursed for traveling expenses as provided in s. 112.061 for attending meetings of the council and in the performance of duties as members of the council; provided further that the aggregate expense of all members of the council shall not, during any fiscal year, exceed the sum of \$2,500.

**History.**—s. 3, ch. 12283, 1927; CGL 4151(3); s. 1, ch. 24034, 1947; s. 19, ch. 63-400; ss. 14, 35, ch. 69-106; s. 4, ch. 78-323.

**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

**589.04 Duties of division.**—It shall be the duty of the Division of Forestry of the Department of Agriculture and Consumer Services under such terms as will best serve the public interest to assist and cooperate with federal and state departments or institutes, county, town, corporation, or individual, to gather and disseminate information in regard to forests, their care and management, to prevent and extinguish forest fires, and enforce all laws pertaining to forests and woodlands.

**History.**—s. 4, ch. 12283, 1927; CGL 4151(4); ss. 14, 35, ch. 69-106.

**589.06 Warrants for payment of accounts, expenses, etc.**—Upon the presentation to the Comptroller of any accounts duly approved by the Division of Forestry, accompanied by such itemized vouchers or accounts as shall be required by him, the Comptroller shall audit the same and draw a warrant on the State Treasurer for the amount for which the

account is audited, payable out of funds to the credit of the division.

**History.**—s. 7, ch. 12283, 1927; CGL 4151(7); ss. 14, 35, ch. 69-106.

**589.07 Division may acquire lands for forest purposes.**—The Division of Forestry, on behalf of the state and subject to the restrictions mentioned in s. 589.08, may acquire lands, suitable for state forest purposes, by gift, donation, contribution, or otherwise and may enter into agreements with the Federal Government, or other agency, for acquiring by gift, purchase, or otherwise, such lands as are, in the judgment of the division, suitable and desirable for state forests. Lands shall be acquired by the Division of Forestry in accordance with the acquisition procedures for state lands provided in s. 253.025.

**History.**—s. 1, ch. 17027, 1935; CGL 1936 Supp. 4151(10y); ss. 14, 35, ch. 69-106; s. 18, ch. 79-255.

**589.071 Traffic control within state forest lands.**—The Division of Forestry on behalf of the state may adopt rules to control ingress, egress, and all other movement of motor vehicles, bicycles, horses, and pedestrians, as well as all other types of traffic, within a state forest outside of the designated right-of-way of state or county-maintained roads, and may designate special areas off the roadways for the operation of recreational type vehicles which need not be licensed or operated by licensed drivers. Violation of the provisions of this act or rules adopted pursuant hereto is punishable as provided in s. 316.655.

**History.**—s. 1, ch. 72-246; s. 53, ch. 76-31.

**589.08 Restrictions upon acquisition of lands.**—The Division of Forestry shall enter into no agreement for the acquisition, lease, or purchase of any land or for any other purpose whatsoever which shall pledge the credit of, or obligate in any manner whatsoever, the state to pay any sum of money or other thing of value for such purpose, and the said division shall not in any manner or for any purpose pledge the credit of or obligate the state to pay any sum of money. The said division may receive, hold the custody of, and exercise the control of any lands, and set aside into a separate, distinct and inviolable fund, the proceeds which may be derived from the sales of the products of such lands, the use thereof in any manner, or the sale of such lands save the 25 percent of the proceeds thereof to be paid into the State School Fund as provided by law. The division may use and apply such funds for the acquisition, use, custody, management, development, or improvement of any lands vested in or subject to the control of such division. After full payment has been made for the purchase of a state forest, to the Federal Government or other grantor, then 15 percent of the gross receipts from a state forest shall be paid to the county or counties in which it is located in proportion to the acreage located in each county for use by the county or counties for school purposes.

**History.**—s. 3, ch. 17027, 1935; CGL 1936 Supp. 4151(10aa); s. 1, ch. 57-159; s. 2, ch. 61-119; ss. 14, 35, ch. 69-106.

**589.081 Withlacoochee State Forest; payment to counties of portion of gross receipts.**—The Division of Forestry shall pay 15 percent of the gross receipts from Withlacoochee State Forest to

Hernando, Citrus, Sumter, and Pasco Counties in proportion to the acreage located in each county. The funds shall be equally divided between the board of county commissioners and the school board of each county, all the acreage of the Withlacoochee State Forest being within the said four counties. The provisions of this act shall apply to the fiscal year beginning July 1, 1960.

**History.**—ss. 1, 2, ch. 61-170; ss. 14, 35, ch. 69-106; s. 1, ch. 69-300.

**589.09 Use of lands acquired.**—All lands acquired by the Division of Forestry on behalf of the state shall be in the custody of and subject to the jurisdiction, management, and control of the said division, and, for such purposes and the utilization and development of such land, the said division may use the proceeds of the sale of any products therefrom, the proceeds of the sale of any such lands, save the 25 percent of such proceeds which shall be paid into the State School Fund as required by s. 228.151, and such other funds as may be appropriated for use by the division, and in the opinion of such division, available for such uses and purposes.

**History.**—s. 2, ch. 17027, 1935; CGL 1936 Supp. 4151(10z); s. 2, ch. 61-119; ss. 14, 35, ch. 69-106.

**589.10 Disposition of lands.**—The Division of Forestry, with the concurrence of the Board of Trustees of the Internal Improvement Trust Fund and the Governor, may sell, exchange or lease, or otherwise dispose of any lands under its jurisdiction by the provisions of this chapter when in its judgment it is advantageous to the state to do so in the interest of the highest orderly development, improvement and management of the state forests and state parks. All such sales, exchanges or leases, or dispositions of such lands, shall be at least upon a 30-day public notice, to be given in the manner deemed reasonable by the said division.

**History.**—s. 4, ch. 17027, 1935; CGL 1936 Supp. 4151(10bb); s. 24, ch. 57-1; s. 2, ch. 61-119; ss. 14, 27, 35, ch. 69-106.

**589.101 Blackwater River State Forest; lease of board's interest in gas, oil, and other minerals.**—Notwithstanding the provisions of ss. 253.51-253.58, 253.60, 253.61, the Division of Forestry is hereby expressly granted the authority to lease its 25 percent interest in oil, gas, and other minerals within the boundaries of the Blackwater River State Forest; provided, however, that grants shall be made only to the lessee or lessees holding the 75 percent interest in said minerals retained by the United States in its conveyance to this state. The concurrence of the Board of Trustees of the Internal Improvement Trust Fund required by s. 589.10 shall not be necessary under the provisions of this section.

**History.**—s. 1, ch. 59-184; s. 2, ch. 61-119; ss. 14, 27, 35, ch. 69-106.

**589.102 Blackwater River State Forest; use of leased forest lands.**—Each person leasing land within the Blackwater River State Forest shall confine all grazing animals upon the area covered by the lease.

**History.**—s. 1, ch. 65-565.

**589.11 Duties of division as to Clarke-McNary Law.**—The Division of Forestry is designated and authorized as the agent of the state to cooperate with the United States Secretary of Agriculture under the provisions of "ss. 4 and 5, Chapter 348, 43 Statutes 654, Acts of Congress, June 7, 1924, known as the Clarke-McNary Law," to assist owners of farms in establishing, improving, and renewing woodlots, shelterbelts, windbreaks, and other valuable forest growth, and also in growing and renewing useful timber crops and also to cooperate with the wood-using industries or other agencies governmental or otherwise interested in proper land use, forest management, and conservative forest utilization.

**History.**—s. 7, ch. 17027, 1935; CGL 1936 Supp. 4151(10ee); ss. 14, 35, ch. 69-106.

**589.12 Rules and regulations.**—The Division of Forestry may make rules and regulations and do such acts and things as shall be reasonable and necessary to accomplish the purposes of ss. 589.07-589.11.

**History.**—s. 8, ch. 17027, 1935; CGL 1936 Supp. 4151(10ff); ss. 14, 35, ch. 69-106.

**589.13 Lien of division and other parties, for forestry work, etc.**—Liens prior in dignity to all others accruing thereafter shall exist in favor of the following persons, boards, firms, or corporations upon the following described real estate, under the circumstances hereinafter mentioned:

(1) The Division of Forestry, the United States Government, or other governmental authority, upon all lands covered in any cooperative or other agreement entered into between the landowner and the division (which term shall embrace and include agreements with the Division of Forestry);

(2) The United States Government or other governmental authority, for the prevention and control of woods fires and other forestry work to the extent of the amounts expended by such division, service, or other governmental authority for and on behalf of the landowner and not paid by the landowner under the terms of said agreement.

**History.**—s. 1, ch. 17026, 1935; CGL 1936 Supp. 4151(10t); ss. 14, 35, ch. 69-106.

**589.14 Enforcement of lien; notice, etc.**—The Division of Forestry, United States Government or other governmental authority shall be entitled to subject said real estate in equity for the value of such expenditures made by it in pursuance of any such agreement, and may, at any time after the expenditure thereof and after default in payment thereof by the landowner in accordance with the terms of such agreement, file in the office of the clerk of the circuit court of the county in which the property is located, and have recorded in the record of liens kept by said clerk, a notice of the expenditures made in pursuance of said agreement and of default of the landowner in the payment of same in accordance with the terms thereof (the form of notice being provided in s. 589.15), and from the date of the filing of such notice the rights of purchasers or creditors of such

landowner shall be subject and subordinate to the claim set out in said notice.

**History.**—s. 2, ch. 17026, 1935; CGL 1936 Supp. 4151(10u); ss. 14, 35, ch. 69-106.

**589.15 Form of notice.**—The said notice shall be substantially as follows: It shall be in writing and shall be sworn to by the duly authorized agent of such division or governmental authority filing same. It shall state the name of the owner of said property, the nature and character of the labor or services performed or to be performed, an itemized statement of the expenditures made in pursuance of said agreement and the value thereof, and shall also contain a description of the property covered by the said agreement and to which said services and expenditures are applicable.

**History.**—s. 3, ch. 17026, 1935; CGL 1936 Supp. 4151(10v); ss. 14, 35, ch. 69-106.

**589.16 Time for filing notice of lien.**—The notice of lien may be filed prior to the filing of a complaint brought to enforce said lien; provided that nothing herein contained shall prevent the filing of such notice at any time after the contract or agreement has been entered into and default made by the landowner in payment of any amount due under the contract or agreement; and suit in equity to enforce the rights of the division or governmental authority as provided in this chapter must be brought within 12 months from the filing of said notice of lien.

**History.**—s. 4, ch. 17026, 1935; CGL 1936 Supp. 4151(10w); s. 2, ch. 29737, 1955; ss. 14, 35, ch. 69-106.

**589.17 Application of general laws.**—The general laws of this state with reference to the acquisition and enforcement of statutory liens shall be applicable to the lien created by ss. 589.13-589.16 insofar as the same may be consistent with and pertinent hereto.

**History.**—s. 5, ch. 17026, 1935; CGL 1936 Supp. 4151(10x).

**589.18 Division to make certain investigations.**—The Division of Forestry shall conduct investigations and make surveys to determine the areas of land in the state which are available and suitable for reforestation projects and state forests, and may recommend to the Board of Trustees of the Internal Improvement Trust Fund, any state agency, or any agency created by state law which is authorized to accept lands in the name of the state, concerning their acquisition. The division shall be considered as a state agency under this law.

**History.**—s. 1, ch. 16030, 1933; CGL 1936 Supp. 4151(10a); s. 2, ch. 61-119; ss. 14, 27, 35, ch. 69-106.

**589.19 Creation of certain state forests.**—When the Board of Trustees of the Internal Improvement Trust Fund, any state agency, or any agency created by state law, authorized to accept reforestation lands in the name of the state, approve the recommendations of the Division of Forestry in reference to the acquisition of land and acquire such land, the said board, state agency, or agency created by state law, may formally designate and dedicate any area as a reforestation project, or state forest, and where so designated and dedicated such area shall be under the administration of the division which shall

be authorized to manage and administer said area according to the purpose for which it was designated and dedicated.

**History.**—s. 2, ch. 16030, 1933; CGL 1936 Supp. 4151(10b); s. 2, ch. 61-119; ss. 14, 27, 35, ch. 69-106.

**589.20 Cooperation by division.**—The Division of Forestry may cooperate with other state agencies, who are custodians of lands which are suitable for forestry purposes, in the designation and dedication of such lands for forestry purposes when in the opinion of the state agencies concerned such lands are suitable for these purposes and can be so administered. Upon the designation and dedication of said lands for these purposes by the agencies concerned, said lands shall be administered by the division.

**History.**—s. 3, ch. 16030, 1933; CGL 1936 Supp. 4151(10c); ss. 14, 35, ch. 69-106.

**589.21 Management to be for public interest.**—All state forests and reforestation projects mentioned in this chapter shall be managed and administered by the Division of Forestry in the interests of the public. If the public interests are not already safeguarded and clearly defined by law or by regulations adopted by the state agencies authorized by law to administer such lands, or in the papers formally transferring said projects to the division for administration, then, and in that event, the division may define the purpose of said project. Such definition of purposes shall be construed to have the authority of law.

**History.**—s. 4, ch. 16030, 1933; CGL 1936 Supp. 4151(10d); ss. 14, 35, ch. 69-106.

**589.26 Dedication of state park lands for public use.**—The Division of Forestry is authorized and empowered, from time to time, to dedicate and reserve for the use of the public all or any part of the lands heretofore or hereafter acquired by the said Division of Forestry for park purposes; provided, however, that said dedication and reservation shall be subject to such rules and regulations, as to reasonable use by the public, as may be adopted by the Division of Recreation and Parks of the Department of Natural Resources.

**History.**—s. 1, ch. 20418, 1941; s. 28, ch. 29615, 1955; ss. 14, 25, 35, ch. 69-106.

**589.27 Power of eminent domain; procedure.**—Whenever the Division of Forestry shall find it necessary to acquire private property for state forests or rights-of-way for state forest roads, or for exercising any of the powers and duties authorized and prescribed by law to be exercised and performed by the Division of Forestry, the Division of Forestry is hereby empowered and authorized to exercise the right of eminent domain and to proceed to condemn said property in the same manner as provided by law for the condemnation of private property by counties.

**History.**—s. 1, ch. 20900, 1941; s. 28, ch. 29615, 1955; ss. 14, 35, ch. 69-106.

cf.—Ch. 73 Eminent Domain  
Ch. 74 Proceedings Supplemental to Eminent Domain  
Ch. 127 Right of Eminent Domain to Counties  
s. 258.021 Power of eminent domain; procedure.

**589.275 Planting of indigenous trees on state lands.**—It is the intent of the Legislature to partially restore the character of the original domain of



Florida by planting native trees on state lands, and to this end all state lands shall have a portion of such lands designated for indigenous trees, to be established and maintained by the using agency with the assistance of the Division of Forestry of the Department of Agriculture and Consumer Services. If the division, or primary managing agency, determines that any state lands are unsuitable for this purpose, such lands shall be exempt from this requirement.

**History.**—s. 1, ch. 77-101.

**589.28 County commissions or municipalities authorized to cooperate with Division of Forestry.**—County commissions or municipalities are authorized to cooperate with the Division of Forestry of the Department of Agriculture and Consumer Services in providing assistance in forestry and forest-related knowledge and skills to stimulate the production of timber wealth through the proper use of forest land and to protect and improve the beauty of urban and suburban areas by helping to create in them an attractive and healthy environment through the proper use of trees and related plant associations. County commissions or municipalities are hereby authorized to appropriate funds and enter into cooperative agreements with the Division of Forestry under the terms and conditions set forth in ss. 589.28-589.34.

**History.**—s. 1, ch. 20899, 1941; ss. 14, 35, ch. 69-106; s. 1, ch. 71-183.

**589.29 Quality of assistance.**—Any advice and assistance provided under ss. 589.28-589.34 shall be the responsibility of the State Forester and the Division of Forestry and shall be conducted under the supervision of a professional forester in an efficient and competent manner by personnel who have the required education, training and experience to accomplish the objectives of these sections.

**History.**—s. 2, ch. 20899, 1941; ss. 14, 35, ch. 69-106; s. 2, ch. 71-183.

**589.30 Duty of district forester.**—It shall be the duty of the district forester to direct all work in accordance with the law and regulations of the Division of Forestry; gather and disseminate information in the management of commercial timber, including establishment, protection and utilization; and assist in the development and use of forest lands for outdoor recreation, watershed protection, and wildlife habitat. The district forester or his representative shall provide encouragement and technical assistance to individuals and urban and county officials in the planning, establishment, and management of trees and plant associations to enhance the beauty of the urban and suburban environment

and meet outdoor recreational needs.

**History.**—s. 3, ch. 20899, 1941; ss. 14, 35, ch. 69-106; s. 3, ch. 71-183.

**589.31 Cooperative agreement.**—Before any assistance is provided under this law, the county or municipality and the Division of Forestry, through their duly constituted representatives, shall enter into a mutually satisfactory cooperative agreement covering the specific duties, and set up a budget for any fiscal period beginning July 1 and ending June 30, and the county's or municipality's share of the budget provided shall be turned over to the Division of Forestry, one-half on or before July 1, and the remainder on or before January 1, and placed in the Incidental Trust Fund of the Division of Forestry.

**History.**—s. 4, ch. 20899, 1941; s. 2, ch. 61-119; ss. 14, 35, ch. 69-106; s. 4, ch. 71-183.

**589.32 Cost of providing forestry assistance.**—The cost of forestry assistance provided under the provisions of ss. 589.28-589.34 shall be jointly determined and paid by the Division of Forestry and the county commission or municipality and shall be not less than 40 percent of the cost of the equivalent of 1 man-year of assistance. However, the county or municipality share shall not exceed the sum of \$3,000 per annum for each man-year of assistance provided.

**History.**—s. 5, ch. 20899, 1941; s. 1, ch. 63-399; ss. 14, 35, ch. 69-106; s. 5, ch. 71-183.

**589.33 Expenditure of budgeted funds.**—Any money budgeted for a fiscal period shall be expended by the Division of Forestry during the period for which it was budgeted and amounts not expended or specifically obligated by contract or other legal procedure during that period shall be available for the next fiscal period or shall be returned to the Division of Forestry and the county or municipality in the same proportions as appropriated. However, when 40 percent of the cost of 1 man-year of assistance equals or exceeds \$3,000, then in that event all budget balance will revert to the Division of Forestry.

**History.**—s. 6, ch. 20899, 1941; ss. 14, 35, ch. 69-106; s. 6, ch. 71-183.

**589.34 Revocation of agreement.**—Any agreement or revision thereof entered into by the Division of Forestry and a county or municipality under the provisions of this law shall continue from year to year, unless written notice is given to the other party 30 days prior to July 1 of any year of the intention to discontinue the work and cancel the agreement.

**History.**—s. 7, ch. 20899, 1941; ss. 14, 35, ch. 69-106; s. 7, ch. 71-183.

## CHAPTER 590

## FOREST PROTECTION

- 590.01 Protection of forests.
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**590.01 Protection of forests.**—Whenever it shall appear to the Division of Forestry of the Department of Agriculture and Consumer Services, hereinafter called the division, from investigation, hearing or otherwise that areas in the state are in need of special protection from forest fires, the said division may designate and establish a forest protection district in such areas. The limits of each such

fire protection district shall be defined by the division, and public notice of its establishment shall be published in some one or more newspapers of general circulation in the region affected, once each week for 3 successive weeks (three insertions), and such additional publicity shall be given to the establishment of said district as the division may deem necessary.

**History.**—s. 2, ch. 17029, 1935; CGL 1936 Supp. 4151(10HH); ss. 14, 35, ch. 69-106.

cf.—Ch. 589, Forestry.

Ch. 591 Forest Development.

**590.02 Powers of division; appointment of forest investigators and rangers; powers and duties; entry upon lands; arrests, etc.—**

(1) The Division of Forestry, in connection with the enforcement of this chapter and other forest and forest fire laws, shall have the following powers, authority and duties:

(a) To enforce the provisions of this chapter and other forest fire and forest protection laws of this state;

(b) To prevent, detect, suppress, and extinguish forest fires in this state and to do all things necessary in the exercise of such powers, authority and duties;

(c) To provide forest firefighting crews, who shall be under the control and direction of forest rangers and other designated agents of the division;

(d) To appoint district foresters, assistant district foresters, investigators, rangers, and other employees;

(e) To use the resources of the division on state-owned parks and historic memorials wherever located within the state to prevent and suppress fires, to cut firelines, to establish regional firefighting crews who shall be authorized to suppress fires on state-owned park lands, and, subject to approval of the Executive Office of the Governor, to use funds not otherwise appropriated for the purchase of the necessary equipment for combating fires in state parks; and

(f) To make rules to accomplish the purposes of this chapter.

(2) Forest rangers, and the firefighting crews under their control and direction, may enter upon any lands for the purpose of preventing and suppressing forest fires and to enforce the provisions of this chapter and other forest fire and forest protection laws of this state.

(3) Forest rangers, employees of the division and all persons, federal and state agencies who are under contract or agreement with the division to assist in firefighting operations as well as persons, federal or state agencies, firms, companies, or corporations called upon by forest rangers or other authorized employees of the division to assist in firefighting under the direction or supervision of employees of the division may, in the performance of their duties, set backfires, dig trenches, cut firelines, and carry on all customary activities in the fighting of forest fires without incurring liability to any person.

(4)(a) The Governor may, upon the application of the division, appoint a sufficient number of special

officers, the exact number to be determined by the division, but not to exceed 20 in number, who shall have the power and authority of arrest. Such special officers shall furnish bond in the penal sum of \$2,500, payable to the Governor of the state, conditioned upon the faithful discharge of their duties as such special officers, such bonds to be approved by the division. Such special officers shall have power and authority throughout the state, under the direction and control of the division, to enforce the criminal provisions contained in this chapter, in laws relating to wild animal life and freshwater aquatic life, in laws relating to littering, and in other laws relating to forests and forest fires.

(b) Such special officers shall have the power and authority to make arrests, with or without warrants, for violations of the criminal provisions of this chapter, of laws relating to wild animal life and freshwater aquatic life, of laws relating to littering, and of other laws relating to forests and forest fires to the same extent and under the same limitations and duties as do peace officers under the provisions of chapter 901, as amended.

(c) In each case in which any of the special officers effects an arrest, the sheriff of the county in which such arrest is made shall be entitled to the lawful fees, the same as though such arrest had been effected by him or his deputies.

(d) In connection with the enforcement of the said criminal provisions, such special officers may go upon any premises, posted or otherwise, when necessary for the enforcement of such laws. All such special officers shall be ex officio forest rangers and shall be under the control and direction of the division, except that the Governor may at any time, for cause, remove any power and authority of arrest conferred by him. Such special officers shall have the same right and authority to carry arms as do the sheriffs of this state, unless otherwise provided by order of the Governor. The compensation of such special officers shall be fixed and paid by the division from its funds.

**History.**—s. 14, ch. 17029, 1935; CGL 1936 Supp. 4151(10SS); s. 1, ch. 26915, 1951; s. 1, ch. 57-55; ss. 2, 3, ch. 67-371; ss. 14, 31, 35, ch. 69-106; s. 1, ch. 77-70; s. 1, ch. 79-91; s. 142, ch. 79-190; s. 231, ch. 79-400.  
cf.—s. 113.07 Bonds of officials.

#### **590.025 Control burning of wild land; authorization; conditions.—**

(1) As used in this section, "wild land" means:

(a) Uncultivated land other than fallow. Such land may be neglected altogether or maintained for such purposes as wood or forage production, wildlife, recreation, or protective plant cover.

(b) Land virtually uninfluenced by human activity.

(2) At the request of the governing body of a county, the Division of Forestry of the Department of Agriculture and Consumer Services is authorized and empowered, subject to the provisions and qualifications contained in subsection (3), and provided the owner of the land does not object, to control burn any area of wild land within the county which is reasonably determined to be in danger of conflagration if any open and uncontrolled fire were to occur in the area.

(3) No area of wild land shall be control burned under the provisions of this section unless notice of

intent to control burn, describing particularly the area to be burned and the tentative date or dates of the burning, is published in a conspicuous manner in one or more newspapers of general circulation in the area of the burn not less than 10 days prior to the burn.

(4) In addition, the Division of Forestry shall prepare, and the county tax collector shall include with the annual tax statement, a notice to be sent to all landowners in each township designated by the Division of Forestry as a high fire hazard area. Such notice shall describe particularly the area to be burned and the tentative date or dates of the burning and shall list the reasons for, and the benefits expected to result from, control burning.

**History.**—s. 1, ch. 77-17.

**590.03 Authority of fire wardens.**—It is unlawful for any person, either willfully or carelessly, to burn or cause to be burned or to set fire to or cause fire to be set to, any forest, grass, woods, wild lands, or marshes within a forest protection district, unless written permission shall have first been secured from a duly appointed fire warden. The permit must show date and hour for burning and description of lands to be burned over. The division shall prepare the necessary forms and blanks for this purpose, shall prescribe rules and regulations for the issuance of such permits, shall appoint, if necessary, in addition to the regular or emergency fire wardens, other persons who shall be authorized to issue such permits, and shall have complete jurisdiction over all other details concerned with the setting of fires within such district.

**History.**—s. 4, ch. 17029, 1935; CGL 1936 Supp. 4151(10JJ); ss. 14, 35, ch. 69-106.

**590.04 Organization of districts.**—The division shall organize each forest protection district so as to most effectively prevent, detect and suppress forest fires, and to that end, may employ wardens or forest rangers to have charge of its activities in each such district, may subdivide each district into patrol areas, may construct lookout towers, roads, bridges, firelines, ranger stations, and telephone lines, purchase tools for firefighting as well as other necessary supplies and equipment, and may carry on all other activities deemed necessary to effectively protect the district from such fires.

**History.**—s. 3, ch. 17029, 1935; CGL 1936 Supp. 4151(10II); ss. 14, 35, ch. 69-106.

**590.05 Road crews to extinguish fires.**—Every member of a road construction or maintenance crew, whether employed by the Department of Transportation, or by the highway department or county commissioners of any county, and every road contractor or subcontractor of said Department of Transportation, or the highway department or county commissioners of any county, and their employees shall keep all fires set by them under control and confined to the right-of-way and suppress all fires discovered and detected by them within 200 feet of the centerline of the right-of-way of any state, county or public road, or highway on which and adjacent



to which the said crew, contractor, subcontractor and employees are employed.

**History.**—s. 5, ch. 17029, 1935; CGL 1936 Supp. 4151(10KK); ss. 23, 35, ch. 69-106.

**590.06 Adoption of rules for road crews.**—

The Division of Road Operations of the Department of Transportation, and the county commissioners or highway departments of the several counties of this state shall require their construction and maintenance crews, contractors, subcontractors and employees to comply with the provisions of this chapter and the said Division of Road Operations, county commissioners and highway department to that end may adopt and promulgate rules and regulations for the observance of said crews, contractors, subcontractors and employees in carrying out the purposes and provisions of this chapter.

**History.**—s. 6, ch. 17029, 1935; CGL 1936 Supp. 4151(10LL); ss. 23, 35, ch. 69-106.

**590.07 Refusal of road crews.**—Any road foreman or member of a road construction or maintenance crew, or any foreman, superintendent or employee of any road contractor or subcontractor, who shall, without sufficient cause, willfully refuse or neglect to prevent and suppress fires as provided in this chapter, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 7, ch. 17029, 1935; CGL 1936 Supp. 7404(1); s. 613, ch. 71-136.

**590.08 Unlawful burning of lands.**—It is unlawful for any person to willfully or carelessly burn or cause to be burned, or to set fire to or cause fire to be set to, any forest, grass, woods, wild lands, or marshes not owned or controlled by such person.

**History.**—ss. 1, 2, ch. 3141, 1879; RS 2527; GS 3426; RGS 5284; s. 1, ch. 12024, 1927; CGL 7403, 7404; s. 8, ch. 17029, 1935; CGL 1936 Supp. 4151(10MM).

**590.081 Emergency drought conditions; burning prohibited.**—

(1) It is unlawful for any person to set fire to, or cause fire to be set to, any forest, grass, woods, wild lands, or marshes, or to build a campfire or bonfire or to burn trash or other debris within 600 yards of any forest, grasslands, woods, wild lands, or marsh area in any county, counties or area within a county where, because of emergency drought conditions, there is extraordinary danger from fire, unless a written permit is obtained from the Division of Forestry or its designated agent, or unless it can be established that the setting of a backfire was necessary for the purpose of saving life or property. The burden of proving such shall rest on such person claiming same as a defense.

(2) The Commissioner of Agriculture, upon the advice of the director of the Division of Forestry, will advise the Governor when forests in any county, counties, or area within a county of this state, because of emergency drought conditions, are in extraordinary danger from fire. The Governor may by proclamation declare a drought emergency to exist and describe the general boundaries of the area affected.

(3) Any proclamation promulgated by the Governor under authority of this section shall be effective immediately upon filing same with the Department

of State and shall remain in full force and effect until, when conditions warrant, an order of revocation of proclamation is made by the Governor and filed with the Department of State.

(4) Any person violating any of the provisions of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—ss. 1-5, ch. 57-246; ss. 14, 35, ch. 69-106; s. 1, ch. 71-64; s. 614, ch. 71-136; s. 1, ch. 75-264.

**590.082 Extraordinary fire hazard; certain acts made unlawful; proclamations by the Governor.**—

(1) When the Governor has by proclamation declared a drought emergency to exist and described the general boundaries of the area affected as prescribed in s. 590.081 and the drought emergency continues until the forest, grass, woods, wild lands, fields, or marshes become so dry or parched as to create an extraordinary fire hazard endangering life and property, it shall be unlawful for any person, except the owner or his agents or other persons regularly engaged in harvesting, processing, or moving forest or farm products, to enter or travel in any public or private forest lands, grasslands, woods, fields, or marshes within the area described by proclamation, except on public roads or highways or on well-defined private roads. Further, it shall be unlawful for any person to carry on any nonessential activities during such periods in the area affected.

(2) The Commissioner of Agriculture, upon the advice of the director of the Division of Forestry, will, with the consent of the chairman of the board of county commissioners of the affected county or counties, advise the Governor when forests, grass, woods, wild lands, fields, or marshes in any county, counties, or area within a county of this state, because of prolonged emergency drought conditions, become so dry or parched as to create an extraordinary fire hazard endangering life or property. The Governor may by proclamation declare an extraordinary fire hazard to exist and describe the general boundaries of the area affected.

(3) Any proclamation promulgated by the Governor under authority of this section shall be effective immediately upon filing same with the Department of State and shall remain in effect until, when conditions warrant, an order of revocation of proclamation is made by the Governor and filed with the Department of State.

(4) Any person violating any of the provisions of this section shall be punished as for a misdemeanor as provided by s. 590.14.

**History.**—s. 1, ch. 71-293; s. 1, ch. 75-264.

**590.09 Setting fire on rights-of-way.**—It is unlawful for any person to set or cause to be set willfully or carelessly a fire within the confines of the rights-of-way of any public road, state road, railroad, or in any other place and allow it to escape onto and burn over any adjoining land.

**History.**—s. 10, ch. 17029, 1935; CGL 1936 Supp. 4151(10OO).

**590.091 Designation of railroad rights-of-way as fire hazard areas.—**

(1) The Division of Forestry, with the concurrence of the governing body of each affected county or city, is authorized to annually designate, on or before October 1, those railroad rights-of-way in this state which are known fire hazard areas.

(2) In addition to the requirements of subpart B of part 213, Chapter II, Title 49, Code of Federal Regulations, it shall be the duty of all railroad companies operating in this state to maintain their rights-of-way designated as provided in subsection (1), as known high fire hazard areas, in an approved condition as shall be prescribed by rule of the division and to provide adequate firebreaks where needed, so as to prevent fire from igniting or spreading from rights-of-way to adjacent property.

**History.**—s. 1, ch. 78-158.

**590.10 Disposing of lighted cigars, etc.**—It is unlawful for any person to throw or drop from an automobile or vehicle, or otherwise, a lighted match, cigarette, cigar, ashes, or other flaming or glowing substance, or any substance or thing which may or does cause a forest, grass, or woods fire.

**History.**—s. 11, ch. 17029, 1935; CGL 1936 Supp. 4151(10PP).

**590.11 Campfires.**—It is unlawful for any individual or group of individuals to build a warming or campfire and leave same unextinguished.

**History.**—s. 12, ch. 17029, 1935; CGL 1936 Supp. 4151(10QQ).

**590.12 Procedure to lawfully burn land.**—It is unlawful for any person, either willfully or carelessly, to burn or cause to be burned, or to set fire to or cause fire to be set to, any forest, grass, woods, wild lands, marshes, or vegetative land clearing debris owned or controlled by such person without first obtaining authorization from the Division of Forestry and giving notice to all resident owners, managers or tenants of lands adjoining and surrounding the area to be burned, said notice to be given in the presence of at least one witness or in writing, not less than 1 or more than 10 days prior to such burning; or to fail to take reasonable precaution against the spreading of fire to other lands by providing adequate fire lines, manpower and firefighting equipment for the control of such fire, or to watch over said fire until it is extinguished, or to permit fire to escape to adjoining lands; provided, however, that no notice shall be required to be given of the setting of fire in a forest protection district where written permission to set such fire has been obtained from a duly appointed fire warden.

**History.**—s. 9, ch. 17029, 1935; CGL 1936 Supp. 4151(10NN); s. 1, ch. 76-136.

**590.13 Civil liability.**—Any person violating any of the provisions of this chapter shall be liable for all damages caused by such violation, which damages shall be recoverable in any court of competent jurisdiction. The civil liability shall obtain whether there be criminal prosecution and conviction or not.

**History.**—s. 17, ch. 17029, 1935; CGL 1936 Supp. 4151(10UU).

**590.14 Penalties.—**

(1) Whoever willfully or intentionally violates any of the provisions of this chapter shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) Whoever carelessly violates any of the provisions of this chapter shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(3) The penalties herein provided shall extend to both the actual violator and the person or persons, firm, or corporation causing, directing, or permitting such violation.

**History.**—s. 15, ch. 17029, 1935; CGL 1936 Supp. 7404(2); s. 1, ch. 20898, 1941; s. 2, ch. 26915, 1951; s. 615, ch. 71-136.

**590.15 Burden of proof.**—In any prosecution or civil action brought under the provisions of this chapter it shall not be necessary for the state or plaintiff to allege and prove absence of the right or authority of the defendant to set or cause to be set the fire, but such right and authority shall be a matter of affirmative defense to be alleged and proved by the defendant.

**History.**—s. 13, ch. 17029, 1935; CGL 1936 Supp. 4151(10RR).

**590.16 Rewards.**—The division, in its discretion, may offer and pay rewards for information leading to the arrest and conviction of any person violating any of the provisions of this chapter.

**History.**—s. 16, ch. 17029, 1935; CGL 1936 Supp. 4151(10TT); ss. 14, 35, ch. 69-106.

**590.25 Penalty for preventing or obstructing extinguishment of woods fires.**—Whoever shall interfere with, obstruct or commit any act aimed to obstruct the extinguishment of forest fires by the employees of the Division of Forestry or any other person engaged in the extinguishment of a woods fire, or who injures or destroys any equipment being used for such purpose, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 1, ch. 26833, 1951; ss. 14, 35, ch. 69-106; s. 616, ch. 71-136.

**590.26 Liability for costs of suppressing fires.**—Whoever willfully or carelessly shall cause an unlawful forest, grass, or woods fire shall, in addition to all other penalties provided by law, be liable for payment of all reasonable costs and expenses incurred in suppressing same. Said costs and expenses shall be payable to the Division of Forestry. When such costs and expenses are not paid in a reasonable time after demand, it shall be the duty of said division to take proper legal proceedings for the collection thereof. The liability for costs of suppression shall obtain whether there be criminal prosecution or not and the liability shall extend to the person or persons, firm, or corporation causing, directing, or permitting such activity as well as to the actual violator.

**History.**—s. 2, ch. 26833, 1951; s. 1, ch. 63-207; ss. 14, 35, ch. 69-106.

**590.27 Penalty for mutilating or destroying state forestry or fire control signs and posters.**—Whoever intentionally breaks down, mutilates, removes, or destroys any fire control or forestry sign or poster of the Division of Forestry erected in the ad-

ministration of its lawful duties and authorities shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

*History.*—s. 3, ch. 26833, 1951; ss. 14, 35, ch. 69-106; s. 617, ch. 71-136.

**590.28 Willful, malicious or intentional burning of lands.—**

(1) Whoever willfully, maliciously, or intentionally burns, sets fire to, or causes to be burned or any fire to be set to, any forest, grass, or woodlands not owned by, or in the lawful possession of, the person setting such fire or burning such lands or causing such fire to be set or lands to be burned shall, upon conviction thereof, be deemed guilty of a felony and punished as provided in s. 590.30.

(2) The terms "willful," "malicious," and "intentional" as used in this section mean not merely gross negligence or disregard for the rights of others and not merely general criminal intent, but a specific intent to damage or destroy public property or the property of another, such intent being engendered by malice or spite or by the hope of material gain or employment to be derived either directly or indirectly.

*History.*—s. 1, ch. 29919, 1955.

**590.29 Illegal possession of incendiary device.—**

(1) Whoever, being outside the corporate limits of any municipality, has in his possession any incendiary device as defined by subsection (3) with the intent to use such device for the purpose of burning or setting fire to any forest, grass, or woodlands, which forest, grass, or woodlands such person possessing such device is not the owner of, nor in possession of lawfully, as under a lease, shall, upon conviction thereof, be deemed guilty of a felony and punished as provided in s. 590.30.

(2) The possession of any incendiary device as defined by subsection (3) outside the corporate limits of any municipality shall be prima facie evidence of the intent of the person possessing such device to use such device for the purpose of burning or setting fire to forest, grass, or woodlands which forest, grass, or woodlands such person possessing such device is not the owner of, nor in possession of lawfully, as under a lease.

(3) The term "incendiary device" as used in this section is included but not limited to any "slow match" which is any device contrived to accomplish the delayed ignition of a match or matches or other inflammable material by the use of a cigarette, rope, or candle to which such match or matches are attached, or a magnifying glass so focused as to intensify heat on inflammable material and thus cause a fire to start at a subsequent time, and any chemicals or chemically treated paper or material, or other combustible material so arranged or designed as to make possible its use as a delayed firing device.

*History.*—s. 1, ch. 29919, 1955.

**590.30 Penalties for violating ss. 590.28 and 590.29.—**

(1) Whoever violates any of the provisions of s. 590.28 or s. 590.29 or both such sections of this chapter shall be guilty of a felony of the third degree,

punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) Neither the provisions of s. 590.14 nor the penalties provided thereby shall apply to violations of the provisions of s. 590.28 or s. 590.29 or both such ss. 590.28 and 590.29, but such violations shall be punished by the penalties provided in s. 590.30 only.

*History.*—s. 1, ch. 29919, 1955; s. 618, ch. 71-136.

**590.31 Southeastern Interstate Forest Fire Protection Compact.**—The Governor on behalf of this state is hereby authorized to execute a compact, in substantially the following form, with any one or more of the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia, and the Legislature hereby signifies in advance its approval and ratification of such compact:

**SOUTHEASTERN INTERSTATE FOREST  
FIRE PROTECTION COMPACT**

**ARTICLE I**

The purpose of this compact is to promote effective prevention and control of forest fires in the southeastern region of the United States by the development of integrated forest fire plans, by the maintenance of adequate forest firefighting services by the member states, by providing for mutual aid in fighting forest fires among the compacting states of the region and with states which are party to other regional forest fire protection compacts or agreements, and for more adequate forest protection.

**ARTICLE II**

This compact shall become operative immediately, as to those states ratifying it whenever any two or more of the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia, which are contiguous have ratified it and congress has given consent thereto. Any state not mentioned in this article which is contiguous with any member state may become a party to this compact, subject to approval by the legislature of each of the member states.

**ARTICLE III**

In each state, the state forester or officer holding the equivalent position who is responsible for forest fire control shall act as compact administrator for that state and shall consult with like officials of the other member states and shall implement cooperation between such states in forest fire prevention and control.

The compact administrators of the member states shall coordinate the services of the member states and provide administrative integration in carrying out the purposes of this compact.

There shall be established an advisory committee of legislators, forestry commission representatives, and forestry or forest products industries representatives which shall meet from time to time with the compact administrators. Each member state shall name one member of the senate and one member of the house of representatives who shall be designated by that state's commission on interstate cooperation,



or if said commission cannot constitutionally designate the said members, they shall be designated in accordance with laws of that state; and the governor of each member state shall appoint two representatives, one of whom shall be associated with forestry or forest products industries to comprise the membership of the advisory committee. Action shall be taken by a majority of the compacting states, and each state shall be entitled to one vote.

The compact administrators shall formulate and, in accordance with need, from time to time, revise a regional forest fire plan for the member states.

It shall be the duty of each member state to formulate and put in effect a forest fire plan for that state and take such measures as may be necessary to integrate such forest fire plan with the regional forest fire plan formulated by the compact administrators.

#### ARTICLE IV

Whenever the state forest fire control agency of a member state requests aid from the state forest fire control agency of any other member state in combating, controlling or preventing forest fires, it shall be the duty of the state forest fire control agency of that state to render all possible aid to the requesting agency which is consonant with the maintenance of protection at home.

#### ARTICLE V

Whenever the forces of any member state are rendering outside aid pursuant to the request of another member state under this compact, the employees of such state shall, under the direction of the officers of the state to which they are rendering aid, have the same powers (except the power of arrest), duties, rights, privileges and immunities as comparable employees of the state to which they are rendering aid.

No member state or its officers or employees rendering outside aid pursuant to this compact shall be liable on account of any act or omission on the part of such forces while so engaged, or on account of the maintenance, or use of any equipment or supplies in connection therewith; provided, that nothing herein shall be construed as relieving any person from liability for his own negligent act or omission or as imposing liability for such negligent act or omission upon any state.

All liability, except as otherwise provided hereinafter, that may arise either under the laws of the requesting state or under the laws of the aiding state or under the laws of a third state on account of or in connection with a request for aid, shall be assumed and borne by the requesting state.

Any member state rendering outside aid pursuant to this compact shall be reimbursed by the member state receiving such aid for any loss or damage to, or expense incurred in the operation of any equipment answering a request for aid, and for the cost of all materials, transportation, wages, salaries, and subsistence of employees and maintenance of equipment incurred in connection with such request; provided, that nothing herein contained shall prevent any assisting member state from assuming such loss, damage, expense or other cost or from loaning such equipment or from donating such service to the receiving member state without charge or cost.

Each member state shall provide for the payment of compensation and death benefits to injured employees and the representatives of deceased employees in case employees sustain injuries or are killed while rendering outside aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within such state.

For the purposes of this compact the term employee shall include any volunteer or auxiliary legally included within the forest fire fighting forces of the aiding state under the laws thereof.

The compact administrators shall formulate procedures for claims and reimbursement under the provisions of this article, in accordance with the laws of the member states.

#### ARTICLE VI

Ratification of this compact shall not be construed to affect any existing statute so as to authorize or permit curtailment or diminution of the forest fire-fighting forces, equipment, services or facilities of any member state.

Nothing in this compact shall be construed to limit or restrict the powers of any state ratifying the same to provide for the prevention, control and extinguishment of forest fires, or to prohibit the enactment or enforcement of state laws, rules or regulations intended to aid in such prevention, control and extinguishment in such state.

Nothing in this compact shall be construed to affect any existing or future cooperative relationship or arrangement between any federal agency and a member state or states.

#### ARTICLE VII

The compact administrators may request the United States Forest Service to act as a research and coordinating agency of the Southeastern Interstate Forest Fire Protection Compact in cooperation with the appropriate agencies in each state, and the United States Forest Service may accept responsibility for preparing and presenting to the compact administrators its recommendations with respect to the regional fire plan. Representatives of any federal agency engaged in forest fire prevention and control may attend meetings of the compact administrators.

#### ARTICLE VIII

The provisions of articles IV and V of this compact which relate to mutual aid in combating, controlling or preventing forest fires shall be operative as between any state party to this compact and any other state which is party to a regional forest fire protection compact in another region; provided, that the legislature of such other state shall have given its assent to such mutual aid provisions of this compact.

#### ARTICLE IX

This compact shall continue in force and remain binding on each state ratifying it until the legislature or the governor of such state, as the laws of such state shall provide, takes action to withdraw therefrom. Such action shall not be effective until 6 months after notice thereof has been sent by the chief executive of the state desiring to withdraw to

the chief executives of all states then parties to the compact.

History.—s. 1, ch. 29635, 1955.

**590.32 Same; effective date; ratification.**—When the Governor shall have executed the compact on behalf of this state and shall have caused a verified copy thereof to be filed with the Department of State and when the compact shall have been ratified by one or more of the states named in s. 590.31, then the compact shall become operative and effective as between this state and such other state or states. The governor is hereby authorized and directed to take such action as may be necessary to complete the exchange of official documents as between this state and any other state ratifying the compact.

History.—s. 2, ch. 29635, 1955; ss. 10, 35, ch. 69-106.

**590.33 State compact administrator; compact advisory committee.**—In pursuance of Art. III of the compact, the director of the Division of Forestry shall act as compact administrator for Florida of the Southeastern Interstate Forest Fire Protection Compact during his term of office as director, and his successor as compact administrator shall be his successor as director of the Division of Forestry. As compact administrator he shall be an ex officio member of the advisory committee of the Southeastern Interstate Forest Fire Protection Compact, and chairman ex officio of the Florida members of the advisory committee. There shall be four members of the Southeastern Interstate Forest Fire Protection Compact Advisory Committee from Florida. Two of the members from Florida shall be members of the Legislature of Florida, one from the Senate and one from the House of Representatives, designated by the Florida Commission on Interstate Cooperation, and the terms of any such members shall terminate at the time they cease to hold legislative office, and their successors as members shall be named in like manner. The Governor shall appoint the other two members from Florida, one of whom shall be associated with forestry or forest products industries. The terms of such members shall be 3 years and such members shall hold office until their respective successors shall be appointed and qualified. Vacancies occurring in the office of such members from any reason or cause shall be filled by appointment by the Governor for the unexpired term. The director of the Division of Forestry as compact administrator for Florida may delegate, from time to time, to any deputy or other subordinate in his department or office, the power to be present and participate, including voting as his representative or substitute at any meeting of or hearing by or other proceeding of the compact administrators or of the advisory committee. The terms of each of the initial four memberships, whether appointed at said time or not, shall begin upon the date upon which the compact shall become effective in accordance with Art. II of said compact. Any member of the advisory committee may be removed from office by the Governor upon charges and after a hearing.

History.—s. 3, ch. 29635, 1955; ss. 14, 35, ch. 69-106.

**590.34 Same; powers; other state agencies, etc.**—There is hereby granted to the director of the Division of Forestry, as compact administrator and chairman ex officio of the Florida members of the advisory committee, and to the members from Florida of the advisory committee all the powers provided for in the compact and all the powers necessary or incidental to the carrying out of the compact in every particular. All officers of Florida are hereby authorized and directed to do all things falling within their respective provinces and jurisdiction necessary or incidental to the carrying out of the compact in every particular; it being hereby declared to be the policy of the state to perform and carry out the said compact and to accomplish the purposes thereof. All officers, bureaus, departments, and persons of and in the state government or administration of the state are hereby authorized and directed at convenient times and upon request of the compact administrator or of the advisory committee to furnish information data relating to the purposes of the compact possessed by them or any of them to the compact administrator of the advisory committee. They are further authorized to aid the compact administrator or the advisory committee by loan of personnel, equipment, or other means in carrying out the purposes of the compact.

History.—s. 4, ch. 29635, 1955; ss. 14, 35, ch. 69-106.

**590.35 Construction ss. 590.31-590.34.**—Any powers herein granted to the division shall be regarded as in aid of and supplemental to and in no case a limitation upon any of the powers vested in the division by other laws of Florida or by the laws of the States of Alabama, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia or by the Congress or the terms of the compact.

History.—s. 5, ch. 29635, 1955; ss. 14, 35, ch. 69-106.

**590.36 State and county fire prevention councils, appointment by division.**—

(1) The Division of Forestry is authorized to appoint a forest fire prevention council, consisting of not less than two members of each forest service administrative district, to be known as the Florida Forest Fire Prevention Council.

(2) The Division of Forestry is authorized to appoint a forest fire prevention council in each of the counties of the state, to be known as the (name of county) Forest Fire Prevention Council.

(3) A member of the Florida Forest Fire Prevention Council may also be a member of the forest fire prevention council of the county of his residence.

History.—ss. 1, 2, ch. 57-54; ss. 3, 14, 35, ch. 69-106.

**590.37 Same; term of office.**—

(1) The Florida Forest Fire Prevention Council shall be appointed by the Division of Forestry to serve for a period of 2 years, or until its successors are appointed and qualified; provided, however, if a member of the Florida Forest Fire Prevention Council shall move his residence from the forest service administrative district from which he was appointed his position shall become vacant immediately, and the Division of Forestry may fill the vacancy for the unexpired term.

(2) The forest fire prevention council of the counties, as provided in s. 590.36(2) shall consist of not less than five members. The members of these councils shall be appointed for 2 years, and shall serve until their successors are duly appointed and qualified; provided, however, if a member moves his residence from the county from which he was appointed his position shall become vacant immediately and the Division of Forestry may fill the vacancy for the unexpired term.

**History.**—s. 3, ch. 57-54; ss. 3, 14, 35, ch. 69-106.

**590.38 Duties of state council.**—The duties of the Florida Forest Fire Prevention Council shall be:

(1) To assist the Division of Forestry, in implementing the policies and programs of the Division of Forestry.

(2) To coordinate the activities of the councils in the several counties of the state appointed as provided by s. 590.36(2).

(3) To assist the Division of Forestry in forest fire prevention, law enforcement in matters related to forestry, and in other forestry activities when called upon to do so by the Division of Forestry.

**History.**—s. 4, ch. 57-54; ss. 3, 14, 35, ch. 69-106.

**590.39 Duties of county councils.**—The duties of the councils appointed as set out in s. 590.36(2), located within the several counties, shall be to assist the Division of Forestry in implementing the policies and programs of the Division of Forestry in their respective counties; to assist the Division of Forestry and the Florida Fire Prevention Council in forest fire prevention and law enforcement activities when called upon to do so by the Division of Forestry.

**History.**—s. 5, ch. 57-54; ss. 3, 14, 35, ch. 69-106.

**590.40 Compensation and expenses of councils.**—The members of the councils shall serve with-

out compensation. The Division of Forestry may designate one of its employees to serve as secretary to each of the councils. The Division of Forestry may authorize the expenditure of funds of the division for incidental operating expenses of each council, when needed.

**History.**—s. 6, ch. 57-54; ss. 3, 14, 35, ch. 69-106.

**590.41 Council organization.**—Each council shall elect, annually, one of its members chairman and two other members to serve with the chairman as an executive council.

**History.**—s. 7, ch. 57-54; ss. 3, 35, ch. 69-106.

**590.42 Federally funded fire protection assistance programs.**—

(1) The Division of Forestry of the Department of Agriculture and Consumer Services may enter into agreements with the Secretary of Agriculture of the United States in order to participate in the Federal Rural Community Fire Protection Program authorized by Pub. L. No. 92-419, whereby the Federal Government provides financial assistance to the states on a matching basis of up to 50 percent of expenditures for such purposes.

(2) With respect to the formulation of projects relating to fire protection of livestock, wildlife, crops, pastures, orchards, rangeland, woodland, farmsteads, or other improvements, and other values in rural areas, for which such federal matching funds are available, any participating county or fire department may contribute to the nonfederal matching share and may also contribute such other nonfederal cooperation as may be deemed necessary by the Division of Forestry.

(3) The provisions of this section are supplementary to the provisions of s. 125.27.

**History.**—s. 1, ch. 73-243.



## CHAPTER 591

## FOREST DEVELOPMENT

- 591.15 Community forests; short title.
- 591.16 Community forests; purposes.
- 591.17 Community forests; definitions.
- 591.18 Community forests; purchase or establishment.
- 591.19 Community forests; tax delinquent lands.
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- 591.23 Community forests; revenues, use.
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- 591.26 Community forests; sale; election; etc.
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- 591.29 Same; form of designation and dedication.
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- 591.31 Same; designated trees not transferred by deed, lease, etc.
- 591.32 Same; duty of landowner.
- 591.33 Same; penalties for cutting, destroying, etc., trees.
- 591.34 Same; cutting trees, procedure; Department of Agriculture and Consumer Services, duty.

**591.15 Community forests; short title.**—The short title for ss. 591.16-591.26 shall be the "Florida Community Forest law."

**History.**—s. 2, ch. 20902, 1941.

**591.16 Community forests; purposes.**—The general purposes of this law are:

- (1) To encourage counties, cities, towns, and school districts to utilize idle lands for productive forest purposes.
- (2) To encourage reduction of taxation through producing income from wise use of such lands.
- (3) To encourage development and make available, in community forests, areas having desirable recreational features.
- (4) To encourage forestry education by establishing permanent forests for use of vocational agriculture departments, schools, and Boy and Girl Scout troops.

**History.**—s. 1, ch. 20902, 1941.

**591.17 Community forests; definitions.**—The terms hereinafter used, unless the text clearly indicates a different meaning, shall be as follows:

- (1) The term "governing board" shall mean county commissioners, city commissioners, town councils, school boards, or any other governing body of counties, cities, towns, or school districts.
- (2) The term "community forest" shall mean any forest area established under this law by a county, city, town, or school district.
- (3) The term "forestry committee" shall mean the appointed committee for directing the activities of community forests.
- (4) The term "counties, cities, towns" shall mean

any recognized political subdivision of the state government.

(5) The term "school district" shall mean individual school districts of a county or vocational agricultural departments located in these districts.

(6) The term "division" shall mean the Division of Forestry of the Department of Agriculture and Consumer Services.

(7) The term "forest products" shall mean any product produced from trees.

(8) The term "contiguous sale" shall mean sale of like forest products from adjoining areas that normally would be in the same sale area as determined by the forester on the forestry committee.

**History.**—s. 3, ch. 20902, 1941; ss. 14, 35, ch. 69-106; s. 1, ch. 69-300; s. 253, ch. 71-377; s. 205, ch. 77-104.

**591.18 Community forests; purchase or establishment.**—All counties, cities, towns, or school districts, through their governing boards, are hereby empowered to establish, from lands owned by such county, city, town, or school district in fee simple, or to acquire by purchase or gift, lands at present covered with forest or tree growth, or suitable for the growth of trees, and to administer the same under the direction of the Division of Forestry, in accordance with the practice and principles of scientific forestry, for the benefit of the said counties, cities, towns, or school districts. Such tracts may be of any size suitable for the purpose but must be located within the county embracing the county, city, town, or school district, provided that it shall be requisite for the governing board availing itself of the provisions of this law to submit to the Division of Forestry, and secure its approval of the area and location of any lands proposed to be acquired or used for the purposes of county, city, town, or school district forests.

**History.**—s. 4, ch. 20902, 1941; ss. 14, 35, ch. 69-106.

**591.19 Community forests; tax delinquent lands.**—The Department of Revenue, the Board of Trustees of the Internal Improvement Trust Fund, counties, cities, towns, school districts, or any other public agency holding fee simple or tax certificate lands are hereby empowered to, and may, upon application to them, transfer title of fee simple lands not in other public use to any county, city, town, or school district for forest purposes as described under this law, provided such lands are approved by the Division of Forestry for this purpose.

**History.**—s. 5, ch. 20902, 1941; ss. 14, 21, 27, 35, ch. 69-106; s. 155, ch. 71-355.

**591.20 Community forests; forestry committee.**—The governing board of any county, city, town, or school district desiring to establish community forests after enactment of this law shall appoint a forestry committee, consisting of three members, as follows: One member of governing board, one member from the Division of Forestry to be designated by the division, and one taxpayer of the county, city, town, or school district not a member of the governing board. The first two members of such committee

shall hold office until replaced in their respective official positions. The third member shall hold office for 3 years. Any vacancy shall be filled at the first regular session of the governing board after the vacancy occurs. The president of the committee shall be selected by the three members for a 1-year term at their first regular meeting. The representative of the Division of Forestry shall not serve as an officer of the committee nor be responsible for making reports. All members shall serve without compensation, but shall be reimbursed for traveling expenses as provided in s. 112.061.

**History.**—s. 6, ch. 20902, 1941; s. 23, ch. 57-1; s. 19, ch. 63-400; ss. 14, 35, ch. 69-106.

#### **591.21 Community forests; duties of forestry committee.—**

(1) It shall be the duty of the forestry committee to advise the governing board in acquiring, developing and managing the forest and in making contracts, agreements, and permits for and with the forest, and, if desirable, in hiring a qualified forester and laborers and in making rules and regulations for operating the forest.

(2) For any sale in excess of \$100, the governing body shall ask for and receive open competitive bids and purchase from the lowest and best bidder. For sale of forest products in excess of \$500 for the total contract, the sale shall be advertised in one issue each of 2 consecutive weeks in a county newspaper of general circulation, and the highest and best bid accepted. Contiguous sales shall not be made.

**History.**—s. 7, ch. 20902, 1941.

#### **591.22 Community forests; appropriations.—**

Counties, cities, towns, or school districts in which forestry committees have been appointed may appropriate money from available funds to be used by said committee to carry out the purposes of this law. The forestry committee shall each year make a budget of recommendation for acquisition and operation and management of the forest for approval by the governing board.

**History.**—s. 8, ch. 20902, 1941.

#### **591.23 Community forests; revenues, use.—**

Revenue from the forests shall be credited to the general fund of counties, cities, towns, or school districts; provided, however, revenues from lands under land use agreements with youth organizations such as chapters of the Future Farmers of America, shall be disposed of subject to the terms of such agreements. When the revenue from any forest other than these under such land use agreements, exceeds the necessary expenses of the forest, including desirable acquisition, the excess will be used by the governing board for regular purposes and in reduction of taxation.

**History.**—s. 9, ch. 20902, 1941; s. 1, ch. 57-790.

#### **591.24 Community forests; fiscal reports.—**

A fiscal year report of expenditures, income, sales, development and management shall be made by the forestry committee to the governing board of the

county, city, town, or school district, and a copy sent to the Division of Forestry. All reports shall be audited by the regular auditor of the county, city, town, or school district.

**History.**—s. 10, ch. 20902, 1941; ss. 14, 35, ch. 69-106.

**591.25 Community forests; fire protection, etc.**—All lands entered or acquired under the provisions of this law shall be protected at all times from wild fire and shall be kept and maintained as a permanent public forest except as hereinafter provided. The timber growing thereon shall be cut in accordance with forestry methods approved by the Division of Forestry and in such a manner as to perpetuate succeeding stands of trees. All such forest lands shall be open to the use of the public for recreational purposes so far as such recreational purposes do not interfere with, or prevent the use of, such lands to the best advantage as a public forest as determined by the forestry committee.

**History.**—s. 11, ch. 20902, 1941; ss. 14, 35, ch. 69-106.

#### **591.26 Community forests; sale; election; etc.**

—If it becomes desirable to sell any community forest or portion thereof as determined jointly by the governing board and forestry committee, it shall be put to a vote of the people at any regular election and a majority of those voting must approve the action. Any funds received from such sale shall be deposited in the general fund of the county, city, town, or school district making the sale and used in consolidating existing community forests or in establishing another community forest.

**History.**—s. 12, ch. 20902, 1941.

**591.27 Designating and marking seed trees; definitions.**—Wherever the following words are used in ss. 591.28-591.34, they shall be defined as follows:

(1) "Owner." The person, and in the event there is more than one, all those in whom the fee simple title to real estate stands of record.

(2) "Real estate." All lands located in this state, including the trees standing or growing thereon.

(3) "Seed trees." All standing or growing trees marked with the letters "S. T."

(4) "Person." The word "person" wherever it appears in said sections shall include persons, firms and corporations.

**History.**—Preamble, ch. 21940, 1943; s. 10, ch. 26484, 1951.

**Note.**—Former s. 590.17.

**591.28 Same; designation and dedication of trees.**—The owner of real estate shall have the right to cause to be designated and marked at the rate of not less than three or more than eight trees per acre as seed trees and such designating and marking shall by law operate as a dedication, transfer and conveyance of the legal title to such trees to the Department of Agriculture and Consumer Services of the state without further words or evidence of transfer of title.

**History.**—s. 1, ch. 21940, 1943; ss. 14, 35, ch. 69-106.

Note.—Former s. 590.18.

**591.29 Same; form of designation and dedication.—**

(1) Seed trees shall be designated as such by filling out and signing an instrument by the owner in substantially the following form:

**CONVEYANCE AND/OR DEDICATION OF STANDING TIMBER TO DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES OF FLORIDA.**

State of Florida,

County of .....

Owner(s) of Land .....

Description of Land .....

.....

Approximate number  
of seed trees designated .....

This ..... day of ..... 19.....

Signed: (Owner).....

(2) Upon the filling out and execution of said instrument and upon same being properly acknowledged in the same manner as is now provided by law for the acknowledgment of deeds, said instrument shall be recorded in the office of the clerk of the circuit court of the county in which said real estate is located and in the record where deeds are recorded.

History.—s. 2, ch. 21940, 1943; ss. 14, 35, ch. 69-106.  
Note.—Former s. 590.19.

**591.30 Same; Division of Forestry; duty.—**It shall be the duty of the Division of Forestry to cause to be made a branding hammer and a sufficient number of reproductions thereof to accomplish the purpose of this law, which said hammers shall bear the letters "S. T.," which letters shall mean "seed tree," and shall be as distinctively constructed as possible. Said branding hammers shall at all times remain in the custody and possession of said division or its duly authorized representatives. It shall be the duty of said division, upon the application of any owner of real estate to the effect that such owner is desirous of marking and designating trees on his real estate as seed trees, to direct as soon as is convenient and practical an employee or representative of said division, trained in the field of forestry, to contact such owner and mark and designate seed trees in accordance with the rules and practices of good forestry. Each of said seed trees shall be marked as such by branding on the trunk the letters "S. T." at a point not more than 4½ feet from the ground and again at a point not more than 6 inches from the ground with the branding hammer or reproduction thereof hereinbefore described. Immediately upon said trees being so marked title thereto shall vest in the Department of Agriculture and Consumer Services of Florida as aforesaid.

History.—s. 3, ch. 21940, 1943; ss. 14, 35, ch. 69-106.  
Note.—Former s. 590.20.

**591.31 Same; designated trees not transferred by deed, lease, etc.—**All standing trees marked with the letters "S. T." as provided in this law shall by operation of law be excluded from any subsequent sale, deed, conveyance, lease or transfer of title to such trees or the real estate on which same are located.

History.—s. 4, ch. 21940, 1943.  
Note.—Former s. 590.21.

**591.32 Same; duty of landowner.—**It shall be the duty of every owner of real estate who has designated or marked seed trees thereon in accordance with the terms of this law, to expressly exclude said seed trees from any deed of conveyance or transfer thereof; provided, however, the failure so to do shall not pass title to said seed trees to the purchaser or grantee; provided, further, however, should the owner fail to expressly exclude said trees from any deed of conveyance or other evidence of transfer of title the grantee or transferee shall have the same remedy against the owner as is now provided by law.

History.—s. 5, ch. 21940, 1943.  
Note.—Former s. 590.22.

**591.33 Same; penalties for cutting, destroying, etc., trees.—**Any person, firm or corporation who shall willfully or carelessly cut, destroy, burn, or damage any trees marked with the letters "S. T." without obtaining permission of the Department of Agriculture and Consumer Services shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. The cutting of each seed tree shall constitute a separate offense under this section.

History.—s. 6, ch. 21940, 1943; ss. 14, 35, ch. 69-106; s. 619, ch. 71-136.  
Note.—Former s. 590.23.

**591.34 Same; cutting trees, procedure; Department of Agriculture and Consumer Services, duty.—**Permission may be obtained from the Department of Agriculture and Consumer Services to cut seed trees by any owner of real estate on which same have been marked in accordance with the provisions of this law, upon filing with said department an affidavit that he is the owner and that all timber and trees on his land have been cut except seed trees and shade trees and that it is the intent of such owner to cultivate the land on which the seed trees sought to be cut are located, or that said seed trees sought to be cut are over mature, and if the said department is satisfied as to the truth of the contents of said affidavit it may issue a certificate giving such owner permission to cut said seed trees and said certificate shall be made a permanent record of the office of said department and a certified copy thereof may be obtained by the owner upon request. Upon the issuance of said certificate the owner shall have the right to cut the seed trees on the real estate designated in the certificate.

History.—s. 7, ch. 21940, 1943; ss. 14, 35, ch. 69-106.  
Note.—Former s. 590.24.



## CHAPTER 600

## CITRUS MARKETING

- 600.011 Short title.
- 600.021 Declaration of state policy.
- 600.031 Purposes of law.
- 600.041 Definitions.
- 600.051 Marketing agreements; powers of department.

**600.011 Short title.**—This act may be known and cited as "Florida Citrus Marketing Act."

*History.*—s. 6, ch. 61-88.

**600.021 Declaration of state policy.**—This act is passed:

(1) In the exercise of the police power of this state to promote and protect the public health, peace, safety, and general welfare, and to stabilize and protect the citrus fruit industry of the state.

(2) Because the citrus fruit crop grown in Florida comprises the major agricultural crop of Florida and the marketing thereof is affected with a public interest.

(3) Because it is hereby found and declared that because of the increased and ever-increasing production of citrus fruit in Florida and elsewhere, except in years of freezes or other disasters that substantially reduce the total crop, the marketing of citrus fruit grown in Florida in excess of reasonable and normal market demands therefor, disorderly marketing of such citrus fruit, unfair methods of competition in the marketing of such citrus fruit, and the inherent inability of individual producers to develop new and larger markets for Florida grown citrus fruit result in an unreasonable and unnecessary economic waste of the agricultural wealth of this state. Such conditions and the accompanying waste jeopardize the future continued production of quality citrus fruit for the people of this and other states and areas, and prevent citrus fruit producers from obtaining a fair return from their labor, the citrus fruit which they produce, and impair the economic value of their citrus fruit groves. As a consequence, the purchasing power of such producers has been in the past, and in all likelihood will continue to be in the future, unless such conditions are remedied, low in relation to that of persons engaged in other gainful occupations within this state. Citrus fruit producers are thereby prevented from maintaining a proper and reasonable standard of living and from contributing their fair share to the support of the necessary governmental and educational functions, thus tending to unfairly increase the tax burdens of other citizens of this state.

(4) Because the conditions hereinbefore described and set forth vitally concern the health, peace, safety, and general welfare of the people of this state, it is hereby declared to be the policy of this state to aid citrus fruit producers and handlers in preventing economic waste in the production and marketing of their citrus fruit, to develop more efficient and equitable methods in the marketing of cit-

rus fruit, and to aid citrus fruit producers and handlers in restoring and maintaining their purchasing power at a more adequate, equitable and reasonable level.

*History.*—s. 1, ch. 61-88.

**600.031 Purposes of law.**—The purposes of this act are:

(1) To enable citrus fruit producers of this state, with the aid and under the direction and control of the state, more effectively to correlate the production and marketing of their citrus fruit with market demands therefor.

(2) To establish and maintain orderly marketing of citrus fruit grown in Florida.

(3) To provide methods and means for the development of new and larger markets for citrus fruit grown in Florida.

(4) To eliminate or reduce economic waste in the production, handling, and marketing of citrus fruit grown in Florida.

(5) To restore and maintain adequate purchasing power for the citrus fruit producers of Florida.

(6) To conserve the agricultural wealth of the state.

*History.*—s. 2, ch. 61-88.

**600.041 Definitions.**—As used in this act the following terms have the following meaning:

(1) "Department" means the Department of Agriculture and Consumer Services.

(2) "Person" means an individual, partnership, corporation, association, business trust, legal representative, or any organized group of individuals.

(3) "Citrus fruit" or "fruit" means and includes grapefruit, oranges, tangerines, Temples, tangelos, and murcott honey oranges grown in Florida as defined in and by s. 601.03, and when regulated by the Florida Citrus Commission of the Department of Citrus, all other citrus fruit grown in Florida, including lemons, sour oranges, limes, and citrus hybrids.

(4) "Variety" or "varieties" means any one or all of the following classifications or groupings of citrus fruit:

(a) Early and mid-season oranges, including Temple oranges, navel types, and other varieties commonly called "round oranges," except Valencias, Lue Gim Gongs, and similar late maturing oranges of the Valencia type;

(b) Valencias, late Valencias, Lue Gim Gongs, and similar late maturing oranges of the Valencia type;

(c) Marsh and other seedless grapefruit, including pinks and reds;

(d) Duncan and other seeded grapefruit, including pinks and reds;

(e) Tangerines;

(f) Tangelos;

(g) Persian, Key, and Tahiti limes;

(h) Murcott honey oranges; and

(i) Lemons.

(5) "Producer" means any person growing or producing citrus fruit within this state for market.

(6) "Handler" means any person engaged within this state as a distributor in the business of handling and distributing citrus fruit in fresh fruit form in the primary channel of trade, whether such citrus fruit be purchased from the producer thereof or handled for his account.

(7) "Distributor" means any person who engages in the operation of packing, selling, marketing, handling, and distributing, in the primary channel of trade, citrus fruit in fresh fruit form in commercial quantities (other than express or gift fruit shippers) which he has produced, or purchased or acquired from a producer, or which he is marketing on behalf of a producer, but shall include only such persons who own and operate or have available to them facilities for packing the fresh citrus fruit handled by them; provided however, that any common marketing agency handling the sales of fresh citrus fruit for the account of any of such persons who do not maintain their own sales force or organization shall be deemed a distributor as herein defined.

(8) "Marketing agreement" means an agreement entered into, pursuant to the provisions of this act, by and between the department and handlers and distributors engaged in the handling and distributing of citrus fruit in fresh fruit form regulating the handling of such citrus fruit.

(9) "To handle" means to engage in the business of handler and distributor as herein defined.

(10) "To distribute" means to engage in the business of a distributor as herein defined.

(11) "Standard packed box" means a unit of measure as defined in s. 601.03(34).

(12) "Shipping season" means that period of time beginning August 1 of one year and ending July 31 of the following year.

(13) Whenever and wherever the context so admits any word or term used in this act which is not herein specifically defined shall have the meaning given by the laws of Florida.

History.—s. 3, ch. 61-88; ss. 14, 29, 35, ch. 69-106; s. 255, ch. 71-377.

#### **600.051 Marketing agreements; powers of department.—**

(1) In order to effectuate the declared policy and purposes of this act, the department shall have the power to enter into, administer, and enforce marketing agreements with handlers and distributors engaged in any one or more of the citrus districts established in and by s. 601.09, in the handling and distributing of citrus fruit in fresh fruit form or any variety or varieties, grade, size, or quality thereof, regulating the handling of such citrus fruit in the way and manner and to the extent therein prescribed and agreed upon, which said marketing agreements shall be binding only upon the signatories thereto exclusively. The execution of any such marketing agreement shall in no manner affect the issuance, administration, or enforcement of any marketing order otherwise provided for by chapter 601, and any marketing agreement executed hereunder shall be ineffective to the extent that it is in conflict with any rule, regulation, marketing order, or marketing agreement under any federal law relating to the handling of citrus fruit grown in Florida.

(2) The department may issue and execute a

marketing agreement, or any amendment thereof after its issuance, if it finds and sets forth in such marketing agreement that such agreement or amendment, as the case may be, will, with respect to the citrus fruit covered thereby, tend to:

(a) Reestablish or maintain prices received by producers for citrus fruit at a level which will give to such citrus fruit a purchasing power, with respect to the articles and services which producers commonly buy, equivalent to the purchasing power of such citrus fruit in the base period. The base period shall be such prior period in which the department finds that:

1. The volume of production of citrus fruit was adequate to supply the requirements of consumers thereof; and

2. The returns to producer of citrus fruit were sufficient to provide an adequate standard of living to the citrus fruit producer and his family.

(b) Approach such equality of purchasing power at as rapid a rate as is feasible in view of the market demand for citrus fruit.

(c) Prevent the unreasonable or unnecessary waste of the wealth of the citrus fruit industry of Florida by developing new and larger markets for citrus fruit.

(d) Protect the interests of consumers of citrus fruit by exercising the powers of this act only to such extent as is necessary to establish the equality of purchasing power described in paragraph (a).

(3) In making the findings set forth above in this section, the department shall take into consideration any and all facts available to it with respect to the following economic factors:

(a) The quantity of citrus fruit available for distribution.

(b) The quantity of citrus fruit normally required by consumers.

(c) The cost of producing citrus fruit as determined by available records, statistics, and surveys.

(d) The purchasing power of consumers as indicated by reports and indices.

(e) The level of prices of similar and other commodities which compete with or are utilized as substitutes for Florida citrus fruit.

(4) Subject to the legislative restrictions and limitations set forth herein, any marketing agreement entered into between the department and signatories thereto pursuant to this act may contain any or all of the following provisions for regulating the handling or distributing of citrus fruit in fresh fruit form within this state in the primary channel of trade, but no others:

(a) Provisions for determining the existence and extent of the surplus of citrus fruit or of any variety, grade, size, or quality thereof, and providing for the control and distribution of such surplus and for equalizing the burden of such surplus elimination or control among the handlers or other distributors affected.

(b) Provisions for limiting the total quantity of citrus fruit, or of any variety, grade, size, or quality thereof, which may be distributed or otherwise handled in the primary channel of trade by any and all affected persons engaged in such distributing or handling during any specified period or periods. The to-

tal quantity of any such citrus fruit so regulated and permitted to be distributed, or otherwise handled, shall not be less than the quantity which the department finds is reasonably necessary to supply the market demands of consumers of such citrus fruit.

(c) Provisions for allotting the quantity of citrus fruit, or of any variety, grade, size, or quality thereof, which each handler signatory to such agreement may purchase or acquire from, or handle on behalf of, any and all producers thereof in the primary channel of trade during any specified period or periods, under a uniform rule applicable to all handlers so regulated based upon the current season's production or sales of such producers, or upon production or sales of such producers in such prior period as the department determines to be representative, or both, to the end that the total quantity of such citrus fruit or any variety, grade, size, or quality thereof, so purchased or handled in the primary channel of trade, shall be apportioned equitably among the producers thereof.

(d) Provisions for the establishment of surplus or reserve pools of citrus fruit, or of the representative value of such citrus fruit, or of any variety, grade, size or quality thereof, and providing for the sale or

other disposition of such surplus citrus fruit and the equitable distribution among the persons interested therein of the net returns or other consideration derived from the sale or other disposition of such citrus fruit or such distribution of such representative value of such citrus fruit.

(e) Prohibiting unfair methods of competition and unfair trade practices.

(f) Provisions for the establishment of plans or programs for advertising, merchandising, sales promotion and incentive payments, or matters connected therewith, to create new or larger markets for citrus fruit or any variety, grade, size, or quality thereof grown in the state.

(g) Provisions incidental to and not inconsistent with the terms, conditions, and provisions hereinbefore specified and necessary to effectuate the other provisions of such marketing agreement and the provisions of this act, including, but not limited to, provisions for paying the costs and expenses of administration of any such agreement, and provisions for penalties and for liquidated damages for violation of any such agreement.

**History.**—s. 4, ch. 61-88; ss. 14, 35, ch. 69-106; s. 6, Ch. 78-95.



## CHAPTER 601

## FLORIDA CITRUS CODE

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**601.01 Short title.**—This chapter may be known and cited as "The Florida Citrus Code of 1949."

*History.*—s. 1, ch. 25149, 1949.

**601.02 Purposes.**—This chapter is passed:

(1) In the exercise of the police power to protect health and welfare and to stabilize and protect the citrus industry of the state.

(2) Because the planting, growing, cultivating, spraying, pruning, and fertilizing of citrus groves and the harvesting, hauling, processing, packing, canning, and concentrating of the citrus crop produced thereon is the major agricultural enterprise of Florida and, together with the sale and distribution of said crop, affects the health, morals, and general economy of a vast number of citizens of the state who are either directly or indirectly dependent thereon for a livelihood, and said business is therefore of vast public interest.

(3) Because it is wise, necessary, and expedient to protect and enhance the quality and reputation of Florida citrus fruit and the canned and concentrated products thereof in domestic and foreign markets.

(4) To provide means whereby producers, packers, canners, and concentrators of citrus fruit and the canned and concentrated products thereof may secure prompt and efficient inspection and classification of grades of citrus fruit and the canned and concentrated products thereof at reasonable costs, it being hereby recognized that the standardization of the citrus fruit industry of Florida by the proper grading and classification of citrus fruit and the canned and concentrated products thereof by prompt and efficient inspection under competent authority is beneficial alike to producer, packer, shipper, canner, concentrator, carrier, receiver, and consumer in that it furnishes them prima facie evidence of the quality and condition of such products and informs the carrier and receiver of the quality of the products carried and received by them and assures the ultimate consumer of the quality of the products purchased.

(5) To stabilize the Florida citrus industry and to protect the public against fraud, deception, and financial loss through unscrupulous practices and haphazard methods in connection with the processing and marketing of citrus fruit and the canned or concentrated products thereof.

(6) Because said act is designed to promote the general welfare of the Florida citrus industry, which in turn will promote the general welfare and social and political economy of the state.

In the event any word, phrase, clause, sentence, paragraph, or section of this chapter is declared unconstitutional by any court of competent jurisdiction, then such declaration of such unconstitutionality shall not affect the remainder of this chapter, and the unconstitutional portion shall be considered severable, it being the intent of the Legislature that the remainder of this chapter shall continue in full force and effect.

History.—s. 2, ch. 25149, 1949; s. 1, ch. 71-77.

**601.03 Definitions.**—In construing this chapter, where the context permits the word, phrase, or term:

(1) "Additive" means any foreign substance which, when added to any citrus fruit juice, will change the amount of total soluble solids or anhydrous citric acid therein, or the color or taste thereof, or act as an artificial preservative thereof;

(2) "Agent" means any person who, on behalf of any citrus fruit dealer, negotiates the consignment, purchase, or sale of citrus fruit, or weighs citrus fruit so that the weight thereof may be used in computing the amount to be paid therefor;

(3) "Broker" means any person engaged in the business of negotiating the sale or purchase of citrus fruit for others;

(4) "Canned products" means juices, segments, or sections of citrus fruits sealed in hermetically sealed containers at a concentration of not exceeding 20 degrees Brix and sufficiently processed by heat to insure preservation of the product, and when regulated by the Department of Citrus, these same products packed in any other manner or in any other type container;

(5) "Canning plant" means any building, structure, or place where citrus fruit or the juice thereof is canned or prepared for canning at a concentration of not exceeding 20 degrees Brix for market or shipment;

(6) "Cash buyer" means any person who purchases citrus fruit in this state from the producer for the purpose of resale;

(7) "Citrus fruit" means all varieties and regulated hybrids of citrus fruit and also means processed citrus products containing 20 percent or more citrus fruit or citrus fruit juice, but, for the purposes of this chapter, shall not mean limes, lemons, marmalade, jellies, preserves, candies, or citrus hybrids for which no specific standards have been established by the Department of Citrus;

(8) "Citrus fruit dealer" means any consignor, commission merchant, consignment shipper, cash buyer, broker, association, cooperative association, express or gift fruit shipper, or person who in any manner makes or attempts to make money or other thing of value on citrus fruit in any manner whatsoever, other than of growing or producing citrus fruit, but the term shall not include retail establishments whose sales are direct to consumers and not for resale or persons or firms trading solely in citrus futures contracts on a regulated commodity exchange;

(9) "Citrus producing area" means that part or

parts of the state in which citrus fruit is grown or produced;

(10) "Color-add" or "color-added" means the application or use of any coloring matter to any citrus fruit;

(11) "Coloring matter" means any dye, or any liquid or concentrate or material containing a dye or materials which react to form a dye, used or intended to be used for the purpose of enhancing the color of citrus fruit by the addition of artificial color to the peel thereof; provided that said term shall not include any process or treatment of fruit which merely brings out or accelerates the natural color of the fruit;

(12) "Coloring room" means any room or place where citrus fruit is placed, with or without the use of heat or any gas, for the purpose of bringing out the natural color of the fruit;

(13) "Commission" means the Florida Citrus Commission as head of the Department of Citrus;

(14) "Department of Agriculture" means the Department of Agriculture and Consumer Services of the State of Florida;

(15) "Commission merchant" means any person engaged in the business of receiving any citrus fruit for sale on commission for or on behalf of another;

(16) "Concentrated products" means:

(a) Frozen citrus fruit juice frozen at a concentration of exceeding 20 degrees Brix and kept at a sufficiently freezing temperature to insure preservation of the product; and

(b) Citrus fruit juice sealed in hermetically sealed containers at a concentration of exceeding 20 degrees Brix and sufficiently processed by heat to insure preservation of the product;

(17) "Concentrating plant" means any building, structure, or place where citrus fruit is canned, frozen, or prepared for canning or freezing at a concentration of more than 20 degrees Brix for market or shipment;

(18) "Consignment shipper" means any person who contracts with the producer of citrus fruit for the marketing thereof for the sole account and risk of such producer and who agrees to pay such producer the net proceeds derived from such sale;

(19) "Consignor" means any person, other than a producer, who ships or delivers to any commission merchant or dealer any citrus fruit for handling, sale, or resale;

(20) "Express or gift fruit shipper" means any person having an established place of business who ships or delivers for transportation in any manner, citrus fruit to a consumer and not for the purpose of resale;

(21) "Fresh fruit juice distributor" means any person extracting and preparing for market or shipment any citrus fruit juice in fresh form;

(22) "Grapefruit" means the fruit *Citrus paradi-si Macf.*, commonly called grapefruit and shall include white, red, and pink meated varieties;

(23) "Handler" means any person engaged within this state in the business of distributing citrus fruit in the primary channel of trade or any person engaged as a processor in the business of processing citrus fruit;

(24) "Manufacturer" means any person who



shall manufacture, sell or offer for sale, or license or offer for license for use any coloring matter, or any soaps, oils, waxes, gases, gas-forming material, or other similar compositions, or the component parts thereof on or in the processing of citrus fruits;

(25) "Oranges" means the fruit *Citrus sinensis* Osbeck, commonly called sweet oranges;

(26) "Packinghouse" means any building, structure, or place where citrus fruit is packed or otherwise prepared for market or shipment in fresh form;

(27) "Person" means any natural person, partnership, association, corporation, trust, estate, or other legal entity;

(28) "Primary channel of trade" means that fruit shall be deemed to have been delivered into the primary channel of trade when it is sold or delivered for shipment in fresh form, or when it is received and accepted at a canning, concentrating, or processing plant for canning, concentrating, or processing;

(29) "Producer" means any person growing or producing citrus in this state for market;

(30) "Ship" or "shipping" means to move or cause citrus fruit or the canned or concentrated products thereof to be moved in intrastate, interstate, or foreign commerce by rail, truck, boat, or airplane, or any other means;

(31) "Shipper" means any person engaged in shipping, or causing to be shipped, citrus fruit or the canned or concentrated products thereof in intrastate, interstate, or foreign commerce, whether as owner, agent, or otherwise;

(32) "Shipping season" means that period of time beginning August 1 of one year and ending July 31 of the following year;

(33) "Standard packed box" means 1½ bushels of citrus fruit, whether in bulk or containers;

(34) "Tangerines" means the fruit *Citrus reticulata* Blanco, commonly called tangerines;

(35) "Lemons" including "rough" lemons means the acid lemons of *Citrus limon*, including the varieties *eureka*, *genoa*, *wheatley*, *amerfo*, *belair*, and *villafanica* of the Eureka group; varieties *bonnie brae*, *kennedy*, *lisbon*, *messer*, *messina*, and *sicily* of the Lisbon group; varieties *meyer*, *cuban*, *ponderosa*, and *rough* of the Anomalous group; varieties *dorshapo* and *millsweet* of the Sweet Lemon group, and other varieties not included above such as *everbearing*, *palestine sweet*, *perrine*, and *spheriola*;

(36) "Sour oranges"—"sour" or "bitter" oranges means the fruit of *Citrus aurantium* L. and contains several subspecies. Among the most important are varieties *african*, *brazilian*, *rubidoux*, and *standard* of the Normal group; varieties *daidai*, *goleta*, *bouquet* of the Aberrant group; variety *chinoto* of the Myrtifolia group; and varieties *bittersweet* and *paraguay* of the Bittersweet group;

(37) "Citrus hybrids" means but shall not be limited to hybrids between or among sour orange (*C. aurantium*), pummelo (*C. grandis*), lemon (*C. limon*), lime (*C. aurantifolia*), citron (*C. medica*), grapefruit (*C. paradisi*), tangerine or mandarin orange (*C. reticulata*), sweet orange (*C. sinensis*), tangelo (*C. reticulata* x *C. paradisi* or *C. grandis*), tangor (*C. reticulata* x *C. sinensis*), kumquat (*Fortunella*, species), trifoliate orange (*Poncirus trifoliata*), and varieties of these species;

(38) "Processor" means any person engaged within this state in the business of canning, concentrating, or otherwise processing citrus fruit for market other than for shipment in fresh fruit form.

**History.**—s. 3, ch. 25149, 1949; ss. 1-5, ch. 26492, 1951; s. 2, ch. 29757, 1955; ss. 1-8, ch. 57-28; s. 1, ch. 59-12; s. 1, ch. 59-16; ss. 1-3, ch. 59-20; ss. 1, 2, ch. 61-91; s. 1, ch. 63-71; s. 1, ch. 65-85; s. 5, ch. 67-220; ss. 14, 29, 35, ch. 69-106; s. 6, ch. 71-185; ss. 1-3, 22, ch. 71-186; s. 256, ch. 71-377; s. 1, ch. 73-13; s. 1, ch. 76-8.

#### 601.04 Florida Citrus Commission; creation and membership.—

(1)(a) There is hereby created and established within the Department of Citrus a board to be known and designated as the "Florida Citrus Commission" to be composed of 12 practical citrus fruit men who are resident citizens of the state, each of whom is and has been actively engaged in growing, growing and shipping, or growing and processing of citrus fruit in the state for a period of at least 5 years immediately prior to his appointment to the said commission and has, during said period, derived a major portion of his income therefrom or, during said time, has been the owner of, member of, officer of, or paid employee of a corporation, firm, or partnership which has, during said time, derived the major portion of its income from the growing, growing and shipping, or growing and processing of citrus fruit.

(b) Seven members of said commission shall be designated as grower members and shall be primarily engaged in the growing of citrus fruit as an individual owner, or as the owner of, a member of, an officer of, or a stockholder of a corporation, firm, or partnership primarily engaged in citrus growing, and none of whom shall receive any compensation from any licensed citrus fruit dealer or handler, as defined in s. 601.03, other than gift fruit shippers, but any of said grower members shall not be disqualified as a member if, individually, or as the owner of, a member of, an officer of, or a stockholder of a corporation, firm, or partnership primarily engaged in citrus growing which processes, packs, and markets its own fruit and whose business is primarily not purchasing and handling fruit grown by others, and one of said seven grower members shall be a resident of and appointed from each of the seven citrus districts as defined in s. 601.09. Five members of said commission shall be designated as grower-handler members and shall be engaged as owners, or paid officers or employees of a corporation, firm, partnership, or other business unit engaged in handling citrus fruit. Two of said five grower-handler members shall be engaged in the fresh fruit business and three of the said five grower-handler members shall be engaged in the processing of citrus fruits. One of the said five grower-handler members shall be appointed from citrus district No. 7 and the remaining four shall be appointed from the state at large but of these four no two members shall be appointed from the same citrus district.

(2)(a) The members of such commission shall possess the qualifications herein provided and shall be appointed by the Governor, subject to confirmation by the Senate, for terms of 3 years each, and four members shall be appointed each year. Such members shall serve until their respective successors are appointed and qualified. The regular terms shall begin on June 1 and shall end on May 31 of the third year after such appointment. The members of the

commission in office on July 1, 1969 shall continue to serve until the expiration of their present term of office. Beginning with their successors, confirmation by the Senate shall be required for removal from the commission.

(b) When appointments are made, the Governor shall publicly announce the actual classification and district, or state at large as the case may be, that each appointee represents. A majority of the members of said commission shall constitute a quorum for the transaction of all business and the carrying out of the duties of said commission. Before entering upon the discharge of their duties as members of said commission, each member shall take and subscribe to the oath of office prescribed in s. 5, Art. II of the State Constitution. The qualification of each member as herein required shall continue throughout the respective term of his office, and in the event a member should, after appointment, fail to meet the qualifications or classification which he possessed at the time of his appointment as above set forth, said member shall resign or be removed and be replaced with a member possessing the proper qualifications and classification.

(3) The commission is authorized to elect a chairman and vice chairman and such other officers as it may deem advisable. The chairman, subject to commission concurrence, may appoint such advisory committees or councils composed of industry representatives as the chairman deems appropriate, setting forth areas of committee or council concern.

**History.**—s. 3, ch. 16854, 1935; CGL 1936 Supp. (57); s. 1, ch. 20449, 1941; s. 1, ch. 22535, 1945; s. 4, ch. 25149, 1949; s. 10, ch. 26484, 1951; s. 1, ch. 59-11; s. 1, ch. 65-71; s. 33, ch. 69-216; ss. 29, 35, ch. 69-106; s. 257, ch. 71-377; s. 1, ch. 79-84.

**Note.**—Former s. 595.01; s. 601.10.

**601.05 Department of Citrus a body corporate.**—The Department of Citrus shall be a body corporate, shall have power to contract and be contracted with, and shall have and possess all the powers of a body corporate for all purposes necessary for fully carrying out the provisions and requirements of this chapter. The Department of Citrus shall adopt a corporate seal with which it shall authenticate its proceedings.

**History.**—s. 5, ch. 25149, 1949; s. 22, ch. 71-186.

**601.06 Compensation and expenses of commission members.**—Each member of the commission shall receive the sum of \$25 per day for each day or fraction thereof spent by him while en route to or from, or in actual attendance at, regular or special meetings of the commission or meetings of committees of the commission, or in transacting other business authorized by the Department of Citrus in addition to per diem and reimbursement of expenses as authorized by law.

**History.**—s. 6, ch. 25149, 1949; s. 16, ch. 63-400; s. 1, ch. 65-70; s. 1, ch. 71-184; s. 22, ch. 71-186.

**cf.**—s. 112.061 Travel expenses of state officials and employees.

**601.07 Location of executive offices.**—The executive offices of the Department of Citrus shall be established and maintained at Lakeland.

**History.**—s. 7, ch. 25149, 1949; s. 22, ch. 71-186.

**601.08 Authenticated copies of commission records as evidence.**—Copies of the proceedings, records, and acts of the commission and certificates purporting to relate the facts concerning such proceedings, records, and acts signed by the chairman of the commission and authenticated by the seal of the Department of Citrus shall be prima facie evidence thereof in all the courts of the state.

**History.**—s. 8, ch. 25149, 1949; s. 22, ch. 71-186.

**601.09 Citrus districts.**—The citrus belt of the state, for the purpose of this chapter, shall be divided into seven citrus districts composed of the following counties, to wit:

(1) Citrus district one: Hillsborough, Pinellas, and Manatee.

(2) Citrus district two: Citrus, Sumter, Lake, Hernando, and Pasco.

(3) Citrus district three: Alachua, Putnam, St. Johns, Flagler, Marion, Levy, Seminole, and that portion of Volusia County lying west of a line beginning at a point on the shore of the Atlantic Ocean where the line between Flagler and Volusia Counties intersects said shore, thence follow the line between said two counties to the southwest corner of section 23, township 14 south, range 31 east; thence continue south to the southwest corner of section 35, township 14 south, range 31 east; thence east to the northwest corner of township 15 south, range 32 east; thence south to the southwest corner of township 17 south, range 32 east; thence east to the northwest corner of township 18 south, range 33 east; thence south to the St. Johns River.

(4) Citrus district four: Orange and Osceola.

(5) Citrus district five: Brevard, Indian River, St. Lucie, Martin, Palm Beach, Broward, Dade, and that portion of Volusia County lying east of a line beginning at a point on the shore of the Atlantic Ocean where the line between Flagler and Volusia Counties intersects said shore, thence follow the line between said two counties to the southwest corner of section 23, township 14 south, range 31 east; thence continue south to the southwest corner of section 35, township 14 south, range 31 east; thence east to the northwest corner of township 15 south, range 32 east; thence south to the southwest corner of township 17 south, range 32 east; thence east to the northwest corner of township 18 south, range 33 east; thence south to the St. Johns River; thence along the main channel of the St. Johns River and through Lake Harney; and thence along the main channel of the St. Johns River to a point in said river where Orange and Volusia Counties corner with each other.

(6) Citrus district six: Sarasota, Hardee, Highlands, Okeechobee, Glades, DeSoto, Charlotte, Lee, Hendry, Collier, and Monroe.

(7) Citrus district seven: Polk.

**History.**—s. 9, ch. 25149, 1949.

**601.091 Interior and Indian River production areas, boundaries and designation.**—

(1) Unless otherwise specifically provided by final court order entered as a result of a legal proceeding instituted prior to July 1, 1976, only citrus fruit grown within the boundaries of a specified production area of this state, or processed citrus products

prepared solely from such citrus fruit, may be identified, classified, labeled, or otherwise designated with the name of such production area or identified, classified, labeled, or otherwise designated in any manner so as to imply that such citrus fruit, or processed citrus product produced therefrom, was grown in the specified production area.

(2) The "Indian River" production area of this state shall encompass only that part of the state particularly described as follows: Beginning at a point on the shore of the Atlantic Ocean where the line between Flagler and Volusia Counties intersects said shore, thence follow the line between said two counties to the southwest corner of Section 23, Township 14 South, Range 31 East; thence continue south to the southwest corner of Section 35, Township 14 South, Range 31 East; thence east to the northwest corner of Township 15 South, Range 32 East; thence south to the southwest corner of Township 17 South, Range 32 East; thence east to the northwest corner of Township 18 South, Range 33 East; thence south to the St. Johns River, thence along the main channel of the St. Johns River and through Lake Harney, Lake Poinsett, Lake Winder, Lake Washington, Sawgrass Lake, and Lake Helen Blazes to the range line between Ranges 35 East and 36 East; thence south to the south line of Brevard County; thence east to the line between Ranges 36 East and 37 East; thence south to the southwest corner of St. Lucie County; thence east to the line between Ranges 39 East and 40 East; thence south to the south line of Martin County; thence east to the line between Ranges 40 East and 41 East; thence south to the West Palm Beach Canal (also known as the Okeechobee Canal); thence follow said canal eastward to the mouth thereof; thence east to the shore of the Atlantic Ocean; thence northerly along the shore of the Atlantic Ocean to the point of beginning.

(3) The "interior" production area of this state shall encompass all the area of the state not included within the boundaries established by subsection (2).

**History.**—s. 1, ch. 76-87; s. 1, ch. 77-174.

#### **601.10 Powers of the Department of Citrus.—**

The Department of Citrus shall have and shall exercise such general and specific powers as are delegated to it by this chapter and other statutes of the state, which powers shall include, but not be confined to, the following:

(1) To adopt and, from time to time, alter, rescind, modify, or amend all proper and necessary rules, regulations, and orders for the exercise of its powers and the performance of its duties under this chapter and other statutes of the state, which said rules and regulations shall have the force and effect of law when not inconsistent therewith.

(2) To act as the general supervisory authority over the administration and enforcement of this chapter and to exercise such other powers and perform such other duties as may be imposed upon it by other laws of the state.

(3) To employ and, at its pleasure, discharge an executive director, a secretary, and such attorneys, clerks, and employees as it deems necessary and to outline their powers and duties and fix their compensation. The Department of Citrus may pay, or participate in the payment of, premiums for health,

accident, and life insurance for its full-time employees, pursuant to such rules or regulations as it may adopt, and said payments shall be in addition to the regular salaries of such full-time employees. The payment of such or similar benefits to its employees in foreign countries, including, but not limited to, social security, retirement, and other similar fringe benefit costs, may be in accordance with laws in effect in the country of employment, except that no benefits will be payable to employees not authorized for other state employees, as provided in the career service system.

(4) To purchase or authorize the purchase of all office equipment and supplies and to incur all necessary expenses in connection with and required for the proper carrying out of the provisions of this chapter and other applicable laws.

(5) To investigate violations of the provisions of this chapter and other laws conferring powers and duties upon said Department of Citrus, and to report its findings or recommendations in connection therewith to the Department of Agriculture and Consumer Services.

(6) To incur such reasonable obligations and expenses as may be necessary and proper for the discharge of its powers and duties under this or other laws, and to have such obligations and expenses paid out of the funds authorized by law to be collected and expended. The executive director of the Department of Citrus is authorized to execute contracts and agreements previously approved by the commission during a regular or special meeting, on behalf of the Department of Citrus, and the secretary of the commission is authorized to attest to the signature of the executive director.

(7) To adopt, promulgate, alter, rescind, modify, amend, and enforce rules and regulations and establish minimum maturity and quality standards for citrus fruits not inconsistent with existing laws, to regulate and control methods and practices followed or used in the harvesting, grading, packing, extracting, canning, concentrating, sectionizing, or otherwise processing citrus fruits or citrus juices or the products thereof for human consumption, including the addition or prohibition of any and all additives, and including application to or use of coloring matter thereon and coloring of fruit by placing in coloring room with or without use of heat or any form of gas in such process, to the end that such methods and practices as affect the eating and keeping qualities and depreciate the value of citrus fruits or the juices or other food products thereof in any form may be minimized to the greatest extent possible, if not altogether eliminated.

(8) To prepare and disseminate information of importance to citrus growers, handlers, shippers, processors, and industry-related and interested persons and organizations, relating to Department of Citrus activities and the production, handling, shipping, processing, and marketing of citrus fruit and processed citrus products. For referendum and other notice and informational purposes, the Department of Citrus may prepare and maintain, from the best available sources, a citrus grower mailing list. Such list shall be a public record available as other public



records, but shall not be subject to the purging provisions of s. 283.28.

(9) When, in the opinion of the Department of Citrus, the tax revenues collected pursuant to this chapter, whether allocated for research, advertising or promotion, reserve funds, advertising incentive plans, or other purposes, are not immediately needed for the purpose for which such funds are provided, the Board of Administration, in addition to existing constitutional and statutory authority, is hereby authorized and shall, upon the request and approval of the Department of Citrus, or its general manager if he has been given such authority, invest and reinvest the funds designated and for the period of time specified in such request. In the investment of such funds, the Board of Administration shall have the powers and be subject to the limitations provided for in chapter 215.

(10) Subject to the concurrence of the Treasurer, whenever the department contracts with a foreign entity for performance of services or the purchase of materials, and such contract requires payment in equivalent foreign currency, the department may, for payment of such contract obligation, deposit sufficient state funds in a foreign bank, or purchase foreign currency at the current market rate, up to an amount not in excess of the contract obligation. All payments from these funds must have prior audit approval from the Office of the Comptroller.

(11) To conduct an annual merchandising and management meeting in this state for department field personnel, and to make direct payment, by means of vendor contracts approved by the commission, for all necessary lodging, meals, facilities, and training expenses for department employees attending such annual meeting, in lieu of payment of individual employee per diem allowances.

**History.**—ss. 3A, 8, ch. 16854, 1935; ss. 1-4, ch. 16863, 1935; CGL 1936 Supp. 3254(62), (63); ss. 1-4, ch. 19309, 1939; CGL 1940 Supp. 3254(177)-(181); s. 2, ch. 20449, 1941; s. 1, ch. 23680, 1947; s. 10, ch. 25149, 1949; s. 1, ch. 57-14; s. 1, ch. 65-65; s. 1, ch. 65-66; s. 1, ch. 67-68; ss. 3, 14, 35, ch. 69-106; s. 1, ch. 70-444; s. 1, ch. 71-158; s. 7, ch. 71-185; s. 22, ch. 71-186; s. 1, ch. 76-134; s. 1, ch. 77-27; s. 1, ch. 79-137; s. 1, ch. 79-155.

**Note.**—Former s. 595.07.

**601.101 Ownership of rights under patent and trademark laws developed or acquired pursuant to the authorities of this chapter.**—Notwithstanding any provision of chapter 286, the legal title and every right, interest, claim, or demand of any kind in and to any patent, trademark, copyright, certification mark, or other right acquired under the patent and trademark laws of the United States or this state or any foreign country, or the application for the same, now, heretofore, or as may be hereafter owned or held, acquired, or developed by the Department of Citrus, under the authority and directions given it by this chapter, is vested in the Department of Citrus for the use, benefit, and purposes provided in this chapter. The Department of Citrus is hereby vested with and is authorized to exercise any and all of the normal incidents of such ownership, including the receipt and disposition of royalties. Any sums received as royalties from any such rights are hereby appropriated to the Department of Citrus for any

and all of the purposes and uses provided in this chapter.

**History.**—s. 1, ch. 72-191.

**601.11 Power of Department of Citrus to establish standards.**—The Department of Citrus shall have full and plenary power to, and may, establish state grades and minimum maturity and quality standards not inconsistent with existing laws for citrus fruits and food products thereof containing 20 percent or more citrus or citrus juice, whether canned or concentrated, or otherwise processed, including standards for frozen concentrate for manufacturing purposes, and for containers therefor, and shall prescribe rules or regulations governing the marking, branding, labeling, tagging, or stamping of citrus fruit, or products thereof whether canned or concentrated, or otherwise processed, and upon containers therefor for the purpose of showing the name and address of the person marketing such citrus fruit or products thereof whether canned or concentrated or otherwise processed; the grade, quality, variety, type, or size of citrus fruit, the grade, quality, variety, type, and amount of the products thereof whether canned or concentrated or otherwise processed, and the quality, type, size, dimensions, and shape of containers therefor, and to regulate or prohibit the use of containers which have been previously used for the sale, transportation, or shipment of citrus fruit or the products thereof whether canned or concentrated or otherwise processed, or any other commodity; provided, however, that the use of secondhand containers for sale and delivery of citrus fruit for retail consumption within the state shall not be prohibited; provided, however, that no standard, regulation, rule, or order under this section which is repugnant to any requirement made mandatory under federal law or regulations shall apply to citrus fruit, or the products thereof, whether canned or concentrated or otherwise processed, or to containers therefor, which are being shipped from this state in interstate commerce. All citrus fruit and the products thereof whether canned or concentrated or otherwise processed sold, or offered for sale, or offered for shipment within or without the state shall be graded and marked as required by this section and the regulations, rules, and orders adopted and made under authority of this section, which regulations, rules, and orders shall, when not inconsistent with state or federal law, have the force and effect of law.

**History.**—s. 11, ch. 25149, 1949; s. 1, ch. 57-30; s. 22, ch. 71-186.

**601.111 Department of Citrus authorized to lower maturity standards.**—

(1) The Legislature of the state finds and declares that emergencies creating abnormal conditions in the Florida citrus industry, such as unusual climatic conditions that produce unusual growing conditions of citrus fruit, freezes and hurricanes, or other acts of God that may affect a substantial part of the citrus industry, require that the Department of Citrus be given the power and authority to lower the maturity standards established by law for citrus fruit or any variety thereof, not including oranges except as to minimum juice content requirement, under and subject to the limitations, conditions, re-

strictions, and provisions and within the standards hereinafter prescribed and established.

(2) In the event of an emergency such as is mentioned in subsection (1), the said Department of Citrus, in addition to all other powers and authority which it now possesses, which have heretofore been granted or delegated to it by the Legislature shall have the additional power to issue rules and regulations to:

(a) Lower by not more than 10 percent the existing minimum requirement as to the total soluble solids of the juice of citrus fruit or any variety, except oranges, or size thereof;

(b) Lower by not more than 10 percent the existing ratio of total soluble solids of the juice of citrus fruit or any variety thereof, except oranges, to the anhydrous citric acid; and

(c) Lower by not more than 10 percent the existing minimum requirement for juice content of citrus fruit or any variety or size thereof.

Any action under this subsection shall not be taken without the consent of at least nine members of the Florida Citrus Commission. Any regulation adopted pursuant to this section shall be by the affirmative vote of at least nine members of said Florida Citrus Commission, and every such regulation shall contain an expiration date not later than 1 year from its effective date.

(3) This act shall not repeal any other section or part of this chapter, but shall be deemed as supplemental and additional to the express power vested in the Department of Citrus, subject only to the limitations, restrictions, conditions, provisions, and standards herein set forth.

**History.**—s. 1, ch. 63-104; s. 22, ch. 71-186; s. 10, ch. 78-95.

#### **601.13 Citrus research; administration by Department of Citrus; appropriation.—**

(1) The administration of this section shall be vested in the Department of Citrus which shall prescribe suitable and reasonable rules and regulations for the proper carrying out of the provisions hereof.

(2) It shall be the duty of the Department of Citrus, and it is empowered:

(a) To conduct or cause to be conducted a thorough and comprehensive study of citrus fruit and the juices thereof

1. With respect to the quality and maturity of said fruit and the juices thereof, including proper effort to assemble data and arrive at a proper standard of quality, grade, and maturity with reference to its texture, stability, and general marketability and so far as possible reduce such findings to specific and readily understood chemical, mathematical, or descriptive terms, and

2. With respect to the nutritional and other value or values of such fruit and the juices thereof

and to provide suitable facilities and equipment of every kind whatsoever proper and necessary in connection with all such work.

(b) To conduct or cause to be conducted such study and research as is necessary to provide all the information and data required to be disseminated pursuant to the provisions of this section.

(c) To provide suitable and sufficient laboratory

facilities and equipment, making use of the laboratory facilities and equipment of the University of Florida, insofar as it is practicable for the purpose of conducting thorough and comprehensive study and research to determine all possible new and further uses for citrus fruit and citrus fruit juices and the products and byproducts into which the same can be converted or manufactured, as well as to determine and develop new and profitable methods and instruments of distribution thereof.

(d) To carry on, or cause to be carried on, suitable experiments in an effort to prove the commercial value of each, and determine and develop new and further use for citrus fruit and citrus fruit juices or the products and byproducts into which the same can be converted or manufactured.

(e) To carry on or cause to be carried on suitable experiments in an effort to prove the commercial value of any and all new profitable methods and instruments of distribution of citrus fruit and citrus fruit juices and the products and byproducts into which the same can be converted or manufactured.

(f) To carry on or cause to be carried on an economic and marketing research program relating to citrus fruits, products or byproducts thereof.

(g) To enter into any mutually satisfactory contracts or agreements with any person, firm, institution, corporation, or business unit, as well as any state or federal agency, which the Department of Citrus deems wise, necessary, and expedient in the carrying out of any of the provisions of this chapter.

(h) To incur and pay such expenses and obligations as are necessary in connection with and required for the proper carrying out of the provisions of this chapter.

(3) There is hereby appropriated and made available for defraying the expenses of the administration of this section from the moneys derived from advertising excise taxes levied on citrus fruit such amounts as the Department of Citrus may deem necessary within the percentage limitations imposed by s. 601.15.

**History.**—s. 13, ch. 25149, 1949; s. 7, ch. 26492, 1951; s. 1, ch. 61-48; s. 1, ch. 63-80; s. 1, ch. 65-67; s. 22, ch. 71-186.

#### **601.14 Transportation problems affecting citrus; investigation by Department of Citrus; appropriation.—**

(1) It shall be the duty of the Department of Citrus to cause to be investigated the transportation problems affecting the Florida citrus industry and the lawfulness of any and all existing or proposed rates, charges, rules, regulations, or practices affecting any rate or charge in so far as the same may affect the Florida citrus industry and, to that end, shall cause such proper investigations to be made by other agencies established and existing for the purpose of handling such problems. The Department of Citrus may authorize such other agency as selected by it to compile the facts concerning the transportation rates, charges, rules, regulations, or practices affecting the Florida citrus industry and, when any such transportation rate, charge, rule, regulation, or practice is in its opinion excessive, unjust, unreasonable, discriminating in nature, or otherwise unlawful, may cause such agency to file with the Interstate Commerce Commission or other proper regulatory

body complaints, protests, petitions, or other pleadings and papers and to participate in any proceedings or hearings concerning the same to the end that the Florida citrus industry may be fully protected in obtaining and enjoying just, reasonable, and otherwise lawful transportation rates and charges. In the performance of any such duties, the Department of Citrus shall pay such agency so selected by it such reasonable compensation as the Department of Citrus may fix for defraying the expenses of the agency, including the employment of counsel, rate experts, accountants, or other assistants in any such proceeding or hearing.

(2) There is hereby appropriated and made available during each year for the expenses of the administration and enforcement of this section from the moneys derived from the excise taxes levied for advertising on citrus fruit such amounts as the Department of Citrus may deem necessary within the percentage limitations imposed by s. 601.15. In case any expenditure is made as authorized herein, it shall be charged against the excise taxes levied upon each respective type of citrus fruit pro rata as the Department of Citrus may find it is affected by such expenditure.

**History.**—s. 14, ch. 25149, 1949; s. 8, ch. 26492, 1951; s. 4, ch. 59-20; s. 1, ch. 65-68; ss. 4, 22, ch. 71-186.

**601.15 Advertising campaign; methods of conducting; excise tax; emergency reserve fund; grapefruit brand advertising rebates; citrus research.—**

(1) The administration of this section shall be vested in the Department of Citrus which shall prescribe suitable and reasonable rules and regulations for the enforcement hereof and the Department of Citrus shall administer the taxes levied and imposed hereby. Said Department of Citrus shall have power to cause its duly authorized agent or representative to enter upon the premises of any handler of citrus fruits and to examine or cause to be examined any books, papers, records, or memoranda bearing on the amount of taxes payable and to secure other information directly or indirectly concerned in the enforcement hereof. Any person required to pay the taxes levied and imposed who shall by any practice or evasion make it difficult to enforce the provisions hereof by inspection or any person who shall, after demand by the Department of Citrus or any agent or representative designated by it for that purpose, refuse to allow full inspection of the premises or any part thereof or any books, records, documents, or other instruments in any manner relating to the liability of the taxpayer for the tax imposed or shall hinder or in anywise delay or prevent such inspection shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) The Department of Citrus shall plan and conduct a campaign for commodity advertising, publicity, and sales promotion to increase the consumption of citrus fruits and may contract for any such advertising, publicity, and sales promotion service. To accomplish such purpose, the Department of Citrus shall have power, and it shall be its duty, to disseminate information:

(a) Relating to citrus fruits and the importance

thereof in preserving the public health, the economy thereof in the diet of the people, and the importance thereof in the nutrition of children;

(b) Relating to the manner, method, and means used and employed in the production and marketing of citrus fruits and to laws of the state regulating and safeguarding such production and marketing;

(c) Relating to the added cost to the producer and dealer in producing and handling citrus fruits to meet the high standards imposed by the state that insure a pure and wholesome product;

(d) Relating to the effect upon the public health which would result from a breakdown of the Florida citrus industry or any part thereof;

(e) Relating to the reasons why producers and dealers should receive a reasonable return on their labor and investment;

(f) Relating to the problem of furnishing the consumer at all times with an abundant supply of fine quality citrus fruits at reasonable prices;

(g) Relating to factors of instability peculiar to the citrus fruit industry, such as unbalanced production, effect of the weather, influence of consumer purchasing power, and price relative to the cost of other items of food in the normal diet of people, all to the end that an intelligent and increasing consumer demand may be created;

(h) Relating to the possibilities with particular reference to increased consumption of citrus fruits;

(i) Relating to such other, further, and additional information as shall tend to promote increased consumption of citrus fruits and as may foster a better understanding and more efficient cooperation among producers, dealers, and the consuming public;

(j) To decide upon some distinctive and suggestive trade name and to promote its use in all ways to advertise Florida citrus fruit.

(3)(a) There is hereby levied and imposed the following excise taxes upon each standard-packed box of the following citrus fruit grown in this state, to wit: grapefruit, 6 cents per box; oranges, 8 cents per box; tangerines, 5 cents per box; and citrus hybrids regulated by the Department of Citrus, 5 cents per box.

(b) When grapefruit are purchased, acquired, or handled on a weight basis rather than under the standard-packed-box basis, 85 pounds thereof shall be considered equal to or the equivalent of one standard-packed box for tax purposes under this section.

(c) When oranges are purchased, acquired, or handled on a weight basis rather than under the standard-packed-box basis, 90 pounds thereof shall be considered equal to or the equivalent of one standard-packed box for tax purposes under this section.

(d) When tangerines are purchased, acquired, or handled on a weight basis rather than under the standard-packed-box basis, 95 pounds thereof shall be considered equal to or the equivalent of one standard-packed box for tax purposes under this section.

(e) The taxes imposed by the provisions of this section shall not apply to citrus fruit consumed for domestic purposes on the premises where produced.

(f) When citrus hybrids are purchased, acquired, or handled on a weight basis rather than under the standard-packed-box basis, 90 pounds shall be equal



to, or the equivalent of, one standard-packed box for tax purposes under this section, unless otherwise established by regulation of the Department of Citrus.

(4) Every handler shall keep a complete and accurate record of all citrus fruit handled by him. Such record shall be in such form and contain such other information as the Department of Citrus shall by rule or regulation prescribe. Such records shall be preserved by such handlers for a period of 1 year and shall be offered for inspection at any time upon oral or written demand by the Department of Citrus or its duly authorized agents or representatives.

(5) Every handler shall, at such times and in such manner as the Department of Citrus may by rule require, file with the Department of Citrus a return certified as true and correct, on forms furnished by the Department of Citrus, stating, in addition to other information, the number of standard-packed boxes of each kind of citrus fruit handled by such handler in the primary channel of trade during the period of time covered by the return. Full payment of all excise taxes due for the period reported shall accompany each handler's return.

(6)(a) All excise taxes levied and imposed pursuant to the provisions of this section shall be due and payable and shall be paid, or the amount thereof guaranteed as hereinafter provided, at the time the citrus fruit is first handled in the primary channels of trade. All such taxes shall be paid, or the payment thereof guaranteed, to the Department of Citrus by the person first handling the fruit in the primary channel of trade, except that payment of taxes on fruit delivered or sold for processing in this state shall be paid, or payment thereof guaranteed in accordance with Department of Citrus rules, by the person processing such fruit.

(b) Periodic payment of excise taxes upon citrus fruit by the person liable for such payment shall be permitted only in accordance with Department of Citrus rules, and the payment thereof shall be guaranteed by the posting of an approved surety bond or cash deposit in an amount and manner as prescribed by Department of Citrus rule. Evidence of such guarantee of payment of excise taxes shall be made on the grade certificate in such manner and form as may be prescribed by Department of Citrus rule.

(c) All taxes collected by the Department of Citrus shall be delivered to the State Treasury for payment into the proper advertising fund.

(7) All excise taxes levied and collected under the provisions of this chapter shall be paid into the State Treasury on or before the 15th day of each month, such moneys to be accounted for in a special fund to be designated as the Florida Citrus Advertising Trust Fund, and all moneys in such fund are hereby appropriated to the Department of Citrus for the following purposes:

(a) Two percent of all income of a revenue nature deposited in this fund, including transfers from any subsidiary accounts thereof, shall be deposited in the General Revenue Fund in lieu of the service charge provided for in s. 215.20; provided, however, that if any moneys are withdrawn from the trust fund for investment, such 2 percent shall not again be

charged against said moneys when they are redeposited in the trust fund.

(b) An amount equal to one-half of the amount deposited in the General Revenue Fund pursuant to paragraph (a) shall be set aside in the Florida Citrus Advertising Trust Fund to be used exclusively for citrus research by the Department of Citrus.

(c) Not more than 24 percent of such trust fund shall be expended for the activities authorized by ss. 601.13 and 601.14 and for the cost of those general overhead, research and development, maintenance, salaries, professional fees, enforcement costs, and other such expenses which are not related to advertising, merchandising, public relations, trade luncheons, publicity, and other associated activities. The cost of general overhead, maintenance, salaries, professional fees, enforcement costs, and other such expenses which are related to advertising, merchandising, public relations, trade luncheons, publicity, and associated activities shall be paid from the balance of the Citrus Advertising Trust Fund and shall not be included in the 24-percent limitation.

(d) An amount equal to 25 percent of the excise taxes levied and imposed by this section upon oranges shall be set aside in the Florida Citrus Advertising Fund as a reserve fund to be used only to conduct intensive campaigns of commodity advertising and sales promotion of oranges, processed orange products, or orange byproducts. Upon the completion of any such intensive campaign of commodity advertising and sales promotion, the balance remaining shall be retained in said reserve fund. The sums so set aside in said special reserve fund shall not be removed therefrom but shall continue to be so held solely for use in campaigns of commodity advertising and sales promotion of oranges, processed orange products, or orange byproducts.

(e) The balance of the moneys in the Florida Citrus Advertising Trust Fund shall be used by the Department of Citrus for defraying those expenses not included within the 24-percent limitation established by paragraph (c). After payment of said expenses, the money levied and collected under the provisions of subsection (3) shall, except as provided in paragraph (f), be used exclusively for commodity advertising, merchandising, publicity, or sales promotion of citrus fruits, either in fresh or processed form, including citrus cattle feed and all other products of citrus fruits, produced in the state, in such equitable manner and proration as the Department of Citrus may determine, but funds expended for advertising thereunder shall be expended through an established advertising agency.

(f) Upon an affirmative vote of nine of its members the commission may, during each year for no more than 3 consecutive years, authorize up to 10 percent of the moneys levied and collected under the provisions of subsection (3) during each of the years, up to a maximum of 3 years, to be expended for noncommodity advertising, merchandising, publicity, and sales promotion of such citrus fruits and products thereof, including brand advertising rebate programs that supplement other department advertising, merchandising, publicity, or sales promotion activities. The moneys expended hereunder shall be expended in regard to such citrus fruits and products

thereof in such equitable manner and proration as the Department of Citrus may determine.

(8)(a) On certification by any employee of the Department of Citrus that his actual and necessary expenses on any particular day while traveling outside of the state exceeded the per diem provided by law, such employee shall show such excess on his regular expense voucher and support the same by the proof required pursuant to rules and regulations to be promulgated by the Department of Citrus.

(b) The Department of Citrus is authorized to spend such amount as it deems advisable for guests involved in promotional activities in the sale of Florida citrus fruits and products.

(c) All obligations, expenses, and costs incurred under the provisions of this section shall be paid out of the Citrus Advertising Fund upon warrant of the Comptroller when vouchers thereof, approved by the Department of Citrus, are exhibited.

(9)(a) Any handler who fails to file a return or to pay any tax within the time required shall thereby forfeit to the Department of Citrus a penalty of 5 percent of the amount of tax determined to be due; but the Department of Citrus, if satisfied that the delay was excusable, may remit all or any part of said penalty. Such penalty shall be paid to the Department of Citrus and disposed of as provided with respect to moneys derived from the taxes levied and imposed by subsection (3).

(b) The Department of Citrus may collect the taxes levied and assessed by subsection (3) in either or all of the following methods:

1. By the voluntary payment by the person liable therefor;

2. By a suit at law;

3. By a suit in equity to enjoin and restrain any handler, citrus fruit dealer, or other person owing said taxes from operating his business or engaging in business as a citrus fruit dealer until the delinquent taxes are paid. Such action may include an accounting to determine the amount of taxes plus delinquencies due. In any such proceeding, it shall not be necessary to allege or prove that an adequate remedy at law does not exist;

4. By use of the method provided for in s. 205.121, in the collection of delinquent license or privilege taxes by state and county officials.

(10) The powers and duties of the Department of Citrus shall include the following:

(a) To adopt and from time to time alter, rescind, modify, and amend all proper and necessary rules, regulations, and orders for the exercise of its powers and the performance of its duties under this chapter;

(b) To employ and at its pleasure discharge an advertising manager, agents, advertising agencies, and such clerical and other help as it deems necessary and to outline their powers and duties and fix their compensation;

(c) To make in the name of the Department of Citrus such advertising contracts and other agreements as may be necessary;

(d) To keep books, records, and accounts of all of its doings, which books, records, and accounts shall be open to inspection and audit by the Auditor General at all times;

(e) To purchase or authorize the purchase of all

office equipment and supplies and to incur all other reasonable and necessary expenses and obligations in connection with and required for the proper carrying out of the provisions of this chapter;

(f) To conduct and pay out of the Florida Citrus Advertising Trust Fund, premium and prize promotions designed to increase the use of citrus in any form;

(g) To advertise citrus cattle feed and promote its use.

**History.**—s. 15, ch. 25149, 1949; s. 10, ch. 26484, 1951; ss. 9-11, ch. 26492, 1951; s. 2, ch. 29737, 1955; ss. 3, 6, ch. 29757, 1955; ss. 1-3, ch. 57-31; ss. 1-4, ch. 57-49; ss. 1-3, ch. 59-5; s. 1, ch. 59-10; s. 5, ch. 59-20; s. 2, ch. 61-119; s. 1, ch. 61-297; s. 1, ch. 62-2; s. 1, ch. 63-78; s. 1, ch. 63-79; ss. 1, 2, ch. 63-320; ss. 1, 2, ch. 65-62; s. 1, ch. 65-69; s. 1, ch. 65-91; s. 1, ch. 67-103; s. 8, ch. 69-82; ss. 12, 35, ch. 69-106; s. 1, ch. 70-161; s. 621, ch. 71-136; ss. 5, 6, 22, ch. 71-186; s. 5, ch. 71-187; s. 1, ch. 76-98; s. 1, ch. 78-392.  
cf.—s. 215.20 Certain trust funds to contribute to general fund.

#### **601.151 Additional tax on fresh fruit; brand advertising rebates, special promotion.—**

(1) There is hereby levied and imposed an additional excise tax of 2 cents per box upon each standard-packed box of citrus fruit taxed under s. 601.15 grown in Florida that is sold or delivered for shipment in fresh form.

(2) One-half of the tax collected by the Department of Citrus under this section shall be set aside in the Florida Citrus Advertising Trust Fund as a special fund to be known as the reserve fund for fresh fruit brand advertising refunds. The Department of Citrus is hereby authorized and directed to issue and promulgate rules and regulations relating to the administration and expenditure of said reserve fund. The reserve fund shall be used exclusively to refund handlers as a rebate for brand advertising for fresh citrus fruit upon a basis not to exceed \$1 for each \$2 spent in brand advertising. No handler shall receive in rebate with respect to any shipping season more than he has paid in such shipping season in additional taxes levied by this section.

(3) The term "advertising" shall be restricted to point-of-sale material, price cards, or other printed matter used in the display of fresh citrus fruit and to newspaper, billboard, magazine, radio, and television advertising, or other advertising or promotional activities approved by the Florida Citrus Commission under such conditions as the Department of Citrus may by rule prescribe.

(4) As of September 15 of each year, the Department of Citrus shall determine what claims have been filed against said reserve fund, and thereupon any balance remaining in said reserve fund over and above the amount of such claims shall be released therefrom and expended according to the provisions of subsection (5). If, with respect to any shipping season, such claims for refunds exceed in the aggregate the amount of such reserve fund for that season, such claims shall be paid on a pro rata basis.

(5) Such portion of the additional excise taxes levied and collected hereunder, after deducting the 2 percent service charge provided by s. 601.15(7), which is not set aside in a reserve fund to refund handlers as a rebate for brand advertising as hereinbefore provided shall, to the extent the Department of Citrus finds practicable, be expended in special advertising and sales promotion campaigns to enlarge the distribution and sale of the fresh citrus fruit taxed thereby.

(6) The definitions contained in s. 601.03 shall apply to this section. The provisions of s. 601.15, as now existing or hereafter amended, not inconsistent with the express provisions of this section, shall apply to this section.

**History.**—ss. 1, 2, 4, ch. 28130, 1953; s. 1, ch. 29647, 1955; s. 1, ch. 59-6; s. 2, ch. 61-119; ss. 1, 3, ch. 65-92; s. 7, ch. 71-186; s. 2, ch. 71-187; s. 1, ch. 73-14; s. 1, ch. 77-28.

#### **601.1515 Grapefruit Offshore Export Indemnity Act.—**

(1) It is the purpose of this act, in the exercise of the police power of this state to promote and protect the public health, peace, safety and general welfare and to stabilize and protect the citrus industry of this state. The citrus fruit crop grown in Florida comprises the major agricultural crop of Florida, and the marketing thereof to the economic advantage of the citrus industry is affected with a public interest and constitutes a valid public purpose. The Florida Citrus Code exists for the purpose of enhancing the welfare, economic and otherwise, of the Florida citrus industry. No single segment of the Florida citrus industry is so isolated as not to affect the whole and the welfare, economic and otherwise, of each other segment of the industry. Each segment of the industry is to some extent interdependent on the other segments of the industry.

(2) There is hereby levied and imposed, subject to the provisions of subsection (12), an additional excise tax of 2 cents per box upon each standard packed box (1½ bushels) of grapefruit grown in this state that is sold or delivered into the primary channel of trade as defined in s. 601.03(28). The taxes levied and imposed by this section shall be paid by the producer or other person delivering the grapefruit into the primary channel of trade; however, the handler who receives the grapefruit in the primary channel of trade shall not be construed to be the person delivering the grapefruit into the primary channel of trade, except when such handler and the producer are one and the same person. Such excise taxes shall be collected from the producer or other person delivering the grapefruit into the primary channel of trade by the handler first handling the grapefruit in the primary channel of trade, shall be guaranteed by the giving of a security bond or cash deposit, and shall be transmitted to the Department of Citrus by the handler so shipping or processing such grapefruit under rules promulgated by the commission. Such excise taxes shall not be absorbed by the handler, unless the handler is one and the same person as the producer, but shall be deducted by the handler from the price paid or to be paid by the handler to the producer or other person who delivered the grapefruit into the primary channel of trade.

(3) Except when inconsistent with this section, the provisions of s. 601.15 shall apply to the additional excise tax imposed by this section.

(4)(a) All excise taxes levied by this section and collected by the Department of Citrus shall be paid into the State Treasury on or before the 15th day of each month, and said moneys shall be deposited into the Florida Citrus Advertising Trust Fund.

(b) After deducting the service charge required by s. 601.15(7)(a), said moneys shall be set aside and accounted for therein as a special fund to be known

as the Grapefruit Offshore Export Indemnity Fund. All moneys in the Grapefruit Offshore Export Indemnity Fund are hereby appropriated to the Department of Citrus to be expended to indemnify only Florida handlers who ship fresh Florida grapefruit to offshore export markets where financial losses occur in regard to such shipments as the direct result of actions of foreign governments or agencies thereof, which actions the Florida handler could not foresee or could not, by the exercise of reasonable business judgment, avoid. Such actions shall include, but not be limited to, embargoes, seizures, confiscation, or other acts by foreign governments or agencies thereof.

(c) Losses not eligible for indemnity under this fund shall include, but not be limited to, those losses resulting from:

1. Fumigation conducted in Florida.
2. Decay, pitting, or other factors or conditions that may normally be encountered in the marketing of grapefruit in offshore export channels.
3. Deliberate use by the handler of the fungicides Ortho Phenyl/phenol, Sodium Ortho/Phenylphenate, or Thiabendazole, unless or until official tolerances for these fungicides have been established by the government of the importing country.

(5) Indemnification from the funds collected may be provided, in the sole discretion of the commission, either through purchase of appropriate insurance policies from licensed insurance carriers approved by the commission or through a self-insurance program, or a combination of both. The commission shall, by rule, establish administrative procedures and guidelines providing for the administration of this program, including, but not limited to, the filing of claims, determinations of amount of loss, cause of losses, validity of claims, and payment of claims. No payment on claims shall be made until the end of the shipping season for which the claim is submitted. An amount equal to 5 percent of the total proven and acceptable claim shall be deducted from each such claim, and the remaining amount shall be the maximum indemnity to which the claimant is entitled from the fund on such claim. The rules may provide that unpaid claims, or unpaid balances of pro rata payments on claims, made in regard to any shipping season may be paid from funds generated in the subsequent season or seasons. In providing procedures and guidelines to determine the amount of loss suffered by any claimant hereunder, consideration shall be given to evidence, or lack of evidence, of good faith acts by the claimant, taken within a reasonable commercial time, to mitigate any losses sought to be indemnified by this section.

(6) In carrying out the program contemplated in this section, the commission is authorized to hire, by contract or otherwise, necessary personnel, including those performing or furnishing professional or technical services, and to fix compensation and terms of employment of such personnel and to incur such expenses, to be paid by the Department of Citrus from moneys collected pursuant to this section, as the commission may deem necessary to perform properly and completely the program authorized in this section.

(7) The Department of Citrus, in administering



this section, is authorized to enter into any mutually satisfactory contracts or agreements with any person, firm, institution, corporation, or business unit, including licensed insurance carriers, as well as any state or federal agency, which the commission deems wise, necessary, and expedient, in the carrying out of the objectives of the program provided for in this section.

(8) The 2 cents-per-box tax imposed by this section shall commence on a date to be established in the order providing for the referendum in subsection (12) and shall continue for 5 years thereafter, but such commencement date shall not be later than December 1, 1976. However, the commission, upon an affirmative vote of seven of its members and an order entered by it accordingly determining that, for the purpose of this section, funds at the rate of 2 cents per box are not needed for the ensuing year, may, prior to the commencement of the tax or prior to any subsequent anniversary date of said tax up to and including the anniversary date in 1980, reduce said tax to a level of less than 2 cents per standard packed box of grapefruit, or suspend said tax entirely for the next ensuing year. If said tax has been suspended or reduced for any year, the commission, upon an affirmative vote of seven of its members and an order entered by it accordingly determining that additional funds are needed for the purposes of this section, may, prior to the first anniversary date of the commencement of the tax or prior to any subsequent anniversary date of said tax up to and including the anniversary date in 1980, reinstate said tax at the 2 cents level or less, but never to exceed 2 cents in any 1 year. If the commission has reduced or suspended the tax for any year, it may reimpose or reinstate said tax for any year within the 5 years following the commencement date of the tax, but under no circumstances shall the total tax collected during the entire 5-year period allowed for the collection of taxes exceed 10 cents per standard packed box of grapefruit. Any suspension, reduction, or reinstatement must become effective on the established anniversary date of any year. The maximum amount projected to accumulate in the Grapefruit Offshore Export Indemnity Fund shall be an amount to be determined by the commission after consideration of all relevant factors, including, but not limited to, estimated crop size, estimated export shipments, historical export market data, extent of previous claims, if any, probable extent of potential claims during next season, and amount of funds currently available. The Grapefruit Offshore Export Indemnity Program utilizing the funds collected hereunder shall not be limited in time, may extend beyond the period during which taxes are collected, and may continue until all funds are expended or until the commission determines that maximum utilization of the funds collected has been achieved for the purposes set forth. Upon such a determination by the commission that maximum utilization of funds has been achieved, any funds remaining in the Grapefruit Offshore Export Indemnity Fund shall remain in the Florida Citrus Advertising Trust Fund and are, upon that event, appropriated to the Department of Citrus for the uses and purposes prescribed in s. 601.15.

(9) If the commission finds it necessary to do so, it may transfer to the said Grapefruit Offshore Export Indemnity Fund, from any portion of the Florida Citrus Advertising Trust Fund, such sum of money as the commission determines is initially required to implement this section and the indemnity program to be carried out pursuant to it until moneys in said Grapefruit Offshore Export Indemnity Fund derived from assessments imposed and collected pursuant to this section are sufficient for such purposes, and thereafter repay such advance out of the Grapefruit Offshore Export Indemnity Fund.

(10) This section shall be liberally construed:

(a) To effectuate the purposes set forth.

(b) As an additional and supplementary power vested in the commission under the police power of this state.

(11) The commission shall appoint an advisory committee of Florida grapefruit growers, not to exceed seven members. An owner, member, officer, director, stockholder, or paid employee of a corporation, firm, or partnership engaged in growing grapefruit for shipment in the primary channel of trade shall be eligible for membership on the advisory committee. No member of the commission shall serve on the advisory committee. The purpose of the committee shall be solely to advise the commission in carrying out the duties imposed upon it pursuant to this section. The advisory committee shall be known as the Florida Grapefruit Offshore Export Indemnity Committee. Said committee shall serve at the pleasure of the commission and shall serve without pay, but may be reimbursed for such actual expenses incurred as the commission may authorize.

(12) This section shall not be implemented unless the commission determines that it has been assented to in writing by at least 55 percent of those producers of grapefruit in Florida to be taxed by this section who vote in a producer referendum to be conducted by the commission. The grapefruit producers entitled to vote shall be those producing grapefruit in Florida at the time of the referendum. Proxy voting shall not be permitted, and each qualified producer shall be entitled to one vote, regardless of the number of separate groves the producer may own. This referendum to determine the grapefruit producers' assent shall be conducted over a 30-day period, which 30-day period shall be determined and set forth in an order entered by the commission, but in no event shall said 30-day period commence later than October 15, 1976. The commission, by order, shall also specify the form of ballot to be used for voting in the referendum and such other procedures as are necessary or required to properly conduct the referendum. Notice of the referendum and the place at which ballots may be obtained shall be published one time, at least 10 days prior to the date the referendum is to commence, in at least one daily newspaper of general circulation in each of two cities within the citrus-producing area of the state to be selected by the commission.

History.—s. 1, ch. 76-129; s. 1, ch. 77-174.

#### **601.152 Special marketing orders.—**

(1)(a) Whenever, upon its own motion or upon petition of any handler or producer or group or association of handlers or producers of citrus fruit, the

commission, upon affirmative vote of nine of its members, determines:

1. That the conduct of a special advertising and promotional marketing campaign or the conduct of market and product research and development, in addition to the advertising campaign being conducted pursuant to s. 601.15 and the research being conducted pursuant to the other provisions of the Florida Citrus Code, may substantially further increase the consumer acceptance and consumption of, and strengthen the market for, any type, variety, or form of citrus fruit or processed citrus product by further increasing the number of families buying such citrus fruit or such processed citrus product or by further increasing the quantity of such citrus fruit or processed citrus product purchased by buying families; and

2. That such substantial further increase and strengthening may be of substantial benefit to handlers thereof, producers thereof, and to the economy and well-being of the state

the commission shall direct that a proposed marketing order be formulated for a special marketing campaign of advertising and sales promotion, including, but not limited to, brand advertising rebate promotions or the conduct of market and product research and development for such type, variety, or form of citrus fruit or processed citrus product, and shall designate a public hearing to consider adoption and implementation of such proposed marketing order.

(b) Notice of the time, place, and purpose of such public hearing shall be:

1. Mailed, not less than 10 days prior to such hearing, to each handler who, during the 12 months immediately preceding such mailing, has first handled in the primary channel of trade in Florida the type, variety, and form of citrus fruit or citrus product specified in the proposed marketing order, and to each handler who the Department of Citrus has good cause to believe will, during the period of time covered by the proposed marketing order, first handle in the primary channel of trade in Florida the type, variety, and form of citrus fruit or processed citrus product specified in such proposed marketing order.

2. Published in the Florida Administrative Weekly not less than 10 days prior to such hearing.

(c) A full and complete record of all proceedings at such public hearing shall be made and filed by the department at its offices, which record, when signed by the chairman of the commission and authenticated by the seal of the department, shall constitute prima facie evidence of said proceedings in all courts of this state.

(d) Copies of the proposed marketing order shall be made available to the public at the offices of the Department of Citrus at Lakeland at least 5 days prior to such hearing and shall be in sufficient detail to apprise all persons having an interest therein of the approximate amount of moneys proposed to be expended; the assessments to be levied thereunder; and the general details of the proposed marketing order for a special marketing campaign of advertising or sales promotion or market or product research and development. Among the details so specified shall be the period of time during which the assess-

ment imposed pursuant to subsection (8) shall be levied upon the privilege so assessed, which period shall not be greater than 2 years. The order may, however, provide that the expenditure of the funds received from the imposition of such assessments shall not be so confined, but may be expended during such time or times as shall be specified in the proposed marketing order, which may be either during the shipping season immediately preceding the shipping seasons during which such assessments are imposed or during, or at any time subsequent to, the shipping seasons during which such assessments are imposed. Nothing herein shall be construed to prevent the imposition of a subsequent marketing order either before, during, or after the expenditure of funds collected pursuant to a previously imposed marketing order, provided the aggregate of the assessments imposed shall not exceed the maximum permitted under subsection (8).

(e) A proposed marketing order shall specify the type, variety, and form of citrus fruit or processed citrus product to be covered by the order and whether it applies:

1. To such citrus fruit or processed citrus product if it was so packed or processed from fruit first placed in the primary channel of trade in Florida during the period of time specified in the marketing order for the imposition of such assessments, or

2. To such citrus fruit or processed citrus product if it was so packed, processed, or shipped in such type, variety, and form during the period of time specified in the marketing order for the imposition of such assessments.

(f) If a marketing order provides for a brand advertising rebate promotion, the details specified shall include the requirements which must be met by the handler, broker, distributor, or grower in order to be eligible for rebate of advertising or promotional expenditures; the amount, or a method for computing the amount, rebatable; and the procedure for making rebates.

(g) Any marketing order may provide that policy decisions with respect to details not specifically set forth in such marketing order may be made either by the commission upon its own motion or by the commission upon the recommendation of any handlers' committee that may be established by the order. Otherwise such policy decisions shall be made by the commission.

(2) After such notice and hearing, the commission shall determine whether or not implementation of the new special marketing order, as originally proposed or as amended at the public hearing, will substantially further increase the consumer acceptance and consumption of the citrus fruit or processed citrus product specified in such marketing order and that such substantial further increase in the consumer acceptance and consumption thereof will be of substantial benefit to the handlers and producers thereof and to the economy and well-being of the state. If the commission so determines and if it adopts a marketing order, the commission shall direct that such marketing order be subjected to a referendum of the handlers who have, during a representative period to be selected by the commission, handled in the primary channel of trade in Florida

the type, variety, and form of citrus fruit or processed citrus product specified in such marketing order.

(3) No marketing order adopted pursuant to this section shall be effective unless and until the commission, at a public meeting, determines such marketing order to have been assented to by referendum by at least 67 percent of the handlers covered by the marketing order who, during the representative period determined by the commission, first handled in the primary channel of trade in Florida not less than 51 percent of the total volume of the type, variety, and form of citrus fruit or processed citrus product specified in the marketing order.

(4) The Department of Citrus is authorized to prescribe such procedures as it deems necessary properly to conduct a referendum among handlers covered by the marketing order to determine whether such marketing order has been so assented to.

(5)(a) Any marketing order adopted pursuant to this section and subsequently approved by referendum as provided herein shall become effective 15 days after referendum approval is officially determined by the commission. Chapter 120 shall not apply to this section. Any such marketing order shall be reviewable by any person adversely affected, by certiorari to the District Courts of Appeal in the manner prescribed by the Florida Appellate Rules. The venue of the proceeding for such review shall be the appellate district which includes the county in which the hearings were conducted or, if the venue cannot be thus determined, the appellate district wherein the Department of Citrus executive offices are located.

(b) In cases in which certiorari is granted pursuant to this section, the court may issue its mandate or order with directions to the agency to enter in the proceedings as is appropriate on the record, or the court may remand the cause for such further proceedings, including the taking of testimony, as may to the court seem necessary or proper:

1. To accord the parties due process of law;
2. To establish a sufficient record for review;
3. To accord the parties their constitutional, statutory, or procedural rights; or
4. To accomplish the purposes and objectives of the law pursuant to which the administrative proceeding was initiated.

(6) Any marketing order so implemented under this section may be amended subsequent to its implementation, provided such amendment shall have been formulated, published, subjected to public hearing, determined by the commission to meet the requirements set forth in the other subsections hereof, and assented to in the same manner and in accordance with all of the procedures and requirements set forth in this section for implementation of the original marketing order. Any such amendment may:

(a) Terminate, extend, accelerate, or defer the conduct of the campaign.

(b) Defer for one or more shipping seasons the imposition of assessments thereunder.

(c) Extend by not more than 2 additional years the period of time during which the assessments imposed pursuant to subsection (8) may be levied upon the privilege so assessed.

(d) Increase (subject to the maximum limitations imposed herein) or reduce the assessments or the amount of moneys to be expended.

(e) Alter the general details of the campaign.

(f) Otherwise amend the originally implemented marketing order.

(7) For the purpose of carrying out any and all provisions of this section, the department, or its duly authorized or designated representative or representatives, may hold hearings, take testimony, and administer oaths. Copies of the proceedings, records, and acts of the department and the handlers' committee, if any, established by the marketing order and certificates purporting to relate the facts concerning such proceedings, records, and acts signed by the chairman of the commission and authenticated by the seal of the department shall be prima facie evidence thereof in all the courts of the state.

(8)(a) Each person who, during the period of time specified in any marketing order implemented pursuant to this section, first handles in the primary channel of trade in Florida any citrus fruit or processed citrus product of the type, variety, and form specified in such marketing order shall, for the privilege of so handling such citrus fruit or such citrus product, pay to the Department of Citrus such assessments as are levied and imposed thereon by such marketing order, which funds shall be used by the Department of Citrus to defray the necessary expenses incurred in the formation, issuance, administration, and enforcement of such marketing order and in the conduct of the special marketing campaign or market and product research and development provided for in such marketing order. However, such assessments levied and imposed pursuant hereto shall be at a rate not to exceed 8 cents per standard-packed box on citrus fruits in fresh form, 1.3 cents per gallon on single strength citrus juices or sections, or 1.3 cents per pound of soluble citrus solids on concentrated citrus juices.

(b) The Department of Citrus shall prescribe procedures for the assessment and collection of such funds to defray the necessary expenses incurred, or expected to be incurred, by the Department of Citrus in the formation, issuance, administration, and enforcement of any marketing order implemented pursuant to the provisions of this section.

(c) Every handler shall, at such times as the department may require, file with the Department of Citrus a return, not under oath, on forms to be prescribed and furnished by the Department of Citrus, certified as true and correct, stating the quantity of the type, variety, and form of citrus fruit or citrus product specified in the marketing order first handled in the primary channels of trade in Florida by such handler during the period of time specified in the marketing order. Such returns shall contain any further information deemed by the Department of Citrus to be reasonably necessary to properly administer or enforce the provisions of this section or any marketing order implemented hereunder. The marketing order shall, and the Department of Citrus may by rule, provide for the confidentiality of any information necessary to the proper administration or enforcement of any marketing order implemented hereunder, when such information is of such a



nature as to cause unfair advantage to competitors of the handler required to file such information.

(d) All assessments imposed under and pursuant to the provisions of this section shall be due and payable and shall be paid by such handlers at such times and in such installments as the commission shall prescribe in such marketing order, or the amount thereof shall be provided for and guaranteed by giving a surety bond or cash deposit or as the Department of Citrus may otherwise prescribe.

(9)(a) All moneys collected by the Department of Citrus under this section shall be set aside in the Florida Citrus Advertising Trust Fund as a special fund to be known as the Citrus Special Marketing Order Fund. All moneys in such fund, after deducting the 2-percent service charge as provided in s. 601.15(7), are hereby appropriated to the Department of Citrus for the actual expenses incurred by the Department of Citrus with respect to the formulation, issuance, administration, and enforcement of any marketing order so implemented and in the conduct of the special marketing campaign or market and product research and development to be carried out pursuant to any such marketing order so implemented. Upon the completion of the special marketing campaign or market and product research and development provided for pursuant to any marketing order so implemented hereunder, any and all moneys remaining and not required by the Department of Citrus to defray the expenses of such marketing order shall be deposited to and made a part of the Florida Citrus Advertising Trust Fund created by s. 601.15.

(b) If the Department of Citrus finds it necessary to do so, it may transfer to said Citrus Special Marketing Order Fund from any other portion of the Florida Citrus Advertising Trust Fund, including the Emergency Reserve Fund and any other special or reserve fund, such sum of money as the Department of Citrus determines is initially required to formulate, issue, administer, and enforce any such marketing order and conduct the special marketing campaign or market and product research and development to be carried out pursuant to such marketing order until moneys in said Citrus Special Marketing Order Fund derived from assessments imposed and collected pursuant to this section are sufficient for such purposes, and thereafter repay such advance out of the Citrus Special Marketing Order Fund.

(10)(a) Any handler who fails to file a return or to pay any assessment within the time required shall thereby forfeit to the Department of Citrus a penalty of 5 percent of the amount of assessment then due; but the Department of Citrus, upon good cause shown, may waive all or any part of said penalty. Such penalty shall be paid to the Department of Citrus and disposed of as provided with respect to moneys derived from the assessments imposed pursuant to this section.

(b) The Department of Citrus may collect the assessments imposed pursuant to this section in either or all of the following methods:

1. The voluntary payment by the handler liable therefor;
2. By a suit at law;
3. By a suit in equity to enjoin and restrain any

handler owing said assessments from operating his business or engaging in business as a citrus fruit dealer until the delinquent assessments are paid. Such action may include an accounting to determine the amount of assessments plus delinquencies due. In any such proceeding, it shall not be necessary to allege or prove that an adequate remedy at law does not exist.

(11) This section shall be liberally construed to effectuate the purposes set forth and as additional and supplemental powers vested in the Department of Citrus under the police power of this state.

**History.**—ss. 1, 3, ch. 61-87; s. 2, ch. 61-119; s. 1, ch. 63-81; s. 1, ch. 65-90; s. 1, ch. 67-85; s. 1, ch. 69-267; s. 22, ch. 71-186; s. 154, ch. 73-333; s. 1, ch. 76-9; s. 1, ch. 77-174; s. 10, ch. 78-95.

#### 601.154 Citrus Stabilization Act of Florida.—

(1) The purposes of this section are:

(a) To enable producers of oranges (*Citrus sinensis Osbeck*), grapefruit (*Citrus paradisi Macf.*), tangerines (*Citrus reticulata Blanco*) or citrus hybrids regulated by the Department of Citrus in the State of Florida, which producers deliver or cause such oranges, grapefruit, tangerines, or citrus hybrids to be delivered into the primary channel of trade, with the aid and under the direction and control of the state, more effectively to correlate the supply of their oranges, grapefruit, tangerines, or citrus hybrids with market demands therefor.

(b) To establish and maintain orderly marketing of oranges, grapefruit, tangerines, or citrus hybrids grown in Florida or the products thereof.

(c) To provide methods and means for the development of new and larger markets for oranges, grapefruit, tangerines, or citrus hybrids grown in Florida, or the products thereof.

(d) To eliminate or reduce economic waste in the production, handling, and marketing of oranges, grapefruit, tangerines, or citrus hybrids grown in Florida.

(e) To restore and maintain adequate purchasing power for orange, grapefruit, tangerine, or citrus hybrid producers of Florida.

(f) To conserve the agricultural wealth of the state.

(g) To stabilize the production and marketing of oranges, grapefruit, tangerines, or citrus hybrids and products thereof in the Florida citrus industry, as the Legislature finds it will promote and protect the health, peace, safety, and general welfare of the people of this state, which in turn will promote the general welfare and social and political economy of this state.

(2)(a) The Department of Citrus shall administer and enforce the provisions of this section. In order to effectuate the declared purposes of this section, the Department of Citrus is hereby authorized to issue, administer, and enforce the provisions of marketing orders hereunder in the way and manner hereinafter provided.

(b) Whenever the commission has reason to believe that the issuance of a marketing order, or any amendment thereof after its issuance, will tend to effectuate the declared purposes of this section, it shall at a regular or special meeting of the commission, either upon its own motion or upon application of any producer or group or association of producers

of oranges, grapefruit, tangerines, or citrus hybrids, provide for a public hearing upon a proposed marketing order or amendment thereof.

(c) Due notice of any hearing called for such purpose shall be given by the commission by publishing notice one time of the time and place of such hearing in at least eight daily newspapers of wide circulation within the citrus producing area of the state to be selected by the commission. Such notice shall be so published not less than 7 nor more than 60 days prior to the date set for such hearing. A copy of the proposed marketing order or amendment thereto shall be available at the commission for examination or copying by any interested party on or before the date of publication of notice of hearing, and such notice shall so state. Such hearing shall be open to the public. All testimony shall be received under oath and a full and complete record of all proceedings at any such hearing shall be made and filed by the commission in its offices, which record signed by the chairman of the commission and authenticated by the seal of the commission shall constitute prima facie evidence of such proceedings in all courts of the state.

(3)(a) After such notice and hearing, the Department of Citrus may issue a marketing order or amendment as originally proposed or as the same may be modified based on evidence submitted at the hearing if it finds and sets forth in such marketing order or amendment that such order or amendment, as the case may be, will tend to:

1. Return to producers of oranges, grapefruit, tangerines, or citrus hybrids in Florida at least average cost of production.

2. Prevent the unreasonable or unnecessary waste of the wealth of the orange, grapefruit, tangerine, or citrus hybrid industry and of the economy of the state.

3. Protect the interests of consumers of oranges, grapefruit, tangerines, or citrus hybrids and the products thereof.

(b) In making the findings set forth in this subsection, the Department of Citrus shall take into consideration any and all relevant and material facts available to it, including but not limited to the following factors:

1. The quantity and quality of oranges, grapefruit, tangerines, or citrus hybrids and products thereof available for sale and distribution.

2. The quantity and quality of oranges, grapefruit, tangerines, or citrus hybrids and products thereof being purchased by consumers.

3. The cost of producing oranges, grapefruit, tangerines, or citrus hybrids as determined by available records, statistics, and surveys.

4. The level of prices of commodities which compete with Florida oranges, grapefruit, tangerines, or citrus hybrids and products thereof.

5. The level of prices of commodities, services, and articles which orange, grapefruit, tangerine, or citrus hybrid producers and handlers commonly buy and utilize.

<sup>1</sup>(4)(a) Every marketing order issued pursuant to the provisions of this section shall provide for an administrative committee to assist the Department of Citrus in the administration thereof. One member

of such administrative committee shall be appointed by the Department of Citrus in such marketing order from each of the seven citrus districts as defined in s. 601.09 from producer nominees submitted by producers on or before the date of the hearing provided for in subsection (2). To qualify for appointment, such producer nominees shall meet the same qualifications as those for grower members of the commission set forth in s. 601.04(1).

(b) If the marketing order contains provisions authorized by paragraph (5)(c) or (e) pertaining to processed citrus products, seven additional members of such administrative committee shall be appointed by the Department of Citrus in such marketing order from processor nominees, each of whom shall be experienced in and actively engaged in an executive capacity as an officer, employee, or owner of a corporation or other business unit engaged in processing the type of processed orange, grapefruit, tangerine, or citrus hybrid products to be purchased or marketed pursuant to the provisions of such marketing order, which processor nominees shall have been submitted by processors on or before the date of such hearing.

(c) If the marketing order contains provisions authorized by paragraph (5)(b) or (e) pertaining to fresh citrus fruits, seven additional members of such administrative committee shall be appointed by the Department of Citrus in such marketing order from shipper nominees, each of whom shall be experienced in and actively engaged in an executive capacity as an officer, employee, or owner of a corporation or other business unit engaged in shipping fresh oranges, grapefruit, tangerines, or citrus hybrids to be purchased or marketed pursuant to the provisions of such marketing order, which fresh fruit shipper nominees shall have been submitted by fresh fruit shippers on or before the date of such hearing.

(d) Any vacancy on the committee shall be filled by appointment by the Department of Citrus.

(e) The Department of Citrus may, if it sees fit, appoint one or more advisory committees to perform such duties as the Department of Citrus finds wise and proper. The majority of the members of any such advisory committee or committees shall be producers.

(f) No member of the administrative committee or advisory committees shall receive a salary, but each member of the administrative committee shall be entitled to his expenses as provided by law while engaged in performing his duties.

(g) Subject to the approval of the Department of Citrus, the administrative committee may employ necessary personnel, including those performing or furnishing professional or technical services, fix their compensation and terms of employment, and may incur or may authorize such administrative committee to incur such expenses, to be paid by the Department of Citrus from moneys collected as hereinafter provided, as the Department of Citrus may deem necessary to perform properly such of its duties and those of the administrative committee as are authorized herein. The duties of such administrative committee shall include the following:

1. Subject to the approval of the Department of Citrus, administer and operate such marketing or-

der under the direction and control of the commission.

2. To recommend to the Department of Citrus administrative rules and regulations relating to the marketing order. With respect to rules and regulations relating to the provisions of paragraph (5)(c) or (e), the same may be adopted by the Department of Citrus only upon the recommendation of the administrative committee by a vote of both a majority of the producer members and a majority of the processor members of such administrative committee. With respect to rules and regulations relating to paragraph (5)(b), the same may be adopted by the Department of Citrus only upon the recommendation of the administrative committee by a vote of both a majority of the producer members and a majority of the fresh orange, grapefruit, tangerine, or citrus hybrid shipper members of such administrative committee.

3. To receive and report to the Department of Citrus any and all complaints with respect to alleged violations of the marketing order and rules and regulations thereunder.

4. To recommend to the Department of Citrus amendments to the marketing order and request a public hearing and referendum thereon.

5. To assist the Department of Citrus in the assessment and the collection of funds hereunder.

6. To assist the Department of Citrus in the collection of such necessary information and data as the Department of Citrus may deem necessary to the proper administration of this section.

(5) Subject to the legislative restrictions and limitations set forth herein, any marketing order issued by the Department of Citrus pursuant to this section may contain one or more of the following provisions relating to oranges, grapefruit, tangerines, or citrus hybrids, or products thereof, produced within this state, but no others:

(a) Provisions for determining, or providing methods for determining, the present and future existence and extent of the supply of oranges, grapefruit, tangerines, or citrus hybrids or products thereof.

(b) Provisions authorizing the imposition of quality standards for oranges, grapefruit, tangerines, or citrus hybrids, fixing the minimum ratios of total soluble solids of the juice of such oranges, grapefruit, tangerines, or citrus hybrids to the anhydrous citric acid thereof or the minimum total soluble solids of the juice thereof or both at levels higher than those provided in s. 601.20(1)-(31) or s. 601.17, or in the Department of Citrus rules governing the same.

(c) Provisions for the establishment of a reserve pool of frozen concentrated orange or grapefruit juice or any other type of processed orange or grapefruit product which can be stored without expectation of significant quality loss for a period of not less than 20 years, for disposition following serious freezes, hurricanes, or other catastrophes which result in a shortage of oranges or grapefruit or processed orange or grapefruit products as hereinafter provided, and for the renting or leasing of facilities for the storage thereof.

(d) Provisions for the establishing of assessments as hereinafter provided on producers, or associations

of producers, to provide funds for the formulation, issuance, administration, operation, and enforcement of any marketing order promulgated hereunder.

(e) Provisions for underwriting or subsidizing the development or expansion of markets for oranges, grapefruit, tangerines, or citrus hybrids, or the products thereof.

(f) Provisions for the borrowing of money by the Department of Citrus to effectuate the particular marketing order.

(g) Provisions for the establishment of such plans or programs for advertising, merchandising, and sales promotion to create new or larger domestic or foreign markets for oranges, grapefruit, tangerines, or citrus hybrids grown in the state and the processed products and byproducts thereof as circumstances may warrant.

(h) Provisions incidental to and not inconsistent with the foregoing provisions.

(6)(a) No marketing order, or amendments thereto, issued pursuant to this section shall become effective unless and until the Department of Citrus finds that such order has been assented to in writing by at least 65 percent of the producers voting in a referendum on the marketing order. The said marketing order must also be consented to in writing by producers voting in the said referendum who, during a preceding representative shipping season determined by the Department of Citrus, produced and delivered or caused to be delivered into the primary channel of trade not less than 65 percent of the total number of standard-packed boxes of oranges, grapefruit, tangerines, or citrus hybrids, or the equivalent thereof which were found by the Department of Citrus to have been produced and delivered by such voting producers into the primary channel of trade during such representative period.

(b) No marketing order or amendments thereto issued pursuant to this section which contain provisions authorized by paragraph (5)(c) or (e) pertaining to processed citrus products shall become effective unless and until such order has also been submitted to processors who, during a preceding representative shipping season determined by the Department of Citrus, handled in the primary channel of trade the type or types of processed orange, grapefruit, tangerine, or citrus hybrid products specified for purchase or marketing by the provisions of such marketing order, and the Department of Citrus finds that such order has been assented to in writing by at least 51 percent of such processors voting in such referendum who processed, from oranges, grapefruit, tangerines, or citrus hybrids delivered into the primary channels of trade during such representative period, not less than 65 percent of the number of gallons of such processed orange, grapefruit, tangerine, or citrus hybrid products, expressed on a single-strength basis, so processed by such voting processors from oranges, grapefruit, tangerines, or citrus hybrids delivered into the primary channel of trade during such representative period.

(c) No marketing order or amendments thereto issued pursuant to this section which contain provisions authorized by paragraph (5)(b) or (e) pertaining to fresh citrus fruit shall become effective unless and



until such order has also been submitted to shippers of fresh oranges, grapefruit, tangerines, or citrus hybrids who, during a preceding representative shipping season determined by the Department of Citrus, handled oranges, grapefruit, tangerines, or citrus hybrids in the primary channel of trade, and the Department of Citrus finds that such order has been assented to in writing by at least 51 percent of such shippers of fresh oranges, grapefruit, tangerines, or citrus hybrids voting in such referendum who, during such representative period, handled in the primary channel of trade not less than 65 percent of the number of standard-packed boxes of such oranges, grapefruit, tangerines, or citrus hybrids handled by such voting shippers of fresh oranges, grapefruit, tangerines, or citrus hybrids in the primary channel of trade during such representative period.

(7) The Department of Citrus is authorized to prescribe by rule or regulation such procedures as it deems necessary or required to properly conduct a referendum hereunder.

(8) Every marketing order and amendment thereto issued by the Department of Citrus, under the provisions of this section, shall be published one time, within 10 days after the same is adopted, in at least one daily newspaper of general circulation in each of two cities within the citrus-producing area of the state, to be selected by the Department of Citrus. All such orders shall become effective 5 days after the same are found by the Department of Citrus to be so assented to, unless the Department of Citrus orders a later date. In case written protest by any affected person shall be made to any such order within 15 days after the Department of Citrus has found it so assented to, a hearing shall be conducted at a place and time determined by the Department of Citrus or its authorized agent or representative; all interested persons shall have an opportunity to be heard. Due notice of the time and place of such hearing by the Department of Citrus or its designated agent, representative, or hearing officer shall be given to the persons making such protest. In all cases such written protests shall be filed with the Department of Citrus; however, the filing thereof shall not stay the effective date of such order. The Department of Citrus may, on application of the protestant and for good cause shown, stay the effective date of said order for such time as the Department of Citrus may direct. Any action of the Department of Citrus refusing to modify the order protested, or refusing to stay the effective date of such order shall be subject to review by any court of competent jurisdiction.

(9) For the purpose of carrying out any and all provisions of this section, the commission, or its duly authorized or designated representative or representatives, may hold hearings, take testimony, administer oaths, and may, after any marketing order shall have become final, subpoena witnesses and issue subpoenas for the production of books, records, or documents relevant and material to the marketing order. Copies of the proceedings, records, and acts of the commission and certificates purporting to relate the facts concerning such proceedings, records, and acts, signed by the chairman of the commission and authenticated by the seal of the commis-

sion, shall be prima facie evidence thereof in all the courts of the state.

(10)(a) The Department of Citrus shall suspend or terminate any marketing order, or any provision thereof, whenever it finds such order or provision does not tend to effectuate the declared purposes of this section within the standards and subject to the limitations and restrictions herein imposed. Such suspension or termination shall not be effective until the expiration of the then current marketing, shipping, or harvesting season, unless otherwise provided in any such marketing order.

(b) If the Department of Citrus finds that the termination or suspension of any marketing order is requested in writing by producers who produced for market during the last preceding shipping season more than 51 percent of the total standard-packed boxes of the variety of citrus fruit covered by the marketing order, the Department of Citrus shall terminate or suspend for a specified period such marketing order or provision thereof.

(11) Upon the issuance of any order of suspension or termination of any marketing order, a notice thereof shall be published one time in at least one daily newspaper of general circulation in each of two cities within the citrus-producing area of the state to be selected by the Department of Citrus. No order of suspension or termination shall become effective until the expiration of a period of 5 days from the date of such publication. It shall also be the duty of the Department of Citrus to mail a copy of the notice of said issuance to all persons directly affected by the terms of such order of suspension or termination who file in the offices of the Department of Citrus a written request for such notice.

(12) For the privilege of delivering the variety of citrus fruit covered by a marketing order into the primary channel of trade, every person so engaged shall pay to the Department of Citrus an assessment specified in the marketing order. However, the aggregate of all assessments levied against any variety of citrus fruit with respect to one or more marketing orders shall not exceed 10 cents per standard-packed box or the equivalent thereof with respect to any shipping season in which such marketing order or orders are in effect. The Department of Citrus shall prescribe rules and regulations with respect to the assessment and collection of such funds.

(13)(a) Every handler, producer, or other person delivering oranges, grapefruit, tangerines, or citrus hybrids to any handler or other person shall keep a complete and accurate record of all oranges, grapefruit, tangerines, or citrus hybrids handled by him. Such record shall be in such form and contain such information as the Department of Citrus shall by rule or regulation prescribe. Such records shall be preserved by all such persons for a period of at least 1 year after the termination of the marketing order to which such records relate and shall be offered for inspection at any time upon oral or written demand by the Department of Citrus or its duly authorized agent or representative.

(b) Every handler shall, at such times as the Department of Citrus may by rule or regulation require, file with the Department of Citrus a return on forms to be prescribed and furnished by the Depart-

ment of Citrus certifying the number of standard-packed boxes of the variety of citrus fruit covered by a marketing order handled by him in the primary channel of trade during the period of time prescribed by the Department of Citrus.

(c) All assessments levied and imposed under and pursuant to the provisions of this section shall be due and payable and shall be paid, or the amount thereof provided for and guaranteed as hereinafter provided, at such times and in such installments as the Department of Citrus shall by regulation prescribe. All such assessments shall be paid by the producer or other person delivering the oranges, grapefruit, tangerines, or citrus hybrids into the primary channel of trade. However, the handler who receives the citrus fruit in the primary channel of trade shall not be construed to be the person delivering the citrus fruit into the primary channel of trade, except when such handler and the producer are one and the same person. Such assessments shall be collected from the producer or other person delivering the oranges, grapefruit, tangerines or citrus hybrids into the primary channel of trade by the handler first handling the citrus fruit in the primary channel of trade and shall be guaranteed and transmitted to the Department of Citrus by the handler so shipping or processing such citrus fruit by the giving of a security bond or cash deposit under rules and regulations promulgated by the Department of Citrus. Such assessments shall not be absorbed by the handler, unless the handler is one and the same person as the producer, but shall be deducted by the handler from the price paid or to be paid by the handler to the producer or other person who delivered the citrus fruit into the primary channel of trade.

(14)(a) All money so collected by the Department of Citrus under this section, including the net proceeds received by the Department of Citrus from the sale of any processed orange product pursuant to paragraph (5)(c), shall be set aside in the Florida Citrus Advertising Trust Fund as a special fund to be known as the "Citrus Stabilization Fund." All moneys in such fund, after deducting the 2 percent service charge as provided in s. 601.15(7), are hereby appropriated to the Department of Citrus for the payment of the actual expenses incurred by the Department of Citrus or by the administrative committee in the formulation, issuance, administration, enforcement, and operation of the marketing order pursuant to which such funds are so collected, except as hereinafter provided. The marketing order may provide that any moneys remaining in such fund upon the termination of a marketing order shall be refunded on a pro rata basis to all persons assessed pursuant to such marketing order, or may provide that such moneys may be used to pay expenses incurred by the Department of Citrus in the formulation, issuance, administration, enforcement, and operation of any other marketing order issued pursuant to this chapter, or may provide that such moneys may be deposited to and made a part of the Citrus Advertising Trust Fund created by s. 601.15. During the administration, enforcement, and operation of any marketing order adopted hereunder, if the commission determines that funds derived pursuant to

that marketing order exceed the requirements for the desired operation of that marketing order, it may transfer such funds as it determines by its vote are excess, to the Florida Citrus Advertising Trust Fund established by s. 601.15. Such transfer shall be for the purposes of advertising and promoting, including brand advertising rebate promotions, merchandising and research in regard to the particular form of citrus fruit or processed citrus product for which the funds were collected pursuant to the marketing order. The commission may also transfer any excess for the purpose of the formulation, issuance, administrative enforcement, or operation of any other marketing order adopted hereunder that is directed to the same form of citrus fruit or processed citrus product. No such transfer shall be accomplished without a public hearing and a subsequent referendum being conducted to approve such a transfer. If, after any such transfer of excess funds, it is subsequently determined that additional funds are needed for the administration, enforcement, and operation of the marketing order from which funds were transferred, and there are sufficient funds available in the fund which was the recipient of the funds transferred, the commission, upon an affirmative vote of nine of its members, may retransfer, from the recipient fund to the original fund, an amount not to exceed that originally transferred.

(b) If the commission finds it necessary to do so, it may transfer to said Citrus Stabilization Fund from the Florida Citrus Advertising Trust Fund created in this chapter, only such sum of money as the commission determines is required to formulate and issue any such marketing order until moneys in said Citrus Stabilization Fund derived from assessments imposed and collected pursuant to this section are sufficient to finance the administration, enforcement, and operation of such marketing order and to replace such transferred funds.

(c) If the commission finds it necessary to do so, for the purpose of administering any marketing order or orders or amendments thereto adopted pursuant to s. 601.159, or for the purpose of funding the activities authorized by any such order or amendment, it may transfer for such purposes funds collected under any marketing order pertaining to oranges or processed orange products adopted pursuant hereto as the commission determines are required. However, any such transfer may be made only after an order entered by the commission authorizing such a transfer, which order shall be subject to public hearing and referendum as provided for herein. Any such public hearing and referendum on such a transfer may be held simultaneously with a public hearing and referendum conducted under the authority of s. 601.159.

(15)(a) Any marketing order which contains provisions authorized by paragraph (5)(c) shall include provisions specifying:

1. The type and form of processed orange or grapefruit product proposed to be purchased, stored, and sold.

2. The maximum price at which the processed orange or grapefruit product to be pooled may be purchased or the criteria to be used in computing such maximum price.

3. The criteria to be used in determining whether a freeze, hurricane, or other catastrophe which results in a shortage of oranges or grapefruit or processed orange or grapefruit products is sufficiently serious to justify the sale of all or part of the processed orange or grapefruit products then held in the reserve pool.

4. The minimum price at which the pooled processed orange or grapefruit product shall be sold after a determination pursuant to subparagraph 3., or the criteria to be used in computing such minimum price.

5. The criteria to be used in determining upon what basis or allocation, or both, and upon what time schedule, the pooled processed orange or grapefruit product may be sold to Florida processors of processed orange or grapefruit products after a determination pursuant to, subparagraph (a)3.

6. The quality standards to which the processed orange or grapefruit product to be pooled shall be required to conform.

7. The criteria for determining at what level the quantity of processed orange or grapefruit products in the reserve pool will be sufficient to accomplish the purposes intended.

8. The criteria to be used in determining to what limited extent processed orange or grapefruit products held in such reserve pool may be sold to defray costs of storage at such times when no other funds are available for such purpose.

(b) Notwithstanding any other provision of this section, the provisions of any marketing order authorized by paragraph (5)(c) shall not, under any circumstances, be suspended, terminated, or amended within 12 months following a catastrophe which, under the criteria established pursuant to subparagraph (a)3., is sufficiently serious to justify the sale of all or part of the processed citrus products then held in the reserve pool.

(16) Any person who violates any provision of this section, any provision of any marketing order, or any rule or regulation of the Department of Citrus relating thereto shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(17) The several circuit courts of the state are hereby vested with jurisdiction specifically to enforce and to enjoin and restrain any person from violating any provisions of this section, or of any marketing order, rules, or regulations duly issued by the Department of Citrus hereunder, in any proceeding brought by the Department of Citrus in any of said circuit courts; and in any such proceeding it shall not be necessary for the Department of Citrus to post any bond or to allege or prove that an adequate remedy at law does not exist. The said circuit courts may issue a temporary restraining order and preliminary injunction, as in other actions for injunctive relief, and, upon final hearing, if the final decree be in favor of the Department of Citrus, the court shall permanently enjoin the defendant or defendants from further violations, and any such final decree in favor of the Department of Citrus shall provide that the defendant or defendants pay it reasonable costs of such suit, including reasonable attorney's fees. Any such action may be commenced

either in the county where the defendant resides, or in the county where any other defendant resides, if more than one defendant, or in the county where any act or omission, or part thereof, complained of occurred.

(18) This section shall be liberally construed to effectuate the purposes set forth and as additional and supplemental powers vested in the Department of Citrus under the police power of this state.

(19) Nothing herein shall be construed to authorize the Department of Citrus in any manner to fix prices of citrus.

**History.**—ss. 1, 2, 4, ch. 67-220; s. 623, ch. 71-136; s. 22, ch. 71-186; s. 156A, ch. 71-355; s. 2, ch. 74-85; s. 1, ch. 77-3; s. 4, ch. 78-323.

**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this subsection prior to that date.

### 601.155 Equalizing excise tax; credit; exemption.—

(1) The first person subject to regulation by this chapter who exercises in this state the privilege of processing, reprocessing, blending, mixing, packaging, or repackaging processed orange products or processed grapefruit products or removing any portion of such product from the original container in which it arrived in this state for purposes other than official inspection or direct consumption by the consumer and not for resale shall be assessed and shall pay an excise tax upon the exercise of such privilege.

(2) The excise tax levied by this section shall be at the same rate per box of oranges or grapefruit utilized in the initial production of the processed citrus products so handled as that imposed, at the time of exercise of the taxable privilege, by s. 601.15 plus that imposed, if any, by s. 601.156 per box of oranges and s. 601.157 per box of grapefruit, respectively.

(3) For purposes of this section, the number of boxes of oranges or grapefruit utilized in the initial production of processed citrus products subject to the taxable privilege shall be:

(a) The actual number of boxes so utilized, if known and verified in accordance with Department of Citrus rules; or

(b) An equivalent number established by Department of Citrus rule which, on the basis of existing data, reasonably equates to the quantity of citrus contained in the product, when the actual number of boxes so utilized is not known or properly verified.

(4) For purposes of this section:

(a) "Processed orange products" means products for human consumption consisting of 20 percent or more single strength equivalent orange juice, or orange sections, segments, or edible components, or whole peeled fruit.

(b) "Processed grapefruit products" means products for human consumption consisting of 20 percent or more single strength equivalent grapefruit juice, or grapefruit sections, segments, or edible components, or whole peeled fruit.

(5) All products subject to the taxable privileges under this section, produced in whole or in part from citrus fruit grown within the United States, shall be exempt from the tax imposed by this section to the extent that the products are derived from oranges or grapefruit grown within the United States.

(6) All persons liable for the excise tax imposed by this section shall keep a complete and accurate



record of the receipt, storage, handling, exercise of any taxable privilege under this section, and shipment of all products subject to the tax imposed by this section. Such record shall be preserved for a period of 1 year and shall be offered for inspection upon oral or written request by the Department of Citrus or its duly authorized agent.

(7) All persons liable for the excise tax imposed by this section shall, at such times and in such manner as the Department of Citrus may by rule require, file with the Department of Citrus a return, certified as true and correct, on forms to be prescribed and furnished by the Department of Citrus, stating, in addition to other information reasonably required by the Department of Citrus, the number of units of processed orange or grapefruit products subject to this section upon which any taxable privilege under this section was exercised during the period of time covered by the return. Full payment of excise taxes due for the period reported shall accompany each return.

(8) All taxes levied and imposed by this section shall be due and payable when the first of the taxable privileges is exercised in this state. Periodic payment of the excise taxes imposed by this section, by the person first exercising the taxable privileges and liable for such payment, shall be permitted only in accordance with Department of Citrus rules, and the payment thereof shall be guaranteed by the posting of an approved surety bond or cash deposit in an amount and manner as prescribed by the Department of Citrus.

(9) All excise taxes levied and collected under the provisions of this section, including penalties, shall be paid into the State Treasury, to be made a part of the Florida Citrus Advertising Trust Fund, in the same manner, for the same purposes, and in the same proportions as set forth in s. 601.15(7). Any person failing to file a return or pay any assessment within the time required shall thereby forfeit to the Department of Citrus a penalty of 5 percent of the amount of assessment then due; but the Department of Citrus, on good cause shown, may waive all or any part of said penalty.

(10) This section shall be liberally construed to effectuate the purposes set forth and as additional and supplemental powers vested in the Department of Citrus under the police power of this state.

**History.**—s. 1, ch. 70-142; s. 1, ch. 70-439; s. 22, ch. 71-186; s. 1, ch. 73-29; s. 1, ch. 78-99.

#### **601.156 Additional excise tax on citrus.—**

(1) There is levied and imposed an additional excise tax of 2 cents per box upon each standard-packed box of oranges grown in this state that is sold or delivered into the primary channel of trade for processing into processed orange products.

(2) Except when inconsistent with this section, the provisions of s. 601.15, as now existing or hereafter amended, shall apply to the additional excise tax imposed by this section.

(3) All excise taxes levied by this section and collected by the Department of Citrus shall be paid into the State Treasury on or before the fifteenth day of each month, and said moneys shall be deposited into the Florida Citrus Advertising Trust Fund and shall be set aside and accounted for therein as a special

fund to be known as the "Processed Orange Products Advertising Fund." All moneys in the Processed Orange Products Advertising Fund, after deducting the service charge required by s. 601.15(7)(a), are appropriated to the Department of Citrus to be expended exclusively for commodity advertising, merchandising, and sales promotion of processed orange products.

**History.**—s. 1, ch. 70-153; s. 1, ch. 70-439; s. 22, ch. 71-186.

#### **601.157 Additional excise tax on grapefruit for processing.—**

(1) There is hereby levied and imposed an additional excise tax of 4 cents per box upon each standard-packed box of grapefruit grown in this state that is sold or delivered into the primary channel of trade for processing into processed grapefruit products.

(2) Except when inconsistent with this section, the provisions of s. 601.15, as now existing or hereafter amended, shall apply to the additional excise tax imposed by this section.

(3) All excise taxes levied by this section and collected by the Department of Citrus shall be paid into the State Treasury on or before the fifteenth day of each month, and said moneys shall be deposited into the Citrus Advertising Trust Fund. After deducting the service charge required by s. 601.15(7)(a), one-half of said moneys shall be set aside and accounted for therein as a special fund to be known as the Processed Grapefruit Rebate Fund, and the remaining one half of said moneys shall be set aside and accounted for therein as a special fund to be known as the Processed Grapefruit Advertising Fund.

(4)(a) All moneys in the Processed Grapefruit Rebate Fund are hereby appropriated to the Department of Citrus to be expended exclusively for making rebates to handlers of processed grapefruit products as an incentive to encourage brand advertising of processed grapefruit products produced in Florida.

(b) The Department of Citrus is hereby authorized and directed to issue and promulgate rules and regulations providing for such rebates to handlers for brand advertising of processed grapefruit products.

(c) No handler shall receive in rebates with respect to any shipping season more than one-half of the additional taxes paid by him hereunder during such shipping season, nor shall he receive more than \$1 for each \$2 spent by such handler in such brand advertising.

(d) The term "advertising" shall be restricted to point-of-sale material, retail price cards, or other printed matter used in the display of processed grapefruit products and to newspaper, billboard, magazine, radio, and television advertising, or other advertising or promotional activities approved by the commission under such conditions as the Department of Citrus may by rule prescribe.

(5)(a) The balance remaining in the Processed Grapefruit Rebate Fund on September 15 of each year over and above the aggregate of all valid claims filed against said fund hereunder shall be transferred to and become a part of the Processed Grapefruit Advertising Fund.

(b) All moneys in the Processed Grapefruit Advertising Fund are hereby appropriated to the De-

partment of Citrus to be expended exclusively for commodity advertising, merchandising, and sales promotion of processed grapefruit products.

History.—s. 1, ch. 71-187; s. 1, ch. 77-29.

**601.158 Additional excise tax; Citrus Harvesting Research and Development Fund.—**

(1) There is hereby levied and imposed an additional excise tax of 1 cent per box upon each standard-packed box of citrus fruit taxed under s. 601.15 and grown in this state that is sold or delivered into the primary channel of trade. The taxes levied and imposed by this section shall be paid by the producer or other person delivering the citrus fruit into the primary channel of trade, except that the handler who receives the citrus fruit in the primary channel of trade shall not be construed to be the person delivering the citrus fruit into the primary channel of trade except when such handler and the producer are one and the same person. Such excise taxes shall be collected from the producer or other person delivering the citrus fruit into the primary channel of trade by the handler first handling the citrus fruit in the primary channel of trade and shall be guaranteed and transmitted to the Department of Citrus by the handler so shipping or processing such citrus fruit by the giving of a security bond or cash deposit under rules and regulations promulgated by the commission. Such excise taxes shall not be absorbed by the handler unless the handler is one and the same person as the producer, but shall be deducted by the handler from the price paid or to be paid by the handler to the producer or other person who delivered the citrus fruit into the primary channel of trade.

(2) Except when inconsistent with this section, the provisions of s. 601.15 as now existing or hereafter amended shall apply to the additional excise tax imposed by this section.

(3) All excise taxes levied by this section and collected by the Department of Citrus shall be paid into the State Treasury on or before the fifteenth day of each month, and said moneys shall be deposited into the Florida Citrus Advertising Trust Fund. After deducting the service charge required by s. 601.15(7)(a), said moneys shall be set aside and accounted for therein as a special fund to be known as the Citrus Harvesting Research and Development Fund. All moneys in the Citrus Harvesting Research and Development Fund are hereby appropriated to the Department of Citrus to be expended in the conduct of a research and development program substantially to eliminate or reduce economic waste in the harvesting and handling of citrus fruit grown in Florida.

(4) In order to carry out the research and development contemplated by this section, the Department of Citrus is empowered to use the funds of the Citrus Harvesting Research and Development Fund to provide suitable facilities and equipment for the purpose of conducting thorough and comprehensive study and research to determine the most efficient and economical means possible for the harvesting and handling of citrus fruits, including, but not limited to, the development of mechanical harvesting devices or other harvesting methods designed more efficiently to harvest citrus fruit and thereby increase the net returns to the Florida citrus grower

for the crops produced upon his citrus groves. In providing facilities for the research and development program contemplated herein, the Department of Citrus is specifically authorized to enter into contracts or leases with citrus grove owners for the use of such citrus groves and citrus crops growing thereon.

(5) In carrying out the research and development contemplated herein, it is recognized that it may be necessary to hire expert and professional personnel, and the commission is hereby empowered, in connection with this program, to hire, by contract or otherwise, necessary personnel, including those performing or furnishing professional or technical services and to fix their compensation and terms of employment, and may incur or authorize such expenses, to be paid by the Department of Citrus from moneys collected hereunder, as the commission may deem necessary to perform properly and completely the research and development authorized hereunder.

(6) The commission, in carrying out the intent of this section, is authorized to enter into any mutually satisfactory contracts or agreements with any person, firm, institution, corporation, or business unit, as well as any state or federal agency, which the commission deems wise, necessary, and expedient in the carrying out of the objectives of the research and development program provided for herein. Any private person, group, association, or corporation who may avail itself of the funds, services, goods, or facilities of any developmental or research programs mentioned in this section shall not, by reason of such use and acceptance, be deemed to have impaired, in favor of the state, the Department of Citrus, or any other state agency, its right of patent. This shall include any patent presently held, or which could be applied for in the future, by such persons named herein. The Department of Citrus or any other state agency or branch of state government shall not become an owner of, or have any right, title, or interest in, any patent invention, concept, or idea relating to any harvesting device or machine for the purpose of harvesting, picking, or gathering of citrus fruit and related products of any private person, group, association, or corporation who may develop or has developed same, unless an agreement or contract specifically claiming any rights mentioned herein shall be in writing signed by the Department of Citrus and the party or parties affected. This provision shall not apply to or impair any rights the Department of Citrus may have in or to any discoveries or inventions created or developed independently by the Department of Citrus or its employees or agents.

<sup>2</sup>(7) The 1 cent per box tax imposed hereunder shall commence September 1, 1973, and shall continue for 3 years thereafter, except that the commission, upon an affirmative vote of nine of its members and an order entered by it determining that, for the purpose of this section, funds at the rate of 1 cent per box are not needed for the ensuing year, may, prior to September 1, 1973, or prior to September 1 of any year to and including September 1, 1978, reduce said tax to a level of less than 1 cent per standard-packed box of citrus or suspend said tax entirely for the next ensuing year. If said tax has been suspended or reduced for any year, the commission, upon an affirm-

ative vote of nine of its members and an order entered by it determining that additional funds are needed for the purposes of this section, may, prior to September 1 of the next year and prior to September 1 of any year to and including the year commencing September 1, 1978, reinstate said tax at the 1-cent level or less, but never to exceed 1 cent in any 1 year. If the commission has reduced or suspended the tax for any year, it may reimpose or reinstate said tax for any year within the 6 years commencing September 1, 1973, and ending August 31, 1979, but under no circumstances shall the total tax collected during the entire 6-year period allowed for the collection of taxes exceed 3 cents per standard-packed box of citrus fruit. The tax year contemplated hereunder is from September 1 to August 31, and any suspension, reduction, or reinstatement must become effective on September 1 of any year. The research and development program utilizing the funds collected hereunder shall not be limited in time and may extend beyond the period during which taxes are collected and may continue until all funds are expended or until the commission determines that maximum utilization of the funds collected has been achieved for the purposes herein set forth. Upon such a determination by the commission that maximum utilization of funds has been achieved and that further research and development would not produce further benefits as contemplated hereunder, any funds remaining in the Citrus Harvesting Research and Development Fund shall remain in the Florida Citrus Advertising Trust Fund and are, upon that event, appropriated to the Department of Citrus for the uses and purposes prescribed in s. 601.15.

(8) If the commission finds it necessary to do so, it may transfer to the said Citrus Harvesting Research and Development Fund from any portion of the Florida Citrus Advertising Trust Fund, including the Orange Reserve Fund, such sum of money as the commission determines is initially required to implement the research and development to be carried out pursuant to this section until moneys in said Citrus Harvesting Research and Development Fund derived from assessments imposed and collected pursuant to this section are sufficient for such purposes, and thereafter repay such advance out of the Citrus Harvesting Research and Development Fund.

(9) This section shall be liberally construed to effectuate the purposes set forth and as an additional and supplementary power vested in the commission under the police power of this state.

<sup>1</sup>(10) The commission shall appoint an advisory committee of not to exceed seven members and consisting of growers of the varieties of Florida citrus taxed by this section. No member of the commission shall serve on the advisory committee. The purpose of the committee shall be to advise the commission in carrying out the duties imposed upon it hereunder. The advisory committee shall be known as the Florida Citrus Harvesting Research and Development Committee. Said committee shall serve at the pleasure of the commission, and shall serve without pay, but may be reimbursed for such actual expenses incurred as the commission may authorize.

**History.**—s. 1, ch. 73-219; s. 4, ch. 78-323; s. 1, ch. 79-125.

**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

**\*Note.**—Chapter 79-125, which does not take effect unless the commission determines that it has been assented to in writing by at least 55 percent of the producers of the varieties of citrus fruit taxed by s. 601.158 in a referendum to be conducted by the commission in accordance with s. 2, ch. 79-125, amends this subsection to read:

(7) The 1 cent per box tax imposed hereunder shall commence September 1, 1980, and shall continue for 3 years thereafter, except that the commission, upon an affirmative vote of nine of its members and an order entered by it determining that, for the purpose of this section, funds at the rate of 1 cent per box are not needed for the ensuing year, may, prior to September 1, 1980, or prior to September 1 of any year to and including September 1, 1985, reduce said tax to a level of less than 1 cent per standard-packed box of citrus or suspend said tax entirely for the next ensuing year. If said tax has been suspended or reduced for any year, the commission, upon an affirmative vote of nine of its members and an order entered by it determining that additional funds are needed for the purposes of this section, may, prior to September 1 of the next year and prior to September 1 of any year to and including the year commencing September 1, 1985, reinstate said tax at the 1-cent level or less, but never to exceed 1 cent in any one year. If the commission has reduced or suspended the tax for any year, it may reimpose or reinstate said tax for any year within the 6 years commencing September 1, 1980, and ending August 31, 1986, but under no circumstances shall the total tax collected during the entire 6-year period allowed for the collection of taxes exceed 3 cents per standard-packed box of citrus fruit. The tax year contemplated hereunder is from September 1 to August 31, and any suspension, reduction, or reinstatement must become effective on September 1 of any year. The research and development program utilizing the funds collected hereunder shall not be limited in time and may extend beyond the period during which taxes are collected and may continue until all funds are expended or until the commission determines that maximum utilization of the funds collected has been achieved for the purposes herein set forth. Upon such a determination by the commission that maximum utilization of funds has been achieved and that further research and development would not produce further benefits as contemplated hereunder, any funds remaining in the Citrus Harvesting Research and Development Fund shall remain in the Florida Citrus Advertising Trust Fund and are, upon that event, appropriated to the Department of Citrus for the uses and purposes prescribed in s. 601.15.

### **601.159 Frozen Concentrated Orange Juice Pooling Act of Florida.—**

(1) **DECLARATION OF POLICY.**—This section is passed:

(a) In the exercise of the police power of this state, to promote and protect the public health, peace, safety, and general welfare, by assisting to establish and maintain orderly marketing conditions in the citrus fruit industry of this state so as to protect and benefit said industry, the citizens of this state, and the consumers of Florida citrus and citrus products.

(b) Because the agriculture industry of this state is second only to the tourist industry in regard to its economic benefits to the state and the citizens thereof; the citrus industry of this state is the largest single segment of the agriculture industry of the state; the production of oranges represents the very substantial majority of all citrus fruit produced in the state; and approximately 76 percent of the orange production of the state, together with substantial quantities of hybrids and tangerines, is utilized in the production of frozen concentrated orange juice. Significant in regard to these figures is the reliable information that this state produces approximately 20 percent of the world's production of oranges and approximately 70 percent of the world's production of frozen concentrated orange juice.

(c) Because the conservation of the agricultural wealth of this state and the prevention of economic waste in the marketing of agricultural products, in particular, Florida citrus and frozen concentrated orange juice, are so affected with the public interest that the adoption and enforcement of the programs hereinafter provided are necessary to protect the health, peace, safety, and general welfare of the people of this state.

(d) Because it is hereby declared to be the policy of the legislature, through the exercise of the powers conferred under this act upon the Florida Citrus Commission as head of the Department of Citrus, to



establish and maintain such orderly marketing conditions for frozen concentrated orange juice as will provide, in the interest of producers and consumers, an orderly flow of supply thereof to market so as to avoid excessive fluctuations in supplies, and it is hereby determined that the disruption of the orderly marketing of frozen concentrated orange juice by excessive fluctuations in supplies impairs the purchasing power of citrus producers and unreasonably reduces the value of those agricultural assets which greatly support the state's financial structure.

(e) To assure that any marketing order adopted pursuant hereto shall not be considered as a contract or agreement entered into, or a conspiracy, in restraint of trade or to establish monopoly, but rather as a legislative command of the state intended to conserve the agricultural wealth of the state, and as a protection to the producers of citrus products and the consumers thereof.

(f) To enable citrus fruit producers and handlers of citrus fruit in the state, with the aid and under the direction and control of the state, to correlate more effectively the supply and marketing of citrus fruit and processed products produced therefrom in Florida.

(g) To establish and maintain orderly marketing of citrus fruit and processed products produced therefrom in Florida.

(h) To provide methods and means for the maintenance of present markets or for the development of new and larger markets for processed orange products produced in Florida.

(2) OBJECTIVES.—In order to effectuate the above declared policy and purpose of the legislature, the objectives to be accomplished by any marketing order adopted pursuant to the powers granted by this law shall be any one or more of the following:

(a) To remove citrus fruit in the form of frozen concentrated orange juice from primary markets during citrus producing seasons which will apparently begin with a larger supply of citrus fruit and processed products produced therefrom than can be orderly marketed to the optimum benefit of the Florida citrus producer, the Florida citrus industry, and the consumer of Florida citrus products.

(b) To provide a pool or pools of frozen concentrated orange juice from which to supply, or increase the supply to, secondary markets at prices those markets can afford to pay and at which they can be developed and expanded.

(c) To provide a pool or pools of frozen concentrated orange juice from which to increase the supply of frozen concentrated orange juice and processed products therefrom to primary markets during the time that the supply of frozen concentrated orange juice produced in Florida is apparently not sufficient for the optimum benefit of the Florida citrus producer, the Florida citrus industry, and the consumer of Florida citrus products, so as to prevent undesirable short-term effects such as excessive prices at the consumer level and the possible loss of market for frozen concentrated orange juice and processed products therefrom by reason of less than optimum supply of frozen concentrated orange juice.

(3) ADOPTION OF MARKETING ORDERS AND HEARINGS THEREON.—

(a) Whenever the commission has reason to believe that the issuance of a marketing order, or any amendment thereof after its issuance, will tend to effectuate the declared purposes of this section, it shall, at a regular or special meeting of the commission, either upon its own motion or upon application of any producer, or group or association of producers, of oranges, cause to be drafted a proposed marketing order or amendment and provide for a public hearing upon such proposed marketing order or amendment. Any such public hearing may be held simultaneously with a public hearing held under authority of s. 601.154.

(b) Due notice of any hearing called for such purpose shall be given by the commission by publishing notice one time of the time and place of such hearing in at least eight daily newspapers of wide circulation within the citrus producing area of the state to be selected by the commission, and by mailing a copy of the published notice to all persons directly affected by the terms of the proposed marketing order or amendment thereof who file with the Department of Citrus a written request for such notice. Such notice shall be so published and mailed not less than 30 or more than 60 days prior to the date set for such hearing. A copy of the proposed marketing order or amendment thereto shall be available at the headquarters offices of the commission for examination or copying by any interested party on and after the date of publication of notice of hearing, and such notice shall so state. Such hearing shall be open to the public. All testimony shall be received under oath, and a full and complete record of all proceedings at any such hearing shall be made and filed by the commission in its offices, which record, signed by the chairman of the commission and authenticated by the seal of the Department of Citrus, shall constitute prima facie evidence of such proceedings in all courts of the state.

(c) After such notice and hearing, the commission may issue a marketing order or amendment as originally proposed, or as the same may be modified based on evidence submitted at the hearing, if it has reason to believe and finds that the issuance of a marketing order will tend to effectuate the declared policy, purposes, and objectives of this act.

(d) No marketing order or amendment thereto issued pursuant to this section shall become effective unless and until the commission finds that such order has been assented to in writing by at least 65 percent of the producers in Florida voting in a referendum on said order who produce the varieties of citrus fruit covered by the order. The said marketing order or amendments must also be consented to in writing by such producers voting in the said referendum, who, during a preceding representative shipping season determined by the commission, produced and delivered or caused to be delivered into the primary channel of trade in Florida not less than 65 percent of the total standard-packed boxes of the varieties of citrus fruit covered by the order, or the equivalent thereof, which were found by the commission to have been produced and delivered by such voting producers into the primary channel of trade during such representative season. In addition to the assent of the producers as hereinabove provided, no

marketing order or amendments thereto issued pursuant to this section shall become effective unless and until the commission finds that such order has also been assented to in writing by at least 65 percent of the processors in Florida of orange juice voting in the referendum on the marketing order, who, during a preceding representative shipping season determined by the commission, processed orange juice from citrus fruit delivered into the primary channels of trade during such representative season not less than 51 percent on a single strength equivalent basis of the orange juice so processed by such voting processors from such citrus fruit delivered.

(e) The commission is authorized to prescribe by rule or regulation such procedures as it deems necessary or required to properly conduct a referendum hereunder, and shall not allow proxy voting. All referendums conducted under this section shall be by secret ballot.

(f) Every marketing order or amendment thereto issued by the commission under the provisions of this section shall, after the commission determines it has been assented to in the referendum provided for herein, be published one time within 10 days after the same is adopted, in at least one daily newspaper of general circulation in each of two cities within the citrus-producing area of the state to be selected by the commission. All such marketing orders and amendments to marketing orders shall become effective on a date to be specified by the commission, subject to the provisions of subsection (12) with respect to the effective date of the diversion table and release-price table set forth therein, which date shall not be prior to the day following the last day on which protests may be filed as provided herein.

(g) On or before the 15th day after the date on which the commission determines the marketing order to have been assented to in the referendum, any person who will be adversely affected by such marketing order, if placed in effect, may file protests thereto with the commission, specifying with particularity the provisions deemed objectionable, stating the grounds therefor, and requesting a public hearing upon such protest. The filing of such protests shall operate to stay the effectiveness of those provisions to which protests are made. The commission, in its discretion, may stay one or more of the other provisions of the marketing order if the same is necessary to carry out the equitable objectives of this act. As soon as practical after the time for filing protest has expired, the commission shall publish a notice in the Florida Administrative Register specifying those parts of the marketing order which have been stayed and, if no protests have been filed, stating that fact.

(h) As soon as practicable after the filing of protests under paragraph (3)(g) or paragraph (4)(g), the commission, after due notice, shall cause to be conducted, at a time and place determined by the commission, a public hearing for the purpose of receiving evidence relevant and material to the issues raised by such protests. The commission may appoint a hearing examiner to preside over any hearing required by this act. The hearing examiner shall be a person who is competent by reason of training or

experience, authorized to practice law in the State of Florida, to preside at an evidentiary hearing, administer oaths, and recommend findings of facts and conclusions of law. The commission may subpoena witnesses and issue subpoenas for the production of books, records, or documents relevant and material to the issues raised by the protests. As soon as practicable after completion of the hearings, the commission shall, by order, act upon such protests. Such order shall be based only on substantial evidence of record at such hearing and shall set forth, as part of the order, detailed findings of fact and conclusions of law on which the order is based. In the event the commission denies the protests and sustains the rule or regulation, the commission shall, subject to the provisions of subsection (12), specify in the order the date on which it shall become effective, which date shall not be prior to the day following the last day on which a petition for review by certiorari may be filed under the Florida Appellate Rules. Copies of the proceedings, records, and acts of the commission and certificates purporting to relate the facts concerning such proceedings, records, and acts, signed by the chairman of the commission and authenticated by the seal of the Department of Citrus, shall be prima facie evidence thereof on judicial review, and the findings of the commission as to the facts, if supported by substantial evidence, shall be conclusive. The provisions for administrative review provided in this section are exclusive of all other remedies including those provided for in chapter 120, as it now exists or as it may be hereafter amended.

#### (4) ADMINISTRATIVE JURISDICTION AND PROCEDURE.—

(a) All powers, duties, and functions provided by this section shall be vested in the commission. The provisions of marketing orders issued under this section shall be administered by a pooling board under the direct supervision of the commission. For the purpose of implementing and administering any marketing orders adopted hereunder, the commission may, regardless of the limitations imposed by chapter 216, employ such additional personnel and incur such reasonable obligations and expenses as may be necessary and proper for the discharge of its powers and duties hereunder.

(b) The pooling board shall be composed of 10 practical citrus fruit men or women who are resident citizens of the state, each of whom is and has been, for a period of at least 5 years prior to this appointment to the pooling board, engaged in growing citrus fruit or processing citrus products and throughout such period derived a major portion of his income therefrom.

(c) Five members of the pooling board shall be designated as grower members, and each shall, throughout such period, have been the owner of a grove producing the type of fruit covered by the marketing order or a member, officer, or substantial stockholder of a corporation, partnership, or other firm substantially engaged in growing oranges in Florida.

(d) Five members of the pooling board shall be designated as processor members, and each shall, throughout such period, have been an executive officer, executive employee, or principal owner of a

firm actively engaged in processing citrus juices in Florida.

(e) The members of the pooling board shall be appointed by the commission for terms which shall be established by the marketing order. The names and terms of each of the members of the initial pooling board shall be set forth in the proposed marketing order on which the referendum is held. Each member shall serve until his successor is appointed and qualified. No members of the pooling board shall receive a salary, but each member shall be entitled to his expenses as provided by law while performing his duties.

(f) Every action for the modification of any diversion table or release-price table, or for the issuance, modification, or repeal of any other rule or regulation under the provisions of a marketing order hereunder, except an action on the issuance of a marketing order or an amendment thereto which is governed by the referendum procedure set forth in subsection (3), shall be begun by a proposal made by the commission, by the pooling board, or by a producer or handler showing reasonable grounds therefor and filed with the pooling board. The pooling board shall announce its intention to consider such proposal, make copies of the proposal available at the offices of the Department of Citrus, and provide for a time period of not less than 30 days from the date of such announcement within which all interested persons may present their views and comments thereon in writing or orally at a meeting of the pooling board which shall be held for that purpose at the end of the time period so provided. As soon as practicable thereafter, the pooling board shall propose to the commission appropriate action upon such proposal. Action on the proposed modification of a diversion table or release-price table may be taken only upon the affirmative vote of three or more grower members and three or more processor members of the pooling board. Action on the proposed issuance, modification, or repeal of any other rule or regulation may be taken upon the affirmative vote of a simple majority of the members of the pooling board. A proposed rule or regulation of the pooling board shall become effective only if it is concurred in by the commission. If the commission does not concur, it may set aside the proposed rule or regulation in whole, or it may direct the pooling board to reconsider. Following the action of the pooling board on such reconsideration, the commission may concur in or modify such proposed rule or regulation or adopt a different one. The commission shall specify in its action the date on which the rule or regulation shall become effective, subject to the provisions of subsection (12) with respect to the effective date of a modification of a diversion table or release-price table.

(g) On or before the 15th day after the date on which a proposed rule or regulation under paragraph (4)(f) is concurred in, modified, or adopted by the commission, any person who will be adversely affected by such rule or regulation, if placed in effect, may file protests thereto with the commission, specifying with particularity the provisions deemed objectionable, stating the grounds therefor, and requesting a public hearing upon such protests. The filing of such protests shall operate to stay the effec-

tiveness of those provisions to which the protests are made. As soon as practicable after the time for filing protests has expired, the commission shall publish a notice in the Florida Administrative Register specifying those parts of the rule or regulation which have been stayed by the filing of protests and if no protests have been filed, stating that fact.

(h) As soon as practicable after the filing of such protests, the commission, after due notice, shall cause to be conducted a public hearing thereon in the manner provided for in paragraph (3)(h).

(5) PROVISIONS TO BE CONTAINED IN MARKETING ORDER.—A marketing order issued under this section shall contain the following provisions:

(a) Provisions relating to diversion, in accordance with subsection (6).

(b) Provisions relating to storage, in accordance with subsection (7).

(c) Provisions relating to the operation and administration of a concentrate reserve pool, in accordance with subsection (8).

(d) Provisions relating to equity payments and funding, in accordance with subsection (9).

(e) Provisions imposing restraints upon the size of the concentrate reserve pool, in accordance with subsection (10).

(f) Provisions relating to termination, in accordance with subsection (11).

(6) DIVERSION.—The provisions of the marketing order relating to diversion shall:

(a) Specify the types of citrus fruit which will, and which will not, be subject to diversion. The classification shall be based upon both varieties and usage. In no event shall the types subject to diversion include any variety which is not permitted in frozen concentrated orange juice, fruit packed by an express or gift fruit shipper, or fruit which is not ultimately delivered into the primary channel of trade.

(b) Set forth the means by which it will be ascertained whether diversion will occur during a particular shipping season and, if so, what percentage. Those provisions shall:

1. Require that both be ascertained annually by applying the current controlling crop size figure to the diversion table applicable to that shipping season.

2. Require that the marketing order set forth a diversion table for the first shipping seasons governed by the marketing order.

3. Authorize and direct the pooling board to review annually the diversion table and propose to the commission amendments modifying the same when appropriate. The effective date of such an amendment shall be governed by subsection (12).

4. Require that the format of the diversion table consist of two columns of figures, the first column consisting of a consecutive series of increasing potential crop-size figures, and the second column consisting of a consecutive series of increasing percentages beginning with zero.

5. Authorize and direct the pooling board, in its deliberations prior to the annual review of the diversion table, to take into consideration relevant and material economic data and projections and to be governed by such guidelines as may be set forth in the marketing order, based upon the provisions set



forth in subsection (10) imposing restraints upon the size of the concentrate reserve pool, and by the purposes and objectives of this chapter. Based on its deliberations, the pooling board shall place at the top of the first column the largest potential crop-size figure which, in its judgment at the time the table is reviewed, should be marketed without diversion and at the top of the second column a zero to so indicate, and to place each of the other increasingly larger potential crop-size figures in the first column of the diversion table opposite the percentage which, in the best judgment of the pooling board at the time the diversion table is reviewed, should be diverted if the particular potential crop-size figure proves to be the controlling crop-size figure. The controlling crop-size figure shall be the October estimate, which shall mean the first estimate by the United States Department of Agriculture of the number of boxes of round oranges, including Temples and including those designated thereon as being for home consumption, expected to be harvested in Florida that shipping season, as announced by that agency in October.

6. Direct that the means by which it will be ascertained whether diversion will occur and, if so, what percentage shall be by determining which of the potential crop-size figures in the first column of the diversion table is closest to the controlling crop-size figure. If the percentage in the second column opposite that figure is zero, diversion shall not occur that shipping season. If the percentage opposite that figure is larger than zero, that percentage shall be the diversion percentage for that shipping season.

The Department of Citrus shall announce on the first business day following the October estimate the diversion percentage, if any, ascertained in accordance with subparagraph 6., and an appropriate order of the commission shall be made at its next meeting confirming the announcement.

(c) Impose a maximum percentage which the highest percentage on a diversion table may not exceed. The maximum so established shall not be greater than 10 percent.

(d) Provide for rules and procedures governing the manner in which diverted fruit shall be placed in the concentrate reserve pool in the form of frozen concentrated orange juice. Those provisions shall:

1. Provide that the term "diverted fruit" shall relate to an undivided fractional portion of the pounds of soluble juice solids contained in the fruit subject to diversion, or the equivalent thereof as defined in the marketing order, if fruit for shipment in fresh form is subject to diversion.

2. Impose, subject to the provisions of paragraphs (6)(g) and (7)(b), upon the handler who first handles diverted fruit in the primary channel of trade and who operates concentrate processing facilities, the duty of delivering to the concentrate reserve pool frozen concentrated orange juice conforming to applicable quality standards and containing the quantity of soluble juice solids calculated by multiplying the pounds of soluble juice solids contained in the fruit subject to diversion by the diversion percentage. For handlers which do not operate concentrate processing facilities, there shall be provided reasonable alternative means of doing so which are

equitable both to handlers which operate facilities and those which do not.

3. Authorize and direct the pooling board to issue from time to time reasonable delivery schedules for deliveries to the concentrate reserve pool, taking into consideration the need to delay deliveries a sufficient length of time to facilitate compliance with applicable quality standards.

(e) Establish appropriate rules whereby the delivery of the frozen concentrated orange juice to the concentrate reserve pool and the passage of unencumbered title thereto to the Department of Citrus will be assured against the claims of third parties. Those rules shall:

1. Be designed so as to eliminate or reduce to a minimum any interference with orderly financing and marketing in the ordinary course of business by growers and handlers and shall not require handlers to segregate the product to be delivered to the concentrate reserve pool prior to the delivery date specified in the delivery schedule established under the provisions of subparagraph (d)3.

2. Provide for the filing of a financing statement and continuation statements under subparagraph 4. by each handler who handles fruit subject to diversion, whereupon a lien, hereby created in favor of the Department of Citrus against all fruit subject to diversion in the possession of such handlers, shall, by operation of law, attach and perfect itself each time a diversion percentage is announced by the commission and continue throughout the packing or processing of such fruit and apply to the frozen concentrated orange juice produced therefrom, the proceeds of such fruit or frozen concentrated orange juice, and the trust accounts provided for in subparagraph 3. The Department of Citrus' lien is created solely to secure the performance by the handler of the duties imposed on him by subparagraph (d)2., which performance may be specifically enforced by any court of competent jurisdiction, and shall be discharged by such performance. The rules so established shall provide for partial release upon partial performance and upon sales made in the ordinary course of business.

3. Require that a handler covered by subparagraph (d)2. who does not operate concentrate facilities shall deposit all sums excluded and deducted by him pursuant to sub-subparagraphs (f)2.d. and e. in a separate trust account, which sums shall be pledged, by operation of law, in accordance with the provisions of the marketing order to secure his performance of the duties imposed by subparagraph (d)2. The sums deposited in such trust account shall be available only for his use in paying the costs of performance of those duties, and all sums remaining after those duties are fully performed with respect to that shipping season may be withdrawn by him from such trust account free of such pledge.

4. Provide that the filing of the financing statement and continuation statements required by subparagraph 2. shall be with the Department of State. In addition to the information required by s. 679.402, the financing statement shall set forth verbatim the provisions of this paragraph. Upon the termination of the marketing order, the Department of Citrus

shall file a termination statement as provided in s. 679.404.

5. Be designed to provide for the orderly handling of the right, hereby created, of the Department of Citrus to take frozen concentrated orange juice delivered to the concentrate reserve pool free of the security interest of every third party, even though the security interest is perfected and even though the Department of Citrus knows of its existence. The security interest of the third party in that portion of the frozen concentrated orange juice remaining in the handler's possession that is not required to satisfy the obligations for that shipping season imposed on the handler by subparagraph (d)2. shall continue, subject to the lien of the Department of Citrus created by subparagraph 2. In the event of suit to enforce the security interest of the third party, the court in which such suit is brought shall, until full performance of the obligations imposed on the handler by subparagraph (d)2. has been accomplished by direction of the court or otherwise, stay the sale sought by the third party in satisfaction of its security interest with respect to any frozen concentrated orange juice in the possession of the handler.

(f)1. Provide for the issuance of diversion certificates in a manner designed to:

a. Eliminate the necessity of imposing assessments by postponing reimbursement of the costs of diversion until after the release and sale of product from the concentrate reserve pool.

b. Eliminate the necessity of determining the amount of reimbursement which should be made for growing, harvesting and hauling, and processing by combining reimbursement of expenses with distribution of net proceeds.

c. Assure that the person who ultimately bears those costs will be the person to whom the diversion certificate is issued.

d. Assure that the person to whom the diversion certificate is issued will, whenever practical, be the grower of the diverted fruit.

2. These provisions shall:

a. Provide that the person entitled to the issuance of the diversion certificate will be the person who last owned the diverted fruit prior to its receipt by the handler who first handled it in the primary channel of trade, except where the handler held title to the diverted fruit prior to its severance from the tree, in which event the costs of diversion are borne by, and the diversion certificate shall be issued to, the handler.

b. Provide that each diversion certificate shall represent the number of pounds of soluble juice solids contained in the diverted fruit.

c. Provide that the diversion certificate will entitle its owner to equity payments under the provisions of subsection (9) when disbursement is ordered by the commission.

d. Provide that, in a shipping season in which diversion certificates are issued, the right of a person to be issued a diversion certificate shall, by operation of law, substitute for and take the place of the right of such person to be paid that part of the purchase price of his fruit subject to diversion which is attributable to the portion thereof consisting of diverted fruit; and shall require that the amount of diverted

fruit received in the primary channel of trade from such person be excluded in computing the purchase price payable to such person by the handler who received in the primary channel of trade fruit subject to diversion from such person. This provision shall not apply when the handler holds title to the diverted fruit prior to its severance from the tree and is issued the diversion certificate.

e. Require that the costs, if any, incurred by the handler for picking or hauling the diverted fruit and the costs incurred by the handler in performing the duties imposed on him by subparagraph (d)2. shall be deducted by the handler from the purchase price of the fruit subject to diversion; and shall permit the person entitled to the diversion certificate and the handler to agree, by contract between them, upon the manner in which amounts of the foregoing costs will be fixed or determined. This provision shall not apply where the handler holds title to the diverted fruit prior to its severance from the tree and is issued the diversion certificate.

f. Permit owners of diversion certificates to transfer title thereto or a security interest therein and provide for the issuance of new certificates to the transferee upon compliance with such reasonable requirements as may by rule be imposed for the protection of the owner of the diversion certificate and in furtherance of the purposes and objectives of this act.

(g) Establish a quality standard or standards and specifications to which the container and frozen concentrated orange juice delivered to the concentrate reserve pool must conform. The marketing order may authorize the modification of the quality standard or standards within limits set forth therein. If the marketing order provides for more than one equity pool period within one shipping season, the quality standard for each respective pool shall bear a reasonable and direct relationship to the quality of frozen concentrated orange juice usually produced in good commercial practice from fruit received in the primary channel of trade during that part of the shipping season.

(h) Provide for deferred payment of that portion of the citrus excise taxes imposed by this chapter which applies to the diverted fruit, and provide for the deduction of such deferred taxes from the proceeds from the release and sale of product from the concentrate reserve pool. The moneys so deducted shall promptly be paid into the state treasury and deposited to and made a part of the Florida Citrus Advertising Trust Fund for the exclusive use of the Department of Citrus and in the same proportion as provided for in s. 601.15(7).

(7) STORAGE.—The provisions of the marketing order relating to storage shall:

(a) Establish rules and guidelines to govern renting and leasing of storage space in which to store product in the concentrate reserve pool and arranging for transportation of product to and from handlers' plants.

(b) Require that delivery of product f.o.b. the handlers' plants be accepted not later than 30 days after notice of availability by the handler or within 14 days after the date specified in the delivery schedule established by it under subparagraph (6)(d)3.,

whichever is earlier, and the handler shall not be liable for the results of the failure of the pooling board to accept delivery.

(c) Specify whether or not the purchase of land and the construction of warehouses thereon and issuance of revenue bonds to finance the cost thereof shall be authorized and, if such authority is granted, to establish rules and guidelines to govern the acquisition and operation of the warehouses and the issuance and amortization of the revenue bonds.

(d) Authorize and direct, in accordance with rules and guidelines set forth in the marketing order, the sale to qualified bidders, as defined in paragraph (8)(e), limited quantities of product from the concentrate reserve pool by competitive bidding for the best price obtainable to provide funds to pay costs of storage if other funds with which to do so are not then available. The minimum release price set forth in the release-price table shall not govern such sales.

(e) Authorize and direct appropriate action to maintain the quality of the product in the concentrate reserve pool. If the marketing order so provides, the pooling board may, in the event the quality of a portion of the product in the pool falls below the minimum applicable quality standard, recommend that sale be made to qualified bidders by competitive bidding for the best price obtainable and, at the same time, purchase on competitive bidding for the lowest price obtainable an equal quantity of product meeting the minimum applicable quality standards. The minimum release price set forth in the release-price table shall not govern such sales.

(8) OPERATION AND ADMINISTRATION OF RESERVE POOL.—The provisions of the marketing order relating to the operation and administration of the concentrate reserve pool shall:

(a) Establish an optimum size for the concentrate reserve pool, based upon the average annual sales of frozen concentrated orange juice by Florida processors during the preceding 36 months, expressed as pounds of soluble juice solids. The optimum size so established shall not be greater than 65 percent of average annual sales.

(b) Set forth the means by which the price to be paid for product released from the concentrate reserve pool will be determined. These provisions shall:

1. Require that the price to be paid shall be determined by competitive bidding, which price shall be not less than the applicable minimum release price.

2. Require that the minimum release price be ascertained by applying the current controlling concentrate reserve figure to the release-price table applicable at that time and that it be announced each time a bid solicitation is issued.

3. Require that the marketing order set forth the release-price table for the first shipping season governed by the marketing order.

4. Authorize and direct the pooling board to review annually the release-price table and propose to the commission amendments modifying the same when appropriate. The effective date of such an amendment shall be governed by subsection (12).

5. Require that the format of the release-price table consist of two columns of figures, the first col-

umn consisting of a consecutive series of increasing potential concentrate reserve figures, and the second column consisting of a consecutive series of decreasing prices.

6. Authorize and direct the pooling board, in its deliberations prior to the annual review of the release-price table, to take into consideration relevant and material economic data and projections and to be governed by such guidelines as may be set forth in the marketing order, based upon provisions set forth in subsection (10) imposing restraints upon the size of the concentrate reserve pool, and by the purposes and objectives of this chapter. Based on its deliberations, the pooling board shall place each of the potential concentrate reserve figures in the first column of the release-price table opposite the price which, in the best judgment of the pooling board at the time the release-price table is reviewed, should be the minimum release price if that particular potential concentrate reserve figure proves to be the controlling concentrate reserve figure.

7. Direct that the means by which the minimum release price which will govern the resulting bidding will be ascertained, at the time bid solicitation is issued, shall be by determining which of the potential concentrate reserve figures in the first column of the release-price table is closest to the current controlling concentrate reserve figure. The controlling concentrate reserve figure shall be the amount of product in the concentrate reserve pool on the date on which the bid solicitation is issued.

(c) Describe or define the type or types of primary or secondary markets, or both, for which product from the concentrate reserve pool will be released and those, if any, for which none will be released.

(d) Decide whether the release-price table shall provide for a single minimum release price, applicable to all types of markets covered by the marketing order, or whether, instead, it shall provide for minimum release prices at two or more levels, one of which shall be applicable to all primary markets and one or more of which will be applicable to a specified type or types of secondary markets. Provisions relating to the release-price table shall:

1. Provide that the second column of the release-price table shall set forth several consecutive series of decreasing prices and shall designate the type or types of markets to which each series will be applicable, so that the minimum release price for product released for each market can be ascertained from the release-price table in the manner provided in subparagraph (b)7. from the applicable series of prices so set forth.

2. Provide guidelines to be followed by the pooling board in its deliberations prior to the review of a release-price table regarding the levels of release prices appropriate for each type of market.

3. Impose, by the marketing order, a ceiling, or formula for computing a ceiling, or authorize and direct the pooling board in the annual review of the release-price table to recommend a ceiling, or a formula for computing a ceiling, on the quantity of product which may be released for secondary markets.

4. Designate or authorize the pooling board to



recommend annually, at the time the release-price table is reviewed, a specific quantity of product in the concentrate reserve pool which shall be set aside for release exclusively to specified secondary markets.

5. Prohibit, at every level of distribution, the resale in primary markets of product released for a secondary market and authorize and direct the issuance of rules and procedures to enforce the prohibition. Such rules and procedures may require that persons at every level of distribution of product released for a secondary market execute contracts or post bonds, or both, providing that violation of the prohibition shall result in the imposition of liquidated damages and attorneys' fees against the guilty party, which liquidated damages may be fixed at triple the amount of the price differential between the minimum release price applicable to primary markets and that applicable to secondary markets, respectively, at the time the violation occurred.

(e) Provide for rules and procedures governing the release and sales of product from the concentrate reserve pool. These provisions shall:

1. Set forth the qualifications which must be met by a firm in order for it to be a qualified bidder entitled to initiate bid solicitations, submit bids, and be awarded release contracts, which qualifications shall require that each qualified bidder must be both a citrus fruit dealer licensed by, and the operator of a citrus juice processing plant in Florida registered with, the Department of Agriculture.

2. Provide for solicitation for bids following a request by a qualified bidder and permit the commission or the pooling board to initiate a solicitation for bids.

3. Prohibit the offering of the entire inventory of the concentrate reserve pool in a single-bid solicitation and also prohibit restraints which limit unduly the quantities which may be offered in bid solicitations. The provisions shall require instead that restraints upon the quantities which will be subject to release shall be designed to spread the release of the inventory of the concentrate reserve pool in an orderly manner over the probable duration of the critical portion of a period of short supply and shall authorize and direct that there be specified, as a part of the release-price table, the size of the increments of the inventory of the concentrate reserve pool which shall be offered in each bid solicitation. If the marketing order provides for minimum release prices at two or more levels, the size of the increments applicable to releases for each of the several types of markets shall be set forth separately.

4. Establish or authorize the establishment of reasonable rules and procedures governing the award of release contracts to high bidders, which shall include provisions designed to assure that no bidder will acquire a disproportionate share of the product released.

5. Establish or authorize the establishment of reasonable rules and procedures governing the prompt payment of the bid price by successful bidders and the prompt delivery of the product to the

successful bidders.

If the marketing order provides for more than one equity pool period per season so that there are several applicable quality standards, each bid solicitation shall designate the quality standard to which the product offered for sale shall conform.

(9) EQUITY PAYMENTS AND FUNDING.—The provisions of the marketing order relating to equity payments and funding shall:

(a) Provide for a method of equitable allocation of cost between the various equity pools and require that the proceeds received from the sale of product released from the concentrate reserve pool shall be applied:

1. First, to pay the citrus excise taxes applicable to the diverted fruit which was deferred pursuant to the provisions of paragraph (6)(h); and

2. To pay allocable costs incurred in the formulation, issuance, administration, and enforcement of the marketing order, storage of product, transportation of product to and from handlers' plants, and debt service, if any.

(b) Provide that the balance shall be disbursed in the form of equity payments to the persons who are the owners of the equity certificates who present the same within 2 years after notice given in the same manner as provided in paragraph (3)(b). These provisions shall provide that:

1. The application of the proceeds and the calculation of the balance to be disbursed shall be made on a first-in first-out basis. Separate accounts shall be maintained for each equity pool to reflect the amounts sold, the duration and costs of storage, and the income from releases and sales.

2. Equity payments shall be calculated by dividing the balance to be disbursed by the total number of pounds of soluble juice solids represented by the diversion certificates issued during the shipping season or equity pool period for which disbursement is being made and by multiplying that amount by the number of pounds of soluble juice solids represented by the particular diversion certificate.

(10) RESTRAINTS ON SIZE OF RESERVE POOL.—

(a) The provisions of the marketing order imposing restraints upon the size of the concentrate reserve pool shall:

1. Impose a maximum pool size, expressed as a percentage of optimum pool size. The maximum so established shall not be greater than 150 percent of the optimum pool size established in accordance with paragraph (8)(a).

2. Set forth guidelines designed to maintain the quantity of product in the concentrate reserve pool at a level lower than the maximum pool size. The guidelines shall direct that there be taken into consideration the amount of product in the concentrate reserve pool during the deliberations prior to the annual review of the diversion table and release-price table. If that amount is found to be approaching the maximum pool size, there shall be incorporated lower diversion percentages relative to potential crop sizes, or larger crop sizes in the diversion table and lower minimum release prices in the re-

lease-price table, than would otherwise be indicated, in order that:

- a. Diversion will be less likely to occur.
- b. In the event diversion does occur, it will result in the addition of a lesser amount of product.
- c. Releases will be more likely to be requested.
- d. In the event releases are requested, they will result in the release and sale of a greater amount of product.

(b) If, on the first day of a shipping season, the amount of product in the concentrate reserve pool equals or exceeds the maximum pool size, the diversion table shall be suspended during that shipping season, and the diversion percentage for that shipping season shall also be suspended, both by operation of law. The duty imposed under subparagraph (b)2. with respect to the release-price table shall be exercised in a manner designed to assure that the amount of product in the concentrate reserve pool at the beginning of the following shipping season will be at a level lower than the maximum pool size.

(11) **TERMINATION.**—

(a) The marketing order shall provide for termination not more than 3 years after the date on which the marketing order becomes effective. The termination date may be extended from time to time for additional periods not to exceed 3 years each by amending the marketing order pursuant to the procedure provided in subsection (3). The commission may, at any time, upon the affirmative vote of nine of its members, impose an earlier termination date. Upon such termination by operation of the marketing order or by action of the commission, the provisions of the marketing order relating to diversion, subject to the provisions of subsection (12), and those relating to the operation and administration of the concentrate reserve pool, storage of product, and disposition of funds shall remain in effect until all of the product in the concentrate reserve pool has been sold, all costs have been paid, and the amounts owing to the owners of equity certificates have been disbursed in accordance with the provisions of the marketing order as the same was issued or may have been amended. Any funds remaining thereafter shall be transferred to the Citrus Advertising Trust Fund created by s. 601.15.

(b) Upon the issuance of any order of termination of any marketing order, a notice thereof shall be published one time in at least one daily newspaper of general circulation in each of two cities within the citrus-producing area of the state, to be selected by the commission.

(12) **EFFECTIVE DATE AND DURATION OF DIVERSION TABLE AND RELEASE-PRICE TABLE.**—Severe economic instability will probably result within the Florida citrus industry if a diversion table or release-price table were subject to being imposed or in any way modified, suspended, terminated, stayed, reinstated, or set aside during the critical last 10 months of a shipping season. Therefore, every action on every such table, whether by order of the commission, by operation of law, or by order of court, shall be made effective only on a date which is within the first 2 months of a shipping season. A diversion table or a release-price table, once made effective, shall remain in effect until modified under subsection (4) or suspended under subsection (10). In the event of proceedings for administrative or judicial review and when final adjudication has not been rendered in such proceedings and made effective prior to October 1 of a shipping season, the table under review shall, by operation of law, be stayed for a period beginning on October 1 and continuing, in every instance, until the last day of the shipping season within which such final adjudication is rendered. Throughout the entire period of such stay, the diversion table or release-price table most recently effective or sustained, if any, shall remain in effect until modified under subsection (4) or suspended under subsection (10).

(13) **JUDICIAL REVIEW.**—Any action of the commission denying a protest under subsection (3) or subsection (4) shall be subject to review by any such protestant by certiorari directed to the Florida Supreme Court within the time and manner prescribed by the Florida Appellate Rules. The provisions for judicial review provided in this section are exclusive of all other remedies, including those provided in chapter 120 as it now exists or as it may be hereafter amended. The filing of such petition for certiorari shall operate to stay the effectiveness of those provisions on which judicial review is sought. The commission, prior to the granting of certiorari, and the supreme court upon or after granting certiorari, may stay one or more of the other provisions of the marketing order if the same is necessary to carry out the equitable objectives of this act. Subject to subsection (12), the supreme court may, if certiorari is granted, issue its mandate or order with a direction to the commission to enter such order in the proceedings as is appropriate on the record, or the court may remand the cause for such further proceedings, including the taking of testimony, as may to the court seem necessary or proper:

- (a) To accord the parties due process of law.
- (b) To establish a sufficient record for review if the court determines that one has not already been established.
- (c) To accord the parties their constitutional, statutory, or procedural rights.
- (d) To accomplish the purposes and objectives of the law pursuant to which the proceedings leading to the adoption of the marketing order or rule or regulation issued thereunder were initiated.

(14) **APPROPRIATIONS.**—

(a) All money collected under this section, including the proceeds received from the sale of product released from the concentrate reserve pool, shall promptly be paid into the state treasury and deposited to and set aside in the Florida Citrus Advertising Trust Fund as a special fund known as the "Concentrate Reserve Fund." All money in such fund, after deducting the 2 percent service charge as provided in subsection 601.15(7), is hereby appropriated to the Department of Citrus for:

1. Payment of the actual expenses incurred in the formulation, issuance, administration, and enforcement of the marketing order;
2. The storage of product in the concentrate pool;
3. The transportation of product to and from handlers' plants;
4. Debt service, if revenue bonds are authorized

by the marketing order; and

5. Equity payments to the owners of equity certificates, to be computed and paid only in the amounts and in the manner provided for by subsection (9).

(b) If the commission finds it necessary to do so, it may temporarily transfer to the Concentrate Reserve Fund from the Florida Citrus Advertising Trust Fund such sum of money as the commission determines is currently required to formulate, issue, administer, and enforce the marketing order and store and transport the product, if any, in the concentrate reserve pool, whenever the funds available from the sale of product released from the concentrate reserve pool and from the proceeds, if any, of borrowed funds are insufficient to do so. The money so transferred shall be reimbursed from the proceeds of the sale of product from the concentrate reserve pool and from the proceeds, if any, of borrowed funds.

(c) If the commission finds it necessary to do so for the purpose of administering any marketing order or orders or amendments thereto, or for the purpose of funding the activities authorized by any such order or amendment, it may transfer funds from the Orange Stabilization Fund created by s. 601.154 in such amount as the commission determines is required to administer and conduct any marketing order or amendments adopted hereunder, until money collected pursuant to the sale of products from pools established hereunder is sufficient to finance the administration, enforcement, and operation of such marketing order. If the funds are to be so transferred from any funds collected pursuant to the authority of s. 601.154, any marketing order adopted hereunder which proposes to use such funds must so provide so as to be subject to approval in the referendum provided for herein. Such funds, when transferred, as well as funds collected from the sale of pool products or from borrowed sources as may be herein authorized, are hereby appropriated to the Department of Citrus for the payment of the actual expenses incurred by the commission or by the pooling board in the formulation, issuance, administration, enforcement, and operation of any marketing order or orders or amendments thereto adopted hereunder. Funds so transferred may be retransferred when it is determined by the commission that they are no longer needed.

(15) **INAPPLICABILITY OF CONFLICTING STATUTES.**—All of the powers, functions, duties, rights, and remedies provided for in this section are exclusive of all other powers, functions, duties, rights, and remedies, including those provided in chapter 120 as that chapter now exists or as it may be hereafter amended. Whenever the provisions of this section are in conflict with any other provisions of law, the provisions of this section shall prevail. This section shall be liberally construed to effectuate the purposes set forth and as additional and supplemental powers vested in the commission pursuant to the police power of this state.

*History.*—s. 1, ch. 74-85; s. 1, ch. 77-174.

#### **601.16 Grapefruit maturity standards; fresh and processed.**—

(1)(a) Seedless grapefruit for fresh use, except as provided herein, shall not be deemed mature until:

1. Each fruit, after having been severed from the tree, shows a break in color, caused solely by nature, with yellow color predominating on not less than 25 percent of the fruit's surface in the aggregate;

2. The total soluble solids (Brix) of the juice is not less than 7.5 percent;

3. The ratio of the total soluble solids to anhydrous citric acid meets the requirements of s. 601.17; and

4. The juice content of each fruit is not less than the minimum requirements for the respective fruit size as set forth in s. 601.18.

(b) Except for the period January 1 through July 31, seedless grapefruit meeting minimum color break, ratio, and juice content requirements of paragraph (a) shall be deemed mature when the total soluble solids (Brix) of the juice is not less than 7 percent.

(c) Except for the period April 15 through July 31, seedless grapefruit meeting minimum color break, soluble solids, and juice content requirements of paragraph (a) shall be deemed mature when the ratio of soluble solids to anhydrous citric acid is not less than six to one.

(d) Except the commission may, by rule, during the period November 1 through July 31, lower by not more than 0.5 percent the minimum total soluble solids requirement established by this section for pink and red seedless grapefruit. Any such rule shall automatically expire on July 31 next following its adoption.

(2)(a) Seeded grapefruit for fresh use, except as provided herein, shall not be deemed mature until:

1. Each fruit, after having been severed from the tree, shows a break in color, caused solely by nature, with yellow color predominating on not less than 25 percent of the fruit's surface in the aggregate;

2. The total soluble solids (Brix) of the juice is not less than 8 percent;

3. The ratio of the total soluble solids to anhydrous citric acid meets the requirements of s. 601.17; and

4. The juice content of each fruit is not less than the minimum requirements for the respective fruit size as set forth in s. 601.18.

(b) Except for the period January 1 through July 31, seeded grapefruit meeting minimum color break, ratio, and juice content requirements of paragraph (a) shall be deemed mature when the total soluble solids (Brix) of the juice is not less than 7.5 percent.

(c) Except for the period April 15 through July 31, seeded grapefruit meeting minimum color break, soluble solids, and juice content requirements of paragraph (a) shall be deemed mature when the ratio of soluble solids to anhydrous citric acid is not less than six to one.

(3) Grapefruit for processing purposes shall be deemed mature as follows:

(a) For the period August 1 through November 30, maturity requirements for grapefruit for processing purposes shall be the same as established herein for grapefruit for fresh use.



(b) After November 30, there shall be no minimum requirements for juice content, acid, or color break for grapefruit for processing.

(c) For the period December 1 through December 31, the total soluble solids (Brix) of the juice shall be not less than 7 percent, and the minimum ratio of total soluble solids to anhydrous citric acid shall meet the requirements of s. 601.17.

(d) For the period January 1 through April 14, the total soluble solids (Brix) of the juice shall be not less than 6.5 percent, and the minimum ratio of total soluble solids to anhydrous citric acid shall be not less than six and one-half to one.

(e) For the period April 15 through July 31, the total soluble solids (Brix) of the juice shall be not less than 6.5 percent, and the minimum ratio of total soluble solids to anhydrous citric acid shall be not less than six to one.

(f) The commission may, by rule, for the period April 15 through July 31, adjust any minimum total soluble solids requirement for grapefruit for processing purposes established by this section. Any such rule shall automatically expire on July 31 next following its adoption.

**History.**—s. 16, ch. 25149, 1949; s. 12, ch. 26492, 1951; s. 1, ch. 28090, 1953; s. 1, ch. 59-13; s. 1, ch. 61-50; s. 22, ch. 71-186; s. 1, ch. 78-61.

**601.17 Grapefruit; minimum ratios of solids to acid.**—The minimum ratios of the total soluble solids of the juice of grapefruit to the anhydrous citric acid shall be as follows:

(1) When the total soluble solids of the juice is not less than 6.5 percent and not more than 9.1 percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be 7 to 1.

(2) When the total soluble solids of the juice is not less than 9.1 percent and not more than 9.2 percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be 6.95 to 1.

(3) When the total soluble solids of the juice is not less than 9.2 percent and not more than 9.3 percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be 6.90 to 1.

(4) When the total soluble solids of the juice is not less than 9.3 percent and not more than 9.4 percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be 6.85 to 1.

(5) When the total soluble solids of the juice is not less than 9.4 percent and not more than 9.5 percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be 6.80 to 1.

(6) When the total soluble solids of the juice is not less than 9.5 percent and not more than 9.6 percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be 6.75 to 1.

(7) When the total soluble solids of the juice is not less than 9.6 percent and not more than 9.7 percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be 6.70 to 1.

(8) When the total soluble solids of the juice is not less than 9.7 percent and not more than 9.8 percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be 6.65 to 1.

(9) When the total soluble solids of the juice is not less than 9.8 percent and not more than 9.9 percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be 6.60 to 1.

(10) When the total soluble solids of the juice is not less than 9.9 percent and not more than 10 percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be 6.55 to 1.

(11) When the total soluble solids of the juice is not less than 10 percent and not more than 10.1 percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be 6.50 to 1.

(12) When the total soluble solids of the juice is not less than 10.1 percent and not more than 10.2 percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be 6.475 to 1.

(13) When the total soluble solids of the juice is not less than 10.2 percent and not more than 10.3 percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be 6.45 to 1.

(14) When the total soluble solids of the juice is not less than 10.3 percent and not more than 10.4 percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be 6.425 to 1.

(15) When the total soluble solids of the juice is not less than 10.4 percent and not more than 10.5 percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be 6.40 to 1.

(16) When the total soluble solids of the juice is not less than 10.5 percent and not more than 10.6 percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be 6.375 to 1.

(17) When the total soluble solids of the juice is not less than 10.6 percent and not more than 10.7 percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be 6.35 to 1.

(18) When the total soluble solids of the juice is not less than 10.7 percent and not more than 10.8 percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be 6.325 to 1.

(19) When the total soluble solids of the juice is not less than 10.8 percent and not more than 10.9 percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be 6.30 to 1.

(20) When the total soluble solids of the juice is not less than 10.9 percent and not more than 11 percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be 6.275 to 1.

(21) When the total soluble solids of the juice is not less than 11 percent and not more than 11.1 percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be 6.25 to 1.

(22) When the total soluble solids of the juice is not less than 11.1 percent and not more than 11.2 percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be 6.225 to 1.

(23) When the total soluble solids of the juice is not less than 11.2 percent and not more than 11.3 percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be 6.20 to 1.

(24) When the total soluble solids of the juice is not less than 11.3 percent and not more than 11.4 percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be 6.175 to 1.

(25) When the total soluble solids of the juice is not less than 11.4 percent and not more than 11.5 percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be 6.15 to 1.

(26) When the total soluble solids of the juice is not less than 11.5 percent and not more than 11.6

percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be 6.125 to 1.

(27) When the total soluble solids of the juice is not less than 11.6 percent and not more than 11.7 percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be 6.10 to 1.

(28) When the total soluble solids of the juice is not less than 11.7 percent and not more than 11.8 percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be 6.075 to 1.

(29) When the total soluble solids of the juice is not less than 11.8 percent and not more than 11.9 percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be 6.05 to 1.

(30) When the total soluble solids of the juice is not less than 11.9 percent and not more than 12 percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be 6.025 to 1.

(31) When the total soluble solids of the juice is not less than 12 percent or is more than 12 percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be 6 to 1.

History.—s. 17, ch. 25149, 1949; s. 2, ch. 28090, 1953.

#### **601.18 Grapefruit; minimum juice content.—**

(1) During that period of time beginning with August 1 of each year and ending with November 15 of the same year, both dates inclusive, the minimum juice content of the juice of the respective sizes of grapefruit is as follows, each size being designated by the commercial number assigned to it based on the number of grapefruit of said size packed commercially in a standard Florida packed box of grapefruit containing two compartments each having inside dimensions of 12 by 12 by 12 inches:

(a) A grapefruit of size 28 shall contain not less than 400 cubic centimeters of juice.

(b) A grapefruit of size 36 shall contain not less than 350 cubic centimeters of juice.

(c) A grapefruit of size 46 shall contain not less than 320 cubic centimeters of juice.

(d) A grapefruit of size 54 shall contain not less than 280 cubic centimeters of juice.

(e) A grapefruit of size 64 shall contain not less than 255 cubic centimeters of juice.

(f) A grapefruit of size 70 shall contain not less than 230 cubic centimeters of juice.

(g) A grapefruit of size 80 shall contain not less than 210 cubic centimeters of juice.

(h) A grapefruit of size 96 shall contain not less than 185 cubic centimeters of juice.

(i) A grapefruit of size 112 shall contain not less than 175 cubic centimeters of juice.

(j) A grapefruit of size 126 shall contain not less than 165 cubic centimeters of juice.

(k) A grapefruit of size 150 shall contain not less than 145 cubic centimeters of juice.

(2) During that period of time beginning with November 16 of each year and ending with March 1 of the following year, both dates inclusive, the minimum juice content of the juice of the respective sizes of grapefruit shall be as follows:

(a) A grapefruit of size 28 shall contain not less than 380 cubic centimeters of juice.

(b) A grapefruit of size 36 shall contain not less than 335 cubic centimeters of juice.

(c) A grapefruit of size 46 shall contain not less

than 305 cubic centimeters of juice.

(d) A grapefruit of size 54 shall contain not less than 270 cubic centimeters of juice.

(e) A grapefruit of size 64 shall contain not less than 240 cubic centimeters of juice.

(f) A grapefruit of size 70 shall contain not less than 220 cubic centimeters of juice.

(g) A grapefruit of size 80 shall contain not less than 200 cubic centimeters of juice.

(h) A grapefruit of size 96 shall contain not less than 180 cubic centimeters of juice.

(i) A grapefruit of size 112 shall contain not less than 170 cubic centimeters of juice.

(j) A grapefruit of size 126 shall contain not less than 160 cubic centimeters of juice.

(k) A grapefruit of size 150 shall contain not less than 135 cubic centimeters of juice.

(3) During that period of time beginning with March 2 of each year and ending with July 31 of the same year, both dates inclusive, the minimum juice content of the juice of respective sizes of grapefruit shall be as follows:

(a) A grapefruit of size 28 shall contain not less than 360 cubic centimeters of juice.

(b) A grapefruit of size 36 shall contain not less than 320 cubic centimeters of juice.

(c) A grapefruit of size 46 shall contain not less than 290 cubic centimeters of juice.

(d) A grapefruit of size 54 shall contain not less than 255 cubic centimeters of juice.

(e) A grapefruit of size 64 shall contain not less than 230 cubic centimeters of juice.

(f) A grapefruit of size 70 shall contain not less than 210 cubic centimeters of juice.

(g) A grapefruit of size 80 shall contain not less than 190 cubic centimeters of juice.

(h) A grapefruit of size 96 shall contain not less than 170 cubic centimeters of juice.

(i) A grapefruit of size 112 shall contain not less than 160 cubic centimeters of juice.

(j) A grapefruit of size 126 shall contain not less than 150 cubic centimeters of juice.

(k) A grapefruit of size 150 shall contain not less than 130 cubic centimeters of juice.

(4) Provided, however, that if the Department of Citrus determines that unusual or abnormal conditions exist and a change in the juice requirements will be in the best interests of the citrus industry, it may, by resolution, decrease the required juice content of grapefruit, by varieties, during the period beginning November 16 and ending March 1 of the following year, both dates inclusive as provided in subsection (2), but in no event shall the required juice content during this period be less than the juice content required during the period beginning March 2 of each year and ending July 31 of the same year, as provided in subsection (3).

(5) Provided further, however, that the Department of Citrus is hereby authorized to establish by regulation different sizes, including changes in diameter ranges for existing sizes, for grapefruit based on the number of grapefruit as packed commercially. At that time it shall also fix for each period the

minimum juice content for the respective sizes so established, but in no event shall the juice content, during any period, be proportionately less than as above fixed.

**History.**—s. 18, ch. 25149, 1949; s. 1, ch. 29760, 1955; s. 1, ch. 57-12; s. 1, ch. 61-93; s. 1, ch. 67-22; s. 22, ch. 71-186.

#### 601.19 Oranges; maturity standards.—

(1) During that period of time beginning with August 1 of each year and ending with October 31 of the same year, both dates inclusive, oranges shall be deemed to be mature only when each orange, after having been clipped, picked, or otherwise severed from the tree, shows a break in color, caused solely by nature, with yellow color predominating on not less than 50 percent of the fruit's surface in the aggregate, except that oranges of the Parson Brown variety need show only such a break in color on not less than 25 percent of the fruit's surface in the aggregate; when the total soluble solids of the juice of the sample thereof is not less than 9 percent; when the ratio of total soluble solids of the juice of the sample thereof to the anhydrous citric acid is as set forth in s. 601.20; when the juice of the sample contains not less than four tenths of 1 percent of anhydrous citric acid; and when the juice content of said orange sample is in an amount not less than at the rate of 4½ gallons of juice per standard-packed box.

(2) During that period of time beginning with November 1 of each year and ending with November 15 of the same year, both dates inclusive, oranges shall be deemed to be mature only when each orange, after having been clipped, picked, or otherwise severed from the tree, shows a break in color, caused solely by nature, with yellow color predominating on not less than 50 percent of the fruit's surface in the aggregate, except that oranges of the Parson Brown variety need show only such a break in color on not less than 25 percent of the fruit's surface in the aggregate; when the total soluble solids of the juice of the sample thereof is not less than 8.7 percent; when the ratio of total soluble solids of the juice of the sample thereof to the anhydrous citric acid is as set forth in s. 601.20; when the juice of the sample contains not less than four tenths of 1 percent of anhydrous citric acid; and when the juice content of said orange sample is in an amount not less than at the rate of 4½ gallons of juice per standard-packed box.

(3) During that period of time beginning with November 16 of each year and ending with July 31 of the following year, both dates inclusive, oranges shall be deemed to be mature only when each orange, after having been clipped, picked, or otherwise severed from the tree, shows a break in color caused solely by nature with yellow color predominating on not less than 25 percent of the fruit's surface in the aggregate; when the total soluble solids of the juice of the sample thereof is not less than 8.5 percent; when the ratio of the total soluble solids of the juice of the sample thereof to the anhydrous citric acid is as set forth in s. 601.20; when the juice of the sample contains not less than four tenths of 1 percent of anhydrous citric acid; and when the juice content of said orange sample is in an amount not less than at the rate of 4½ gallons of juice per standard-packed box. If in any particular shipping season it shall appear to the Department of Citrus, after a public hear-

ing held not earlier than October 5 and called and held to determine such question, that oranges are then maturing earlier than normally as herein defined in this section, then the Department of Citrus may by order, rule, or regulation to be issued or promulgated and to become effective not later than October 10, declare and provide that during that period of time beginning with August 1 and ending with October 16, both dates inclusive, oranges meeting all other maturity standards shall be deemed to be mature when the total soluble solids of the juice of the sample thereof is not less than 9 percent, and during that period of time beginning with October 17 and ending with October 31, both dates inclusive, oranges meeting all other maturity standards shall be deemed to be mature when the total soluble solids of the juice of the sample thereof is not less than 8.7 percent, and during that period of time beginning with November 1 and ending July 31 of the following year, both dates inclusive, oranges meeting all other maturity standards shall be deemed to be mature when the total soluble solids of the juice of the sample thereof is not less than 8.5 percent.

(4) However, from December 1 of each year to July 31 of the following year, both dates inclusive, oranges shall be deemed to be mature for canning and concentrating purposes when the total soluble solids of the juice thereof is not less than 8 percent and when the minimum ratio of the total soluble solids of the juice thereof to the anhydrous citric acid is as set forth in s. 601.20, with no minimum requirement as to juice content, acid, or color break.

**History.**—s. 19, ch. 25149, 1949; s. 8, ch. 71-186.

**601.20 Oranges; minimum ratios of solids to acid.**—The minimum ratios of the total soluble solids of the juice of oranges to the anhydrous citric acid shall be as follows:

(1) When the total soluble solids of the juice is not less than 8 percent and not more than 8.1 percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be 10.50 to 1.

(2) When the total soluble solids of the juice is not less than 8.1 percent and not more than 8.2 percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be 10.45 to 1.

(3) When the total soluble solids of the juice is not less than 8.2 percent and not more than 8.3 percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be 10.40 to 1.

(4) When the total soluble solids of the juice is not less than 8.3 percent and not more than 8.4 percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be 10.35 to 1.

(5) When the total soluble solids of the juice is not less than 8.4 percent and not more than 8.5 percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be 10.30 to 1.

(6) When the total soluble solids of the juice is not less than 8.5 percent and not more than 8.6 percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be 10.25 to 1.

(7) When the total soluble solids of the juice is not less than 8.6 percent and not more than 8.7 percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be 10.20 to 1.

(8) When the total soluble solids of the juice is



not less than 8.7 percent and not more than 8.8 percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be 10.15 to 1.

(9) When the total soluble solids of the juice is not less than 8.8 percent and not more than 8.9 percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be 10.10 to 1.

(10) When the total soluble solids of the juice is not less than 8.9 percent and not more than 9 percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be 10.05 to 1.

(11) When the total soluble solids of the juice is not less than 9 percent and not more than 9.1 percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be 10 to 1.

(12) When the total soluble solids of the juice is not less than 9.1 percent and not more than 9.2 percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be 9.95 to 1.

(13) When the total soluble solids of the juice is not less than 9.2 percent and not more than 9.3 percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be 9.90 to 1.

(14) When the total soluble solids of the juice is not less than 9.3 percent and not more than 9.4 percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be 9.85 to 1.

(15) When the total soluble solids of the juice is not less than 9.4 percent and not more than 9.5 percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be 9.80 to 1.

(16) When the total soluble solids of the juice is not less than 9.5 percent and not more than 9.6 percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be 9.75 to 1.

(17) When the total soluble solids of the juice is not less than 9.6 percent and not more than 9.7 percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be 9.70 to 1.

(18) When the total soluble solids of the juice is not less than 9.7 percent and not more than 9.8 percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be 9.65 to 1.

(19) When the total soluble solids of the juice is not less than 9.8 percent and not more than 9.9 percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be 9.60 to 1.

(20) When the total soluble solids of the juice is not less than 9.9 percent and not more than 10 percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be 9.55 to 1.

(21) When the total soluble solids of the juice is not less than 10 percent and not more than 10.1 percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be 9.50 to 1.

(22) When the total soluble solids of the juice is not less than 10.1 percent and not more than 10.2 percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be 9.45 to 1.

(23) When the total soluble solids of the juice is not less than 10.2 percent and not more than 10.3 percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be 9.40 to 1.

(24) When the total soluble solids of the juice is not less than 10.3 percent and not more than 10.4 percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be 9.35 to 1.

ids to anhydrous citric acid shall be 9.35 to 1.

(25) When the total soluble solids of the juice is not less than 10.4 percent and not more than 10.5 percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be 9.30 to 1.

(26) When the total soluble solids of the juice is not less than 10.5 percent and not more than 10.6 percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be 9.25 to 1.

(27) When the total soluble solids of the juice is not less than 10.6 percent and not more than 10.7 percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be 9.20 to 1.

(28) When the total soluble solids of the juice is not less than 10.7 percent and not more than 10.8 percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be 9.15 to 1.

(29) When the total soluble solids of the juice is not less than 10.8 percent and not more than 10.9 percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be 9.10 to 1.

(30) When the total soluble solids of the juice is not less than 10.9 percent and not more than 11 percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be 9.05 to 1.

(31) When the total soluble solids of the juice is 11 percent or more, the minimum ratio of the total soluble solids to anhydrous citric acid shall be 9 to 1.

**History.**—s. 20, ch. 25149, 1949; s. 10, ch. 26484, 1951; s. 1, ch. 59-8; s. 1, ch. 67-23; s. 9, ch. 71-186.

#### 601.21 Tangerine maturity standards.—

(1) Tangerines shall be deemed to be mature only when each tangerine after having been clipped, picked, or otherwise severed from the tree, shows a break in color caused solely by nature, with yellow color predominating on not less than 50 percent of the fruit's surface in the aggregate; when the total soluble solids of the juice thereof is not less than 9 percent; and when the ratio of total soluble solids of the juice thereof to the anhydrous citric acid is as set forth in s. 601.22.

(2) From November 15th of each year to July 31st of the following year, both dates inclusive, tangerines shall be deemed to be mature only when each tangerine, after having been clipped, picked, or otherwise severed from the tree, shows a break in color caused solely by nature, with yellow color predominating on not less than 50 percent of the fruit's surface in the aggregate; and when the total soluble solids of the juice thereof is not less than 8.75 percent; and when the ratio of total soluble solids of the juice thereof to the anhydrous citric acid is as set forth in s. 601.22.

(3) From November 15th of each year to July 31 of the following year, both dates inclusive, tangerines shall be deemed to be mature for canning and concentrating purposes when the total soluble solids of the juice thereof is not less than 8.75 percent and when the minimum ratio of the juice thereof to the anhydrous citric acid is as set forth in s. 601.22, with no minimum requirements as to juice content, acid, or color break.

**History.**—s. 21, ch. 25149, 1949; s. 13, ch. 26492, 1951; s. 1, ch. 57-13; s. 1, ch. 59-17; ss. 10, 11, ch. 71-186.



ids to anhydrous citric acid shall be 7.65 to 1.

(p) When the total soluble solids of the juice is not less than 10.20 percent and not more than 10.30 percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be 7.55 to 1.

(q) When the total soluble solids of the juice is not less than 10.30 percent and not more than 10.40 percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be 7.45 to 1.

(r) When the total soluble solids of the juice is not less than 10.40 percent and not more than 10.50 percent, the minimum ratio of the total soluble solids to anhydrous citric acid shall be 7.35 to 1.

(s) When the total soluble solids of the juice is not less than 10.50 percent or is more than 10.50 percent the minimum ratio of the total soluble solids to anhydrous citric acid shall be 7.25 to 1.

**History.**—s. 22, ch. 25149, 1949; ss. 13, 14, ch. 26492, 1951; s. 12, ch. 71-186.

**601.24 Department of Citrus to prescribe methods of testing and grading.**—The Department of Citrus shall by rule or regulation provide the manner and method to be used in drawing samples and the quantity to be used in testing and grading of citrus fruit and the canned and concentrated products thereof and shall provide specifications and methods for use of juice extractors to be used in extracting juice for such tests and grading purposes.

**History.**—s. 24, ch. 25149, 1949; s. 1, ch. 61-49; s. 22, ch. 71-186.

**601.25 Determination of soluble solids and acid.**—The Department of Citrus by rule or regulation shall determine the method by which juice is tested for percentage of total soluble solids, the method by which juice is tested for acidity, and the method for testing fruit for juice content. Until such time as the Department of Citrus may see fit to determine such method by rule or regulation, the Brix hydrometer shall be used and the reading of the hydrometer corrected for temperature shall be considered as the percent of the total soluble solids; and anhydrous citric acid shall be determined by titration of the juice using standard alkali and phenolphthalein as indicator, the total acidity being calculated as anhydrous citric acid.

**History.**—s. 25, ch. 25149, 1949; s. 1, ch. 61-68; s. 22, ch. 71-186.

**601.26 Color break; minimum standard.**—In determining the color break required for citrus fruit, the color shown and appearing on plate 22, color designation L-2 (page 67) of Dictionary of Color, by Maerz and Paul, first edition, published by McGraw-Hill Book Company, Inc., New York, 1930, shall be the minimum standard for yellow color predominating.

**History.**—s. 26, ch. 25149, 1949.

**601.27 Department of Agriculture; citrus inspectors.**—The inspection in the state of all citrus fruit and the canned and concentrated products thereof, and the certifying as to grades and qualifications thereof, and the enforcement of all provisions of this chapter and rules, regulations, and orders made pursuant to and under authority of this chapter shall be under the direction, supervision, and control of the Department of Agriculture; and all citrus fruit inspectors performing inspection work,

services, or duties pursuant to or under the provisions of this chapter and said rules, regulations, and orders made pursuant to and under authority of this chapter shall be persons who are duly licensed or certified by the United States Department of Agriculture as citrus fruit inspectors.

**History.**—s. 27, ch. 25149, 1949; ss. 14, 35, ch. 69-106; s. 7, ch. 71-185.

#### **601.28 Inspection fees.**—

(1) There is hereby levied upon citrus fruit and processed citrus products the following inspection fees:

(a) Upon each standard-packed box or equivalent thereof of citrus fruit inspected and certified for shipment in fresh form other than fruit on which a fee is imposed by paragraph (b), such fee, to be fixed annually promptly following the release by the United States Department of Agriculture of the October citrus crop estimate, as is determined by the Department of Agriculture to be necessary to pay:

1. The costs expected to be incurred during the then current shipping season by the Fresh Citrus Inspection Bureau in performing its duties with respect to such citrus fruit and by the Technical Control Bureau in performing its duties with respect to such citrus fruit;

2. A pro rata portion of the costs expected to be incurred during the then current shipping season by the Citrus Bond and License Bureau;

3. A pro rata portion of the costs expected to be incurred during the then current shipping season, by the Department of Agriculture through its cooperative agreement with the United States Department of Agriculture, which are directly attributable to the estimation of the size of the citrus crop in Florida; and

4. The amount, if any, by which the costs actually incurred with respect to the foregoing during the preceding shipping season may have exceeded the income received during that season, or less the amounts, if any, by which the income received during the preceding shipping season may have exceeded the costs actually incurred with respect to the foregoing during that season. For the purpose of this subparagraph, income received during the preceding season shall be deemed to include all fees collected under this paragraph, plus a pro rata portion of all fines and penalties collected pursuant to this chapter, and plus all interest earned on the investment of the foregoing funds.

(b) Upon each unit, as defined by the Department of Citrus, of citrus fruit inspected and certified for shipment in fresh form as gift fruit or for sale at roadside retail fruit stands, such fee, to be fixed annually promptly following the release by the United States Department of Agriculture of the October citrus crop estimate, as is determined by the Department of Agriculture to be necessary to pay:

1. The costs expected to be incurred during the then current shipping season by the Fresh Citrus Inspection Bureau in performing its duties with respect to such citrus fruit and by the Technical Control Bureau in performing its duties with respect to such citrus fruit;

2. A pro rata portion of the costs expected to be incurred during the then current shipping season by



the Citrus Bond and License Bureau;

3. A pro rata portion of the costs expected to be incurred during the then current shipping season by the Department of Agriculture through its cooperative agreement with the United States Department of Agriculture which are directly attributable to the estimation of the size of the citrus crop in Florida; and

4. The amount, if any, by which the costs actually incurred with respect to the foregoing during the preceding shipping season may have exceeded the income received during that season, or less the amounts, if any, by which the income received during the preceding shipping season may have exceeded the costs actually incurred with respect to the foregoing during that season. For the purpose of this subparagraph, income received during the preceding shipping season shall be deemed to include all fees collected under this paragraph, plus a pro rata portion of all fees collected under s. 601.59, plus a pro rata portion of all fines and penalties collected pursuant to this chapter, and all interest earned on the investment of the foregoing funds.

(c) Upon each standard-packed box or equivalent thereof of citrus fruit inspected and certified for processing, such fee, to be fixed annually promptly following the release by the United States Department of Agriculture of the October citrus crop estimate, as is determined by the Department of Agriculture to be necessary to pay:

1. The costs expected to be incurred during the then current shipping season by the Processed Citrus Inspection Bureau in performing its duties with respect to such citrus fruit and by the Technical Control Bureau in performing its duties with respect to such citrus fruit;

2. A pro rata portion of the costs expected to be incurred during the then current shipping season by the Citrus Bond and License Bureau;

3. A pro rata portion of the costs expected to be incurred during the then current shipping season by the Department of Agriculture through its cooperative agreement with the United States Department of Agriculture directly attributable to the estimation of the size of the citrus crop in Florida; and

4. The amount, if any, by which the costs actually incurred with respect to the foregoing during the preceding shipping season may have exceeded the income received during that season, or less the amount, if any, by which the income received during the preceding shipping season may have exceeded the costs actually incurred with respect to the foregoing during that season. For the purpose of this subparagraph, income received during the preceding shipping season shall be deemed to include all fees collected under this paragraph, a pro rata portion of all fees collected under s. 601.59, a pro rata portion of all fines and penalties collected pursuant to this chapter, and all interest earned on the investments of the foregoing funds.

(d) Upon each standard case of 24 No. 2 cans, or the equivalent thereof, of processed citrus products inspected and certified within this state, such fee, to be fixed annually promptly following the release by the United States Department of Agriculture of the October citrus crop estimate, as is determined by the

Department of Agriculture to be necessary to pay:

1. The costs expected to be incurred during the then current shipping season by the Processed Citrus Inspection Bureau, through the cooperative agreement between the Department of Agriculture and the United States Department of Agriculture, in performing its duties with respect to processed citrus products; and

2. The amount, if any, by which the costs actually incurred with respect to the foregoing during the preceding shipping season may have exceeded the fees collected under this paragraph during that season, or less the amount, if any, by which the fees collected under this paragraph during the preceding shipping season may have exceeded the costs actually incurred with respect to the foregoing during that season.

(2)(a) Costs and income required to be prorated under the terms of paragraphs (a), (b), and (c) of subsection (1) shall be prorated on the basis of the number of boxes on which fees were assessed under the particular paragraph as compared to the total number of boxes of citrus fruit delivered into the primary channel of trade during the particular shipping season. Expenditures of funds for estimation of the size of the citrus crop in Florida by the Department of Agriculture through its cooperative agreement with the United States Department of Agriculture shall be for service and research work related to estimating and forecasting citrus production in Florida, including, but not limited to, tree counts, using aerial photography and ground surveys, fruit counts, fruit measurement, maturity and yield surveys, damage surveys, opinion surveys, season average price determinations, and related activities.

(b) If, after the release of the October citrus crop estimate, a subsequent citrus crop estimate is so substantially different that any of the foregoing fees fixed following the October estimate are determined by the Department of Agriculture to be insufficient to pay the estimated costs expected to be incurred as set forth in the preceding paragraphs, then the Department of Agriculture shall determine the fee necessary to pay such estimated costs based upon such revised citrus crop estimate and shall amend such fee accordingly.

(c) In fixing the foregoing fees, the Department of Agriculture shall provide for adequate reserves to pay costs expected to be incurred during those periods when costs are expected to exceed income.

(d) The computations of the fees provided for herein and information as to the data upon which they are based shall be furnished by the Department of Agriculture upon request to any person liable for fees hereunder.

(3)(a) All fees levied by this section shall be applicable retroactively to a date to be fixed by the Department of Agriculture. Such fees shall be paid to the Department of Agriculture or the payment thereof guaranteed by the person who is the owner or operator of the facility at which the citrus fruit or processed citrus products so certified are handled under the provisions of this chapter. Payment of such fees shall be due upon the certification of the citrus fruit or processed citrus products and shall be paid periodically under such rules and regulations

as shall be prescribed by the Department of Agriculture. Payment shall be secured by the filing and posting of a bond or cash deposit in the form and amount required by the Department of Agriculture.

(b) All fees levied and collected under the provisions of this section shall be paid into the State Treasury on or before the 15th day of each month. Such moneys shall be deposited to and made a part of the Citrus Inspection Trust Fund and are hereby appropriated to the Department of Agriculture to be used to pay the costs incurred in its performance, through the bureaus and cooperative agreements referred to in subsection (1), of the duties of such bureaus and under such cooperative agreements with respect to citrus fruit and processed citrus products.

(4)(a) All persons liable for the fees imposed by this section shall keep a complete and accurate record of the receipt, sale, shipment, and processing of citrus fruit and processed citrus products subject to the fees imposed hereby. Such records shall be preserved by such persons for a period of 1 year following the end of the shipping season to which they pertain and shall be offered for inspection at any time upon oral or written demand by the Department of Agriculture.

(b) All persons liable for the fees imposed by this section shall, at such times as the Department of Agriculture may by rule or regulation require, file with the Department of Agriculture a return certified as true and correct on forms to be prescribed and furnished by the Department of Agriculture stating the number of applicable units of citrus fruit and processed citrus products which were subject to fees hereunder during the period of time covered by the return.

(5) When any portion of the revenues deposited to the Citrus Inspection Trust Fund is not immediately needed for the purpose for which such funds are appropriated, the Board of Administration shall invest and reinvest such funds and the earnings thereon shall be deposited to and made a part of the Citrus Inspection Trust Fund.

(6) The duties of the Department of Agriculture shall include the duty to conduct hearings, through a hearing officer who shall be an attorney authorized to practice law within this state, on violations of this section and rules and regulations promulgated thereunder. Said hearing officer shall be selected by the Commissioner of Agriculture and shall be in addition to his regular legal staff authorized by law. Said hearing officer shall, in addition to conducting such hearings, be available to the Division of Fruit and Vegetable Inspection for other legal services on matters pertaining to violations of this chapter and rules and regulations promulgated thereunder.

**History.**—s. 28, ch. 25149, 1949; s. 16, ch. 26492, 1951; s. 5, ch. 29757, 1955; s. 1, ch. 57-84; s. 1, ch. 59-15; ss. 7, 8, ch. 59-20; s. 1, ch. 61-97; s. 2, ch. 61-119; s. 1, ch. 63-108; ss. 1-4, ch. 65-2442; ss. 1-3, ch. 67-219; s. 1, ch. 69-226; ss. 14, 35, ch. 69-106; s. 1, ch. 71-185.  
cf.—s. 601.83 Assessment of tax upon colored oranges and tangelos.

**601.281 Road guard fees.**—There is hereby levied upon all citrus fruit upon which inspection fees are imposed by s. 601.28 an additional fee in the amount of 1 mill per standard-packed box or the equivalent thereof. This additional fee shall be collected at the same time and in the same manner as citrus inspection fees imposed by s. 601.28. All fees

levied and collected under the provisions of this section shall be paid into the State Treasury on or before the 15th day of each month. Such money shall be deposited in the General Inspection Trust Fund and is hereby appropriated to the Department of Agriculture to defray that portion of the cost of operating road guard stations that is attributable to the services performed by the road guard stations with respect to citrus fruit. All such money not required to defray that portion of such costs shall be deposited in the Citrus Inspection Trust Fund and is hereby appropriated in the manner provided by s. 601.28(3)(b).

**History.**—s. 2, ch. 71-185.

#### **601.29 Powers of Department of Agriculture.**

—The powers of the Department of Agriculture shall include, but not be limited to, the following:

(1) To make such rules, regulations, and orders as may be necessary to carry out such of the provisions of this chapter as impose duties and powers on the Department of Agriculture or its authorized inspectors, employees, or agents which said rules, regulations, and orders shall have the effect and force of law when consistent therewith.

(2) To enter and inspect, through its authorized inspector, employee, or agent, any place within the state where citrus fruit is being prepared, colored, packed, loaded, or stored for shipment, either in fresh or processed form, and to stop and inspect, through its authorized inspector, employee, or agent, any shipment of citrus fruit or processed citrus products.

(3) Through its authorized inspector, employee, or agent, to forbid and prohibit the shipment or sale of any citrus fruit or the canned or concentrated products thereof found to be in violation of any of the provisions of this chapter, or in violation of any rule, regulation, or order made or adopted under the authority of this chapter.

(4) In furtherance of the right and privilege of any shipper or canning or concentrating plant to have citrus fruit or the canned or concentrated products thereof graded according to the standards as now fixed by the United States Department of Agriculture, or as such standards may be hereafter changed to make any and all necessary contracts and agreements with the United States Department of Agriculture or any of its branches, divisions, or extensions to provide complete and adequate inspection of such citrus fruit and the canned and concentrated products thereof.

(5) To cause prosecution to be instituted for violation of any of the citrus laws or for violation of any rule, regulation, or order promulgated by the commission or by the Department of Agriculture.

(6) To institute such action at law or in equity as may appear necessary to enforce compliance with any provisions of this chapter, or to enforce compliance with any rule, regulation, or order of the Department of Citrus or the Department of Agriculture made pursuant to the provisions of this chapter, and, in addition to any other remedy, to apply to any circuit court of this state for relief by injunction, if necessary, to protect the public interest without being compelled to allege or prove that an adequate remedy at law does not exist.

(7) To employ and fix the compensation of such attorneys as it deems necessary to aid and assist it in exercising the powers and discharging the duties conferred and imposed upon it by law, and particularly by subsections (5) and (6).

**History.**—s. 29, ch. 25149, 1949; ss. 14, 35, ch. 69-106; s. 7, ch. 71-185; ss. 14, 22, ch. 71-186.

**601.31 Citrus inspectors; employment.**—The Department of Agriculture may in each year employ as many citrus fruit inspectors for such period or periods, not exceeding 1 year, as said Department of Agriculture shall deem necessary for the effective enforcement of the citrus fruit laws of this state. All persons authorized to inspect and certify to the maturity and grade of citrus fruit shall be governed in the discharge of their duties as such inspectors by the provisions of law and by the rules and regulations prescribed by the Department of Citrus and the Department of Agriculture and shall perform their duties under the direction and supervision of the Department of Agriculture. All citrus inspectors appointed for the enforcement of this chapter shall be persons who are duly licensed or certified by the United States Department of Agriculture as citrus fruit inspectors.

**History.**—s. 31, ch. 25149, 1949; ss. 14, 35, ch. 69-106; s. 7, ch. 71-185; s. 22, ch. 71-186.

**601.32 Compensation of inspectors.**—The salaries of the chief citrus inspector, the chief laboratory inspector, the district supervising inspectors, the junior and senior inspectors, and all other necessary inspectors shall be in the amount as determined and fixed by the Department of Agriculture and, in addition thereto, each of said inspectors shall be reimbursed for traveling expenses as provided in s. 112.061, which shall be paid upon approval of accounts therefor by the Department of Agriculture. The Department of Agriculture may employ such additional field and other agents and clerical assistance at such times and for such periods and incur and pay any other expenses, including traveling expenses, as provided in s. 112.061, of the Department of Agriculture during the citrus fruit season, as may be necessary for the effective enforcement of the citrus fruit laws of this state and of the regulations of the Department of Citrus and assure the payments of the inspection fees imposed or that may be imposed under the authority of law.

**History.**—s. 32, ch. 25149, 1949; s. 19, ch. 63-400; ss. 14, 35, ch. 69-106; s. 7, ch. 71-185; s. 22, ch. 71-186.

**601.33 Interference with inspectors.**—It is unlawful for any person to obstruct, hinder, resist, interfere with, or attempt to obstruct, hinder, resist, or interfere with any authorized inspector in the discharge of any duty imposed upon or required of him by the provisions of law or by any rule or regulation prescribed by the Department of Citrus or the Department of Agriculture, or to change or attempt to change any instrument, substance, article, or fluid used by such inspector or emergency inspector in making tests of citrus fruit or the canned or concentrated products thereof.

**History.**—s. 33, ch. 25149, 1949; s. 1, ch. 59-19; ss. 14, 35, ch. 69-106; s. 7, ch. 71-185; s. 22, ch. 71-186.

#### **601.34 Duties of law enforcement officers.**—

Each state or county law enforcement officer shall make arrests for violations of the citrus fruit laws of this state or of any rule, regulation, or order promulgated by the commission or the Department of Agriculture and Consumer Services under authority of law when notified of such violation by the department or its duly authorized agent or representative.

**History.**—s. 34, ch. 25149, 1949; ss. 14, 35, ch. 69-106.

#### **601.35 Disputes as to quality, etc.; procedure.**

—When any dispute as to quality, grade, or condition of citrus fruit or the canned or concentrated products thereof arises, the shipper or any financially interested person may call in at his, her, or its expense an inspector licensed or certified only by the United States Department of Agriculture to inspect such citrus fruit or its canned or concentrated products. Such inspector shall issue a regular official certificate to the applicant showing the quality, grade, and condition thereof and, in all cases, such certificate shall be prima facie evidence. If such certificate shows the citrus fruit or the canned or concentrated products thereof therein-mentioned and described to conform to the provisions of this chapter and the rules, regulations, or orders of the Department of Citrus and of the Department of Agriculture, such shipper or such financially interested person may present the original certificate to the person or representative of the person having charge of the vehicle of transportation by which such citrus fruit or the canned or concentrated products thereof is to be transported, which person or representative shall then accept such citrus fruit or the canned or concentrated products thereof for shipment provided that all other provisions of this chapter and of the rules, regulations, and orders of the Department of Citrus and of the Department of Agriculture have been met and complied with.

**History.**—s. 35, ch. 25149, 1949; ss. 14, 35, ch. 69-106; s. 7, ch. 71-185; s. 22, ch. 71-186.

#### **601.36 Inspection information required when two or more lots of fruit run simultaneously.**

—In the event that any packinghouse packing citrus fruit or canning plant canning citrus fruit or concentrating plant concentrating citrus fruit shall have present therein or shall be packing, canning, or concentrating two or more lots of fruit simultaneously, the manager or other person in charge of said packinghouse or said canning plant or said concentrating plant shall notify the citrus fruit inspector conducting inspections at said packinghouse or canning plant or concentrating plant of said fact and furnish to said inspector full information as to the source of said several lots of fruit and the number of boxes in each several lots.

**History.**—s. 36, ch. 25149, 1949.

**601.37 Unlawful acts of inspectors.**—It is unlawful for any authorized inspector to make or deliver a certificate of inspection and maturity and quality of any citrus fruit or the canned or concentrated products thereof upon which the inspection fees and



advertising taxes have not been paid or the payment thereof guaranteed, or to make or issue any false certificate as to inspection, maturity, quality, or payment of inspection fees.

History.—s. 37, ch. 25149, 1949.

**601.38 Citrus inspectors; authority.**—For the purpose of enforcing the provisions of the citrus fruit laws of this state, as well as the regulations of the Department of Citrus, citrus fruit inspectors may enter into any packinghouse or canning plant or concentrating plant at any hour of day or night and have and demand access and admission to any enclosed portion of said packinghouse, canning plant, or concentrating plant. Said citrus fruit inspectors may also inspect all packing house or canning plant records pertaining to receipts from groves and to details of receiving, handling, running, processing, packing, or canning citrus fruit.

History.—s. 38, ch. 25149, 1949; s. 10, ch. 26484, 1951; s. 22, ch. 71-186.

**601.39 Special inspectors.**—In cases of emergency or necessity, when no citrus fruit inspector is available for inspection of a particular lot of citrus fruit or the canned or concentrated products thereof, the Department of Agriculture may designate some fit and competent individual to inspect, test, and certify as to such lot of fruit or the canned or concentrated products thereof. Certificates made or issued by such designated individual shall be signed by him as "Special citrus fruit inspector." He shall not be required to give any bond, but shall be subject to the penalties imposed for violation of any of the provisions of the citrus fruit laws.

History.—s. 39, ch. 25149, 1949; ss. 14, 35, ch. 69-106; s. 7, ch. 71-185.

**601.40 Registration of citrus packinghouses, processing plants with department.**—The owner, manager, or operator of each packinghouse, canning plant, or concentrating plant, at which it is intended to pack, can, concentrate, or prepare citrus fruit for market or transportation during the then present or the next ensuing citrus fruit shipping season, shall register such packinghouse, canning plant, or concentrating plant and its location, shipping point, and post office with the Department of Agriculture not less than 10 days before packing, canning, concentrating, or otherwise preparing any citrus fruit or the canned or concentrated products thereof for sale or transportation in or at such packinghouse, canning plant, or concentrating plant; and he shall, in addition to such registration, give the said Department of Agriculture not less than 7 days' written notice of the date on which packing, canning, concentrating, or other preparation for sale or transportation of citrus fruit of the then current or the next ensuing season's crop will be begun. The Department of Agriculture shall issue a certificate of registration to each such packinghouse, canning plant, or concentrating plant registering; provided, however, that no such certificate of registration shall be issued to any packinghouse, canning plant, or concentrating plant unless the operator thereof shall have first applied for and received his license as a citrus fruit

dealer and furnished his bond as such citrus fruit dealer in accordance with law.

History.—s. 40, ch. 25149, 1949; ss. 14, 35, ch. 69-106; s. 7, ch. 71-185.

**601.41 Operation without registration unlawful.**—It is unlawful for any person to operate a citrus fruit packinghouse, canning plant, or concentrating plant, or to pack or otherwise prepare for sale or transportation any citrus fruit at such packinghouse, canning plant, or concentrating plant without having previously registered said packinghouse, canning plant, or concentrating plant and given the notice required in s. 601.40 and having received and still having unrevoked from the Department of Agriculture a certificate; provided, that no certificate of inspection and maturity of any fruit shall be issued by any authorized inspector except to a person who has registered with the Department of Agriculture during the then current year and has an unrevoked certificate of registration and has given to said Department of Agriculture the notice required.

History.—s. 41, ch. 25149, 1949; ss. 14, 35, ch. 69-106; s. 7, ch. 71-185.

**601.42 Revocation of registration.**—Whenever the Department of Agriculture shall issue a certificate of registration to any packinghouse, canning plant, or concentrating plant for the purpose of processing citrus fruit or citrus products, as provided by s. 601.40, and said Department of Agriculture shall thereafter revoke or suspend the license of any citrus fruit dealer who may own, operate, or have any proprietary or ownership interest in any such packinghouse, canning plant, or concentrating plant aforesaid, the certificate of registration as provided for in s. 601.40 shall automatically and without further proceedings stand suspended or revoked during the entire period of the suspension or revocation of the citrus fruit dealer's license.

History.—s. 42, ch. 25149, 1949; s. 1, ch. 59-18; ss. 14, 35, ch. 69-106; s. 7, ch. 71-185; s. 6, ch. 78-95.

**601.43 Immature and unfit citrus fruit; individual sampling.**—Any oranges, grapefruit, and tangerines not conforming to the minimum maturity requirements set forth in this chapter and any citrus hybrids not conforming to the minimum maturity requirements set forth in Department of Citrus regulations shall be deemed and held to be immature and unfit for human consumption. In the testing of fruit to determine whether the same conforms to such requirements, any inspector shall have the right and authority to test the individual fruit in any given sample of fruit drawn in the number and by the manner as prescribed by regulations of the Department of Citrus. If, upon the testing of the juice of said individual fruit in any sample, more than 10 percent of said individual fruit shall fail by more than one-half percentage point to meet the minimum ratio of total soluble solids to anhydrous citric acid which is required for such fruit, then all of the fruit in the lot from which said sample was drawn shall be deemed and held to be immature and unfit for human consumption.

History.—s. 43, ch. 25149, 1949; s. 15, ch. 71-186.

**601.44 Destruction of immature fruit.**—All citrus fruit or processed citrus products prepared for sale or transportation, which is being prepared for such purpose, or which has been or is being delivered for sale or transportation that may be found immature or otherwise unfit for human consumption upon inspection and testing shall be seized and destroyed by a citrus fruit inspector or the sheriff of the county where found as may be provided by regulations prescribed by the Department of Citrus. Said determination of immaturity or unfitness for human consumption may be made by a citrus fruit inspector at any place where such citrus fruit may be found after severance from the tree, and such seizure and destruction may likewise occur at any such place. However, in the event of seizure of citrus fruit upon the grounds that such citrus fruit fails to show a break in color required by this chapter or Department of Citrus regulations for that particular variety of citrus fruit, the owner or person in charge of such citrus fruit shall be allowed to separate and retain for subsequent use, in accordance with the provisions of this chapter or Department of Citrus regulations, that portion of such citrus fruit which shows a break in color required by this chapter or Department of Citrus regulations for that particular variety and, in such case, only that portion thereof which fails to show a break in color for such variety, as required by this chapter or Department of Citrus regulations, shall be destroyed by a citrus fruit inspector or the sheriff of the county, as may be prescribed by regulations of the Department of Citrus.

*History.*—s. 44, ch. 25149, 1949; s. 16, ch. 71-186.

**601.45 Grading of fresh citrus fruit.**—

(1) All citrus fruit, except as provided in s. 601.50, sold or shipped, or offered for sale or shipment, for consumption in fresh form shall be graded in a registered packinghouse in this state according to standards established by the Department of Citrus, and the grade of such fruit shall be indicated as hereinafter provided.

(2) Fresh citrus fruit being transported in bulk form shall have stamped upon such fruit, subject to department rules:

(a) The actual grade thereof; or

(b) Brands or trademarks properly registered with the department to represent state or U.S. grades, as provided in subsection (4).

(3) For fresh citrus fruit being transported when packed in a closed container approved or otherwise authorized by the Department of Citrus, it shall be sufficient if the closed container has the grade indicated thereon, in accordance with department rules, by:

(a) Stamping the grade of the fruit on the container; or

(b) Use of labels, brands, or trademarks properly registered with the department to represent state or U.S. grades, as provided in subsection (4).

(4) In accordance with such rules as the Department of Citrus may prescribe, licensed citrus fruit dealers in this state shall be entitled to register labels, brands, or trademarks for grade identification

purposes. The department shall maintain a record of all labels, brands, or trademarks registered for grade identification purposes, which record may be purged as necessary.

*History.*—s. 45, ch. 25149, 1949; s. 1, ch. 57-29; s. 22, ch. 71-186; s. 1, ch. 77-4.

**601.46 Condition precedent to sale of citrus fruit.**—

(1) It is unlawful, except as provided in s. 601.50, for any person to sell or offer for sale, to transport, prepare, receive, or deliver for transportation or market any citrus fruit in fresh form unless such fruit has matured in accordance with the maturity standards and is accompanied by a certificate of inspection and maturity thereof issued by a duly authorized citrus fruit inspector of the Department of Agriculture and Consumer Services. However, the Department of Citrus may by regulation provide that, in lieu of the accompaniment of such shipment by a certificate of inspection and maturity, the fact of such inspection may be shown by appropriate means on the manifest or bill of lading covering such shipment.

(2) Inspection for maturity may be made at any time, anywhere, after the fruit is severed from the tree until the shipment, after inspection and certification, is accepted by common carrier or until it has been transported beyond the state lines where being transported other than by a common carrier.

(3) Shipments in bulk, either by common carrier or otherwise, to a packinghouse for repacking in Florida must be reinspected and certified before final delivery to a carrier. However, only one inspection fee shall be paid by the shipper.

(4) It shall be unlawful at any time for any person to sell or offer for sale, transport, prepare, receive, or deliver for transportation or market any citrus fruit which is immature or otherwise unfit for human consumption, or for any person to receive any such citrus fruit under a contract of sale, or for the purpose of sale, offering for sale, transportation, or delivery for transportation thereof. However, these provisions shall not apply to sale of citrus fruit "on the trees" or to common carriers or their agents when the fruit accepted for transportation or transported by any common carrier is accompanied by proper proof of inspection, maturity, and grade.

*History.*—s. 46, ch. 25149, 1949; ss. 14, 35, ch. 69-106; s. 7, ch. 71-185; ss. 1-4, ch. 73-11.

**601.461 Falsification of weights; penalty.**—

(1) It shall be unlawful for any person, firm, association, or corporation to falsify or alter any certificate, slip, or other document evidencing or pretending to evidence the weight of citrus fruit bought by weight or knowingly to make, utter, or deliver any such certificate, slip, or document which shall be false or to counsel, assist in, or procure any such act.

(2) Any person, firm, association, or corporation convicted of the violation of any provision of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

*History.*—ss. 1, 2, ch. 29814, 1955; s. 624, ch. 71-136.

**601.47 Condition precedent to processing citrus.**—It is unlawful for any person to can any citrus fruits or to can or concentrate the juices thereof unless such fruit is mature in accordance with the maturity standards and is accompanied by a certificate of inspection and maturity thereof issued by a duly authorized citrus fruit inspector of the Department of Agriculture. Inspection for maturity shall be made at the canning or concentrating plant with the further proviso that shipments either by common carrier or otherwise to a canning plant or a concentrating plant in Florida must be reinspected and recertified before use by the canner or concentrator.

**History.**—s. 47, ch. 25149, 1949; ss. 14, 35, ch. 69-106; s. 7, ch. 71-185.

**601.471 Definition of "canned or concentrated citrus fruit products" expanded.**—The term "canned or concentrated citrus fruit products" when used in ss. 601.48-601.54 shall include chilled citrus juice, chilled citrus sections, or otherwise processed products of citrus fruit.

**History.**—s. 1, ch. 65-72.

**601.48 Grading processed citrus products.**—

(1) All processed citrus products for which grade standards may be established, if sold, shipped, or offered for sale or shipment, except as provided in s. 601.50, shall be inspected for grade in a registered processing plant, and shall be graded according to standards established by the Department of Citrus, and the grade of such processed citrus products shall be designated on the immediate container thereof in such manner as the Department of Citrus may by rule prescribe.

(2) If such processed citrus products meet the requirements of the two highest grades as established by the Department of Citrus or, at the option of the processor, the two highest grades established by the United States Department of Agriculture, the processor shall have the privilege, in lieu of the grade declaration requirements of subsection (1), of using labels, brands, or trademarks properly registered with the Department of Citrus, as provided in subsection (3), to represent state or U.S. grades.

(3) In accordance with such rules as the Department of Citrus may prescribe, licensed citrus fruit dealers in this state shall be entitled to register labels, brands, or trademarks for grade identification purposes. The department shall maintain a record of all labels, brands, and trademarks registered for grade identification purposes, which record may be purged as necessary.

(4) The grade labeling requirements of this section shall not apply to intrastate shipments of processed citrus products between licensed citrus fruit dealers who are operators of processing plants duly registered under s. 601.40.

**History.**—s. 48, ch. 25149, 1949; s. 1, ch. 71-78; s. 22, ch. 71-186; s. 1, ch. 77-5.

**601.49 Condition precedent to selling processed citrus products.**—It is unlawful for any person, except as provided in s. 601.50, to sell or offer for sale, to transport, receive, or deliver for transportation, or market any canned or concentrated products of citrus fruits unless the same has been inspected and is accompanied by a certificate of inspection issued by a duly authorized inspector of the Depart-

ment of Agriculture, provided, however, that the Department of Citrus shall by regulation provide that in lieu of the accompaniment of such shipment by a certificate of inspection, the fact of such inspection may be shown by appropriate means on the manifest or bill of lading covering such shipment.

**History.**—s. 49, ch. 25149, 1949; s. 17, ch. 26492, 1951; ss. 14, 35, ch. 69-106; s. 7, ch. 71-185; s. 22, ch. 71-186.

**601.50 Exemptions; sale or shipment of citrus or citrus products for certain purposes.**—Irrespective of the provisions of ss. 601.45, 601.46, 601.48, 601.49, 601.51, and 601.52, the Department of Citrus under such precautionary rules and regulations as it may deem expedient may permit sale or shipment of citrus fruit or the canned or concentrated products thereof without the issuance of and filing of inspection certificate and without the grade being shown on the container thereof, of:

(1) Intrastate shipments of fresh citrus fruit for consumption or use within the state;

(2) Shipments to be used for charitable or unemployment relief purposes;

(3) Shipments to the United States Government or any of its agencies and interstate shipments to any packinghouse, canning plant, or concentrate plant for commercial processing, as may be defined by the Department of Citrus; or to fresh fruit juice distributors outside the state;

(4) Shipments by any method of transportation by "gift fruit shippers," as defined by the Department of Citrus, but such shipments shall not be for the purpose of resale by the consignee thereof;

but, provided however that, no such rule or regulation issued hereunder shall permit or allow the sale or shipment of citrus fruit deemed by this section to be immature and unfit for human consumption nor of canned or concentrated products thereof prepared or made from citrus fruit deemed by this law to be immature and unfit for human consumption; but, provided further, that shipments under subsections (1) and (4) shall meet such minimum grade standards as may, from time to time, be established by the Department of Citrus; and, provided further that such rules and regulations shall provide for the due collection of any advertising taxes and inspection fees that may be due thereon.

**History.**—s. 50, ch. 25149, 1949; s. 18, ch. 26492, 1951; s. 1, ch. 59-41; s. 1, ch. 63-100; s. 1, ch. 67-24; s. 22, ch. 71-186.

**601.501 Charitable shipments tax exempt.**—Shipments of citrus fruit when permitted under s. 601.50 for charitable purposes shall be exempt from all advertising taxes.

**History.**—s. 3, ch. 28197, 1953.

**601.51 Certification required for shipment of citrus fruit or products.**—No common carrier or other carrier or person, except as provided in s. 601.50, shall accept for shipment, ship, or transport any citrus fruit or the canned or concentrated products thereof until a grade certificate is issued showing the grade thereof, which certificate or a duplicate thereof shall be filed with the carrier at the point of shipment, nor shall any common carrier or other carrier or person accept for shipment or ship



any citrus fruit or the canned or concentrated products thereof where written notice has been given to such common carrier, other carrier or person, or his representative or agent by the Department of Agriculture or its authorized agent, employee, or inspector that said citrus fruit or the canned or concentrated products thereof does not comply with the provisions of law or the rules and regulations promulgated by the Department of Citrus or the Department of Agriculture; provided that the shipper or handler of such citrus fruit or the canned or concentrated products thereof shall have the privilege of repacking or remarking, and that, if or when the same shall have been repacked or remarked to conform to the provisions of law or said rules, regulations, or orders promulgated by the Department of Citrus or the Department of Agriculture, the Department of Agriculture or its authorized inspector or agent shall notify said common carrier, other carrier or person, or his agent that such citrus fruit or the canned or concentrated products thereof may be accepted for shipment, and such shipper or handler shall not be considered as having violated this chapter or said rules, regulations, or orders, but provided further that this section shall be deemed to have been complied with if the shipper shall have conformed to regulations issued by the Department of Citrus under the provisions of s. 601.49.

**History.**—s. 51, ch. 25149, 1949; s. 10, ch. 26492, 1951; ss. 14, 35, ch. 69-106; s. 7, ch. 71-185; s. 22, ch. 71-186.

**601.52 Carriers not to accept fruit unless same bears evidence of payment of excise taxes.**—No common carrier or other carrier or person, except as provided in s. 601.50, shall accept for shipment, ship, or transport any citrus fruit or processed citrus products unless the grade certificate, manifest, or bill of lading covering said citrus fruit or processed citrus products bears evidence of the payment, as provided by law, of the taxes, assessments, and fees imposed by this chapter.

**History.**—s. 52, ch. 25149, 1949; s. 20, ch. 26492, 1951; s. 3, ch. 71-187.

**601.53 Unlawful to process unwholesome citrus.**—It is unlawful for any person to can or concentrate, or buy for canning or concentrating purposes, or sell for canning or concentrating purposes in Florida any citrus fruit that is unwholesome or decomposed so that it is unfit for canning or concentrating purposes.

**History.**—s. 53, ch. 25149, 1949.

**601.54 Seizure of unwholesome fruit by Department of Agriculture's agents.**—

(1) The Department of Agriculture or its duly authorized inspectors shall seize and destroy all citrus fruit found by said Department of Agriculture or inspectors to be unwholesome or decomposed so that it is unfit for canning or concentrating purposes as defined by law or by any regulation of the Department of Citrus pursuant to authority given in this chapter and, in the event any inspector shall find that any canner or concentrator is canning or concentrating fruit prohibited to be used, he may seize and destroy not only such fresh fruit found in the canning or concentrating plant but also citrus fruit or juice in the process of being canned or concentrat-

ed or which has been canned or concentrated from the same lot or shipment wherein the fresh fruit is found by said inspector to be subject to seizure under the provisions of this section.

(2) Whenever any inspector finds citrus fruit in the canning or concentrating plant which should be destroyed under the provisions of this law, the operator, manager, or other person in charge of the canning or concentrating plant shall make known to the inspector the code number or other manner of identifying any fruit or the canned or concentrated products thereof that has been canned or concentrated from the same lot or shipment wherein is found the said fruit subject to be seized.

**History.**—s. 54, ch. 25149, 1949; ss. 14, 35, ch. 69-106; s. 7, ch. 71-185; s. 22, ch. 71-186.

**601.55 Citrus fruit dealer; license required.**—

(1) No person shall act as a citrus fruit dealer in this state without first having obtained the issuance of a current license for each shipping season, or portion thereof.

(2) All applications for a citrus fruit dealer's license shall be within one of the following classifications, and any such license approved shall have such effective date as prescribed for that classification.

(a) A "renewal application" shall be defined as an application filed by a dealer who held a valid license during the season immediately preceding that for which application is made, such application having been properly filed with the Department of Citrus on or before June 30 prior to the beginning of the season for which the application is made. Such renewal application, if approved on or before August 1, shall have an effective date as of the beginning of the shipping season applied for. Any such application not approved on or before August 1 shall automatically become classified as a "delinquent renewal application."

(b) "Delinquent renewal applications" shall be those applications for the next immediate shipping season made by a dealer who held a valid license during the immediately preceding shipping season and properly filed with the Department of Citrus on or after July 1 preceding the shipping season for which the license is sought, and all renewal applications not approved on or before August 1. Such delinquent renewal applications, if approved, shall be effective from the date of license issuance through July 31 of the shipping season applied for.

(c) All applications filed by applicants not licensed during the immediately preceding shipping season for which the license application is made shall be considered "new applications." Such new applications, if approved, shall be effective from the date of license issuance through July 31 of the shipping season applied for.

The termination dates of citrus fruit dealer licenses as set forth above shall not apply to a "temporary license" approved and issued in accordance with s. 601.57(3).

(3) An applicant shall be limited to the filing of one application for each citrus shipping season, which application may be amended if necessary to

comply with the requirements of this chapter and regulations of the Department of Citrus.

History.—s. 55, ch. 25149, 1949; s. 1, ch. 73-12.

**601.56 Application for dealers' licenses; requirements.**—Any person desiring to engage in the business of citrus fruit dealer in the state shall make application to the Department of Citrus for a license. The Department of Citrus shall by regulation prescribe the information to be contained in such application.

(1) All such applications, in addition to other information which may be prescribed by the Department of Citrus, must contain the following information:

(a) Name and address of the individual, firm, partnership, association, corporation, or other business unit applying for a license;

(b) Names and addresses of the principal stockholders, officers, partners, or other individuals belonging to or connected with the applicant if the applicant for a license is a firm, partnership, association, corporation, or other business unit, whether it be for profit or otherwise;

(c) The length of time the applicant has been engaged in the citrus fruit business in Florida in any manner whatsoever;

(d) A statement of delinquent accounts growing out of the ordinary course of business with producers, if any there be;

(e) A financial statement of the applicant, if required by the Department of Citrus, showing such information as the Department of Citrus may prescribe regarding the financial conditions of the applicant;

(f) Whether or not the applicant or any of its officers, directors, or stockholders have previously been licensed as a citrus fruit dealer, or connected with a licensed citrus fruit dealer in the state and, if so, the date all such licenses were obtained; and

(g) The number of boxes of citrus fruit, measured in terms of standard-packed boxes, which the applicant intends to deal with during the current or ensuing shipping season.

(2) If the applicant is an individual and is shown to be a nonresident of the state, or is a copartnership and each member is shown to be a nonresident of the state, in either event, the said applicant shall designate some bona fide resident of the state as such applicant's resident agent upon whom process may be served. The service of process of any of the courts of this state upon such resident agent shall be as effectual and binding upon said applicant as if personally served upon said applicant.

(3) If the applicant is a corporation, then such corporation must be one organized and existing under the laws of this state or having an unrevoked permit authorizing it to transact business in this state.

History.—s. 56, ch. 25149, 1949; s. 22, ch. 71-186.

**601.57 Examination of application; approval of dealers' licenses.**—

(1) The Department of Citrus shall, within a reasonable time, examine the application and consider the information submitted therewith, including the applicant's financial statement and the reputation

of the applicant as shown by applicant's past and current history and activities, including applicant's method and manner of doing business. The Department of Citrus shall also consider the past history of any applicant, either individually or in connection with any individual, copartnership, corporation, association, or other business unit with whom any applicant shall have been connected in any capacity, and may in proper cases impute to any individual, corporation, copartnership, association, or other business unit liability for any wrong or unlawful act previously done or performed by said individual, corporation, copartnership, association, or any other business unit.

(2) If the Florida Citrus Commission shall, by a majority vote, be of the opinion that the applicant is qualified and entitled to a license as a citrus fruit dealer, the commission shall approve said application; otherwise said application shall be disapproved. However, commission approval of any application may be contingent upon such reasonable conditions as may be endorsed thereon by the commission, or commission action on an application may, by majority vote, be deferred to a subsequent date.

(3) In cases of deferred action, as set forth in subsection (2), if the applicant so requests and the factual circumstances are deemed by the commission so to justify, the commission may approve the granting of a temporary license to be valid for a period to be set by the commission, not to exceed 60 days. No more than one temporary license shall be approved for any applicant during a shipping season. No temporary license may be approved unless all requirements relating to bonds or fees required to be posted or paid by the applicant shall have been met the same as though the approval were not of a temporary nature.

(4) Grounds for the disapproval of the application shall include, but shall not be limited to:

(a) Any previous conduct of the applicant which would have been grounds for revocation or suspension of a license as hereinafter provided if the applicant had been licensed.

(b) Delinquent accounts of the applicant owing to and growing out of the ordinary course of business with producers and other persons or firms.

(c) Delinquent accounts of the applicant with any person or persons with whom applicant has dealt in its operations under a previous license.

(d) Failure of the applicant or its owners, partners, officers, or agents to comply with any valid order of the Department of Agriculture or the Department of Citrus relating to citrus fruit laws or rules.

(e) Applicant's violation, or aiding or abetting in the violation, of any federal or Florida law or governmental agency rule or regulation governing or applicable to citrus fruit dealers.

(5) When the applicant is a corporate or other business entity, the term "applicant" as used in this section shall be deemed to include within its meaning those individuals who have been, or can reasonably be expected to be, actively engaged in the managerial affairs of the corporate or other business entity applicant.

(6) The Department of Citrus shall designate in

writing not more than three employees directly involved in the processing of citrus fruit dealer license applications, who shall be a part of, and shall have access to, the criminal justice information system described in chapter 943, for purposes of investigating license applications.

**History.**—s. 57, ch. 25149, 1949; s. 22, ch. 71-186; s. 1, ch. 73-17; s. 1, ch. 76-10; s. 1, ch. 77-8.

#### **601.58 Application approval or disapproval.—**

(1) If an application is approved, or approved subject to conditions thereon, the Department of Citrus shall, upon satisfaction of the conditions, if any, immediately forward such application with its approval and satisfaction of conditions, if any, endorsed thereon to the Department of Agriculture and Consumer Services which shall issue to such applicant a license as mentioned in s. 601.60.

(2) No license shall be issued to any applicant whose application stands disapproved by the commission. Once an application has been disapproved by the commission, said application shall remain disapproved for the remainder of the subject shipping season.

**History.**—s. 58, ch. 25149, 1949; s. 10, ch. 26484, 1951; ss. 14, 35, ch. 69-106; s. 7, ch. 71-185; s. 22, ch. 71-186; s. 1, ch. 73-250; s. 10, ch. 78-95.

#### **601.59 Dealer's license and agents' registration fees.—**

(1) Each applicant who qualifies for a citrus fruit dealer's license shall pay to the Department of Agriculture, prior to issuance of such license, a license fee of \$10 per shipping season or portion thereof covered by the license.

(2) A registration fee of \$5 per shipping season or portion thereof covered by the dealer's license shall be paid to the Department of Agriculture for the registration of each agent of a licensed citrus fruit dealer.

(3) All license and registration fees imposed and collected under the provisions of this section shall be paid to the State Treasury on or before the 15th day of each month; such moneys shall be deposited in the Citrus Inspection Trust Fund and are hereby appropriated in the manner provided by s. 601.28(3)(b).

**History.**—s. 59, ch. 25149, 1949; s. 2, ch. 61-119; s. 1, ch. 65-80; s. 1, ch. 67-104; ss. 14, 35, ch. 69-106; ss. 4, 7, ch. 71-185; s. 1, ch. 76-25.

#### **601.60 Issuance of dealers' licenses.—**

(1) Whenever an application bears the approved endorsement of the Department of Citrus and satisfactions of conditions of approval, if any, and the applicant has paid the prescribed fee, the Department of Agriculture and Consumer Services shall issue to such applicant a license, as approved by the Department of Citrus, which shall entitle the licensee to do business as a citrus fruit dealer during the effective term of such license in accordance with s. 601.55 or until such license may be suspended or revoked by the Department of Agriculture and Consumer Services in accordance with the provisions of law.

(2) If, during the effective term of such license, there is any change in the ownership, officers, managership, or stockholders of any copartnership, association, corporation, or other business unit to which a license has been issued, the licensee shall

immediately notify the Department of Citrus in writing specifying the change in detail. The Department of Citrus shall be entitled to receive, and the licensee shall be required to promptly furnish, such additional information as if the licensee were applying for a new license. If, after investigating the facts and applying the standards prescribed for the issuance of new licenses, the commission finds that the licensee is not entitled to a citrus fruit dealer's license, the commission shall recommend to the Department of Agriculture and Consumer Services that such existing license be suspended or revoked and, upon such recommendation, the Department of Agriculture and Consumer Services shall immediately take necessary steps to suspend or revoke such existing license.

**History.**—s. 60, ch. 25149, 1949; s. 1, ch. 65-81; ss. 14, 35, ch. 69-106; s. 7, ch. 71-185; s. 22, ch. 71-186; s. 1, ch. 76-11.

#### **601.601 Registration of dealers' agents.—**Every licensed citrus fruit dealer shall:

(1) Register with the Department of Agriculture each and every agent, as defined in s. 601.03(2), authorized to represent said dealer; and make application for registration of said agent or agents on a form approved by the Department of Agriculture and filed with the Department of Agriculture not less than 5 days prior to the active participation of said agent or agents on behalf of said dealer in any transaction described in s. 601.03(2); and be held fully liable for and legally bound by all contracts and agreements, verbal or written, involving the consignment, purchase, or sale of citrus fruit executed by a duly registered agent on his behalf during the entire period of valid registration of said agent the same as though said contracts or agreements were executed by said dealer. Registration of each agent shall be for the entire shipping season for which the applying dealer's license is issued; provided, however, said licensed dealer may cancel the registration of any agent registered by him by returning the agent's identification card to the Department of Agriculture and giving formal written notice to the Department of Agriculture of not less than 10 days. In addition, said dealer shall make every effort to alert the public to the fact that said agent is no longer authorized to represent him. An agent may be registered by more than one licensed dealer for the same shipping season, provided that each licensed dealer shall apply individually for registration of said agent and further provided that written consent is given by each and every dealer under whose license said agent has valid prior registration.

(2) When the above requirements and such additional requirements as may be set forth by regulations adopted by the Department of Citrus for registration of an agent have been met and the prescribed fee of \$5 as required by s. 601.59 has been paid, the Department of Agriculture shall duly register said agent and issue an identification card certifying such registration. Said identification card, among other things, shall show in a prominent manner:

- (a) The name and address of the agent;
- (b) The authorizing dealer's name, address, and license number;
- (c) The effective date and season for which registration is made;



- (d) A space for signature of the agent;
- (e) A space to be countersigned by the licensed dealer;
- (f) A statement providing that the card shall not be valid unless so signed and countersigned.

The Department of Citrus may, from time to time, adopt additional requirements or conditions relating to the registration of agents as may be necessary.

**History.**—s. 1, ch. 63-75; s. 1, ch. 65-86; ss. 14, 35, ch. 69-106; s. 7, ch. 71-185; s. 22, ch. 71-186.

#### **601.61 Bond requirements of citrus fruit dealers.—**

(1) Except as hereinafter provided, prior to the approval of a citrus fruit dealer's license, the applicant therefor must deliver to the Department of Agriculture and Consumer Services a good and sufficient cash bond, appropriate certificate of deposit, or a surety bond executed by the applicant as principal and by a surety company qualified to do business in this state as surety, in an amount as determined by the Department of Citrus. The amount of such bond or certificate of deposit shall be determined by taking into consideration any one or more of the following: The number of standard packed boxes of citrus fruit, or the equivalent thereof, which the applicant intends to handle during the term of the license as set forth in the application; the total volume of fruit handled by the dealer the previous season; the highest month's volume handled the previous season; the anticipated increase in the total citrus crop during the season for which the application for license is made; and other relevant factors based on the following schedule:

- (a) \$1,000 up to 2,000 boxes;
- (b) \$2,000 up to 5,000 boxes;
- (c) \$3,750 up to 7,500 boxes;
- (d) \$5,000 up to 10,000 boxes;
- (e) \$10,000 up to 20,000 boxes;
- (f) \$1,000 for each additional 20,000 boxes or fraction thereof in excess of 20,000 boxes, with a maximum bond of \$100,000.

If a citrus fruit dealer during the term of his license finds that he has handled, or can reasonably expect to handle a volume of fruit greater than that covered by his posted bond or certificate of deposit, the dealer shall have the affirmative duty of immediately notifying the Department of Agriculture and Consumer Services and initiating an increase in such bond or certificate of deposit to an amount that will meet the requirements set forth above.

(2) Said bond shall be in the form approved by the Department of Agriculture and Consumer Services and shall be conditioned as provided in s. 601.66(9), and also to fully comply with the terms and conditions of all contracts, verbal or written, made by the citrus fruit dealer with producers or with other citrus fruit dealers, relative to the purchasing, handling, sale, and accounting of purchases and sales of citrus fruit, and upon the dealer accounting for the proceeds from, and paying for, any citrus fruit purchased or contracted for, in accordance with the terms of the contracts with producers, and upon the dealer accounting for any advance payments or deposits made, and delivering all citrus

fruit contracted for, in accordance with the terms of the contracts with other citrus fruit dealers. For purposes of this chapter, every such contract shall be conclusively deemed to have been made and entered into during the shipping season in which the delivery of fruit into the primary channel of trade is made.

(3) Said bond shall be to the Department of Agriculture, for the use and benefit of every producer and of every citrus fruit dealer with whom the dealer deals in the purchase, handling, sale, and accounting of purchases and sales of citrus fruit. The aggregate accumulative liability under any bond shall not exceed the amount named therein. Said bond shall provide that the surety company thereon shall not be liable to any citrus fruit dealer claiming to be injured or damaged by the said dealer if the aggregate of the amounts found to be due to producers pursuant to the provisions of this chapter equals or exceeds the amount of the bond, unless such citrus fruit dealer is also a producer and is acting in the capacity of a producer and not in the capacity of a citrus fruit dealer in the transaction wherein he claims to have been injured or damaged by applicant; but if the aggregate of such amounts is less than the amount of the bond, then the surety may be held liable to such citrus fruit dealers, but not in excess of the sum by which the amount of the bond exceeds the aggregate of the amounts found to be due to producers pursuant to the provisions of this chapter.

(4) The Department of Citrus or the Department of Agriculture, or any officer or employee designated by the Department of Citrus or the Department of Agriculture, shall have the right to inspect such accounts and records of any citrus fruit dealer as may be deemed necessary to determine whether a bond which has been delivered to the Department of Agriculture is in the amount required by this section or whether a previously licensed nonbonded dealer should be required to furnish bond. If any such citrus fruit dealer refuses to permit such inspection, the Department of Agriculture may publish the facts and circumstances and by order suspend the license of the offender until permission to make such inspection is given. Upon a finding by the Department of Agriculture that any citrus fruit dealer has dealt or probably will deal with more fruit during the season than shown by the application, the Department of Agriculture may order such bond increased to such an amount as will meet the requirements as set forth in the bond schedule of subsection (1). Upon failure to file such increased bond within the time fixed by the Department of Agriculture, the Department of Agriculture may publish the facts and circumstances and by order suspend the license of such citrus fruit dealer until the said bond is increased as ordered.

(5)(a) The following citrus fruit, subject to such rules as may be prescribed by the Department of Citrus, shall not be considered as fruit with which the applicant intends to deal for the purpose of determining the amount of the bond required under subsection (1);

- 1. Citrus fruit which the applicant produces.
- 2. Citrus fruit which is handled for its members

by a cooperative marketing association organized and existing under the provisions of either chapter 618 or chapter 619.

3. Fresh citrus fruit handled by the applicant, which has been prepared and packaged by a registered packinghouse other than the applicant and has been inspected and certified for shipment.

4. Citrus fruit handled by the applicant from citrus groves for which applicant provides complete grove management services under direct contract with the owner or producer.

5. Citrus fruit handled by a corporate or partnership applicant that is from citrus groves owned by officers or stockholders of the corporation or from citrus groves owned by the partnership, the parent corporation, or a wholly owned subsidiary corporation or its corporate officers or stockholders, or any partner of a partnership; provided that appropriate waivers of right to any claim against the bond required to be posted by this section be attached to and made a part of the application for license.

6. Processed citrus fruit handled by the applicant which has been processed and packaged by a registered citrus processing plant other than the applicant and has been inspected and certified for shipment.

(b) If the applicant does not intend to deal with any citrus fruit other than that which comes within the foregoing classifications, the Department of Agriculture and Consumer Services shall issue a license without the posting of a bond. Such a license shall bear a descriptive statement to the effect that the licensee is not a bonded citrus fruit dealer.

(c) A claim against any citrus fruit dealer's bond required to be posted by this section shall not be accepted with respect to any damages in connection with fruit handled under the provisions of subparagraphs 1. through 6. of paragraph (a) if such claim is filed against the bond of the dealer who was granted bond exempt status for said fruit.

(6) If any of the provisions of this act shall be held to be unconstitutional or invalid for any reason by any court of competent jurisdiction or if such court shall find or declare that no applicant shall be required to furnish the bond required by this act, then and in that event this entire act shall be ineffective for any and all purposes and the laws in effect on July 31, 1965, which are amended by this act, shall not be deemed to be amended or repealed by this act but shall instead remain in full force and effect it being the intention of the Legislature that in such event this entire act shall be ineffective for any and all purposes and the laws in effect on July 31, 1965, which are amended or repealed by this act shall instead not be deemed to be amended or repealed by this act but shall remain in full force and effect.

**History.**—s. 61, ch. 25149, 1949; s. 21, ch. 26492, 1951; s. 2, ch. 28197, 1953; s. 1, ch. 29762, 1955; s. 1, ch. 61-45; s. 1, ch. 61-389; s. 1, ch. 63-61; ss. 1, 2, ch. 65-73; ss. 14, 35, ch. 69-106; s. 7, ch. 71-185; s. 22, ch. 71-186; ss. 1-3, ch. 73-199; s. 1, ch. 75-102; s. 2, ch. 78-100.

**601.611 Applicable law in event ch. 61-389 held invalid.**—If any of the provisions of s. 601.61 be held unconstitutional or invalid for any reason by any court of competent jurisdiction, or if any such court shall find or declare that no applicant shall be required to furnish the bond required by this act, then and in that event this entire act, including sec-

tion 5 thereof, shall be ineffective for any and all purposes, and the Laws of Florida in effect on August 1, 1961, which are amended or repealed by this act shall not be deemed to be amended or repealed by this act but shall instead remain in full force and effect, it being the intention of the Legislature that in that event this entire act shall be ineffective for any and all purposes and the Laws of Florida in effect on August 1, 1961, including ch. 61-45, which are amended or repealed by this act shall not be deemed to be amended or repealed by this act but shall instead remain in full force and effect.

**History.**—s. 4, ch. 61-389.

#### **601.64 Citrus fruit dealers; unlawful acts, etc.**

—It is unlawful in, or in connection with, any transaction relative to the purchase, handling, sale, and accounting of sales of citrus fruit:

(1) For any citrus fruit dealer to make or exact any fraudulent charge to or from any person;

(2) For any citrus fruit dealer to reject or fail to deliver in accordance with the terms of the contract without reasonable cause any citrus fruit bought, sold, or contracted to be bought or sold by such citrus fruit dealer;

(3) For any citrus fruit dealer to discard, dump, or destroy without reasonable cause any citrus fruit received by such citrus fruit dealer;

(4) For any citrus fruit dealer to make, for a fraudulent purpose, any false or misleading statement concerning the condition, quality, quantity, or disposition of, or the condition of the market for, any citrus fruit which is received by such citrus fruit dealer or bought or sold or contracted to be bought or sold by such citrus fruit dealer; or the purchase or sale of which is negotiated by such citrus fruit dealer; or to fail or refuse truly and correctly to account and make full payment promptly in respect of any such transaction in any such citrus fruit to the person with whom such transaction is had, or to fail or refuse on such account to make full payment of such amounts as may be due thereon, or to fail without reasonable cause to perform any specification or duty express or implied arising out of any undertaking in connection with any such transaction;

(5) For any citrus fruit dealer to knowingly buy, sell, receive, process, or handle stolen citrus fruit;

(6) For any citrus fruit dealer to violate, or aid or abet in the violation of, any law of Florida governing or applicable to citrus fruit dealers, including any of the provisions of this chapter not herein specifically set forth;

(7) For any citrus fruit dealer to violate or aid or abet in the violation of any rule or regulation duly promulgated by the Department of Citrus.

**History.**—s. 64, ch. 25149, 1949; s. 10, ch. 26484, 1951; s. 1, ch. 65-82; s. 22, ch. 71-186.

#### **601.641 Fraudulent representations, penalties.**

(1) It shall be unlawful for any person, firm, association, or corporation to claim or represent to be a licensed citrus fruit dealer, licensed and bonded citrus dealer, or agent of a licensed citrus fruit dealer unless such person, firm, association, or corporation is licensed, licensed and bonded, or a registered

agent of a licensed citrus fruit dealer under the Laws of Florida.

(2) It shall be unlawful for any person, firm, association, or corporation to advertise or in any way represent falsely as to his status as a seller of citrus fruit, to make any false claim as to the status of such seller of citrus fruit, or to make any false claim as to the condition, grade, quality, quantity, grove origin, or producer's name and address of any citrus fruit sold by any such person, firm, association, or corporation.

(3) It shall be unlawful for any person, firm, association, or corporation licensed under this chapter to advertise or to use on his letterhead, or on any advertising material, or in any way pretend to be a bonded shipper unless said person, firm, association, or corporation has filed and had approved a performance bond in addition to the bond required under this chapter.

(4) This section is supplemental, making provisions in addition to any other provisions of law and shall be construed liberally.

(5) Any person, firm, association, or corporation violating any of the provisions of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Such criminal penalties shall be in addition to any other penalties provided by law. If the violator be a licensed citrus fruit dealer, then such license may be revoked or suspended in the manner provided by s. 601.67.

**History.**—ss. 1-5, ch. 57-4; s. 1, ch. 61-92; s. 1, ch. 65-84; s. 625, ch. 71-136.

**601.65 Liability of citrus fruit dealers.**—If any licensed citrus fruit dealer violates any provision of this chapter, such dealer shall be liable to the person allegedly injured thereby for the full amount of damages sustained in consequence of such violation. Such liability may be enforced either by proceeding in an administrative action to and before the Department of Agriculture and pursuing such action to its ultimate termination if desired or by filing of a judicial suit at law in a court of competent jurisdiction; however, in such court suit the bond of such citrus fruit dealer theretofore posted with the Department of Agriculture pursuant to s. 601.61 shall not be amenable or subject to any judgment or other legal process issuing out of or from such court in connection with such law suit, whether cash bond or surety company bond, but such bonds shall be amenable to and enforceable only by and through administrative proceedings before the Department of Agriculture, it being the intent and purpose of the Legislature that such citrus dealer's bond so posted with the Department of Agriculture shall be applicable and liable only for the payment of claims duly adjudicated by order of the Department of Agriculture and the determination of such adjudicated claim if and in the event such order is appealed by any aggrieved party to the administrative proceeding.

**History.**—s. 65, ch. 25149, 1949; s. 1, ch. 65-76; ss. 14, 35, ch. 69-106; s. 7, ch. 71-185; s. 157, ch. 71-355; s. 6, ch. 78-95.

**601.66 Complaints of violations by citrus fruit dealers; procedure; bond distribution; court action on bond.**—

(1) Any person may complain of any violation of

any of the provisions of this chapter by any citrus fruit dealer during any shipping season, by filing of a written complaint with the Department of Agriculture and Consumer Services at any time prior to May 1 of the year immediately following the end of such shipping season. Said complaint shall briefly state the facts, and the Department of Agriculture and Consumer Services shall thereupon, if the facts alleged prima facie warrant such action, forward true copies of said complaint to the dealer in question and also to the surety company on the dealer's bond. The dealer at such time shall be called upon, within a reasonable time to be prescribed by the Department of Agriculture and Consumer Services, either to satisfy the complaint or to answer the complaint in writing, either admitting or denying the liability.

(2) If the dealer admits the violation but fails to satisfy the complaint within the time fixed by the Department of Agriculture, the Department of Agriculture shall thereupon order payment by the dealer of the damages sustained.

(3) If the dealer, in his answer to the original complaint, denies the violation alleged, the Department of Agriculture shall thereupon determine whether the facts and circumstances set forth in the complaint have been established by competent substantial evidence.

(4) If the Department of Agriculture determines that the complaint has not been so established as aforesaid, the order shall, among other things, dismiss the proceeding.

(5) If the Department of Agriculture determines that the allegations of the complaint have been established as aforesaid, it shall make its findings of fact accordingly and thereupon adjudicate the amount of indebtedness or damages due to be paid by the dealer to the complainant. The administrative order shall fix a reasonable time within which said indebtedness shall be paid by the dealer.

(6) Upon failure by a dealer to comply with an order of the Department of Agriculture and Consumer Services directing payment, the department shall call upon the surety company to pay over to the Department of Agriculture and Consumer Services, out of the bond theretofore posted by the surety for such dealer, the amount of damages sustained but not exceeding the amount of the bond. The proceeds turned over to the Department of Agriculture and Consumer Services by the surety company shall be deposited in a bank account known as the Citrus Cash Bond Account, maintained in Winter Haven by the Division of Fruit and Vegetable Inspection, and, in the discretion of the Department of Agriculture and Consumer Services, be either paid over forthwith to the original complainant or held by the Department of Agriculture and Consumer Services for later disbursement, depending upon the time during the shipping season when the complaint was made, when liability was admitted by the dealer, when the proceeds were so paid out by the surety company to the Department of Agriculture and Consumer Services, the amount of other claims then pending against the same dealer, the amount of other claims already adjudicated against the dealer, and such other pertinent facts as the Department of Agriculture



and Consumer Services in its discretion may consider material. The Department of Agriculture and Consumer Services, if it decides to pay the proceeds over to the original complainant, has authority to order an increase in the original bond of the dealer to such higher sum as to the Department of Agriculture and Consumer Services would be justified under all the circumstances so as to protect other possible claimants and to exercise all powers otherwise confided to it under this chapter to enforce the posting of such increased bond. The Department of Agriculture and Consumer Services also, in its discretion as the facts and circumstances might appear to it, may hold the amount of such proceeds until such later time, up to the time when all claims have been filed during the allotted period after the closing of the shipping season and such claims adjudicated, and may then disburse the total proceeds in its possession paid over to it by the surety company on the dealer's bond as such claims were adjudicated to the various claimants, paying first to the producers the amount of their claims in full, if such proceeds are sufficient for such purpose, and if not, then in pro rata shares to such producer claimants; and if there then exist additional proceeds in the hands of the Department of Agriculture and Consumer Services, after all claims of producers have been paid in full, the balance of such proceeds shall be paid to claimants who are citrus fruit dealers, either in whole or in pro rata portion, as the aggregate of their claims may bear to the amount of such additional proceeds.

(7) Upon failure of a surety company to comply with a demand for payment of the proceeds of a citrus fruit dealer's bond pursuant to administrative orders entered by the Department of Agriculture fixing amounts due claimants, the department shall within a reasonable time file in the Circuit Court in and for Polk County, an original petition or complaint setting forth the administrative proceedings before the Department of Agriculture and ask for final order of the court directing the surety company to pay the proceeds of the said bond to the Department of Agriculture for distribution to the claimants.

(8) In any court proceeding filed under subsection (7), the findings of facts and orders of the Department of Agriculture shall be prima facie evidence of the facts therein stated, and if in such suit the Department of Agriculture is successful and the court affirms the department's demand for payment from the surety company, the Department of Agriculture shall be allowed all court costs incurred therein and also a reasonable attorney's fee to be fixed and collected as a part of the costs of the suit.

(9) The bond required to be posted by citrus fruit dealers under s. 601.61 shall be subject, and so conditioned therein, only to payment of claims duly adjudicated by the Department of Agriculture. All proceeds from such bonds shall be paid over by the surety company directly to the Department of Agriculture, to be disbursed by it to successful claimants in whose favor the Department of Agriculture has entered administrative order or orders. Such funds shall be considered trust funds in the hands of the Department of Agriculture for the exclusive purpose of satisfying orders of indebtedness duly adjudicated.

Cash bonds which may be posted by citrus fruit dealers in lieu of surety company bonds shall occupy the same legal status as funds paid over by the surety company to the Department of Agriculture for payment of claims.

**History.**—s. 66, ch. 25149, 1949; s. 2, ch. 29737, 1955; s. 1, ch. 65-77; ss. 14, 35, ch. 69-106; s. 7, ch. 71-185; ss. 4, 5, ch. 73-199; s. 1, ch. 77-117; s. 6, ch. 78-95; s. 1, ch. 78-100.

#### **601.67 Disciplinary action by Department of Agriculture and Consumer Services against citrus fruit dealers.—**

(1) The Department of Agriculture and Consumer Services may impose a fine not exceeding \$50,000 per violation against any licensed citrus fruit dealer for violation of any provision of this chapter, and, in lieu of, or in addition to, such fine, may revoke or suspend the license of any such dealer when it has been satisfactorily shown that such dealer, in his activities as a citrus fruit dealer, has:

(a) Obtained a license by means of fraud, misrepresentation, or concealment;

(b) Violated or aided or abetted in the violation of any law of this state governing or applicable to citrus fruit dealers or any lawful rules of the Department of Citrus;

(c) Been guilty of a crime against the laws of this or any other state or government involving moral turpitude or dishonest dealing, or has become legally incompetent to contract or be contracted with;

(d) Made, printed, published, distributed, or caused, authorized, or knowingly permitted the making, printing, publication, or distribution of false statements, descriptions, or promises of such a character as to reasonably induce any person to act to his damage or injury, if the said citrus fruit dealer then knew, or, by the exercise of reasonable care and inquiry, could have known of the falsity of such statements, descriptions, or promises;

(e) Knowingly committed or been a party to any material fraud, misrepresentation, concealment, conspiracy, collusion, trick, scheme, or device whereby any other person lawfully relying upon the word, representation, or conduct of the citrus fruit dealer shall act to his injury or damage;

(f) Committed any act or conduct of the same or different character of that hereinabove enumerated which shall constitute fraudulent or dishonest dealing; or

(g) Violated any of the provisions of ss. 506.19 through 506.28, both sections inclusive.

(2) Any fine imposed pursuant to subsection (1), when paid, shall be deposited by the Department of Agriculture and Consumer Services into its General Inspection Trust Fund.

(3) Whenever any administrative order has been made and entered by the Department of Agriculture and Consumer Services imposing a fine pursuant to this section, said order shall specify a time limit for payment thereof, not exceeding 15 days, and failure of the dealer involved to pay said fine within said time shall be grounds for suspension of the citrus fruit dealer's license. Whenever an order is entered suspending such license for a definite period of time, and the end of any shipping season shall occur during the period of such suspension, such suspension order shall continue and be effective into the ensu-

ing shipping season and until the entire period of time set forth in such order has elapsed. Whenever any such administrative order of the Department of Agriculture and Consumer Services is sought to be reviewed by the offending dealer involved in a court of competent jurisdiction, if such court proceedings should finally terminate in such administrative order of the Department of Agriculture and Consumer Services being upheld or not quashed, such order shall thereupon, upon the filing with the Department of Agriculture and Consumer Services of a certified copy of the mandate or other order of the last court having to do with the matter in the judicial process, become immediately effective and shall then be carried out and enforced notwithstanding such time will be during a new and subsequent shipping season from that during which the administrative order was first originally entered by the Department of Agriculture and Consumer Services.

**History.**—s. 67, ch. 25149, 1949; s. 1, ch. 61-90; s. 2, ch. 61-119; ss. 14, 35, ch. 69-106; s. 7, ch. 71-185; s. 22, ch. 71-186; s. 6, ch. 78-95; s. 1, ch. 79-126.

#### **601.671 Appropriation of fines collected.**—

All fines imposed and collected by the Department of Agriculture under the provisions of this chapter are hereby appropriated in the manner provided by s. 601.28(3)(b).

**History.**—s. 5, ch. 71-185.

**601.68 Investigation of violations.**—The Department of Agriculture may instigate and make investigation of any citrus fruit dealer who it has reason to believe has violated any law of this state governing and applicable to citrus fruit dealers, and, whenever the Department of Agriculture determines that any citrus fruit dealer has violated any law of the state governing and applicable to citrus fruit dealers, it may publish the facts and circumstances of such violation and suspend the license of such offender for a specific period or revoke the same or make such other appropriate order as it may deem just and proper, and any such order shall specify the effective date thereof and any order other than one suspending or revoking a license shall automatically suspend such license until said order is complied with. Any administrative order of the Department of Agriculture issued under the provisions of ss. 601.66-601.68 or s. 601.70 shall be deemed to have been issued in the county wherein the licensee has his main office, as disclosed in his application for citrus dealer's license.

**History.**—s. 68, ch. 25149, 1949; s. 10, ch. 26484, 1951; s. 35, ch. 63-512; ss. 14, 35, ch. 69-106; s. 7, ch. 71-185; s. 6, ch. 78-95.

**601.69 Records to be kept by citrus fruit dealers.**—Every citrus fruit dealer shall make and keep a correct record showing in detail the following with reference to the purchase, handling, sale, and accounting of sale of citrus fruit handled by him, namely:

(1) The name and address of the producers or other persons from whom the citrus fruit was procured, and, if same was procured from some person other than a licensed citrus fruit dealer, the name and address of the producer of said fruit;

(2) The date citrus fruit is received, the amount thereof, and the purchase price paid therefor if pur-

chased for the purpose of resale;

(3) The condition of such citrus fruit upon receipt by the citrus fruit dealer;

(4) If the citrus fruit is handled on consignment for the account of the producer, the date of sale and the selling price;

(5) An itemized statement of the charges to be paid by the producer in connection with any sale;

(6) A detailed statement of all claims made by producers against the citrus fruit dealer, a copy of each when received to be certified and filed with the Department of Agriculture;

(7) A copy of the record and account of sale of citrus fruit handled on consignment or commission shall be delivered to the producer upon the consummation of the sale, together with all moneys received by the citrus fruit dealer in payment for such transaction made upon account of the producer, less the agreed commission and other charges which must be separately itemized, and said payment and accounting must be made by said citrus fruit dealer to the producer within 15 days after said citrus fruit dealer receives the money in payment of said citrus fruit unless otherwise specified in contract between citrus fruit dealers and producer;

(8) A detailed statement and record of the resale or commercial disposition of citrus fruit so purchased by the dealer for purpose of resale or other commercial disposition, showing the number of boxes resold, the moneys received by such dealer upon such resale of the fruit, the person or dealer and address thereof to whom sold, the date of such resale, and how delivered to such purchaser;

(9) Any other record or account required to be kept and maintained by such dealer by rule or regulation of the Department of Citrus duly promulgated.

**History.**—s. 69, ch. 25149, 1949; s. 1, ch. 65-78; ss. 14, 35, ch. 69-106; s. 7, ch. 71-185; s. 22, ch. 71-186.

**601.70 Inspection of records by Department of Agriculture and Consumer Services.**—The Department of Agriculture and Consumer Services, or its duly authorized agents, shall have the right to inspect all accounts, records, and memoranda of any citrus fruit dealer required to be kept pursuant to the provisions of this chapter. If any such citrus fruit dealer refuses to permit such inspection, the department may publish the facts and circumstances and by order suspend the license of the offender until permission to make such inspection is given.

**History.**—s. 70, ch. 25149, 1949; s. 1, ch. 65-79; ss. 14, 35, ch. 69-106.

#### **601.701 Penalty for failure to keep records.**—

(1) It shall be unlawful to fail to keep any records required to be kept under the provisions of the Florida Citrus Code of 1949, or any amendments thereto, or required to be kept by any other law or by any authorized regulation of the Department of Agriculture or the Department of Citrus, or to falsify or cause the falsification of any such records or to keep false records.

(2) The violation of any of the provisions of this act shall constitute a misdemeanor of the first de-

gree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—ss. 1, 2, ch. 61-96; ss. 14, 35, ch. 69-106; s. 626, ch. 71-136; s. 7, ch. 71-185; s. 22, ch. 71-186.

**601.72 Penalties for violations.**—Any person who violates or aids or abets in the violation of any provision of this chapter shall for each offense be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083; provided further that a person shall be guilty hereunder upon conviction for nonpayment of a debt arising solely out of the purchase or sale of citrus fruits only when criminal fraud is proved. Civil suits against a citrus fruit dealer only, without resort to such dealer's bond as provided in s. 601.65, and also criminal prosecutions arising by violation of any of the provisions of this chapter as herein provided, may be instituted or prosecuted in the county where the said citrus fruit was received by the dealer or in the county wherein the principal place of business of such dealer is located within the state, or within the county in which the alleged violation occurred; and if such violation occurs in more than one county, then within the county wherein such violation or any part thereof occurred.

**History.**—s. 72, ch. 25149, 1949; s. 1, ch. 65-83; s. 627, ch. 71-136.

**601.73 Additional methods of enforcement.**—The several circuit courts of the state, sitting in chancery, are vested with jurisdiction specifically to enforce, and to enjoin and restrain any citrus fruit dealer from violating the provisions of this law, or any rule, regulation, or order made by the Department of Agriculture, in any proceeding brought by the Department of Agriculture in any of said circuit courts; and in any such proceeding it shall not be necessary for the Department of Agriculture to allege or prove that an adequate remedy at law does not exist.

**History.**—s. 73, ch. 25149, 1949; ss. 14, 35, ch. 69-106; s. 7, ch. 71-185.

**601.731 Transporting citrus on highways; name and dealer designation on vehicles; load identification; penalty.**—

(1) It shall be unlawful to operate any truck, tractor, trailer, or other motor vehicle hauling citrus fruit in bulk or in unclosed containers for commercial purposes on the highways of this state unless said truck, tractor, trailer, or other motor vehicle is designated by a number assigned or permitted for use in the way and manner and to the extent prescribed by regulation of the Department of Citrus and by lettering of not less than 3 inches minimum in height on both sides, or the rear end and the front end, plainly showing the name of the firm or the name of the corporation or person owning same, or the name of any lessee or other person operating same, and if said truck, tractor, trailer, or other motor vehicle is owned by a licensed fruit dealer under this chapter, there shall also appear the words "Licensed Citrus Fruit Dealer" by lettering of not less than 3 inches minimum in height under the name of the owner of said vehicle. When both a tractor and trailer or when two units are used in the operation of hauling, both of said units shall be so marked as aforesaid; the designations aforesaid shall be paint-

ed or affixed by decal upon the vehicle or units so as to be of a permanent character. A motor vehicle which is not so marked that is so hauling such citrus fruit on the highways of this state shall prima facie be considered to be hauling commercial fruit with intent to violate this section. The provisions of this subsection shall not apply to any such fruit being hauled from the farm or grove by the producer of such fruit in his own vehicle to market or place of first commercial handling unless such producer is also a licensed citrus fruit dealer.

(2) Any person driving any truck, tractor, trailer, or other motor vehicle hauling citrus fruit in bulk or in unclosed containers for commercial purposes on the highways of the state shall have on his person when driving such vehicle a certificate or other paper showing approximate amount of fruit being hauled, the name of owner and the grove or other origin of such fruit, the number painted or affixed by decal, as well as the number of the motor vehicle license tag, on the vehicle in which such fruit is being hauled, and such other information and data as may be prescribed by regulation of the Department of Citrus, and it shall be unlawful to drive any such vehicle on the highways of this state without having such certificate or other paper, as aforesaid; and the failure of any such person to have such certificate or other paper on his person when driving, as aforesaid, shall be prima facie evidence of intent to violate and of the violation of this act.

(3) Whoever violates or fails to comply with any of the provisions of this section shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—ss. 1, 2, ch. 59-37; s. 2, ch. 63-77; s. 1, ch. 65-87; s. 628, ch. 71-136; s. 22, ch. 71-186; s. 1, ch. 79-23.

**601.74 Analysis of processing materials.**—

(1) Every manufacturer, before selling or offering for sale, or licensing or offering to license, any soaps, oils, waxes, gases, gas-forming materials, and other similar compositions, and the component parts thereof, for use on or in the processing of citrus fruits, shall furnish the Department of Agriculture with the complete formula followed in the manufacture of such composition, together with a sample of such composition, except gases, and a description of the manner in, and conditions under, which such composition is intended to be so used.

(2) The Department of Agriculture shall cause the said formula to be examined and the said sample to be analyzed, and if there shall be found in either any ingredient the use of which upon or in the processing of such citrus fruit shall render the same dangerous to health or otherwise unfit for human consumption, or injurious to such fruit or its keeping qualities, then such composition shall not be used on citrus fruit and the manufacturer shall be denied the license hereinafter required.

(3) Likewise, if the process followed in applying or using the said soaps, oils, waxes, gases, gas-forming materials, and other similar compositions and the component parts thereof on or in the processing of citrus fruits as furnished by the manufacturer is found to be injurious to citrus fruit or to its keeping qualities, then such soaps, oils, waxes, gases, gas-forming materials, and other similar compositions,



and the component parts thereof, shall not be used on citrus fruits and the manufacturer shall be denied the license hereinafter required.

(4) If such composition is found suitable for use on or in the processing of citrus fruits and the process is likewise found suitable for use on or in the processing of citrus fruits, then such composition shall be authorized for use on or in the processing of citrus fruits and the manufacturer shall be licensed as hereinafter provided.

(5) Thereafter, the Department of Agriculture shall, from time to time, cause samples of such compositions to be taken at the manufacturer's place of business or at the place being used and samples of fruit on or in the processing of which such composition has been used, at such times and places as the same may be found, and shall cause the same to be analyzed and examined and, if said composition shall be found to violate any of the conditions hereinabove made a prerequisite to the issuance of the license, or if it be found to vary in any material or substantial degree from the formula therefor as filed with the Department of Agriculture, then such composition shall not be used on citrus fruits and the manufacturer thereof shall be subjected to the penalties of this chapter; provided, however, that the formula so filed with the Department of Agriculture shall be held as confidential and shall only be divulged to the said Department of Agriculture or its duly authorized representatives or upon orders of a court of competent jurisdiction when necessary in the enforcement of this section.

(6) Likewise, the Department of Agriculture shall, from time to time, cause inspection to be made at the packinghouse or other place where said soaps, oils, waxes, gases, gas-forming materials, and other similar compositions, and the component parts thereof, are being used in the processing of citrus fruit and, if the application of said soaps, oils, waxes, gases, gas-forming materials, and other similar compositions, and the component parts thereof, shall be found to be injurious to the citrus fruit, or to the keeping qualities thereof, the manufacturer shall be advised thereof and, if such condition is not remedied within a reasonable time, the Department of Agriculture shall be authorized to cancel the license of the manufacturer to sell or license the use of such soaps, oils, waxes, gases, gas-forming materials, and other similar compositions, and the component parts thereof, on or in the processing of citrus fruits.

(7) Before offering any such soaps, oils, waxes, gases, gas-forming materials and other similar compositions, or the component parts thereof, for sale or use on or in the processing of citrus fruits, the manufacturer thereof shall first procure from the Department of Agriculture a license to manufacture and sell or license the use of the same. Each manufacturer shall pay to the Department of Agriculture a fee of \$10 per annum. All such license fees collected hereunder shall be paid by the Department of Agriculture into the State Treasury monthly to the credit of the General Inspection Trust Fund and appropriated and made available for defraying the expenses incurred in the administration of this law.

(8) It is unlawful for any person to use on or in the processing of citrus fruits any such composition

which has not fully received the approval of the department as herein provided.

**History.**—s. 74, ch. 25149, 1949; s. 2, ch. 61-119; ss. 14, 35, ch. 69-106; s. 7, ch. 71-185.

**601.75 Dyes and coloring matter for citrus fruit to be certified prior to use.**—It is unlawful for any manufacturer to use or include in the manufacture of any coloring matter any dye or color other than one that has been duly certified by the United States Department of Agriculture as harmless and suitable for use in foods; provided, that, in the case of a dye or color for which certification is pending, the Department of Agriculture shall issue a temporary permit allowing the use of such dye or color pending such certification when, upon analysis thereof made pursuant to regulations promulgated by the Department of Agriculture, the said dye or color shall have been found to contain no amount of antimony, arsenic, barium, lead, copper, mercury, zinc, or other substances known to be injurious to health in excess amounts thereof permitted in certified food colors by regulations of the United States Department of Agriculture; and provided further, that the cost of such analysis shall be paid by the manufacturer desiring to use such color.

**History.**—s. 75, ch. 25149, 1949; ss. 14, 35, ch. 69-106; s. 7, ch. 71-185.

**601.76 Manufacturer to furnish formula, etc.**—

(1) Every manufacturer, before selling or offering for sale, or licensing or offering to license for use any coloring matter, shall furnish the Department of Agriculture with the complete formula followed in the manufacture of such coloring matter (including, in event of the use of a noncertified dye, the formula for such dye), together with a sample of such coloring matter in such amount as the Department of Agriculture may direct.

(2) He shall likewise furnish the Department of Agriculture with a complete description of the process followed in applying said coloring matter to the peel of citrus fruit, including the following:

(a) The list of materials (other than the coloring matter) and of all machinery, apparatus, and equipment used in said process;

(b) An explanation of the amount and kind of heat used in said process, how applied to the citrus fruit, and for what period of time;

(c) A specific showing as to whether or not the coloring matter used in said process on the peel of the citrus fruit is of such nature or operates in such manner that the color of citrus fruit which has been treated with such coloring matter under such process is stable or changeable.

(3) The Department of Agriculture shall cause the said formula to be examined, and the said sample to be analyzed, and, if there shall be found in either any ingredient prohibited by law, or any other ingredient known to be dangerous to health under the conditions of its use, or if the said coloring matter shall vary in any material or substantial degree from the formula so furnished, then such coloring matter shall not be used on citrus fruits, and the manufacturer shall be denied the license required.

(4) Likewise, if the process followed in applying said coloring matter to the peel of citrus fruits as

furnished by the manufacturer to the Department of Agriculture is found to be injurious to citrus fruit or to its keeping qualities or to result in the creation of an unstable and unsatisfactory color on the peel of citrus fruit, then such coloring matter shall not be used on citrus fruits, and the manufacturer shall be denied the license required.

(5) If such coloring matter is found suitable for use in food, and the process is likewise found suitable for use on citrus fruit, both in respect to effecting no injury to said fruit or its keeping qualities and in resulting in the creation of a stable and satisfactory color on the peel thereof, then the coloring matter shall be authorized for use on citrus fruit, and the manufacturer shall be licensed as provided in this chapter.

**History.**—s. 76, ch. 25149, 1949; ss. 14, 35, ch. 69-106; s. 7, ch. 71-185.

#### **601.77 Subsequent analysis of coloring matter, etc.—**

(1) Thereafter the Department of Agriculture shall, from time to time, cause samples of coloring matter to be taken at the manufacturer's place of business, and shall cause the same to be analyzed, and if the said coloring matter shall be found to contain any ingredient prohibited, or if it varies in any material or substantial degree from the formula therefor as filed with the Department of Agriculture, then such coloring matter shall not be used on citrus fruit, and the manufacturer thereof shall be subjected to the penalties of this law; provided, however, that the formula so filed with the Department of Agriculture shall be held as confidential, and shall only be divulged to the Department of Agriculture or its duly authorized representatives or upon orders of a court of competent jurisdiction when necessary in the enforcement of this law.

(2) Likewise, the Department of Agriculture shall from time to time cause inspections to be made at the packinghouses or other places where said coloring matter is being applied to citrus fruits and, if the application of said coloring matter to citrus fruits through the use of said process or otherwise shall be found to be injurious to the citrus fruits or to the keeping qualities thereof or to result in an unstable and unsatisfactory color, the manufacturer shall be advised thereof, and, if said condition is not remedied, the Department of Agriculture may cancel the license of the manufacturer to manufacture and sell or license the use of such coloring matter.

**History.**—s. 77, ch. 25149, 1949; ss. 14, 35, ch. 69-106; s. 7, ch. 71-185; s. 6, ch. 78-95.

**601.78 Manufacturer to procure license and post bond.**—Before offering any such coloring matter for sale or use the manufacturer thereof shall first procure from the Department of Agriculture a license to manufacture and sell or license the use of the same. Each manufacturer shall pay to the Department of Agriculture a fee of \$10 per annum. All such license fees collected hereunder shall be paid by the Department of Agriculture into the State Treasury monthly to the credit of the General Inspection Trust Fund and are appropriated and made available for defraying the expenses incurred in the administration of this law. At the same time the manufacturer shall execute and deliver to the Department

of Agriculture a cash bond or surety bond executed by such manufacturer as principal and by a surety company qualified and authorized to do business in this state, as surety, in the amount of \$5,000. Said bond shall be in the form approved by the Department of Agriculture and shall be conditioned to guarantee that such coloring matter is free from any matter or ingredient that is harmful to the quality of such citrus fruit and is free from any ingredient that is in any way injurious to health. Said bond shall be to the Governor of the state and his successors in office, and the aggregate accumulated liability under any such bond shall not exceed the amount named therein. Any person claiming to be injured by a breach of any of the conditions of said bond may maintain an action on the same against the principal and surety named in said bond, or either of them, and any judgment against the principal and surety, or either of them, in any such action shall include costs.

**History.**—s. 78, ch. 25149, 1949; s. 2, ch. 61-119; ss. 14, 35, ch. 69-106; s. 7, ch. 71-185.

**601.79 To color grapefruit and tangerines prohibited.**—It is unlawful for any person to use on grapefruit or tangerines or apply thereto any coloring matter.

**History.**—s. 79, ch. 25149, 1949; ss. 1-3, ch. 29808, 1955; ss. 1-3, ch. 57-27; ss. 1-3, ch. 59-32; s. 1, ch. 61-89.

**601.80 Unlawful to use uncertified coloring matter.**—It is unlawful for any person to use on oranges or citrus hybrids any coloring matter which has not first received the approval of the Department of Agriculture as provided in s. 601.76.

**History.**—s. 80, ch. 25149, 1949; s. 2, ch. 61-89; ss. 14, 35, ch. 69-106; s. 7, ch. 71-185; s. 17, ch. 71-186.

**601.81 Standards of oranges to be colored.—**

(1) It is unlawful at any time to use on oranges or apply thereto any coloring matter unless the juice content of said oranges shall be at least 5 gallons to each standard-packed box thereof and unless the minimum ratio of total soluble solids of the juice thereof to anhydrous citric acid is not less than 9 to 1.

(2) It is unlawful between August 1 and October 31, both dates inclusive, of each year for any person to use on oranges or apply thereto any coloring matter unless such oranges pass the requirement of the state maturity tests and the total soluble solids of the juice of the sample shall be not less than 9.2 percent and the total anhydrous citric acid of juice thereof shall be not less than one-half of 1 percent, and, in addition thereto, oranges shall meet the appropriate minimum requirements for ratio of total soluble solids of the juice thereof to anhydrous citric acid as is set forth in s. 601.20.

(3) It is unlawful between November 1 and November 15, both dates inclusive, of each year for any person to use on oranges or apply thereto any coloring matter unless such oranges pass the requirement of the state maturity tests and the total soluble solids of the juice of the sample shall be not less than 9 percent and the total anhydrous citric acid of juice thereof shall be not less than one-half of 1 percent, and, in addition thereto, oranges shall meet the appropriate minimum requirements for ratio of total

soluble solids of the juice thereof to anhydrous citric acid, as is set forth in s. 601.20.

(4) It is unlawful between November 16 of each year and July 31 of the succeeding year, both dates inclusive, for any person to use on oranges or apply thereto any coloring matter unless such oranges pass the requirements of the state maturity tests and the total soluble solids of the juice of the sample are not less than 8.7 percent and the total anhydrous citric acid of the juice thereof is not less than one-half of 1 percent, and, in addition thereto, the oranges meet the appropriate minimum requirements for ratio of total soluble solids of the juice thereof to anhydrous citric acid as is set forth in s. 601.20. However, if in any particular shipping season it appears to the Department of Citrus, after a public hearing held not earlier than October 5 and called and held to determine such question, that oranges are then maturing earlier than normally as herein defined, then the Department of Citrus by order, rule, or regulation to be issued or promulgated and to become effective not later than October 10, may permit or allow the use on and application to oranges meeting all other maturity standards of coloring matter between August 1 and October 16, both dates inclusive, when the total soluble solids of the juice of the sample are not less than 9.2 percent and between October 17 and October 31, both dates inclusive, when the total soluble solids of the juice of the sample are not less than 9 percent and between the dates of November 1 and July 31 of the following year, both dates inclusive, when the total soluble solids of the juice of the sample are not less than 8.7 percent.

**History.**—s. 81, ch. 25149, 1949; s. 1, ch. 59-9; s. 3, ch. 61-89; ss. 18, 19, ch. 71-186.

#### **601.83 Assessment of tax upon colored oranges and tangelos.—**

(1) All oranges (including Temple oranges) and tangelos treated with coloring matter or to which coloring matter is applied, as provided in this chapter, shall be assessed at the rate of not to exceed one-half cent for each standard-packed box as determined by the Department of Citrus. The moneys raised from such assessment shall be paid to the Department of Agriculture by the person applying coloring matter to such oranges (including Temple oranges) and tangelos, and shall be credited to and paid into the General Inspection Trust Fund to be used for the purpose of defraying the expenses of the administration and enforcement of this law. All such assessments shall be due when such citrus is so treated or coloring matter applied thereto and prepared for shipment.

(2) The assessment herein provided for shall be paid, collected, and used in the same manner as provided in s. 601.28 for the payment and collection of inspection fees.

**History.**—s. 83, ch. 25149, 1949; s. 5, ch. 29757, 1955; s. 2, ch. 61-119; s. 5, ch. 61-89; ss. 14, 35, ch. 69-106; s. 7, ch. 71-185; s. 22, ch. 71-186.

**601.85 Standard shipping box for fresh fruit.**—The specifications for the standard legal shipping box, crate, or container to be used in shipping fresh citrus fruits shall be as established by the Department of Citrus; but provided that the unit of a stand-

ard-packed box, commonly called 1½ bushels, shall contain an inside cubical measurement of 3,456 cubic inches.

**History.**—s. 85, ch. 25149, 1949; s. 22, ch. 71-186.

**601.86 Standard field boxes for fresh citrus fruit.**—All field boxes used in the purchase, sale, or handling of citrus fruit from or for the grower by a citrus fruit dealer in the state shall be of the uniform standard size of 31½ inches long, 13 inches high, and 12 inches wide, inside measurements, and shall be divided into two compartments by a center partition of at least three-fourths-inch thickness; and each of these compartments thus created shall have a cubical capacity of not to exceed 2400 cubic inches.

**History.**—s. 86, ch. 25149, 1949.

**601.87 Use of cleats on boxes.**—The height of the end heads and the center partition of field boxes shall in no case be increased more than 1¼ inches by the addition of cleats or any similar addition to the height so that the total height of said boxes from the inside bottom to the top of said cleats shall not exceed 14¼ inches. It is unlawful to place cleats or any other device or thing on the bottom or top, other than herein provided, of any standard citrus field box whereby the space between the field boxes when stacked will be greater than the space that exists between such standard field boxes as herein defined.

**History.**—s. 87, ch. 25149, 1949.

#### **601.88 Oversized boxes to be stamped.—**

(1) It is unlawful to use any field box that exceeds the total capacity of 4900 cubic inches in the purchase, sale, or handling of oranges, grapefruit, or tangerines by a citrus fruit dealer from or for a grower, unless all field boxes exceeding this dimension shall have plainly stamped on both ends of the box in letters of the dimension of 1 inch in height and width the word "oversize."

(2) It is unlawful to use any "tractor box" or other bulk harvesting equipment or special type field box that exceeds the total capacity of 4900 cubic inches in the purchase, sale, or handling of oranges, grapefruit, or tangerines by a citrus fruit dealer from or for a grower, unless such tractor box or other bulk harvesting equipment or special type field box exceeding this dimension shall have plainly stamped on both ends of the tractor box or other bulk harvesting equipment or special type field box in letters of the dimension of 1 inch in height and width the actual content expressed in terms of standard field box equivalent as defined in s. 601.86.

**History.**—s. 88, ch. 25149, 1949; s. 9, ch. 59-20; s. 1, ch. 63-72.

#### **601.89 Citrus fruit; when damaged or seriously damaged by freezing.—**

(1) Citrus fruit shall be deemed to be seriously damaged by freezing when:

(a) It causes marked drying to extend into the segments of oranges and grapefruit more than one-half inch at the stem end, or into segments of the mandarin groups more than one-fourth inch at the stem end, or more than the equivalent of these respective amounts by volume when occurring in other portions of the fruit.

(b) It causes, before the drying process develops,



other injury as evidenced by:

1. A water-soaked appearance or evidence of previous water-soaking;
2. Broken-down juice cells;
3. Mushy condition;
4. Open spaces in the pulp;

or when any condition or combination of conditions, as described in subparagraphs 1., 2., 3., and 4., may be interpreted as affecting any portion or portions of the fruit with seriousness equal to that defined in paragraph (a).

(2) Citrus fruit shall be deemed to be damaged by freezing when:

(a) It causes marked drying to extend into the segments of oranges and grapefruit more than one-quarter inch at the stem end or into segments of the mandarin groups more than one-eighth inch at the stem end or more than the equivalent of these respective amounts by volume when occurring in other portions of the fruit.

(b) It causes, before the drying process develops, other injury as evidenced by:

1. A water-soaked appearance or evidence of previous water-soaking;
2. Broken-down juice cells;
3. Mushy condition;
4. Open spaces in the pulp;

or when any condition or combination of conditions, as described in subparagraphs 1., 2., 3., and 4., may be interpreted as affecting any portion or portions of the fruit with seriousness equal to that defined in paragraph (a).

**History.**—s. 89, ch. 25149, 1949.

#### **601.90 Frozen citrus fruit; power of Department of Citrus.—**

(1) Whenever freezing temperatures of sufficient degree to cause serious damage to citrus fruit occur in any section of the citrus producing areas, the Department of Citrus shall determine whether or not serious damage has resulted to citrus fruit from such freezing temperatures.

(2) If the Department of Citrus does determine that serious damage, as defined in s. 601.89, has been caused by such temperature to citrus fruit, it may at any time within 96 hours after the occurrence of such freezing temperature order either or both of the following:

(a) That no citrus fruit shall be sold, offered for sale, or transported for a period not to exceed 10 days after such order becomes effective.

(b) That, without an order under paragraph (a) or subsequent to the termination of any such order for a period not to exceed 14 days, no citrus fruit showing damage, as defined by s. 601.89, caused by freezing temperatures shall be sold, offered for sale, or transported.

(3) Such order or orders shall not affect or be applicable to any citrus fruit which was prepared for shipment and a certificate of inspection issued thereon prior to the time the order or orders herein provided for become effective.

(4) No order or orders hereunder shall apply to citrus fruit transported to canning or concentrating plants for the purpose of processing.

(5) Any order, rule, or regulation of the Department of Citrus issued pursuant to this section shall become effective at a time to be fixed by the Department of Citrus.

**History.**—s. 90, ch. 25149, 1949; s. 1, ch. 59-7; s. 22, ch. 71-186.

#### **601.901 Use of freeze-damaged fruit in frozen concentrated citrus products.—**

(1) At any time subsequent to a commission determination, pursuant to s. 601.90, that serious damage has resulted to citrus fruit from freezing temperatures, the commission may, at a regular or special meeting, establish by order the maximum degree of freeze damage or freeze-related injury to be permitted in citrus fruit used in preparation of any frozen concentrated products, including concentrate for manufacturing purposes, for the purpose of protecting the quality of such processed products.

(2) Notwithstanding the provisions of chapter 120, any order adopted by the commission pursuant to this section shall become effective at a time fixed by the commission, but not less than 24 hours from the time of adoption, and shall expire at a time fixed by the commission, but in no instance later than the end of the current shipping season.

(3) This section shall not repeal any other authority now or hereafter delegated to the Department of Citrus, but shall be deemed as additional and supplemental authority vested in the Department of Citrus, and should any part of this section be held to be unconstitutional or unenforceable by any court of competent jurisdiction, the decision of such court shall not affect the remaining portions of this section. It is the intention of the Legislature that this section would have been adopted had such unconstitutional or such unenforceable provision not been included herein.

**History.**—ss. 1-3, ch. 59-21; s. 22, ch. 71-186; s. 1, ch. 78-60; s. 10, ch. 78-95.

#### **601.91 Unlawful to sell, etc., frozen citrus.—**

(1) It shall be unlawful at any time for any person to sell or offer for sale, to transport, to prepare, receive, or deliver for transportation or market, except for canning, concentrating, or byproduct purposes within the state, any citrus fruit seriously damaged by freezing, as defined in s. 601.89. Not more than 15 percent by count of the citrus fruit in any one container or bulk lot may be seriously damaged by freezing injury; but not more than one-third of this tolerance shall be allowed for citrus fruit now or hereafter deemed adulterated by federal law or regulation.

(2) No lot of citrus fruit seriously damaged by freezing may be mixed with other lots of citrus fruit which are free from damage by freezing resulting in concealment of inferior fruit and thereby reducing the percentage of defective fruit in the seriously damaged lot to within the tolerance permitted for error in grading only.

(3) The manner and method of drawing samples and conducting tests under this section shall be prescribed by rules and regulations of the Department of Citrus. The inspection in the state of all citrus fruits seriously damaged by freezing and the enforcement of this section and of rules, regulations, and orders made by the Department of Citrus pursuant to and under authority of this section shall be under

the direction, supervision, and control of the Department of Agriculture and its duly authorized agents and inspectors who are qualified under existing laws to inspect for grade and maturity; and all citrus fruits that may be found to be seriously damaged by freezing, as defined by s. 601.89, upon inspection and testing shall be seized and may be confiscated and destroyed under the supervision of the citrus fruit inspector at the expense of the owner unless previous disposition is made by the owner or other person who offered the same for inspection, all the provisions of this section being subject to such reasonable rules and regulations as may be promulgated by the Department of Citrus.

**History.**—s. 91, ch. 25149, 1949; ss. 14, 35, ch. 69-106; s. 7, ch. 71-185; s. 22, ch. 71-186; s. 6, ch. 78-95.

**601.92 Use of arsenic in connection with citrus.**—Persons owning, managing, or tending and cultivating citrus groves or trees shall not use arsenic or any of its derivatives, or any combination, compound, or preparation containing arsenic as a fertilizer or spray on bearing citrus trees, except grapefruit trees.

**History.**—s. 92, ch. 25149, 1949.

**601.93 Sale of citrus containing arsenic.**—No person shall sell or offer for sale, transport, prepare, secure, or deliver for transportation or market any fruit of any variety except grapefruit which contains any arsenic or any compound or derivative of arsenic.

**History.**—s. 93, ch. 25149, 1949.

**601.94 Fruit containing arsenic; powers of inspection.**—Citrus fruit inspectors are authorized:

(1) To inspect citrus fruit, except grapefruit, for arsenic content at any packinghouse, canning plant, concentrating plant, or other place where citrus fruit, except grapefruit, is being received or prepared for sale or transportation, and

(2) To enforce the provisions of these arsenic laws under the direction and supervision of the Department of Agriculture in accordance with the law and rules and regulations prescribed by the said Department of Agriculture.

**History.**—s. 94, ch. 25149, 1949; ss. 14, 35, ch. 69-106; s. 7, ch. 71-185.

**601.95 Seizure of citrus fruit containing arsenic.**—Whenever any citrus fruit inspector shall find citrus fruit, except grapefruit, at any packinghouse, canning plant, concentrating plant, or other place that the same is being received or prepared for sale or transportation which citrus fruit shall, when tested, show an abnormal and excessively high ratio of total soluble solids of the juice thereof to the anhydrous citric acid thereof indicating the presence of arsenic therein, said inspector shall at once seize and take possession of said citrus fruit, except grapefruit, pending the procuring of the chemical analysis provided for in this chapter notifying the manager or other person in charge of said packinghouse, canning plant, concentrating plant, or other place where the said fruit is being received of such seizure. It is unlawful for the manager of said packinghouse, canning plant, concentrating plant, or other place where the fruit is being received, or the owner of said

citrus fruit, or any person whomsoever to sell, transport, or in any way move or dispose of any of said fruit from the time of seizure thereof until after the making of said chemical analysis and the receipt of the chemist's report thereon; provided that no citrus fruit so seized may be held by any inspector more than 96 hours after the time of seizure thereof unless the same shall be shown by the chemist's analysis to contain arsenic.

**History.**—s. 95, ch. 25149, 1949; s. 10, ch. 26484, 1951.

**601.96 Seized fruit; taking samples for analysis.**—Upon the making of seizure of any citrus fruit as provided in s. 601.95, the inspector making said seizure shall immediately draw samples therefrom, as shall be provided for by regulations to be issued by the Department of Agriculture, drawing said samples either from the packinghouse, canning plant, or concentrating plant bins, or elsewhere in the packinghouse, canning plant, or concentrating plant, or from field boxes or vehicles delivering said citrus fruit to said packinghouse. Such samples so drawn by said inspector shall be transported with all possible haste to such chemist as may be designated by the Department of Agriculture for the making by such chemist of a chemical analysis thereof to determine whether or not the said citrus fruit contains arsenic. Said chemist shall make said analysis with all the proper haste and report by the quickest means available the result of said analysis as soon as the same is completed to the inspector making the seizure. If the said analysis shall show that the said citrus fruit contains no arsenic, the inspector shall release the fruit from seizure as soon as he receives the report of the chemist thereon.

**History.**—s. 96, ch. 25149, 1949; ss. 14, 35, ch. 69-106; s. 7, ch. 71-185.

**601.97 Destruction of certain fruit containing arsenic.**—All citrus fruit, except grapefruit, prepared for sale or transportation, or which is being prepared for such purpose, or which has been or is being delivered for sale or transportation that may be shown by the chemical analysis provided for in s. 601.96 to contain arsenic, or any compound or derivative of arsenic, shall be destroyed by the inspector making seizure of the same, or by any citrus fruit inspector, or by the sheriff of the county where found, as may be provided by regulations prescribed by the Department of Agriculture. Regulations for the application and enforcement of ss. 601.92 through 601.97, inclusive, shall be promulgated by the Department of Agriculture.

**History.**—s. 97, ch. 25149, 1949; ss. 14, 35, ch. 69-106; s. 7, ch. 71-185.

**601.98 Shipment, sale, etc., of imported citrus fruit or citrus products.**—

(1) It is unlawful for any person to quote, offer for sale, sell, ship, or invoice in or from Florida any citrus fruit or the canned or concentrated products thereof grown and canned or concentrated in any other state or country other than Florida in such manner as to indicate in any form whatsoever that the said citrus fruit or the canned or concentrated products thereof were produced and canned in Florida.

(2) Every such person in Florida shall specifically advise and notify the buyer of any citrus fruit or

the canned or concentrated product thereof produced and canned or concentrated in any state or country other than Florida which is being sold, quoted, offered for sale, or shipped to such buyer that the said citrus fruit or the canned or concentrated products thereof were not produced in Florida, and the failure to so notify and advise such buyer will be construed as a violation of this section.

**History.**—s. 98, ch. 25149, 1949.

**601.981 Permits for export to foreign countries.**—During each shipping season the Department of Citrus is authorized and empowered to issue permits permitting citrus fruit grown in Florida, whether color-added or otherwise, to be exported to all foreign countries, other than Canada and Mexico, when the total soluble solids of the juice thereof and the minimum ratio of the total soluble solids of the juice thereof to the anhydrous citric acid and the juice content thereof is within a tolerance not exceeding 10 percent of the standards established by law, provided such citrus fruit is loaded on chartered vessels at a Florida port. The Department of Citrus shall promulgate such rules and regulations as it may deem necessary or required to control such permits.

**History.**—s. 1, ch. 61-94; s. 1, ch. 67-21; s. 1, ch. 70-15; s. 1, ch. 70-439; s. 22, ch. 71-186.

**601.99 Unlawful to misbrand wrappers or packages containing citrus fruit.**—It is unlawful for any person to misbrand any package or any wrapper containing citrus fruits or any container of the canned or concentrated products thereof, and all citrus fruits and the canned or concentrated products thereof shall be deemed misbranded if the package or the wrapper or the container thereof shall bear any statement, design, or device regarding the fruit therein contained which is false or misleading either as to the name, size, quality, or brand of such fruit or the canned or concentrated products thereof or as to the locality in which it was grown.

**History.**—s. 99, ch. 25149, 1949.

**601.9901 Certificates of inspection; form.**—All certificates of inspection prescribed by this chapter shall be of such number, form, size, and character as the Department of Citrus may by rule and regulation prescribe and shall be used in such manner as to identify the fruit or the canned or concentrated products thereof to which they relate.

**History.**—s. 100, ch. 25149, 1949; s. 22, ch. 71-186.

**Note.**—Former s. 601.0100.

**601.9902 Payment of salaries and expenses; Department of Citrus.**—All salaries, costs, and expenses incurred by the Department of Citrus in the administration and the enforcement of this chapter and in the performance of its duties and the exercise of its powers under the laws of this state shall be proratably paid from the moneys derived from the citrus advertising taxes imposed on the various types of citrus fruit in such proportion as the Department of Citrus may find each respective type is affected by such expenditures.

**History.**—s. 101, ch. 25149, 1949; s. 10, ch. 59-20; s. 20, ch. 71-186.

**Note.**—Former s. 601.0101.

**601.9903 Annual report of Department of Citrus.**—The Department of Citrus shall make an annual report to the Governor upon the work of the Department of Citrus. It shall also make such special reports upon any phase of the work of the Department of Citrus as may be called for by the Governor or the Legislature or either house thereof.

**History.**—s. 102, ch. 25149, 1949; s. 22, ch. 71-186.

**Note.**—Former s. 601.0102.

**601.9904 Rules and regulations; frozen citrus juices.**—The Department of Citrus is hereby authorized and required to promulgate and enforce rules and regulations concerning the contents, preparation, concentrating, other processing, and keeping or storing of frozen concentrated fresh citrus juices, and such rules and regulations may cover but are not limited to the sanitary conditions under which such product is prepared, the type of equipment and machinery used therein, and the manner and method of storage within this state and the manner and method of shipment.

**History.**—s. 103, ch. 25149, 1949; s. 22, ch. 71-186.

**Note.**—Former s. 601.0103.

**601.9905 Canned orange juice; standards; labeling.**—No canned orange juice shall be sold or offered for sale or shipped or offered for shipment which:

(1) Is prepared from raw juice containing before the addition of any additive less than 8.5 percent total soluble solids;

(2) When canned, contains less than 10 percent total soluble solids;

(3) Has a ratio of total soluble solids to anhydrous citric acid of less than 9 to 1;

(4) Contains less than 0.55 percent or more than 1.60 percent anhydrous citric acid;

(5) Contains more than 0.050 percent recoverable oil; or

(6) Does not meet requirements to be established by the Department of Citrus regarding color, absence of defects, taste, and flavor; unless the immediate container thereof shall be labeled in accordance with regulations of the Department of Citrus and there shall appear on such label the word "substandard" in bold type not less than one-fourth inch high printed or stamped diagonally thereon.

**History.**—s. 104, ch. 25149, 1949; s. 22, ch. 26492, 1951; s. 22, ch. 71-186.

**Note.**—Former s. 601.0104.

**601.9906 Canned grapefruit juice; standards; labeling.**—No canned grapefruit juice shall be sold or offered for sale or shipped or offered for shipment which:

(1) Is prepared from raw juice containing before the addition of any additive, less than 7.5 percent total soluble solids;

(2) When canned, contains less than 9 percent total soluble solids;

(3) Has a ratio of total soluble solids to anhydrous citric acid of less than seven and one-half to one; provided, this subsection shall not apply to canned grapefruit juice produced prior to July 1, 1963;

(4) Contains less than 0.75 percent anhydrous citric acid;



(5) Contains more than 0.020 percent recoverable oil; or

(6) Does not meet requirements to be established by the Department of Citrus regarding color, absence of defects, taste, and flavor; unless the immediate container thereof shall be labeled in accordance with regulations of the Department of Citrus and there shall appear on such label the word "substandard" in bold type not less than one-fourth inch high printed or stamped diagonally thereon.

**History.**—s. 105, ch. 25149, 1949; ss. 1, 2, ch. 63-107; s. 22, ch. 71-186.

**Note.**—Former s. 601.0105.

**601.9907 Canned blended juice; standards; labeling.**—No canned blend of orange and grapefruit juice shall be sold or offered for sale or shipped or offered for shipment which:

(1) Is prepared from mixed raw juice of oranges and grapefruit containing before the addition of any additive less than 8 percent total soluble solids;

(2) When canned, contains less than 9.5 percent total soluble solids;

(3) Has a ratio of total soluble solids to anhydrous citric acid of less than eight to one;

(4) Contains less than 0.65 percent or more than 1.80 percent anhydrous citric acid;

(5) Contains more than 0.040 percent recoverable oil; or

(6) Contains when mixed and before canning more or less than the percentage of orange juice determined by rule or regulation of the Department of Citrus required to be contained therein and does not meet requirements to be established by the Department of Citrus regarding color, absence of defects, taste and flavor; unless the immediate container thereof shall be labeled in accordance with regulations of the Department of Citrus, and there shall appear on such label the word "substandard" in bold type not less than one-fourth inch high printed or stamped diagonally thereon.

**History.**—s. 106, ch. 25149, 1949; s. 22, ch. 71-186.

**Note.**—Former s. 601.0106.

**601.9908 Canned tangerine juice; standards; labeling.**—No canned tangerine juice shall be sold or offered for sale or shipped or offered for shipment which:

(1) Is prepared from raw juice containing before the addition of any additive less than 9 percent total soluble solids;

(2) When canned, contains less than 10 percent total soluble solids; or

(3) Has a ratio of total soluble solids to anhydrous citric acid of less than nine to one;

(4) Contains less than 0.55 percent or more than 1.60 percent anhydrous citric acid;

(5) Contains more than 0.050 percent recoverable oil; or

(6) Does not meet requirements to be established by the Department of Citrus regarding color, absence of defects, taste, and flavor; unless the immediate container thereof shall be labeled in accordance with regulations of the Department of Citrus and there shall appear on such label the word "substand-

ard" in bold type not less than ¼ inch high printed or stamped diagonally thereon.

**History.**—s. 107, ch. 25149, 1949; s. 22, ch. 71-186.

**Note.**—Former s. 601.0107.

**601.9909 Frozen concentrated orange juice; requirements; labeling.**—Subject to the provisions of ss. 601.9913 and 601.9914, no frozen concentrated orange juice shall be sold, offered for sale, shipped, or offered for shipment which:

(1) Is concentrated to less than 41.8 or more than 47 degrees Brix. The Brix reading, if determined refractometrically, shall include corrections for citric acid.

(2) Has a lower ratio of total soluble solids to anhydrous citric acid of less than 12 to 1 or a higher ratio of total soluble solids to anhydrous citric acid than 19.5 to 1.

(3) Contains more than 0.120 milliliters of recoverable oil per 100 grams of concentrate.

(4) Contains any additives of any kind.

(5) Does not taste essentially the same as freshly expressed orange juice of similar quality and is not completely free of all fermented, cooked, terpeny, or other off-flavors; or does not meet all requirements of the rules of the Department of Citrus regarding color, absence of defects, taste, and flavor; unless the immediate container thereof shall be labeled in accordance with rules of the Department of Citrus, and there shall appear on such label the word "substandard" in bold type not less than one-fourth inch high printed or stamped diagonally thereon.

**History.**—s. 108, ch. 25149, 1949; s. 1, ch. 29759, 1955; s. 1, ch. 61-67; s. 22, ch. 71-186; s. 1, ch. 77-6; s. 161, ch. 79-164.

**Note.**—Former s. 601.0108.

**601.9910 Legislative findings of fact; strict enforcement of maturity standard in public interest.**—

(1) FINDINGS.—

(a) The Legislature finds and determines and so declares that, for many years past, the shipment of raw, immature citrus fruit, generally designated as "green fruit," from the state to consuming markets has caused the loss of millions of dollars to the citrus growers of Florida; also has resulted in the lowering of the standard of living of many of its citizens; adversely affected the economic conditions of the entire state; reduced the receipts in the collection of ad valorem taxes, thereby reducing revenue needed by counties and cities; caused financial loss to the growers and shippers and processors who did not engage in the shipment of green fruit; and that such practice each year hurts the good name and reputation of all Florida citrus.

(b) The Legislature, after extensive hearings conducted annually, and after many hearings attended by its citrus committees at various citrus industry meetings throughout the citrus area; and after having had the advice and counsel of the best qualified and most expert technical advisers in the Florida citrus industry, and after having had the benefit of the advice of some of the most expert and best informed growers, shippers, and processors, and after having made a careful study of the reaction of all citrus fruits by reason of changes in climatic conditions, and having found that regardless of the color of an orange or the color of a grapefruit or regardless

of the juice content of such fruit, finds such fruit may be immature and unfit for human consumption. It is also recognized by experts that there are certain factors entering into the maturity of fruit which are not now measurable by chemical tests. There is a change brought about by time and nature in the blending of solids and acids into juice which characterizes maturity but not in a manner susceptible to chemical determination. Because of this, it is scientifically sound that the minimum requirements for solids and the ratio of solids to anhydrous citric acid in determining maturity be relaxed as the season progresses and the raw, immature flavor characteristic of fruit early in the season has disappeared through the workings of time and nature. Therefore, the Legislature hereby finds and determines and so declares that, until nature has completed its process of removing the raw, immature flavor, such citrus fruit will still be immature and unfit for human consumption and, when marketed, will result in dissatisfied consumers who will cease purchasing Florida citrus for some time and will classify that fruit which they had purchased as "Florida green fruit."

(c) The Legislature finds and determines and so declares that there is no better method of determining when such raw and immature flavor leaves Florida citrus than by the standards set forth in this chapter; and that experience has demonstrated over a period of many years, by the best available records and under various climatic conditions and various seasonal changes, that generally speaking prior to November 1 of each season oranges which do not have a total soluble solids of 9 percent with a minimum ratio of total soluble solids, as set forth in s. 601.20, still have a raw, immature flavor; and that, beginning on or about November 1 of each season, such raw, immature fruit flavor gradually disappears from the orange and by November 15 the same orange may have a still lower soluble solids percentage and not be immature; and after November 15 can still have a further lower soluble solids percentage without being immature; and by December 1 nature has completed its process of removing the raw, immature flavor which might have existed prior to that time, provided such fruit meets the other minimum maturity requirements set forth in this chapter. On December 1 oranges meeting the requirements of s. 601.19(4), while not being sufficiently mature to ship in fresh form, may be safely used in some processed products without the finished product having a raw, immature flavor. On December 1 grapefruit meeting the requirements of s. 601.16(4), while not being sufficiently mature to ship in fresh form, may be safely used in some processed products without the finished product having a raw, immature flavor.

(d) The Legislature finds and determines and so declares that the enforcement of the maturity standards, as set forth in this chapter, will not result in preventing any grower from marketing his fruit at some time during the marketing season, whenever nature has removed the raw, immature flavor; and, if there is a delay in such marketing, it will result in higher prices for the entire season, bringing additional millions of dollars to the growers of Florida and resulting in benefit to all growers, including the

grower or growers who were delayed a short time in the shipment of their fruit.

(2) **DECLARATION.**—Therefore, the Legislature declares that the strict enforcement of the maturity standards, as set forth in this chapter, is definitely in the public's interest and for the public's welfare, and that no citrus should be shipped from Florida and sold in the consuming markets which has a raw, immature flavor, and which could be classed by the consuming public as "Florida green fruit."

(3) **REGULATIONS REGARDING MATURITY STANDARDS FOR HYBRIDS.**—The Legislature finds and determines that classifications of and maturity standards for citrus hybrids should be established by regulations promulgated by the Department of Citrus pursuant to this chapter.

**History.**—s. 109, ch. 25149, 1949; s. 1, ch. 67-25; s. 21, ch. 71-186.

**Note.**—Former s. 601.0109.

**601.9911 Fruit may be sold or transported, etc., direct from producer.**—Any citrus producer may transport his own citrus fruit or any citrus fruit may be sold or purchased and transported in interstate or intrastate commerce in truckload lots direct from a producer and any such fruit so sold, purchased, or transported need not be processed, handled by any packinghouse, washed, polished, graded, stamped, labeled, branded, placed in containers, or otherwise prepared for market as may be provided herein. Such fruit shall be certified at the time of inspection as tree run grade of fruit, but shall otherwise remain subject to the maturity standards and all other conditions, restrictions, embargoes, and other requirements of this chapter and shall be inspected for such compliance as all other fruit is inspected at such convenient locations as may be determined by the Department of Agriculture. Any such fruit violating any of the provisions of this chapter, or any rule or regulation of the Department of Citrus made pursuant to this chapter, but not inconsistent with this section, may be seized, condemned, and destroyed as provided herein. At the time of such inspection, all fees, assessments, and excise taxes provided in this chapter shall be paid and collected at the same rate as paid by all other fresh fruit growers or shippers.

**History.**—s. 109½, ch. 25149, 1949; ss. 14, 35, ch. 69-106; s. 7, ch. 71-185; s. 22, ch. 71-186.

**Note.**—Former s. 601.0110.

**601.9912 Penalties.**—Any person violating any provisions of this chapter or of the rules or regulations of the Department of Citrus or the Department of Agriculture shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 112, ch. 25149, 1949; ss. 14, 35, ch. 69-106; s. 629, ch. 71-136; s. 7, ch. 71-185; s. 22, ch. 71-186.

**Note.**—Former s. 601.0111.

**601.9913 High density frozen concentrated orange juice; standards; labeling.**—

(1) "High density frozen concentrated orange juice" is frozen concentrated orange juice which has been concentrated to a density greater than 47 degrees Brix.

(2) All high density frozen concentrated orange

juice sold or shipped, or offered for sale or shipment, in retail or institutional size containers shall comply with all requirements applicable to frozen concentrated orange juice in retail or institutional size containers, except as to the density of the concentrated food. The percent by weight of orange juice soluble solids contained in the reconstituted food made from high density frozen concentrated orange juice when the label directions for dilution are followed shall be the same as is prescribed by the Department of Citrus for frozen concentrated orange juice in retail or institutional size containers.

(3) The name of high density frozen concentrated orange juice, when sold in retail or institutional size containers, is "frozen concentrated orange juice, ..... plus 1", the blank being filled in with the whole number showing the dilution ratio in conspicuous type consistent with the size of the container and in conjunction with the product name. Where the label bears directions for making one quart or multiples of a quart, the blank may be filled in with a number that includes a fraction. The term "dilution ratio" means the number of volumes of water per volume of high density frozen concentrated orange juice prescribed by the label for reconstituting the food. The nomenclature requirements of this subsection shall not apply to containers for post-mix dispenser use, or to retail containers designed solely for use in foreign countries, provided the labeling thereof contains mixing instructions adequate to inform the institution or the consumer of the correct dilution ratio.

(4) The name of high density frozen concentrated orange juice, when sold in bulk size containers, is the name provided in subsection (3), or "frozen concentrated orange juice, ..... Brix," the blank being filled in with the number which expresses the percent by weight of orange juice soluble solids contained in the food, in conspicuous size and in conjunction with the product name.

(5) The compositional requirements applicable to high density frozen concentrated orange juice sold in bulk size containers shall be prescribed by the Department of Citrus by rule.

(6) The definition of retail, institutional, and bulk size containers for high density frozen concentrated orange juice shall be prescribed by the department by rule.

(7) All high density frozen concentrated orange juice sold or shipped or offered for sale or shipment shall be inspected as provided by law or rule for the inspection of frozen concentrated orange juice, and all fees and taxes shall be paid in the manner and as provided by law or rule.

(8) For the period August 1, 1977, through July 31, 1978, the Department of Citrus shall have the authority to issue individual permits for use of existing label inventory, provided such labels are found to be in substantial compliance with the requirements of this section and would not cause significant consumer confusion.

**History.**—ss. 1-3, ch. 57-25; s. 22, ch. 71-186; s. 1, ch. 77-7.  
**Note.**—Former s. 601.0114.

**601.9914 Concentrate Quality Council, Canned Juice Quality Council, Chilled Juice Quality Council; membership, powers, duties, etc.—**

(1)(a) Whenever on its own motion, or upon application of any handler or producer or group or association of handlers or producers of citrus fruit, the commission determines that a modification of any of the requirements of ss. 601.9905-601.9908 or s. 601.9909, within the limitations hereinafter specified, may increase the acceptance and consumption by consumers or a substantial segment of the consuming public of any of the citrus products regulated by the foregoing sections, it shall upon the recommendation of the Canned Juice Quality Council, hereinafter established, with respect to the citrus products regulated by ss. 601.9905-601.9908, or upon the recommendation of the Concentrate Quality Council, hereinafter established, with respect to the citrus products regulated by s. 601.9909, direct the formulation of a proposed regulation modifying the requirements of one or more of the foregoing sections in a manner designed to accomplish the foregoing purpose. Notice of the time, place, and purpose of any required hearing shall be published as hereinafter specified in at least one daily newspaper of general circulation in each of two cities to be selected by the commission within the citrus-producing area of the state. The first of such published notices shall be so published at least 10 days prior to such hearing, and the last of such published notices shall be published not less than 2 or more than 5 days prior to such hearing. Such notice shall be in addition to any other notice required by law. A full and complete record of the proceedings when signed by the chairman of the commission and authenticated by the seal of the commission shall constitute prima facie evidence of said proceedings in all courts of this state.

(b) Copy of the proposed regulation shall be made available to the public at the office of the Department of Citrus in Lakeland at least 5 days prior to any hearing.

(2) The commission shall determine whether or not the promulgation of such regulation is likely to further increase the acceptance and consumption by consumers or a substantial segment of the consuming public of the citrus product or products regulated by such proposed regulation and that such substantial increase in acceptance and consumption will be of substantial benefit to handlers and producers of citrus fruit. If the commission so determines, it may, by affirmative vote of at least nine members of the commission and upon the recommendation and approval of not less than six members of the Canned Juice Quality Council, with respect to a regulation hereunder pertaining to any of the citrus products regulated by ss. 601.9905-601.9908, or upon the recommendation and approval of not less than nine members of the Concentrate Quality Council, with respect to a regulation hereunder pertaining to the citrus products regulated by s. 601.9909, promulgate such regulation.

(3) The extent to which the requirements of ss. 601.9905-601.9908 or s. 601.9909, may be amended by regulation promulgated pursuant hereto is as follows:

(a) The existing requirements with respect to minimum or maximum Brix or the existing requirements with respect to minimum percent of total sol-



uble solids may be raised;

(b) The existing requirements with respect to minimum ratio of total soluble solids to anhydrous citric acid may be raised and the requirements with respect to maximum ratio of total soluble solids to anhydrous citric acid may be raised or lowered;

(c) The existing requirements with respect to the minimum or maximum amount of percentage of recoverable oil may be raised or lowered;

(d) The existing requirements with respect to the minimum or maximum percentage of anhydrous citric acid may be raised or lowered.

<sup>1</sup>(4) There is hereby created and established in the Department of Citrus a state council to be known and designated as the Canned Juice Quality Council consisting of eight members, each of whom is experienced in and is actively engaged in an executive capacity as an officer, employee, or owner of a corporation, firm, partnership, or other business unit engaged in the business of producing canned citrus juices in this state. The members of said council shall be appointed by the Department of Citrus for terms of 2 years each, except that four of the initial members of said council shall be appointed for a term of 1 year each, and each member shall serve until his successor is appointed and has qualified. The regular term shall begin on August 1 and shall end on July 31 of the second year after such appointment. Six of the members of said council shall constitute a quorum for the transaction of all business and the carrying out of the duties of said council. Before entering upon the discharge of their duties as members of said council, each member shall take and subscribe to the oath of office prescribed in s. 5, Art. II, of the State Constitution.

<sup>1</sup>(5)(a) There is hereby created and established in the Department of Citrus a Chilled Juice Quality Council consisting of eight members, each of whom is actively engaged in an executive capacity as an officer, employee, or owner of a corporation, partnership, firm, or other business unit engaged in the business of producing chilled citrus juices in the state.

(b) The members of said council shall be appointed by the Department of Citrus for terms of 2 years each, except that four of the initial members of said council shall be appointed for a term of 1 year each, and each member shall serve until his successor is appointed and has qualified. The regular term shall begin on August 1 and shall end on July 31 of the second year after such appointment. Six of the members of said council shall constitute a quorum for the transaction of all business and the carrying out of the duties of said council. Before entering upon the discharge of their duties as members of said council, each member shall take and subscribe to the oath of office prescribed in s. 5, Art. II, of the State Constitution.

(c) The Department of Citrus shall from time to time advise and consult with the Chilled Juice Quality Council on matters particularly concerning and affecting the chilled juice segment of the citrus industry.

**History.**—s. 2, ch. 65-63; ss. 29, 35, ch. 69-106; s. 33, ch. 69-216; s. 22, ch. 71-186; s. 10, ch. 78-95; ss. 3, 4, ch. 78-323; s. 232, ch. 79-400.

<sup>1</sup>**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the

possible effect of laws affecting this subsection prior to that date.

**Note.**—Former s. 601.01151.

**601.9916 Optional nutritive sweetening ingredients for frozen concentrated orange juice and concentrated orange juice for manufacturing.**—

(1) The Department of Citrus, upon the affirmative vote of not less than nine members of the commission, is authorized to issue permits for the processing, shipping, and sale of frozen concentrated orange juice or concentrated orange juice for manufacturing to which has been added any of the following optional nutritive sweetening ingredients: sugar, sugar syrup, and invert sugar syrup.

(2) Each processor to whom a permit is issued pursuant to this section shall comply with rules established by the Department of Citrus which rules shall provide that:

(a) Such product shall be inspected immediately prior to the addition of the optional sweetening ingredient and shall be reinspected promptly after the addition of the optional sweetening ingredient.

(b) If such product is to be stored, sold, or shipped in retail or institutional size containers of less than 1 gallon, it shall, when reconstituted according to label directions, contain not less than 12.8 percent by weight of orange juice soluble solids, exclusive of the weight of any added optional nutritive sweetening ingredient, and shall, each time it is inspected, fully conform to the rules and standards of the Department of Citrus applicable to frozen concentrated orange juice in retail or institutional size containers.

(c) If such product is to be stored, sold, or shipped in bulk containers of 1 gallon or larger, it shall contain not less than 47 percent by weight of orange juice soluble solids, exclusive of the solids of any added optional sweetening ingredient, and shall, when reconstituted according to label directions, contain not less than 11.8 percent by weight of orange juice soluble solids, exclusive of any added optional nutritive sweetening ingredient, and shall, each time it is inspected, fully conform to the rules and standards of the Department of Citrus applicable to concentrated orange juice for manufacturing.

(d) If any such product has been filled into bulk containers of 1 gallon or larger, it shall not thereafter be filled into retail or institutional size containers unless it fully conforms to the requirements of paragraph (b).

(e) The product shall conform to such labeling requirements as the Department of Citrus shall by rule prescribe.

(3) The privilege of processing any such product under a permit issued hereunder shall expire at the end of the shipping season for which such processing was authorized by such permit but may be renewed annually upon the affirmative vote of not less than nine members of the commission.

(4) In addition to the disciplinary action that may be taken by the Department of Agriculture against a citrus fruit dealer for violations of this chapter, the commission may temporarily suspend and may revoke any permit issued hereunder for

any violation of the provisions of this section or of the rules promulgated hereunder.

**History.**—ss. 1, 2, ch. 67-19; ss. 1, 2, ch. 69-384; ss. 14, 35, ch. 69-106; s. 1, ch. 70-16; s. 1, ch. 70-439; s. 22, ch. 71-186; s. 1, ch. 75-11; s. 10, ch. 78-95.

**Note.**—Former s. 601.01171.

**601.9917 Products manufactured from citrus**

**oil or citrus seed oil; labeling.**—Products manufactured from citrus oil or citrus seed oil may be labeled and marketed within this state as “citrus oil butter” or “citrus seed oil butter.”

**History.**—s. 1, ch. 59-242.

**Note.**—Former s. 601.0122.

## CHAPTER 603

## FRUIT AND VEGETABLE INSPECTION

- 603.11 Standard grades of fruits, vegetables, nuts, grains, and other agricultural products.
- 603.12 Inspection of fruits, vegetables, nuts, grains, and other agricultural products; certificates.
- 603.13 Fees for inspections.
- 603.14 Cooperative certificates as evidence.
- 603.15 United States inspection certificates as evidence.
- 603.151 Enforcement of Federal Marketing Agreement Act by state as to certain vegetables.
- 603.152 Maturity standard for limes; applicability; testing of limes; rules and regulations.
- 603.161 Sales certificates, work orders to accompany certain fruit.

**603.11 Standard grades of fruits, vegetables, nuts, grains, and other agricultural products.**—The standard grades of all fruits, vegetables, nuts, grains, and other agricultural products shall be the same as those of the United States grades as now promulgated or which may be promulgated by the United States Department of Agriculture.

*History.*—s. 1, ch. 12292, 1927; CGL 2006; s. 1, ch. 67-259.

**603.12 Inspection of fruits, vegetables, nuts, grains, and other agricultural products; certificates.**—The Department of Agriculture and Consumer Services, cooperating with the United States Department of Agriculture, shall, when requested by the shipper, furnish carlot inspection of fruits, vegetables, nuts, grains, and other agricultural products at shipping point, furnishing certificates in conformity with those used by the United States Department of Agriculture in shipping point inspection. The expense or charge of such inspection shall be paid by the shipper.

*History.*—s. 2, ch. 12292, 1927; CGL 2007; s. 1, ch. 23677, 1947; s. 2, ch. 67-259; ss. 14, 35, ch. 69-106.

**603.13 Fees for inspections.**—All fees for inspection performed under the preceding section shall be paid to the Department of Agriculture and Consumer Services which shall deposit the same in the State Treasury in the General Inspection Trust Fund from which all expenses for inspection services performed and other expenses incurred under the provisions of s. 603.12 shall be paid upon the approval and at the direction of the state department, but the expenditures from the General Inspection Trust Fund for all such expenses shall not exceed the amount of fees charged and collected as authorized and provided by said s. 603.12 of this chapter. Any amount of fees so charged and collected in excess of the requirements for paying all expenses for inspection services shall be held in the State Treasury in the General Inspection Trust Fund, subject to any contract or agreement entered into by and between the Department of Agriculture and Consumer Ser-

vices and the United States Department of Agriculture for carrying out the provisions of s. 603.12.

*History.*—s. 3, ch. 12292, 1927; CGL 2008; s. 1, ch. 17948, 1937; s. 2, ch. 23677, 1947; s. 2, ch. 61-119; ss. 14, 35, ch. 69-106.

**603.14 Cooperative certificates as evidence.**—All such cooperative government certificates shall be accepted as prima facie evidence in the courts of Florida.

*History.*—s. 4, ch. 12292, 1927; CGL 2009.

**603.15 United States inspection certificates as evidence.**—

(1) Any inspection certificate issued by any licensed inspector of the Bureau of Agricultural Economics, of the United States Department of Agriculture under the laws of the United States or the regulations of the Secretary of Agriculture of the United States, showing the grade, quality, condition or the size, pack or method of loading for shipment of any agricultural, horticultural or citricultural products shall be received as competent evidence in all proceedings in any of the courts of this state, except when offered in behalf of the state in criminal prosecutions.

(2) Every such certificate when offered in evidence shall be prima facie evidence of the truth of all matters and things set forth therein.

*History.*—ss. 1, 2, ch. 12056, 1927; CGL 2011; s. 7, ch. 22858, 1945.

**603.151 Enforcement of Federal Marketing Agreement Act by state as to certain vegetables.**—

(1) During the period of time in each year that tomatoes, cucumbers, avocados, or limes are subject to any regulations issued by the Secretary of Agriculture of the United States pursuant to an order issued by said Secretary of Agriculture under the authority and provisions of the Act of Congress known as the Agricultural Marketing Agreement Act of 1937, as amended, (48 Stat. s. 1, as amended; 7 U.S.C., s. 601, et seq.), it shall be unlawful for any producer, shipper, forwarding company, private carrier, or common carrier, to ship or transport outside the production area defined in said regulations and order of the Secretary of Agriculture, any lot or cargo of tomatoes, cucumbers, avocados or limes subject to the provisions of any such existing regulations, unless the same has been inspected by the Department of Agriculture and Consumer Services, or its authorized inspectors or agents, and a certificate of such inspection obtained.

(2) Failure to have at all times a copy of such inspection certificate present with such lot or cargo of tomatoes, cucumbers, avocados or limes being shipped or transported outside the production area as defined in said regulations or order of the Secretary of Agriculture, shall be prima facie evidence of violation of the provisions of subsection (1).

(3) The Department of Agriculture and Consumer Services is hereby authorized to make such rules, regulations, and orders as may be necessary to carry out the provisions and intent of this section, and



such rules, regulations, and orders issued by the department shall have the force and effect of law when not inconsistent therewith.

(4) Whoever violates the provisions of subsection (1) shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—ss. 1-4, chs. 59-501, 59-502, 59-503; ss. 14, 35, ch. 69-106; s. 630, ch. 71-136.

**603.152 Maturity standard for limes; applicability; testing of limes; rules and regulations.**—The provisions of this section shall be applicable and effective only in the event that there shall cease to be a federal marketing agreement as referred to in s. 603.151. In such event, the following shall be applicable:

(1) As used in this section, the word limes shall mean and include limes of all varieties and clones of acid limes grown in the state classified botanically as *Citrus aurantifolia* (Christm.) Swingle and includes the group known as large fruited limes (Tahiti, Persian, Bearss, Pond, Idemor).

(2) Limes shall be deemed to be mature only when clipped or picked, or otherwise severed from the tree and the limes in each lot have been found by inspection as herein provided to contain an average of 42 percent juice content by volume, and no limes in any such lot shall contain less than 38 percent juice content by volume and measure at least 1½ inches in diameter when measured on a line perpendicular to a line running from the stem end to the blossom end, except from March 15 to May 1 of each year, during which latter period of time, limes shall measure at least 1¾ inches along the said diameter.

(3) The tests of the juice content of limes hereunder shall be based upon the average maximum amount of liquid contents which can be extracted from the flesh and pulp of not less than ten average individual specimens of said limes of any lot of limes. The testing of the juice content of limes on a percentage basis by volume shall be the total maximum amount of liquid contents of the limes being tested when determined by the percentage of such juice contents as compared to the total volume displacement of said limes before the juice is extracted. The Department of Agriculture and Consumer Services shall, by proper rules and regulations, be authorized to prescribe the manner, method, cost and expense of drawing of said samples and of conducting said tests. In the making of such tests, the juice of the limes being tested shall not be strained through a cloth or other strainer but shall be considered for testing as said juice comes from the juice extractor. The juice extractor used shall be any suitable mechanical device or fruit press used for extracting juice, such type or kind of extractor or fruit press to be determined and approved by the department.

(4) Any limes not conforming to the standards, as set forth herein, shall be deemed and held to be immature and shall be destroyed under the supervision of an inspector; provided however, that limes meeting the juice content requirements but not meeting the size requirements as set forth in subsection (2) above may be diverted directly to a processing plant under the supervision of an inspector; provided fur-

ther that in event of an emergency such as a freeze or hurricane the department, at its own discretion, may waive size requirements only.

(5) It shall be unlawful for any producer, shipper, forwarding company, private carrier, or common carrier, to sell, ship or transport limes, unless the same has been inspected by the department, or its authorized inspectors or agents, and a certificate of such inspection obtained.

(6) Failure to have at all times a copy of such inspection certificate present with such a lot or cargo of limes being shipped shall be prima facie evidence of violation of the provisions of this act.

(7) The department is hereby authorized to make such rules, regulations, and orders as may be necessary to carry out the provisions and intent of this section, and such rules, regulations, and orders issued by the department shall have the force and effect of law when not inconsistent therewith.

(8) Whoever violates the provisions of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 1, ch. 61-437; s. 1, ch. 65-169; ss. 14, 35, ch. 69-106; s. 631, ch. 71-136.

**603.161 Sales certificates, work orders to accompany certain fruit.**—

(1) This section applies to tropical or semitropical fruit. "Tropical" or "semitropical fruit" means avocados, bananas, calamondins, guavas, kumquats, limes, loquats, lychees, mangoes, papayas, sapodillas and fruit that must be grown in tropical or semitropical regions.

(2) Every purchaser of more than one bushel or crate of tropical or semitropical fruit at the point of growth shall obtain a sales certificate from the grower who shall prepare and furnish such certificates. The sales certificate shall accompany the fruit from the point of growth to the final processor or wholesaler who will offer for retail sale and such processor or wholesaler shall keep the sales certificate for inspection upon request by a peace officer for 1 year from date of purchase.

(3) The sales certificate shall indicate the name, address and telephone number of the grower from whom the fruit was purchased; the species, variety and amount purchased; and for the purchaser and each subsequent purchaser, his name, address and telephone number, date of purchase and driver's license number; if the fruit is transported by other than the owner, the name of the transporting company and the make, type and license number of the vehicle transporting the fruit. The grower shall keep a copy of the sales certificate for 1 year from date of the purchase. The Commissioner of Agriculture, according to requirements of this section, shall prescribe the form of sales certificates.

(4) All firms or individuals transporting fruit for handlers, packing houses or processors shall obtain a work order from the dispatcher of the named organizations which must remain in the possession of the driver to the point of pickup and thereafter with the fruit until delivered. The form of the work order shall be prescribed by the Commissioner of Agriculture and shall indicate the name of firm or individual transporting fruit, date, grove destination, time

for pickup, truck number, number of crates, variety of fruit, name of packing house or other place where fruit is to be delivered, driver's name, driver's license number and the name of the truck dispatcher.

(5) Violation of the provisions of this section shall constitute a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—ss. 1, 2, ch. 67-494; s. 830, ch. 71-136; s. 3, ch. 72-252.

**Note.**—Former s. 811.271.

## CHAPTER 604

## GENERAL AGRICULTURE, HORTICULTURE, ETC., LAWS

- 604.01 State wide soil survey and mapping; declaration of policy.
- 604.02 Costs of surveys, by whom payable.
- 604.04 Administration of law.
- 604.05 Standard procedure to be used; cooperation with federal and other agencies.
- 604.06 Determination of soils to be surveyed.
- 604.07 Analyses of type materials, etc.
- 604.08 Reports; maps; publications; etc.
- 604.09 Limited agricultural association; purpose of law.
- 604.10 Limited agricultural association; powers, membership, etc.
- 604.11 Limited agricultural association; formation, fees, etc.
- 604.12 Limited agricultural association; articles of association, name, etc.
- 604.13 Limited agricultural association; bylaws; elections, etc.
- 604.14 Limited agricultural association; dissolution of.
- 604.15 Dealers in agricultural products; definitions.
- 604.151 Purpose.
- 604.16 Exceptions to provisions of ss. 604.15-604.30.
- 604.17 License required.
- 604.18 Application; form; contents.
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- 604.22 Dealers to keep records; contents, etc.
- 604.23 Examination of records, sales, accounts, books, etc.
- 604.25 Refusal to grant license; suspension; revocation, etc.
- 604.27 Rules and regulations.
- 604.28 Department may employ help, etc.
- 604.29 License fees; disposition.
- 604.30 Penalties.

**604.01 State wide soil survey and mapping; declaration of policy.**—A thorough and careful survey and mapping of the soils of Florida is hereby declared as a matter of legislative policy, basic to:

- (1) The development of intelligent research programs on the agricultural potentialities of the soils of the state;
- (2) The organization of effective soil conservation and land use planning programs;
- (3) Agricultural extension and home demonstration work;
- (4) Highway and secondary road planning;
- (5) Establishment of equitable land tax assessments;
- (6) Agricultural teaching;
- (7) The development of a sound body of helpful agricultural information for nationwide distribution to prospective landowners; and

(8) A number of other social and agricultural enterprises of broad public interest.

*History.*—s. 1, ch. 20454, 1941.

**604.02 Costs of surveys, by whom payable.**—The cost of the survey shall be borne jointly by the state and county or any other local agency and by the federal government in a proportion to be determined by the availability of funds and of trained personnel for the purpose.

*History.*—s. 2, ch. 20454, 1941.

**604.04 Administration of law.**—The agricultural experiment station of the University of Florida shall administer this law and shall be responsible for the general supervision of this cooperative enterprise between and among federal, state, county and local agencies, and that it be charged with the duty of developing an energetic soil survey program for the state accordingly as funds are made available for this purpose from federal, state, county, or other sources.

*History.*—s. 4, ch. 20454, 1941.

**604.05 Standard procedure to be used; cooperation with federal and other agencies.**—The methods used in the survey shall be the standard procedures developed by the United States Department of Agriculture now in common use; all correlation work shall be carried out jointly by the regular soil survey inspectors of the United States Department of Agriculture in cooperation with representatives of the state agricultural experiment station.

*History.*—s. 5, ch. 20454, 1941.

**604.06 Determination of soils to be surveyed.**—The successive selection of units to be surveyed shall be by type areas well distributed over the state, just as far as possible or practicable, especially during the early stages of the program, though determination shall naturally depend, too, on the feeling of need by the people in the area and the willingness of county or other local officials to cooperate.

*History.*—s. 6, ch. 20454, 1941.

**604.07 Analyses of type materials, etc.**—Suitable physical, chemical and other analyses of type materials associated with the work of the survey shall be carried out in the laboratories of the Florida Agricultural Experiment Station or of the proper bureau of the United States Department of Agriculture.

*History.*—s. 7, ch. 20454, 1941.

**604.08 Reports; maps; publications; etc.**—The preparation of soil survey reports and maps for such areas surveyed shall be a joint responsibility of state and federal workers, although publication shall be by the United States Department of Agriculture, especially for the purpose of full conformity with the many reports of this same type that are regularly



being published for other states where survey work of this type is making notable advances.

History.—s. 8, ch. 20454, 1941.

**604.09 Limited agricultural association; purpose of law.**—In order to promote, foster and encourage more efficient and progressive agriculture and to enable the farmers and growers of Florida to enjoy the manifold benefits of joint and collective effort without personal liability and without the expense and technical involvements incident to corporate structure, this chapter is enacted.

History.—s. 1, ch. 20620, 1941.

**604.10 Limited agricultural association; powers, membership, etc.**—Any three or more persons engaged in agricultural pursuits may form a limited agricultural association under the provisions of this law, and such association shall have and may exercise all the powers granted by the laws of this state to persons, partnerships and corporations for profit and not for profit, so far as the same may be applicable to agriculture or livestock in all its phases and the operations incident thereto and which are not inconsistent with the provisions of this law. Persons may become members of such association upon such terms as may be prescribed in its bylaws. No member shall be held personally liable for any of the claims against or the indebtedness and obligations of the association.

History.—s. 2, ch. 20620, 1941.

**604.11 Limited agricultural association; formation, fees, etc.**—

(1) The articles of association shall be subscribed by the original members and acknowledged by one of them before an officer authorized by the laws of this state to take acknowledgments and administer oaths.

(2) Two copies of the proposed articles of association, together with a certificate of the Department of State to the effect that there is no other limited agricultural association within the state having the same name, shall be filed with the clerk of the circuit court in the county within which the principal place of business of the association is to be located. The said articles shall then be presented to a circuit judge of the circuit within which the principal place of business of the association is to be located, and, if such judge shall find that the proposed articles of association are for purposes authorized by law, he shall approve the same and endorse his approval thereon. The articles of association, with their endorsements, shall thereupon be recorded by the clerk of the circuit court, and thereafter the association and the subscribers shall be a limited agricultural association for profit. The clerk of the circuit court shall transmit a certified copy of the articles of association to the Department of State for filing. The original articles of association, or any certified copy thereof, shall be received as conclusive evidence of the contents thereof. The Department of State and the clerk of the circuit court shall each be entitled to

a fee of \$3 for all services rendered by them in connection with the formation of the association.

History.—s. 3, ch. 20620, 1941; ss. 10, 35, ch. 69-106; s. 9, ch. 71-114.

**604.12 Limited agricultural association; articles of association, name, etc.**—

(1) The articles of association shall be subscribed by three or more persons, and shall set forth:

(a) The name of the association and the location of the principal place of business.

(b) The purpose for which the association is formed.

(c) The term for which the association is to exist.

(d) By what officers the business, or businesses, of the association is to be conducted, and the names of the officers who are to conduct the business, or businesses, until their successors shall have qualified. Officers shall be members of the association.

(e) The number, to be not less than three, of the association's managing committeemen. Managing committeemen shall be members of the association.

(f) The fact that the members are not to be held personally liable for any of the claims against or the indebtedness and obligations of the association.

(2) The name of the proposed association shall be different from that of any other limited agricultural association in the state and shall include the words "Limited Agricultural Association," or the letters "LAA," to indicate that it is a limited agricultural association as distinguished from a natural person, firm, copartnership or corporation.

History.—s. 4, ch. 20620, 1941.

**604.13 Limited agricultural association; bylaws; elections, etc.**—Each association organized hereunder shall, by a majority vote of its members, within 30 days after its organization, adopt for its government and management a code of bylaws, which shall be taken and deemed to be the law of the association. The bylaws shall provide for such matters as may be pertinent and necessary to the business, including the matter of the acceptance of memberships, the issuance of certificates of membership, the fixing of the voting and participation rights of the owners of such certificates, the assignability of such certificates, the election of a managing committee and the determination of its powers, the time and place of meetings of the association and the election, powers and duties of its officers.

History.—s. 5, ch. 20620, 1941.

**604.14 Limited agricultural association; dissolution of.**—Any limited agricultural association may be dissolved upon the presentation by its members of a petition for dissolution to the circuit judge of the circuit wherein its principal place of business is located. Such judge may make all orders necessary to the preservation of the rights of the members and creditors and the winding up of the affairs of the association. Such notice of hearing on the petition for dissolution shall be given as may by the judge be deemed proper.

History.—s. 6, ch. 20620, 1941.

**1604.15 Dealers in agricultural products; definitions.**—For the purpose of ss. 604.15-604.30, the following words and terms, when used, shall be construed to mean:

(1) "Dealer in agricultural products" means any person, whether itinerant or domiciled within this state, engaged within this state in the business of purchasing, receiving, or soliciting agricultural products from the producer or his agent or representative for resale or processing for sale, acting as an agent for such producer in the sale of agricultural products for the account of the producer on a net return basis or acting as a negotiating broker between the producer or his agent or representative and the buyer.

(2) "Department" means the Department of Agriculture and Consumer Services.

(3) "Agricultural products" means the natural products of the farm, nursery, grove, orchard, vineyard, garden, and apiary (raw or manufactured); livestock; milk and milk products; poultry and poultry products; and limes (meaning the fruit *Citrus aurantifolia*, variety Persian, Tahiti, Bearss or Florida Key limes) produced in the state, except tobacco, tropical foliage, sugar cane, and citrus other than limes.

(4) "Net return basis" means the sale of agricultural products for the account of a person, other than the seller, wherein the seller acts as the agent for the owner and pays the owner of such products the net proceeds after subtracting all authorized and allowable deductions.

(5) "Producer" means any producer of agricultural products produced in the state.

**History.**—s. 1, ch. 20678, 1941; s. 1, ch. 23812, 1947; s. 1, ch. 28183, 1953; s. 1, ch. 57-139; s. 1, ch. 63-291; s. 1, ch. 67-109; ss. 14, 35, ch. 69-106; s. 259, ch. 71-377; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 2, 12, 14, ch. 79-238.

**Note.**—Section 14, ch. 79-238, provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

cf.—s. 1.01 Agriculture, agricultural purposes, etc., definitions.

**1604.151 Purpose.**—The Legislature recognizes that the recovery of agricultural products is impractical because of the speed with which such products move through commerce and because of the difficulty of identification and that, because recovery is impractical, producers are subject to the possibility of serious economic harm in the event an agricultural products dealer defaults. Therefore, it is necessary in the interest of the public welfare to regulate agricultural products dealers in this state. However, restrictions shall be imposed only to the extent necessary to protect the public from significant and discernible harm or damage and not in a manner which will unreasonably affect the competitive market.

**History.**—ss. 3, 14, ch. 79-238.

**Note.**—Section 14, ch. 79-238, provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

**1604.16 Exceptions to provisions of ss. 604.15-604.30.**—The provisions of ss. 604.15-604.30 shall not apply to:

(1) Farmers or groups of farmers in the sale of agricultural products grown by themselves.

(2) All persons who buy for cash and pay at the time of purchase with United States currency.

(3) A dealer in agricultural products who oper-

ates as a bonded licensee under the Federal Packers and Stockyards Act.

(4) Dealers who operate exclusively on a retail basis and who purchase less than \$1,000 worth of agricultural products from Florida producers or their agents or representatives during the peak month of such purchases within the calendar year.

**History.**—s. 2, ch. 20678, 1941; s. 1, ch. 21878, 1943; s. 2, ch. 23812, 1947; s. 1, ch. 59-437; s. 1, ch. 63-351; s. 3, ch. 76-168; s. 1, ch. 76-185; s. 1, ch. 77-457; ss. 12, 14, ch. 79-238.

**Note.**—Section 14, ch. 79-238, provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

**1604.17 License required.**—It shall be unlawful for any dealer in agricultural products who comes within the terms of this law to engage in such business in this state without a state license issued by the department.

**History.**—s. 3, ch. 20678, 1941; ss. 14, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 4, 12, 14, ch. 79-238.

**Note.**—Section 14, ch. 79-238, provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

**1604.18 Application; form; contents.**—Every dealer in agricultural products, desiring to transact business within the state, shall, prior to transacting any business as such, file an application for such license with the department. License shall be renewed annually on its anniversary date. The application shall be on a form furnished by the department and, together with such other information as the department shall require, shall state:

(1) The kind or kinds of agricultural products the applicant proposes to handle;

(2) The full name or title of the applicant, or if the applicant be an association or copartnership, the name of each member of such association or copartnership, or if the applicant be a corporation, the name of each officer of the corporation;

(3) The names of buyers or other local agents of the applicant, if any;

(4) The cities and towns within which places of business of the applicant will be located, together with the street or mailing address of each; and

(5) The federal employer's identification number of the applicant.

**History.**—s. 4, ch. 20678, 1941; s. 1, ch. 61-412; ss. 14, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 5, 12, 14, ch. 79-238.

**Note.**—Section 14, ch. 79-238, provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

**1604.19 License; fee; bond; penalty.**—Unless the department refuses the application on one or more of the grounds hereinafter provided, it shall issue to an applicant, upon the payment of proper fees and the execution and delivery of a bond as hereinafter provided, a state license entitling the applicant to conduct business as a dealer in agricultural products for a 1-year period to coincide with the effective period of the bond furnished by the applicant. The license fee for the principal place of business for a dealer in agricultural products shall be based upon the amount of the agricultural products dealer's surety bond furnished by each dealer under the provisions of s. 604.20 and shall not exceed \$150. For each additional place in which the applicant desires to conduct business and which the applicant names in the application, the additional license

fee shall not exceed \$50 annually. Should any dealer in agricultural products fail, refuse, or neglect to apply and qualify for the renewal of a license on or before the date of expiration thereof, a penalty not to exceed \$35 shall apply to and be added to the original license fee and shall be paid by the applicant before the renewal license may be issued. The department, by rule, shall prescribe fee amounts sufficient to assure continued funding of ss. 604.15-604.30.

**History.**—s. 5, ch. 20678, 1941; s. 2, ch. 59-437; s. 2, ch. 61-412; s. 2, ch. 63-351; ss. 14, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 6, 12, 14, ch. 79-238.

**Note.**—Section 14, ch. 79-238, provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

#### **604.20 Bond prerequisite; amount; form.—**

(1) Before any license shall be issued, the applicant therefor shall make and deliver to the department a surety bond in the amount of at least \$1,000 or in such greater amount as the department may determine, not exceeding the maximum amount of business done or estimated to be done in any month by the applicant, executed by a surety corporation authorized to transact business in the state. Such bond shall be upon a form prescribed or approved by the department and shall be conditioned to secure the faithful accounting for and payment to producers or their agents or representatives of the proceeds of all agricultural products handled or purchased by such dealer. A new and separate bond shall be furnished annually for the renewal of a license.

(2) The amount of such bond shall, upon the order of the department at any time, be increased, if in its discretion the department finds such increase to be warranted by the volume of agricultural products being handled by the principal or maker of such bond. In the same manner, the amount of such bond may be decreased when a decrease in volume of products handled warrants such decrease in bond. These provisions shall apply to any bond, regardless of the anniversary date of its issuance, expiration or renewal.

(3) In order to effectuate the purposes of this section, the department or its agents may require from any applicant or licensee verified statements of the volume of his business or may review his records at his place of business during normal business hours for the purpose of determining his volume of business. Failure of a licensee to furnish such statement, to make such records available, or to make and deliver a new or additional bond shall be cause for suspension of his license. If the department finds such failure to be willful, the license may be revoked.

**History.**—s. 6, ch. 20678, 1941; s. 1, ch. 28032, 1953; s. 2, ch. 57-139; s. 3, ch. 61-412; ss. 14, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 6, ch. 78-95; ss. 7, 12, 14, ch. 79-238.

**Note.**—Section 14, ch. 79-238, provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

#### **604.21 Complaint; investigation; hearing.—**

(1) Any person claiming himself to be damaged by any breach of the conditions of a bond given by a licensed dealer in agricultural products as hereinbefore provided may enter complaint thereof to the department, which complaint shall be a written statement of the facts constituting said complaint. Said complaint shall be filed within 9 months from the date of sale in instances involving direct sales or

from the date on which the agricultural product was received by the dealer in agricultural products, as agent, to be sold for the producer.

(2) Upon the filing of such complaint against the dealer and the surety in the manner herein provided, the department shall investigate the matters complained of; whereupon, if, in the opinion of the department, the facts contained in the complaint warrant such action, the department shall send to the dealer in question, by certified mail, notice of the filing of the complaint. Such notice shall be accompanied by a true copy of the complaint. A copy of such notice and complaint shall also be sent to the surety company that provided the bond for the dealer, which surety company shall become party to the action. Such notice of the complaint shall inform the dealer of a reasonable time within which to answer the complaint by advising the department in writing that the allegations in the complaint are admitted or denied or that the complaint has been satisfied. Such notice shall also inform the dealer and the surety of a right to a hearing on the complaint, if requested.

(3) If the dealer admits the allegations of the complaint but fails to satisfy same within the time fixed by the department, the department shall thereupon order payment by the dealer of the amount found owed.

(4) If the dealer, in his answer, denies the allegations of the complaint and waives a hearing, the department may order a hearing or enter an order based on the facts and circumstances set forth in the complaint and the respondent's answer thereto. If the department determines the complaint has not been established, the order shall, among other things, dismiss the proceedings. If the department determines that the allegations of the complaint have been established, it shall enter its findings of fact accordingly and thereupon enter its order adjudicating the amount of indebtedness due to be paid by the dealer to the complainant.

(5) Any order entered by the department pursuant to this section shall become final 14 days after issue if neither the department nor a party whose material interest is affected by the order requests a hearing on the order within 14 days following the date of issue.

(6) Any party whose material interest is affected by a proceeding pursuant to this section shall be granted a hearing upon request. Such hearing shall be conducted pursuant to chapter 120. The department's order, when issued pursuant to the recommended order of a hearing officer, shall be final upon issuance.

(7) Any indebtedness set forth in a departmental order against a dealer shall be paid by the dealer within 15 days after such order becomes final.

(8) Upon failure by a dealer to comply with an order of the department directing payment, the department shall call upon the surety company to pay over to the department, out of the bond posted by the surety for such dealer, the amount called for in the department's order, not exceeding the amount of the bond. If the bond is insufficient to pay in full the amount due each complainant as set forth in the department's order, the department shall distribute the proceeds of the bond pro rata among such com-



plainants. All proceeds from such bonds shall be paid over by the surety company directly to the department to be distributed by it to successful complainants. Such funds shall be considered trust funds in the hands of the department for the exclusive purpose of satisfying duly established complaints. Payments made by a surety to the department pursuant to this section shall be considered payments made upon demand and shall not be considered voluntary payments.

(9) Nothing in this section shall be construed as relieving a surety company from responsibility for payment on properly established complaints against dealers involved in a federal bankruptcy proceeding and against whom the department is prohibited from entering an order.

(10) Upon failure of a surety company to comply with a demand for payment of the proceeds on a bond for a dealer in agricultural products, a complainant who is entitled to such proceeds, in total or in part, may, within a reasonable time, file in the circuit court a petition or complaint setting forth the administrative proceeding before the department and ask for final order of the court directing the surety company to pay the bond proceeds to the department for distribution to the complainants. If in such suit the complainant is successful and the court affirms the demand of the department for payment, the complainant shall be awarded all court costs incurred therein and also a reasonable attorney's fee to be fixed and collected as part of the costs of the suit. In lieu of such suit, the department may enforce its final agency action in the manner provided in s. 120.69.

**History.**—s. 7, ch. 20678, 1941; s. 3, ch. 57-139; s. 4, ch. 61-412; s. 2, ch. 67-109; ss. 14, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 6, ch. 78-95; ss. 8, 12, 14, ch. 79-238.

**Note.**—Section 14, ch. 79-238, provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

**604.211 Limitation on successive consignments.**—No licensee, while acting as an agent for a producer or in disposing of agricultural products received on consignment from a producer or his agent or representative, shall consign such products to another, use the services of a broker, or receive more than one commission or fee for making the sale thereof, unless by written consent of the producer or consignor. No charges or costs for acts prohibited by this section may be passed on to the producer or consignor.

**History.**—s. 5, ch. 61-412; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 9, 12, 14, ch. 79-238.

**Note.**—Section 14, ch. 79-238, provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

**604.22 Dealers to keep records; contents, etc.**—Each licensee, while acting as agent for a producer, shall make and preserve for at least 1 year a record of each transaction, specifying the name and address of the producer for whom he acts as agent; the date of receipt; the kind, quality, and quantity of agricultural products received; the name and address of the purchaser of each package of agricultural products; the price for which each package was sold; the amount and explanation of any adjustments given; and the net amount due from each purchaser. An account of sales shall be furnished each

producer within 48 hours after the sale of such agricultural products. Such account of sales shall clearly show the sale price of each lot of agricultural products sold; all adjustments to the original price, along with explanation of same; and an itemized showing of all marketing costs deducted by the licensee, along with the net amount due the producer. The licensee shall make the payment to the producer within 5 days of the licensee's receipt of payment.

**History.**—s. 8, ch. 20678, 1941; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 10, 12, 14, ch. 79-238.

**Note.**—Section 14, ch. 79-238, provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

**604.23 Examination of records, sales, accounts, books, etc.**—The department shall have power to investigate upon complaint of any interested person or upon its own initiative, the record of any applicant or licensee, or any transaction involving the solicitation, receipt, sale or attempted sale of agricultural products, the failure to make proper and true accounts and settlements at prompt and regular intervals, the making of false statements as to condition, quality or quantity of goods received or while in storage, the making of false statements as to market conditions with intent to deceive, or the failure to make payment for goods received, or other alleged injurious transactions. For such purposes the department or its agents may examine, at the place or places of business of the applicant or licensee, his ledgers, books of accounts, memoranda, and other documents which relate to the transaction involved, and may take testimony thereon under oath.

**History.**—s. 9, ch. 20678, 1941; ss. 14, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 12, 14, ch. 79-238.

**Note.**—Section 14, ch. 79-238, provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

**604.25 Refusal to grant license; suspension; revocation, etc.**—

(1) The department may decline to grant a license or may suspend or revoke a license already granted if it is satisfied that the applicant or licensee has either:

(a) Suffered a money judgment to be entered against him upon which execution has been returned unsatisfied;

(b) Made false charges for handling or services rendered;

(c) Failed to account promptly and properly or to make settlements with any producer;

(d) Made any false statement or statements as to condition, quality or quantity of goods received or held for sale when he could have ascertained the true condition, quality or quantity by reasonable inspection;

(e) Made any false or misleading statement or statements as to market conditions or service rendered;

(f) Been guilty of a fraud in the attempt to procure, or the procurement of, a license;

(g) Directly or indirectly sold agricultural products received on consignment or on a net return basis for his own account, without prior authority from the producer, consigning the same, or without notifying such producer; or

(h) Employed in a responsible position a person,

or officer or stockholder of a corporation, who has failed to fully comply with an order of the department at any time within one year after issuance.

(2) If a licensee fails or refuses to comply in full with an order of the department, his license may be suspended or revoked, in which case he shall not be eligible for license for a period of 1 year or until he has fully complied with the order of the department.

(3) No person, or officer or stockholder of a corporation, whose license has been suspended or revoked for failure to comply with an order of the department may hold a responsible position with a licensee for a period of one year or until the order of the department has been fully complied with.

**History.**—s. 11, ch. 20678, 1941; s. 3, ch. 67-109; ss. 14, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 12, 14, ch. 79-238.

**Note.**—Section 14, ch. 79-238, provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

**'604.27 Rules and regulations.**—The department shall adopt rules and regulations deemed necessary to carry out the provisions of this law and enforce same.

**History.**—s. 14, ch. 20678, 1941; ss. 14, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 12, 14, ch. 79-238.

**Note.**—Section 14, ch. 79-238, provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

**'604.28 Department may employ help, etc.**—The department may employ all help and services necessary to carry out and enforce the provisions of this law and fix their compensation. All expenses and salaries shall be paid out of the General Inspection Trust Fund.

**History.**—s. 15, ch. 20678, 1941; s. 2, ch. 61-119; ss. 14, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 12, 14, ch. 79-238.

**Note.**—Section 14, ch. 79-238, provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

**'604.29 License fees; disposition.**—All moneys received as license fees under this law shall be placed in the General Inspection Trust Fund.

**History.**—s. 16, ch. 20678, 1941; s. 2, ch. 61-119; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 12, 14, ch. 79-238.

**Note.**—Section 14, ch. 79-238, provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

#### **'604.30 Penalties.**—

(1) Any dealer in agricultural products violating the provisions of ss. 604.15-604.30, or interfering with an agent of the department in the enforcement of said ss. 604.15-604.30 shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and for a second or subsequent offense shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) In addition to the remedies provided in this chapter and notwithstanding the existence of any adequate remedy at law, the department is hereby authorized to make application for injunction to a circuit court or circuit judge and such circuit court or circuit judge shall have jurisdiction upon hearing and for cause shown to grant a temporary or permanent injunction, or both, restraining any person from violating or continuing to violate any of the provisions of ss. 604.15-604.30 or for failing or refusing to comply with the requirements of said ss. 604.15-604.30 or any rule or regulation duly adopted by the department as in s. 604.27 provided, such injunction to be issued without bond.

**History.**—s. 13, ch. 20678, 1941; s. 3, ch. 23812, 1947; s. 29, ch. 29737, 1955; s. 4, ch. 57-139; ss. 14, 35, ch. 69-106; s. 632, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 12, 14, ch. 79-238.

**Note.**—Section 14, ch. 79-238, provides that this section is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

# TITLE XXXV

## BUSINESS ORGANIZATIONS

### CHAPTER 607 CORPORATIONS

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**607.001 Short title.**—This act shall be known and may be cited as the "Florida General Corporation Act."

**History.**—s. 1, ch. 75-250.

**607.004 Definitions.**—As used in this chapter, unless the context otherwise requires, the term:

(1) "Corporation" or "domestic corporation" means a corporation subject to the provisions of this chapter, except a foreign corporation.

(2) "Foreign corporation" means a corporation organized under laws other than the laws of this state for a purpose or purposes for which a corporation may be organized under this chapter.

(3) "Articles of incorporation" means the original or restated articles of incorporation or articles of consolidation, and all amendments thereto, including articles of merger.

(4) "Shares" means the units into which the proprietary interests in a corporation are divided.

(5) "Subscriber" means one who subscribes for shares in a corporation, whether before or after incorporation.

(6) "Shareholder" or "stockholder" means one who is a holder of record of shares in a corporation.

(7) "Authorized shares" means the shares of all classes which the corporation is authorized to issue.

(8) "Treasury shares" means the shares of a corporation which have been issued, have been subsequently acquired by and belong to the corporation, and have not, either by reason of the acquisition or otherwise, been canceled or restored to the status of authorized but unissued shares. Treasury shares shall be deemed to be "issued" shares, but not "outstanding" shares.

(9) "Net assets" means the amount by which the total assets of a corporation exceed the total liabilities of the corporation. For purposes of this definition, the term "total liabilities" shall not include the capital and surplus of a corporation.

(10)(a) "Stated capital" means, at any particular time, the sum of:

1. The par value of all shares of the corporation having a par value that have been issued and have not been canceled;

2. The amount of the consideration received by

the corporation for all shares of the corporation without par value that have been issued, except such part of the consideration therefor as may have been allocated to capital surplus in a manner permitted by law; and

3. Such amounts, not included in subparagraphs 1. and 2., as have been transferred to stated capital of the corporation, whether upon the issue of shares as a share dividend or otherwise,

minus all reductions from such sum as have been effected in a manner permitted by law.

(b) Irrespective of the manner of designation thereof by the laws under which a foreign corporation is organized, the stated capital of a foreign corporation shall be determined on the same basis and in the same manner as the stated capital of a domestic corporation, for the purpose of computing taxes on qualification and other charges imposed by this act.

(11) "Surplus" means the excess of the net assets of a corporation over its stated capital.

(12) "Earned surplus" means the portion of the surplus of a corporation that is equal to the balance of its net profits, income, gains, and losses from the date of incorporation, or from the latest date on which a deficit in earned surplus was eliminated by an application of its capital surplus or stated capital or otherwise, after deducting subsequent distributions to shareholders and transfers to stated capital and capital surplus to the extent that such distributions and transfers are made out of earned surplus. "Earned surplus" shall include also any portion of surplus allocated to earned surplus in mergers, consolidations, or acquisitions of all or substantially all of the outstanding shares or of the property and assets of another corporation, domestic or foreign.

(13) "Capital surplus" means the entire surplus of a corporation other than its earned surplus.

(14) "Insolvent" means the inability of a corporation to pay its debts as they become due in the usual course of its business.

History.—s. 2, ch. 75-250.

**607.007 Purposes and application.**—Corporations may be organized under this chapter for any lawful purpose or purposes, and the provisions of this chapter extend to all corporations, whether for profit or not for profit, or whether chartered by special acts or general laws, except that special statutes for the regulation and control of types of business and corporations shall control when in conflict herewith.

History.—s. 3, ch. 75-250.

#### **607.011 General powers.—**

(1) Each corporation shall have power:

(a) To have perpetual succession by its corporate name unless a limited period of duration is stated in its articles of incorporation.

(b) To sue and be sued, complain, and defend in its corporate name in all actions or proceedings.

(2) Unless otherwise provided by its articles of incorporation, each corporation shall have power:

(a) To have a corporate seal, which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed, affixed, or in

any other manner reproduced.

(b) To purchase, take, receive, lease, or otherwise acquire, own, hold, improve, use, and otherwise deal in and with real or personal property or any interest therein, wherever situated.

(c) To sell, convey, mortgage, pledge, create a security interest in, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets.

(d) To lend money to, and use its credit to assist, its officers and employees in accordance with s. 607.141.

(e) To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, associations, partnerships, or individuals, or direct or indirect obligations of the United States or of any other government, state, territory, governmental district, or municipality or of any instrumentality thereof.

(f) To make contracts and guarantees and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises, and income.

(g) To lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested.

(h) To conduct its business, carry on its operations, and have offices and exercise the powers granted by this act within or without this state.

(i) To elect or appoint officers and agents of the corporation and define their duties and fix their compensation.

(j) To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of the affairs of the corporation.

(k) To make donations for the public welfare or for charitable, scientific, or educational purposes.

(l) To transact any lawful business which the board of directors shall find will be in aid of governmental policy.

(m) To pay pensions and establish pension plans, profit sharing plans, stock bonus plans, stock option plans, and other incentive plans for any or all of its directors, officers, and employees and for any or all of the directors, officers, and employees of its subsidiaries.

(n) To be a promoter, incorporator, general partner, limited partner, member, associate, or manager of any corporation, partnership, limited partnership, joint venture, trust, or other enterprise.

(o) To have and exercise all powers necessary or convenient to effect its purposes.

History.—s. 4, ch. 75-250; s. 2, ch. 76-209.  
Note.—Former s. 608.13.

#### **607.014 Indemnification of officers, directors, employees, and agents.—**

(1) A corporation shall have power to indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending, or com-

pleted action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by, or in the right of, the corporation), by reason of the fact that he is or was a director, officer, employee, or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit, or proceeding, including any appeal thereof, if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, or conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in, or not opposed to, the best interests of the corporation or, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

(2) A corporation shall have power to indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending, or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee, or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit, including any appeal thereof, if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the corporation, except that no indemnification shall be made in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the corporation unless, and only to the extent that, the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

(3) To the extent that a director, officer, employee, or agent of a corporation has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in subsection (1) or subsection (2), or in defense of any claim, issue, or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

(4) Any indemnification under subsection (1) or subsection (2), unless pursuant to a determination by a court, shall be made by the corporation only as authorized in the specific case upon a determination

that indemnification of the director, officer, employee, or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in subsection (1) or subsection (2). Such determination shall be made by the board of directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit, or proceeding or by the shareholders by a majority vote of a quorum consisting of shareholders who were not parties to such action, suit, or proceeding.

(5) Expenses (including attorneys' fees) incurred in defending a civil or criminal action, suit, or proceeding may be paid by the corporation in advance of the final disposition of such action, suit, or proceeding upon a preliminary determination following one of the procedures set forth in subsection (4) that the director, officer, employee, or agent met the applicable standard of conduct set forth in subsection (1) or subsection (2) and upon receipt of an undertaking by or on behalf of the director, officer, employee, or agent to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the corporation as authorized in this section.

(6) A corporation shall have the power to make any other or further indemnification, except an indemnification against gross negligence or willful misconduct, under any bylaw, agreement, vote of shareholders or disinterested directors, or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office.

(7) Indemnification as provided in this section shall continue as to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of such a person.

(8) A corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, whether or not the corporation would have the power to indemnify him against such liability under the provisions of this section.

(9) If any expenses or other amounts are paid by way of indemnification otherwise than by court order or action by the shareholders or by an insurance carrier pursuant to insurance maintained by the corporation, the corporation shall, not later than the time of delivery to shareholders of written notice of the next annual meeting of shareholders, unless such meeting is held within 3 months from the date of such payment, and, in any event, within 15 months from the date of such payment, deliver either personally or by mail to each shareholder of record at the time entitled to vote for the election of directors a statement specifying the persons paid, the amounts paid, and the nature and status at the time of such payment of the litigation or threatened litigation.

History.—s. 5, ch. 75-250; s. 1, ch. 77-174.



**607.017 Right of corporation to acquire and dispose of its own shares.—**

(1) A corporation shall have the right to purchase, take, receive, or otherwise acquire, hold, own, pledge, grant a security interest in, transfer, or otherwise dispose of its own shares, but purchases of its own shares, whether direct or indirect, shall be made only to the extent of unreserved and unrestricted surplus.

(2) To the extent that earned surplus or capital surplus is used as the measure of the corporation's right to purchase its own shares, such surplus shall be restricted so long as such shares are held as treasury shares. Such restriction shall be allocated on a pro rata basis to the treasury shares, and upon the disposition or cancellation of any such shares, the restriction shall be removed to the extent it is attributable to the shares disposed of or canceled.

(3) Notwithstanding the limitations contained in subsection (1), a corporation may purchase or otherwise acquire its own shares for the purpose of:

- (a) Eliminating fractional shares.
- (b) Collecting or compromising indebtedness to the corporation.
- (c) Paying dissenting shareholders entitled to payment for their shares under the provisions of this act.
- (d) Effecting, subject to the other provisions of this act, the retirement of its redeemable shares by redemption or by purchase at not to exceed the redemption price.

(4) No purchase of, or payment for, its own shares shall be made by a corporation at a time when the corporation is insolvent or when such payment would make it insolvent.

(5) An open-end investment company registered as such under the Federal Investment Company Act of 1940, as heretofore or hereafter amended, if its articles of incorporation shall so provide, may purchase, take, receive, or otherwise acquire, hold, own, pledge, transfer, or otherwise dispose of its own shares out of stated capital or any unrestricted surplus.

*History.*—s. 6, ch. 75-250.

**607.021 Defense of ultra vires.**—No act of a corporation, and no conveyance, transfer, or encumbrance of real or personal property to or by a corporation, shall be invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance, transfer, or encumbrance, but such lack of capacity or power may be asserted:

(1) In a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through shareholders in a representative suit, against the incumbent or former officers or directors of the corporation.

(2) In a proceeding by the Attorney General, as provided in this act, to dissolve the corporation or in a proceeding by the Attorney General to enjoin the corporation from the transaction of unauthorized business.

*History.*—s. 7, ch. 75-250; s. 3, ch. 76-209.

**607.024 Corporate name.—**

(1) The corporate name:

(a) Shall contain the word "corporation," "company," or "incorporated" or such other word, abbreviation, affix, prefix, or suffix as will clearly indicate that it is a corporation instead of a natural person or partnership.

(b) Shall not be the same as, or deceptively similar to, the name of any domestic corporation existing under the laws of this state or any foreign corporation authorized to transact business in this state, a name the exclusive right to which is, at the time, reserved in the manner provided in this act, or the name of a corporation which has in effect a registration of its corporate name as provided in this act, except that this provision shall not apply if the applicant files with the Department of State either of the following:

1. The written consent of such other corporation or holder of a reserved or registered name to use the same or deceptively similar name and one or more words are added to make such name distinguishable from such other name; or

2. A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of such name in this state.

(2) A corporation with which another corporation, domestic or foreign, is merged or which is formed by the reorganization or consolidation of one or more domestic or foreign corporations or upon a sale, lease, or other disposition to, or exchange with, a domestic corporation of all or substantially all the assets of another corporation, domestic or foreign, including its name, may have the same name as that used in this state by any of such corporations if such other corporation was organized under the laws of, or is authorized to transact business in, this state.

*History.*—s. 8, ch. 75-250.

**607.027 Reserved name.—**

(1) The exclusive right to the use of a corporate name may be reserved by any person or corporation, foreign or domestic, by filing with the Department of State an application, executed by the applicant, to reserve a specified corporate name. If the Department of State finds that the name is available for corporate use, it shall reserve the same for the exclusive use of the applicant for a period of 120 days, and the reservation may be renewed.

(2) The right to the exclusive use of a specified corporate name so reserved may be transferred to any other person or corporation by filing with the Department of State a notice of such transfer, executed by the applicant for whom the name was reserved and specifying the name and address of the transferee.

(3) The Department of State may revoke any reservation if, after a hearing, it finds that the application therefor or any transfer thereof was not made in good faith.

*History.*—s. 9, ch. 75-250; s. 4, ch. 76-209.  
*Note.*—Former s. 608.031.

**607.031 Registered name; application; renewal; revocation.—**

(1) Any foreign corporation not authorized to transact business in this state may register its corpo-

rate name under this act, provided its corporate name is not the same as, or deceptively similar to, the name of any domestic corporation existing under the laws of this state, the name of any foreign corporation authorized to transact business in this state, or any corporate name reserved or registered under this act.

(2) Such registration shall be made by:

(a) Filing with the Department of State an application for registration executed by the corporation by an officer thereof setting forth the name of the corporation, the state or territory under the laws of which it is incorporated, the date of its incorporation, a statement that it is carrying on or doing business, and a brief statement of the business in which it is engaged; and

(b) Filing with the Department of State a certificate setting forth that such corporation is in good standing under the laws of the state or territory wherein it is organized, executed by the Secretary of State of such state or territory or by such other official as may have custody of the records pertaining to corporations.

(3) Such registration shall be effective until the close of the calendar year in which the application for registration is filed.

(4) A corporation which has in effect a registration of its corporate name may renew such registration from year to year by annually filing an application for renewal setting forth the facts required to be set forth in an original application for registration and a certificate of good standing as required for the original registration. A renewal application may be filed after October 1 and on or before December 31 in each year and shall extend the registration for the following calendar year.

(5) The Department of State may revoke any registration if, after a hearing, it finds that the application therefor or any renewal thereof was not made in good faith.

History.—ss. 10, 11, ch. 75-250.

#### **607.034 Registered office and registered agent.—**

(1) Each corporation shall have and continuously maintain in this state:

(a) A registered office which may be, but need not be, the same as its place of business.

(b) A registered agent, which agent may be either:

1. An individual resident in this state whose business office is identical with such registered office or

2. Another domestic corporation or a foreign corporation authorized to transact business in this state, having a business office identical with such registered office.

(2) This section does not apply to corporations which are required by law to designate the Insurance Commissioner and Treasurer as their attorney for the service of process, savings associations or savings and loan associations subject to the provisions of chapter 665, banks and trust companies subject to the provisions of the Florida Banking Code, savings banks, and industrial savings banks.

(3) Each registered agent and each successor registered agent appointed pursuant to s. 607.037 on

whom process may be served shall file a statement in writing with the Department of State accepting the appointment as registered agent simultaneously with being designated, unless the agent signed the document making the appointment.

(4) The Department of State shall maintain an accurate record of the registered agents and registered offices for the service of process and shall furnish any information disclosed thereby promptly upon request and payment of the required fee.

(5) No Florida or foreign corporation shall maintain any action in any court until the corporation complies with the provisions of this section or s. 607.324, as applicable, and pays to the Department of State a penalty of \$1 for each day it has failed to so comply or \$250, whichever is less.

(6) Resident agents and resident offices designated prior to January 1, 1976, shall be deemed to be registered agents and registered offices under this chapter without further redesignation.

History.—s. 12, ch. 75-250; s. 5, ch. 76-209; s. 1, ch. 79-384.

Note.—Former s. 608.38.

#### **607.037 Change of registered office or registered agent.—**

(1) A corporation may change its registered office or its registered agent, or both, upon filing with the Department of State a statement setting forth:

(a) The name of the corporation.

(b) The street address of its then registered office.

(c) If the street address of its registered office is to be changed, the street address to which the registered office is to be changed.

(d) The name of its then registered agent.

(e) If its registered agent is to be changed, the name of its successor registered agent.

(f) That the street address of its registered office and the street address of the business office of its registered agent, as changed, will be identical.

(g) That such change was authorized by resolution duly adopted by its board of directors or by an officer of the corporation so authorized by the board of directors.

(2) Such statement shall be executed by the corporation by its president or vice president, acknowledged in writing by the new registered agent, and delivered to the Department of State. If the Department of State finds that such statement conforms to the provisions of this chapter, it shall file such statement. Upon the filing of such statement, the change of address of the registered office or the appointment of a new registered agent, or both, as the case may be, shall become effective.

(3) Any registered agent of a corporation may resign as such agent by filing with the Department of State a written notice thereof and mailing a copy of such notice to the corporation at its last known address. The appointment of such agent shall terminate upon the expiration of 30 days after receipt of such notice by the Department of State.

(4) If a registered agent changes his or its business address to another place within the same county, he or it may change such address and the address of the registered office of any corporation of which he or it is registered agent by filing a statement as required above, except that it need be signed only by

the registered agent and need not be responsive to paragraph (1)(e) or paragraph (1)(g), and must state the last known address of the corporation and recite that a copy of the statement has been mailed to the corporation at the address so stated.

**History.**—s. 13, ch. 75-250; ss. 3, 4, ch. 79-384.

**607.041 Service of process, notice, or demand on a corporation.—**

(1) Process against any corporation may be served in accordance with chapter 48 or chapter 49.

(2) Any notice to or demand on a corporation made pursuant to this chapter may be made by:

(a) Delivery to the chairman of the board, the president, any vice president, the secretary or treasurer, or the registered agent of the corporation.

(b) Writing, mailed to the registered office of the corporation in this state or to any other address in this state which is in fact the principal office of the corporation in this state.

**History.**—s. 14, ch. 75-250.

**607.044 Authorized shares.—**

(1) Each corporation shall have power to create and issue the number of shares stated in its articles of incorporation. Such shares may be divided into one or more classes, any or all of which classes may consist of shares with par value or shares without par value, with such designations, preferences, limitations, and relative rights as shall be stated in the articles of incorporation. The articles of incorporation may limit or deny the voting rights of, or provide special voting rights for, the shares of any class to an extent not inconsistent with the provisions of this chapter.

(2) Without limiting the authority herein contained, a corporation, when so provided in its articles of incorporation, may issue shares of preferred or special classes:

(a) Subject to the right of the shareholders to require redemption of, or the corporation to redeem, any of such shares at the price fixed by the articles of incorporation for the redemption thereof.

(b) Entitling the holders thereof to cumulative, noncumulative, or partially cumulative dividends.

(c) Having preference over any other class or classes of shares as to the payment of dividends.

(d) Having preference in the assets of the corporation over any other class or classes of shares, upon the voluntary or involuntary liquidation of the corporation.

(e) Convertible into shares of any other class or into shares of any series of the same or any other class, but shares without par value shall not be converted into shares with par value unless that part of the stated capital of the corporation represented by such shares without par value is, at the time of conversion, at least equal to the aggregate par value of the shares into which the shares without par value are to be converted, or the amount of any such deficiency is transferred from surplus to stated capital.

(3) If any corporation shall issue more than one class of stock or more than one series of any class, the powers, designations, preferences, limitations, and relative rights of each class or series of stock shall be set forth in full or summarized on the certificate which the corporation issues to represent that class

or series of stock, or, in lieu thereof, there may be set forth on the certificate a statement that the corporation will furnish without charge, to each stockholder who so requires, the designations, preferences, limitations, and relative rights of each class or series of stock.

(4) If any corporation shall have authority to issue more than one class or series of stock, the shares of each class or series shall be designated to distinguish them from the shares of all other classes or series. Shares which are entitled to preference in the distribution of dividends or assets shall not be designated as common shares. Shares which are not entitled to preference in the distribution of dividends or assets shall be common shares and shall not be designated as preferred shares.

**History.**—s. 15, ch. 75-250.

**Note.**—Former s. 608.14.

**607.047 Issuance of shares of preferred or special classes in series.—**

(1) If the articles of incorporation so provide, the shares of any preferred or special class may be divided into and issued in series. If the shares of any such class are to be issued in series, then each series shall be so designated as to distinguish the shares thereof from the shares of all other series and classes. Any or all of the series of any such class, and the variations in the relative rights and preferences as between different series, may be fixed and determined by the articles of incorporation, but all shares of the same class shall be identical except as to the following relative rights and preferences, as to which there may be variations between different series:

(a) The rate or manner of payment of dividends.

(b) Whether shares may be redeemed and, if so, the redemption price and the terms and conditions of redemption.

(c) The amount payable upon shares in the event of voluntary and involuntary liquidation.

(d) Sinking fund provisions, if any, for the redemption or purchase of shares.

(e) The terms and conditions, if any, on which shares may be converted.

(f) Voting rights, if any.

(2) If the articles of incorporation shall expressly vest authority in the board of directors, then, to the extent that the articles of incorporation shall not have established series and fixed and determined the variations in the relative rights and preferences as between series, the board of directors shall have authority to divide any or all of such classes into series and, within the limitations set forth in this section and in the articles of incorporation, fix and determine the relative rights and preferences of the shares of any series so established.

(3) Prior to the issue of any shares of a series established by resolution adopted by the board of directors, the corporation shall file in the office of the Department of State a statement setting forth:

(a) The name of the corporation.

(b) A copy of the resolution establishing and designating the series and fixing and determining the relative rights and preferences thereof.

(c) The date of adoption of such resolution.

(d) That such resolution was duly adopted by the board of directors.



Such statement shall be executed by the corporation by its president or a vice president and by its secretary or an assistant secretary, acknowledged by one of the officers signing such statement, and delivered to the Department of State. If the Department of State finds that such statement conforms to law, it shall, when all taxes and fees have been paid as in this chapter prescribed, file such statement in accordance with this chapter. Upon the filing of such statement by the Department of State, the resolution establishing and designating the series and fixing and determining the relative rights and preferences thereof shall become effective and shall constitute an amendment to the articles of incorporation.

History.—s. 16, ch. 75-250.

Note.—Former s. 608.14.

#### 607.051 Subscriptions for shares.—

(1) A subscription for shares of a corporation to be organized shall be irrevocable for a period of 6 months, unless otherwise provided by the terms of the subscription agreement or unless all the subscribers consent to the revocation of such subscription.

(2) A subscription for shares, whether made before or after the formation of a corporation, shall not be enforceable unless in writing and signed by the subscriber.

(3) Unless otherwise provided in the subscription agreement:

(a) Subscriptions for shares, whether made before or after the organization of a corporation, shall be paid in full at such time, or in such installments and at such times, as shall be determined by the board of directors.

(b) Any call made by the board of directors for payment on subscriptions shall be uniform as to all shares of the same class or as to all shares of the same series, as the case may be.

(4) In case of default in the payment of any installment or call when such payment is due, the corporation may proceed to collect the amount due in the same manner as any debt due the corporation. The subscription agreement may prescribe other penalties for failure to pay installments or calls that may become due, but no penalty working a forfeiture of a subscription, or of the amounts paid thereon, shall be declared as against any subscriber unless the amount due thereon shall remain unpaid for a period of 20 days after written demand has been made therefor. If mailed, such written demand shall be deemed to be made when deposited in the United States mail in a sealed envelope addressed to the subscriber at his last post-office address known to the corporation, with first class postage thereon prepaid. The delinquent subscriber or his legal representative shall be entitled to be paid the excess of the sale proceeds realized from the sale by the corporation of such subscribed shares over the sum of the amount due and unpaid on the subscription and the reasonable expenses incurred in selling the shares.

History.—s. 17, ch. 75-250.

#### 607.054 Consideration and payment for shares.—

(1) Shares of stock with par value may be issued for such consideration, having a value not less than the par value of the shares issued therefor, as is determined from time to time by the board of directors.

(2) Shares of stock without par value may be issued for such consideration as is determined from time to time by the board of directors.

(3) Treasury shares may be disposed of by the corporation for such consideration as may be determined from time to time by the board of directors.

(4) In any instance in which this section provides that the consideration may be determined from time to time by the board of directors, the articles of incorporation may reserve to the stockholders the right to determine the consideration for the issue or disposition of any shares. If the right is so reserved to stockholders, a vote of the majority of the outstanding stock entitled to vote thereon shall be required, unless the articles require a greater vote.

(5) The consideration for the issuance of shares or for the disposal of treasury shares may be paid, in whole or in part, in cash or other property, tangible or intangible, or in labor or services actually performed for the corporation. Shares may not be issued until the full amount of the consideration therefor has been paid. When payment of the consideration for which shares are to be issued shall have been received by the corporation, such shares shall be deemed to be fully paid and nonassessable.

(6) Future services shall not constitute payment or part payment for the issuance of shares of a corporation.

(7) In the absence of fraud in the transaction, the judgment of the board of directors or the shareholders, as the case may be, as to the value of the consideration received for shares shall be conclusive.

History.—ss. 18, 19, ch. 75-250; s. 6, ch. 76-209.

Note.—Former s. 608.15.

#### 607.057 Stock rights and options.—

(1) Unless this section or the articles of incorporation otherwise provide, a corporation may create and issue, whether or not in connection with the issue and sale of any of its shares or other securities, rights or options entitling the holders thereof to purchase from the corporation shares of any class or classes, whether authorized but unissued shares, treasury shares, or shares to be purchased or acquired by the corporation. Except to the extent that this section permits otherwise, the consideration and payment for shares to be purchased under any such right or option shall comply with the requirements of s. 607.054.

(2) The instrument or instruments evidencing such rights or options shall be approved by the board of directors and shall set forth or incorporate by reference the terms and conditions upon which, the time or times at or within which, and the price or prices at which such shares may be purchased from the corporation upon the exercise of any such rights or options.

(3) Such rights or options may be issued to directors, officers, and employees of the corporation or a subsidiary or affiliate thereof as an incentive to ser-

vice or continued service with the corporation or a subsidiary or affiliate thereof, or to a trustee on behalf of such directors, officers, and employees.

(4) In the absence of fraud, the judgment of the board of directors or of the shareholders, as the case may be, shall be conclusive as to the adequacy of the consideration received or to be received by the corporation for such rights or options.

History.—s. 20, ch. 75-250.

#### **607.061 Determination of amount of stated capital.—**

(1) In case of the issuance by a corporation of shares having a par value, the consideration received therefor, expressed in dollars, shall constitute stated capital to the extent of the par value of such shares, and the excess, if any, of such consideration shall constitute capital surplus.

(2) In case of the issuance by a corporation of shares without par value, the entire consideration received therefor, expressed in dollars, shall constitute stated capital unless the corporation shall determine as provided in this section that only a part thereof shall be stated capital. The board of directors may allocate to capital surplus any portion of the consideration received for the issuance of shares without par value. Such allocation may be made at any time prior to the date on which the corporation prepares and publishes to any other person a financial statement of the corporation reflecting the issuance of such shares without par value. No such allocation shall be made of any portion of the consideration received for shares without par value having a stated preference in the assets of the corporation in the event of involuntary liquidation, except the amount, if any, of such consideration in excess of such preference, and no such allocation shall be made out of any portion of the consideration for the issue of shares without par value which is fixed by the shareholders pursuant to a right reserved in the articles of incorporation, unless such allocation is authorized by the affirmative vote of the holders of a majority of all shares entitled to vote thereon.

(3) If shares have been or shall be issued by a corporation in merger or consolidation or in acquisition of all or substantially all of the outstanding shares or of the property and assets of another corporation, whether domestic or foreign, any amount that would otherwise constitute capital surplus under the foregoing provisions of this section may instead be allocated to earned surplus by the board of directors of the issuing corporation, except that its aggregate earned surplus shall not exceed the sum of the earned surpluses, as defined in this chapter, of the issuing corporation and of all other corporations, domestic or foreign, that were merged or consolidated or of which the shares or assets were acquired.

(4) The stated capital of a corporation may be increased from time to time by resolution of the board of directors directing that all or part of the surplus of the corporation be transferred to stated capital. The board of directors may direct that the amount of the surplus so transferred shall be

deemed to be stated capital in respect of any designated class of shares.

History.—s. 21, ch. 75-250.

**607.064 Expenses of organization, reorganization, and financing.—**The reasonable charges and expenses of formation or reorganization of a corporation and the reasonable expenses of, and compensation for, the sale or underwriting of its shares may be paid or allowed by the corporation out of the consideration received by it in payment for its shares without thereby impairing the fully paid and nonassessable status of such shares.

History.—s. 22, ch. 75-250.

#### **607.067 Certificates representing shares.—**

(1) Every holder of shares in a corporation shall be entitled to have a certificate representing all shares to which he is entitled; and such certificates shall be signed by the president or a vice president and the secretary or an assistant secretary of the corporation and may be sealed with the seal of the corporation or a facsimile thereof. The signatures of the president or vice president and the secretary or assistant secretary may be facsimiles if the certificate is manually signed on behalf of a transfer agent or a registrar other than the corporation itself or an employee of the corporation. In case any officer who signed, or whose facsimile signature has been placed upon, such certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer at the date of its issuance.

(2) Every certificate representing shares issued by a corporation which is authorized to issue shares of more than one class or more than one series of any class shall set forth or fairly summarize upon the face or back of the certificate, or shall state that the corporation will furnish to any shareholder upon request and without charge a full statement of:

(a) The designations, preferences, limitations, and relative rights of the shares of each class or series authorized to be issued.

(b) The variations in the relative rights and preferences between the shares of each such series, if the corporation is authorized to issue any preferred or special class in series and so far as the same have been fixed and determined.

(c) The authority of the board of directors to fix and determine the relative rights and preferences of subsequent series.

(3) Every certificate representing shares which are restricted as to the sale, disposition, or other transfer of such shares shall state that such shares are restricted as to transfer and shall set forth or fairly summarize upon the certificate, or shall state that the corporation will furnish to any shareholder upon request and without charge a full statement of, such restrictions.

(4) Each certificate representing shares shall state upon the face thereof:

(a) The name of the corporation.

(b) That the corporation is organized under the laws of this state.

(c) The name of the person or persons to whom issued.

(d) The number and class of shares and the design-

nation of the series, if any, which such certificate represents.

(e) The par value of each share represented by such certificate or a statement that the shares are without par value.

(5) No certificate shall be issued for any share until such share is fully paid.

(6) Nothing in this section shall be construed to invalidate any share certificate validly issued and outstanding under the general corporation law on January 1, 1976.

**History.**—s. 23, ch. 75-250; s. 1, ch. 77-174.

**Note.**—Former s. 608.41.

#### **607.071 Fractional shares.—**

(1) A corporation may, when necessary or desirable in order to effect share transfers, share distributions or reclassifications, mergers, consolidations, or reorganizations:

(a) Issue fractions of a share.

(b) Make arrangements, or provide reasonable opportunity, for any person entitled to a fractional interest in a share to sell such fractional interest or to purchase such additional fractional interests as may be necessary to acquire a full share.

(c) Pay in cash the fair value of fractions of a share as of the time when those entitled to receive such fractions are determined.

(d) Issue scrip in registered or bearer form, over the manual or facsimile signature of an officer of the corporation or its agent, which shall entitle the holder to receive a certificate for a full share upon the surrender of such scrip aggregating a full share. The board of directors may cause scrip to be issued subject to the condition that it shall become void if not exchanged for certificates representing full shares before a specified date, the condition that the shares for which scrip is exchangeable may be sold by the corporation and the proceeds thereof distributed to the holders of scrip, or any other conditions which the board of directors may deem advisable. Such conditions shall be stated or fairly summarized on the face of the certificate.

(2) A certificate for a fractional share shall, but scrip shall not unless otherwise provided therein, entitle the holder to exercise voting rights, to receive dividends thereon, and to participate in any of the assets of the corporation in the event of liquidation.

**History.**—s. 24, ch. 75-250.

**Note.**—Former s. 608.151.

#### **607.074 Liability of subscribers and shareholders.—**

(1) A holder of, or subscriber to, shares of a corporation shall be under no obligation to the corporation or its creditors with respect to such shares other than the obligation to pay to the corporation the full consideration for which such shares were issued or to be issued. Such an obligation may be enforced by the corporation and its successors or assigns, by a shareholder suing derivatively on behalf of the corporation, or by a receiver, liquidator or trustee in bankruptcy of the corporation, or other person having the legal right to marshal the assets of such corporation.

(2) Any person becoming an assignee or transferee of shares, or of a subscription for shares, in good

faith and without knowledge or notice that the full consideration therefor has not been paid shall not be personally liable to the corporation or its creditors for any unpaid portion of such consideration, but the assignor or transferor shall continue to be liable therefor.

(3) No pledgee or other holder of shares as collateral security shall be personally liable as a shareholder, but the pledgor or other person transferring such shares as collateral shall be considered the holder thereof for purposes of liability under this section.

(4) An executor, administrator, conservator, guardian, trustee, assignee for the benefit of creditors, receiver, or other fiduciary shall not be personally liable to the corporation as a holder of, or subscriber to, shares of a corporation, but the estate and funds in his hands shall be so liable.

**History.**—s. 25, ch. 75-250.

**Note.**—Former ss. 608.44 and 608.45.

#### **607.077 Shareholders' preemptive rights.—**

(1) The shareholders of a corporation shall have no preemptive right to acquire unissued or treasury shares of the corporation or securities of the corporation convertible into or carrying a right to subscribe to or acquire shares, except to the extent, if any, that such right is provided in the articles of incorporation.

(2) In the case of any Florida corporation in existence prior to January 1, 1976, shareholders of such corporation shall continue to have the preemptive rights in such corporation which they had immediately prior to the effective date of this law, unless and until the articles of incorporation are amended to alter or terminate shareholders' preemptive rights.

**History.**—s. 26, ch. 75-250.

**Note.**—Former s. 608.42(2).

**607.081 Bylaws.**—The power to adopt, alter, amend, or repeal bylaws shall be vested in the board of directors unless reserved to the shareholders by the articles of incorporation. Bylaws adopted by the board of directors or by the shareholders may be repealed or changed, new bylaws may be adopted by the shareholders, and the shareholders may prescribe in any bylaw made by them that such bylaw shall not be altered, amended, or repealed by the board of directors. The bylaws may contain any provisions for the regulation and management of the affairs of the corporation not inconsistent with law or the articles of incorporation.

**History.**—s. 27, ch. 75-250.

**Note.**—Former s. 608.07.

#### **607.084 Meetings of shareholders; place; frequency; special; notice.—**

(1) Meetings of shareholders may be held at such place, either within or without this state, as may be provided in the bylaws or, when not inconsistent with the bylaws, in the notice of the meeting.

(2) A meeting of shareholders shall be held annually, for the election of directors and for the transaction of other business, on such date and at such time as may be stated in, or fixed in accordance with, the bylaws. If the annual meeting is not held within any 13-month period, the circuit court of the circuit in



which the registered office of the corporation is located may, on the application of any shareholder, summarily order a meeting to be held.

(3) Special meetings of the shareholders may be called by any one of the following persons or groups:

(a) The board of directors.

(b) The holders of not less than one-tenth of all the shares entitled to vote at the meeting.

(c) Such other persons or groups as may be authorized in the articles of incorporation or the bylaws.

(4) Except as otherwise provided in this chapter, written notice stating the place, day, and hour of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called shall be delivered to each shareholder of record entitled to vote at such meeting not less than 10 or more than 60 days before the date of the meeting, either personally or by first-class mail, by or at the direction of the president, the secretary, or the officer or persons calling the meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the shareholder at his address as it appears on the stock transfer books of the corporation, with postage thereon prepaid.

(5) When a meeting is adjourned to another time or place, it shall not be necessary, unless the bylaws require otherwise, to give any notice of the adjourned meeting if the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken, and any business may be transacted at the adjourned meeting that might have been transacted on the original date of the meeting. If, however, after the adjournment the board fixes a new record date for the adjourned meeting, a notice of the adjourned meeting shall be given in compliance with subsection (4) to each shareholder of record on the new record date entitled to vote at such meeting.

History.—ss. 28, 29, ch. 75-250.

#### **607.087 Closing of transfer books and fixing record date.—**

(1) For the purpose of determining shareholders entitled to notice of, or to vote at, any meeting of shareholders or any adjournment thereof or entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other purpose, the board of directors of a corporation may provide that the stock transfer books shall be closed for a stated period not to exceed, in any case, 60 days. If the stock transfer books shall be closed for the purpose of determining shareholders entitled to notice of, or to vote at, a meeting of shareholders, such books shall be closed for at least 10 days immediately preceding such meeting.

(2) In lieu of closing the stock transfer books, the bylaws or, in the absence of an applicable bylaw, the board of directors may fix in advance a date as the record date for any such determination of shareholders, such date in any case to be not more than 60 days and, in case of a meeting of shareholders, not less than 10 days prior to the date on which the particular action requiring such determination of shareholders is to be taken.

(3) If the stock transfer books are not closed and

no record date is fixed for the determination of shareholders entitled to notice or to vote at a meeting of shareholders or shareholders entitled to receive payment of a dividend, the date on which notice of the meeting is mailed or the date on which the resolution of the board of directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of shareholders.

(4) When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this section, such determination shall apply to any adjournment thereof, unless the board of directors fixes a new record date under this section for the adjourned meeting.

History.—s. 30, ch. 75-250.

#### **607.091 Record of shareholders having voting rights.—**

(1) The officer or agent having charge of the stock transfer books for shares of a corporation shall make, at least 10 days before each meeting of shareholders, a complete list of the shareholders entitled to vote at such meeting or any adjournment thereof, with the address of, and the number and class and series, if any, of shares held by, each. Such list shall be kept on file at the registered office of the corporation, at the principal place of business of the corporation, or at the office of the transfer agent or registrar of the corporation for a period of 10 days prior to such meeting and shall be subject to inspection by any shareholder at any time during usual business hours. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any shareholder at any time during the meeting.

(2) The original stock transfer books shall be prima facie evidence as to who are the shareholders entitled to examine such list or transfer books or to vote at any meeting of shareholders.

(3) If the requirements of this section have not been substantially complied with, the meeting shall be adjourned until the requirements are complied with on the demand of any shareholder in person or by proxy.

(4) If, upon the demand of any shareholder made pursuant to subsection (3), the meeting is not adjourned by the officers of the corporation and the list is not produced, such officers shall be liable to any shareholder suffering damage on account of the failure to produce such list, to the extent of such damage.

(5) If no such demand is made, failure to comply with the requirements of this section shall not affect the validity of any action taken at such meeting.

(6) This section does not apply to corporations having fewer than six shareholders.

History.—s. 31, ch. 75-250; s. 1, ch. 77-174.

Note.—Former s. 608.39.

#### **607.094 Shareholder quorum and voting.—**

(1) Unless otherwise provided in the articles of incorporation, a majority of the shares entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders, but in no event shall a quorum consist of less than one-third of the shares entitled to vote at the meeting. When a specified item of business is required to be

voted on by a class or series of stock, a majority of the shares of such class or series shall constitute a quorum for the transaction of such item of business by that class or series.

(2) If a quorum is present, the affirmative vote of a majority of the shares represented at the meeting and entitled to vote on the subject matter shall be the act of the shareholders, unless the vote of a greater number or voting by classes is required by this chapter or the articles of incorporation or bylaws.

(3) After a quorum has been established at a shareholders' meeting, the subsequent withdrawal of shareholders, so as to reduce the number of shares entitled to vote at the meeting below the number required for a quorum, shall not affect the validity of any action taken at the meeting or any adjournment thereof.

*History.*—s. 32, ch. 75-250; s. 1, ch. 77-174.

#### 607.097 Voting of shares.—

(1) Each outstanding share, regardless of class, shall be entitled to one vote on each matter submitted to a vote at a meeting of shareholders, except as may be otherwise provided in the articles of incorporation. If the articles of incorporation provide for more or less than one vote for any share on any matter, every reference in this chapter to a majority or other proportion of shares shall refer to such a majority or other proportion of votes entitled to be cast.

(2) Treasury shares, shares of its own stock owned by another corporation the majority of the voting stock of which is owned or controlled by it, and shares of its own stock held by a corporation in a fiduciary capacity shall not be voted, directly or indirectly, at any meeting and shall not be counted in determining the total number of outstanding shares at any given time.

(3) A shareholder may vote either in person or by proxy executed in writing by the shareholder or his duly authorized attorney-in-fact.

(4) At each election for directors, every shareholder entitled to vote at such election shall have the right to vote, in person or by proxy, the number of shares owned by him, for as many persons as there are directors to be elected at that time and for whose election he has a right to vote or, if cumulative voting is authorized by the articles of incorporation, to cumulate his votes by giving one candidate as many votes as the number of directors to be elected at that time multiplied by the number of his votes shall produce or by distributing such votes on the same principle among any number of such candidates.

(5) Shares standing in the name of another corporation, domestic or foreign, may be voted by the officer, agent, or proxy designated by the bylaws of the corporate shareholder or, in the absence of any applicable bylaw, by such person as the board of directors of the corporate shareholder may designate. Proof of such designation may be made by presentation of a certified copy of the bylaws or other instrument of the corporate shareholder. In the absence of any such designation or, in case of conflicting designation by the corporate shareholder, the chairman of the board, the president, any vice president, the secretary, and the treasurer of the corporate shareholder shall be presumed to possess, in

that order, authority to vote such shares.

(6) Shares held by an administrator, executor, guardian, or conservator may be voted by him, either in person or by proxy, without a transfer of such shares into his name. Shares standing in the name of a trustee may be voted by him, either in person or by proxy, but no trustee shall be entitled to vote shares held by him without a transfer of such shares into his name.

(7) Shares standing in the name of a receiver may be voted by such receiver, and shares held by or under the control of a receiver may be voted by such receiver without the transfer thereof into his name, if authority so to do be contained in an appropriate order of the court by which such receiver was appointed.

(8) A shareholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee or his nominee shall be entitled to vote the shares so transferred.

(9) On and after the date on which written notice of redemption of redeemable shares has been mailed to the holders thereof and a sum sufficient to redeem such shares has been deposited with a bank or trust company with irrevocable instruction and authority to pay the redemption price to the holders thereof upon surrender of certificates therefor, such shares shall not be entitled to vote on any matter and shall not be deemed to be outstanding shares.

*History.*—s. 33, ch. 75-250.

#### 607.101 Proxies.—

(1) Every shareholder entitled to vote at a meeting of shareholders or to express consent or dissent without a meeting, or his duly authorized attorney-in-fact, may authorize another person or persons to act for him by proxy.

(2) Every proxy must be signed by the shareholder or his attorney-in-fact. No proxy shall be valid after the expiration of 11 months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the shareholder executing it, except as otherwise provided in this section.

(3) The authority of the holder of a proxy to act shall not be revoked by the incompetence or death of the shareholder who executed the proxy unless, before the authority is exercised, written notice of an adjudication of such incompetence or of such death is received by the corporate officer responsible for maintaining the list of shareholders.

(4) Except when other provision shall have been made by written agreement between the parties, the record holder of shares which he holds as pledgee or otherwise as security or which belong to another shall issue to the pledgor or to such owner of such shares, upon demand therefor and payment of necessary expenses thereof, a proxy to vote or take other action thereon.

(5) A proxy which states that it is irrevocable is irrevocable when it is held by any of the following or a nominee of any of the following:

(a) A pledgee.

(b) A person who has purchased or agreed to purchase the shares.

(c) A creditor or creditors of the corporation who

extend or continue credit to the corporation in consideration of the proxy, if the proxy states that it was given in consideration of such extension or continuation of credit, the amount thereof, and the name of the person extending or continuing credit.

(d) A person who has contracted to perform services as an officer of the corporation, if a proxy is required by the contract of employment and if the proxy states that it was given in consideration of such contract of employment and states the name of the employee and the period of employment contracted for.

(e) A person designated by or under an agreement under subsection 607.107(1).

(6) Notwithstanding a provision in a proxy stating that it is irrevocable, the proxy becomes revocable after the pledge is redeemed, the debt of the corporation is paid, the period of employment provided for in the contract of employment has terminated, or the agreement under subsection 607.107(1) has terminated and, in a case provided for in paragraph (5)(c) or paragraph (5)(d), becomes revocable 3 years after the date of the proxy or at the end of the period, if any, specified therein, whichever period is less, unless the period of irrevocability is renewed from time to time by the execution of a new irrevocable proxy as provided in this section. This paragraph does not affect the duration of a proxy under subsection (2).

(7) A proxy may be revoked, notwithstanding a provision making it irrevocable, by a purchaser of shares without knowledge of the existence of the provision, unless the existence of the proxy and its irrevocability is noted conspicuously on the face or back of the certificate representing such shares.

(8) If a proxy for the same shares confers authority upon two or more persons and does not otherwise provide, a majority of them present at the meeting, or if only one is present then that one, may exercise all the powers conferred by the proxy; but if the proxy holders present at the meeting are equally divided as to the right and manner of voting in any particular case, the voting of such shares shall be prorated.

(9) If a proxy expressly provides, any proxy holder may appoint, in writing, a substitute to act in his place.

*History.*—s. 34, ch. 75-250; s. 1, ch. 77-174.

#### **607.104 Voting trusts.—**

(1) Any number of shareholders of a corporation may create a voting trust for the purpose of conferring upon a trustee or trustees the right to vote or otherwise represent their shares for a period not to exceed 10 years by:

(a) Entering into a written voting trust agreement specifying the terms and conditions of the voting trust;

(b) Depositing a counterpart of the agreement with the corporation at its registered office; and

(c) Transferring their shares to such trustee or trustees for the purposes of the agreement.

(2) Upon the transfer of such shares, voting trust certificates shall be issued by the trustee or trustees to the shareholders who transfer their shares in trust. Such trustee or trustees shall keep a record of the holders of voting trust certificates evidencing a

beneficial interest in the voting trust and giving the names and addresses of all such holders and the number and class of the shares in respect of which the voting trust certificates held by each are issued, and shall deposit a copy of such record with the corporation at its registered office.

(3) The counterpart of the voting trust agreement and the copy of such record so deposited with the corporation shall be subject to the same right of examination by a shareholder of the corporation, in person or by agent or attorney, as are the books and records of the corporation, and such counterpart and such copy of such record shall be subject to examination by any holder of record of voting trust certificates, either in person or by agent or attorney, at any reasonable time for any proper purpose.

(4) At any time before the expiration of such voting trust agreement as originally fixed or as extended one or more times under this subsection, one or more holders of voting trust certificates may, by agreement in writing, extend the duration of such voting trust agreement, nominating the same or substitute trustee or trustees, for an additional period not exceeding 10 years. Such extension agreement shall not affect the rights or obligations of persons not parties to the agreement, and such persons shall be entitled to remove their shares from the trust and promptly have their share certificates reissued to them. The extension agreement shall in every respect comply with and be subject to all the provisions of this section applicable to the original voting trust agreement, except that the 10-year maximum period of duration shall commence on the date of adoption of the extension agreement.

(5) Notwithstanding any other provisions of this section, voting trusts in existence on January 1, 1976, shall continue in full force and effect for the time stated therein if they were valid under the law of this state as it existed on the date they were created.

*History.*—s. 35, ch. 75-250.

*Note.*—Former s. 608.43.

#### **607.107 Shareholders' agreements.—**

(1) An agreement between two or more shareholders, if in writing and signed by the parties thereto, may provide that, in exercising any voting rights, the shares held by them shall be voted as therein provided, as they may agree, or as determined in accordance with a procedure agreed upon by them. Nothing herein shall impair the right of the corporation to treat the shareholders of record as entitled to vote the shares standing in their names.

(2) Except in cases in which the shares of the corporation are listed on a national securities exchange or in which the shares are ones as to which a market exists as evidenced by regular quotations by licensed securities dealers or brokers, no written agreement to which all the shareholders have actually assented, whether embodied in the articles of incorporation or bylaws or in any agreement in writing and signed by all the parties thereto, and which relates to any phase of the affairs of the corporation, whether to the management of its business, division of its profits, or otherwise, shall be invalid as between the parties thereto on the ground that it is an attempt by the parties thereto to restrict the discre-



tion of the board of directors in its management of the business of the corporation, to treat the corporation as if it were a partnership, or to arrange their relationships in a manner that would be appropriate only between partners.

(3) A transferee of shares in a corporation whose shareholders have entered into an agreement authorized by subsection (1) or subsection (2) shall be bound by such agreement if he takes shares subject to such agreement with notice thereof. A transferee shall be deemed to have notice of any such agreement or any such renewal if the existence thereof is noted on the face or back of the certificate or certificates representing such shares.

(4) The effect of any agreement authorized by subsection (2) shall be to relieve the directors and impose upon the shareholders assenting thereto the liability for managerial acts or omissions that is imposed on directors by law, to the extent that, and so long as, the discretion or powers of the board of directors in its management of corporate affairs are controlled by any such agreement.

History.—s. 36, ch. 75-250.

Note.—Former s. 608.75.

#### **607.111 Board of directors; exercise of corporate powers.—**

(1) All corporate powers shall be exercised by or under the authority of, and the business and affairs of a corporation shall be managed under the direction of, a board of directors, except as may be otherwise provided in this chapter or in the articles of incorporation. If any such provision is made in the articles of incorporation, the powers and duties conferred or imposed upon the board of directors by this chapter shall be exercised or performed to such extent and by such person or persons as shall be provided in the articles of incorporation.

(2) Directors need not be residents of this state or shareholders of the corporation unless the articles of incorporation or bylaws so require. The articles of incorporation or bylaws may prescribe other qualifications for directors.

(3) The board of directors shall have authority to fix the compensation of directors unless otherwise provided in the articles of incorporation or bylaws.

(4) A director shall perform his duties as a director, including his duties as a member of any committee of the board upon which he may serve, in good faith, in a manner he reasonably believes to be in the best interests of the corporation, and with such care as an ordinarily prudent person in a like position would use under similar circumstances.

(5) In performing his duties, a director shall be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:

(a) One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented.

(b) Counsel, public accountants, or other persons as to matters which the director reasonably believes to be within such persons' professional or expert competence.

(c) A committee of the board upon which he does not serve, duly designated in accordance with a pro-

vision of the articles of incorporation or the bylaws, as to matters within its designated authority, which committee the director reasonably believes to merit confidence.

(6) A director shall not be considered to be acting in good faith if he has knowledge concerning the matter in question that would cause such reliance described in subsection (4) to be unwarranted.

(7) A person who performs his duties in compliance with this section shall have no liability by reason of being or having been a director of the corporation.

(8) A director of a corporation who is present at a meeting of its board of directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken, unless he votes against such action or abstains from voting in respect thereto because of an asserted conflict of interest.

History.—s. 37, ch. 75-250; s. 1, ch. 77-174.

#### **607.114 Number, election, and classification of directors; vacancies.—**

(1) The board of directors of a corporation shall consist of one or more members. The number of directors shall be fixed by, or in the manner provided in, the articles of incorporation or the bylaws, except as to the number constituting the initial board of directors, which number shall be fixed by the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to, or in the manner provided in, the articles of incorporation or the bylaws, but no decrease shall have the effect of shortening the term of any incumbent director. In the absence of a bylaw providing for the number of directors, the number shall be the same as that provided for in the articles of incorporation.

(2) Each person named in the articles of incorporation as a member of the initial board of directors shall hold office until the first annual meeting of shareholders and his successor shall have been elected and qualified or until his earlier resignation, removal from office, or death.

(3) At the first annual meeting of shareholders and at each annual meeting thereafter, the shareholders shall elect directors to hold office until the next succeeding annual meeting, except in case of the classification of directors as permitted by this chapter. Each director shall hold office for the term for which he is elected and until his successor shall have been elected and qualified or until his earlier resignation, removal from office, or death.

(4) The articles of incorporation or the specific provisions of a bylaw adopted by the shareholders may provide that the directors be divided into not more than four classes, as nearly equal in number as possible, whose terms of office shall respectively expire at different times, but no such term shall continue longer than 4 years, and at least one-fifth in number of the directors shall be elected annually.

(5) If directors are classified and the number of directors is thereafter changed, any increase or decrease in directorships shall be so apportioned among the classes as to make all classes as nearly equal in number as possible.

(6) Any vacancy occurring in the board of direc-

tors, including any vacancy created by reason of an increase in the number of directors, may be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the board of directors. A director elected to fill a vacancy shall hold office only until the next election of directors by the shareholders.

History.—ss. 38-40, ch. 75-250.

**607.117 Removal of directors.**—Unless the articles of incorporation otherwise provide:

(1) At a meeting of shareholders called expressly for that purpose, directors may be removed in the manner provided in this section. Any director or the entire board of directors may be removed, with or without cause, by a vote of the holders of a majority of the shares then entitled to vote at an election of directors.

(2) In the case of a corporation having cumulative voting, if less than the entire board is to be removed, no one of the directors may be removed if the votes cast against his removal would be sufficient to elect him if then cumulatively voted at an election of the entire board of directors or, if there be classes of directors, at an election of the class of directors of which he is a part.

(3) Whenever the holders of the shares of any class are entitled to elect one or more directors by the provisions of the articles of incorporation, the provisions of this section shall apply, in respect to the removal of a director or directors so elected, to the vote of the holders of the outstanding shares of that class and not to the vote of the outstanding shares as a whole.

History.—s. 41, ch. 75-250.

**607.121 Director quorum and voting.**—A majority of the number of directors fixed by, or in the manner provided in, the bylaws or, in the absence of a bylaw fixing or providing for the number of directors, then of the number stated in the articles of incorporation shall constitute a quorum for the transaction of business, unless a greater number is required by the articles of incorporation or the bylaws. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by the articles of incorporation or the bylaws.

History.—s. 42, ch. 75-250.

**607.124 Director conflicts of interest.**—

(1) No contract or other transaction between a corporation and one or more of its directors or any other corporation, firm, association, or entity in which one or more of its directors are directors or officers or are financially interested shall be either void or voidable because of such relationship or interest, because such director or directors are present at the meeting of the board of directors or a committee thereof which authorizes, approves, or ratifies such contract or transaction, or because his or their votes are counted for such purpose, if:

(a) The fact of such relationship or interest is disclosed or known to the board of directors or committee which authorizes, approves, or ratifies the contract or transaction by a vote or consent suffi-

cient for the purpose without counting the votes or consents of such interested directors;

(b) The fact of such relationship or interest is disclosed or known to the shareholders entitled to vote and they authorize, approve, or ratify such contract or transaction by vote or written consent; or

(c) The contract or transaction is fair and reasonable as to the corporation at the time it is authorized by the board, a committee, or the shareholders.

(2) Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or a committee thereof which authorizes, approves, or ratifies such contract or transaction.

History.—s. 43, ch. 75-250.

**607.127 Executive and other committees; designation; authority.**—

(1) Unless the articles of incorporation or the bylaws otherwise provide, the board of directors, by resolution adopted by a majority of the full board of directors, may designate from among its members an executive committee and one or more other committees each of which, to the extent provided in such resolution or in the articles of incorporation or the bylaws of the corporation, shall have and may exercise all the authority of the board of directors, except that no such committee shall have the authority to:

(a) Approve or recommend to shareholders actions or proposals required by this chapter to be approved by shareholders.

(b) Designate candidates for the office of director, for purposes of proxy solicitation or otherwise.

(c) Fill vacancies on the board of directors or any committee thereof.

(d) Amend the bylaws.

(e) Authorize or approve the reacquisition of shares unless pursuant to a general formula or method specified by the board of directors.

(f) Authorize or approve the issuance or sale of, or any contract to issue or sell, shares or designate the terms of a series of a class of shares, except that the board of directors, having acted regarding general authorization for the issuance or sale of shares, or any contract therefor, and, in the case of a series, the designation thereof, may, pursuant to a general formula or method specified by the board by resolution or by adoption of a stock option or other plan, authorize a committee to fix the terms of any contract for the sale of the shares and to fix the terms upon which such shares may be issued or sold, including, without limitation, the price, the rate or manner of payment of dividends, provisions for redemption, sinking fund, conversion, and voting or preferential rights, and provisions for other features of a class of shares, or a series of a class of shares, with full power in such committee to adopt any final resolution setting forth all the terms thereof and to authorize the statement of the terms of a series for filing with the Department of State under this chapter.

(2) The board, by resolution adopted in accordance with subsection (1), may designate one or more directors as alternate members of any such committee who may act in the place and stead of any absent member or members at any meeting of such committee.

(3) Neither the designation of any such commit-

tee, the delegation thereto of authority, nor action by such committee pursuant to such authority shall alone constitute compliance by any member of the board of directors not a member of the committee in question with his responsibility to act in good faith, in a manner he reasonably believes to be in the best interests of the corporation, and with such care as an ordinarily prudent person in a like position would use under similar circumstances.

History.—s. 44, ch. 75-250.

**607.131 Place, time, notice, and call of directors' meetings.—**

(1) Meetings of the board of directors, regular or special, may be held either within or without this state.

(2) Regular meetings of the board of directors may be held with or without notice, as prescribed in the bylaws. Special meetings of the board of directors shall be held upon such notice as is prescribed in the bylaws. Unless otherwise prescribed in the bylaws, written notice of the time and place of special meetings of the board of directors shall be given to each director either by personal delivery or by mail, telegram, or cablegram at least 2 days before the meeting.

(3) Notice of a meeting of the board of directors need not be given to any director who signs a waiver of notice either before or after the meeting. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting and a waiver of any and all objections to the place of the meeting, the time of the meeting, or the manner in which it has been called or convened, except when a director states, at the beginning of the meeting, any objection to the transaction of business because the meeting is not lawfully called or convened.

(4) Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting, unless required by the bylaws.

(5) A majority of the directors present, whether or not a quorum exists, may adjourn any meeting of the board of directors to another time and place. Unless the bylaws otherwise provide, notice of any such adjourned meeting shall be given to the directors who were not present at the time of the adjournment and, unless the time and place of the adjourned meeting are announced at the time of the adjournment, to the other directors.

(6) Meetings of the board of directors may be called by the chairman of the board, by the president of the corporation, by any two directors, or by any other person or persons authorized by the bylaws.

(7) Except as may be otherwise restricted by the articles of incorporation or bylaws, members of the board of directors may participate in a meeting of such board by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.

History.—s. 45, ch. 75-250.

**607.134 Action by directors without a meeting.—**Unless otherwise provided by the articles of incorporation or bylaws, any action required by this chapter to be taken at a meeting of the directors of a corporation, or any action which may be taken at a meeting of the directors or a committee thereof, may be taken without a meeting if a consent in writing setting forth the action so to be taken signed by all of the directors or all the members of the committee, as the case may be, is filed in the minutes of the proceedings of the board or of the committee. Such consent shall have the same effect as a unanimous vote.

History.—s. 46, ch. 75-250.

**607.137 Dividends.—**The board of directors of a corporation may, from time to time, declare, and the corporation may pay, dividends on its shares in cash, property, or its own shares, except when the corporation is insolvent, when the payment thereof would render the corporation insolvent, or when the declaration or payment thereof would be contrary to any restrictions contained in the articles of incorporation, subject to the following provisions:

(1) Dividends in cash or property may be declared and paid, except as otherwise provided in this section, only out of the unreserved and unrestricted earned surplus of the corporation or out of capital surplus, howsoever arising, but each dividend paid out of capital surplus shall be identified as a distribution of capital surplus, and the amount per share paid from such surplus shall be disclosed to the shareholders receiving the same concurrently with the distribution.

(2) If the articles of incorporation of a corporation engaged in the business of exploiting natural resources or other wasting assets so provide, dividends may be declared and paid in cash out of depletion or similar reserves, but each such dividend shall be identified as a distribution of such reserves, and the amount per share paid from such reserves shall be disclosed to the shareholders receiving the same concurrently with the distribution thereof.

(3) Dividends may be declared and paid in its own treasury shares.

(4) Dividends may be declared and paid in its own authorized but unissued shares out of any unreserved and unrestricted surplus of the corporation upon the following conditions:

(a) If a dividend is payable in its own shares having a par value, such shares shall be issued at not less than the par value thereof, and there shall be transferred to stated capital at the time such dividend is paid an amount of surplus equal to the aggregate par value of the shares to be issued as a dividend.

(b) If a dividend is payable in its own shares without par value, such shares shall be issued at such stated value as shall be fixed by the board of directors by resolution adopted at the time such dividend is declared, and there shall be transferred to stated capital at the time such dividend is paid an amount of surplus equal to the aggregate stated value so fixed in respect of such shares, and the amount per share so transferred to stated capital shall be disclosed to the shareholders receiving such dividend concurrently with the payment thereof.



(5) No dividend payable in shares of any class shall be paid to the holders of shares of any other class unless the articles of incorporation so provide or such payment is authorized by the affirmative vote or the written consent of the holders of at least a majority of the outstanding shares of the class in which the payment is to be made.

(6) A splitup or division of the issue shares of any class into a greater number of shares of the same class without increasing the stated capital of the corporation shall not be construed to be a share dividend within the meaning of this section.

History.—s. 47, ch. 75-250.

Note.—Former s. 608.52.

**607.141 Loans to employees and officers; guaranty of obligations of employees and officers.**—Any corporation may lend money to, guarantee any obligation of, or otherwise assist any officer or other employee of the corporation or of a subsidiary, including any officer or employee who is a director of the corporation or of a subsidiary, whenever, in the judgment of the directors, such loan, guaranty, or assistance may reasonably be expected to benefit the corporation. The loan, guaranty, or other assistance may be with or without interest and may be unsecured or secured in such manner as the board of directors shall approve, including, without limitation, a pledge of shares of stock of the corporation. Nothing in this section shall be deemed to deny, limit, or restrict the powers of guaranty or warranty of any corporation at common law or under any statute.

History.—s. 48, ch. 75-250.

**607.144 Liabilities of directors in certain cases.**—

(1) In addition to any other liabilities, a director shall be liable in the following circumstances, unless he complies with the standard provided in this chapter for the performance of the duties of directors:

(a) A director of a corporation who votes for or assents to the declaration of any dividend or other distribution of the assets of a corporation to its shareholders contrary to the provisions of this chapter or contrary to any restrictions contained in the articles of incorporation shall be liable to the corporation, jointly and severally with all other directors so voting or assenting, for the amount of such dividend which is paid or the value of such assets which are distributed in excess of the amount of such dividend or distribution which could have been paid or distributed without a violation of the provisions of this chapter or the restrictions in the articles of incorporation, to the extent that any creditor or shareholder of the corporation has suffered damage as a result thereof.

(b) A director of a corporation who votes for or assents to the purchase of the corporation's own shares contrary to the provisions of this chapter shall be liable to the corporation, jointly and severally with all other directors so voting or assenting, for the amount of the consideration paid for such shares which is in excess of the maximum amount which could have been paid therefor without a violation of the provisions of this chapter, to the extent that any creditor or shareholder of the corporation has suf-

fered damage as a result thereof.

(c) A director who votes for or assents to any distribution of assets of a corporation to its shareholders during the liquidation of the corporation without the payment and discharge of, or making adequate provision for, all known debts, obligations, and liabilities of the corporation shall be liable to the corporation, jointly and severally with all other directors so voting or assenting, for the value of such assets which are distributed, to the extent that such debts, obligations, and liabilities of the corporation are not thereafter paid and discharged.

(2) Any director against whom any claim shall be asserted under or pursuant to this section for the payment of a dividend or other distribution of assets of a corporation and who shall be held liable thereon shall be entitled to contribution from the shareholders who accepted or received any such dividends or assets knowing such dividend or distribution to have been made in violation of this chapter, in proportion to the amounts received by them respectively.

(3) Any director against whom any claim shall be asserted under or pursuant to this section shall be entitled to contribution from the other directors who voted for or assented to the action upon which the claim is asserted.

History.—s. 49, ch. 75-250.

**607.147 Shareholders' derivative actions; security for expenses.**—In any action commenced or maintained by a shareholder of any domestic or foreign corporation to procure a judgment in its favor:

(1) It must be made to appear that the plaintiff was a shareholder or a holder of voting trust certificates at the time of the transaction of which he complains or that his shares or voting trust certificates thereafter devolved upon him by operation of law from a person who was a shareholder or holder of voting trust certificates at such time.

(2) No such action shall be discontinued, compromised, or settled without the approval of the court having jurisdiction of the action. Such court in its discretion, if it shall determine that the interests of the shareholders of such corporation may be substantially affected thereby, may direct that notice, by publication or otherwise, of such proposed discontinuance, compromise, or settlement be given to such shareholders. Shareholders objecting to such settlement must, within a time allowed by the court, show cause why the settlement should not be accepted and approved by the court as fair and reasonable. The court may determine which one or more of the parties to the action shall bear the expense of giving notice in such amount as the court shall determine and find to be reasonable in the circumstances, and the amount of such expense shall be awarded as special costs of the action and recoverable in the same manner as statutory taxable costs.

(3) If the plaintiff or plaintiffs hold less than 5 percent of the outstanding shares or voting trust certificates of such corporation, then, unless the stock or voting trust certificates held by such plaintiff or plaintiffs shall then have a fair value in excess of \$50,000, the court may at any time before final judgment require the plaintiff or plaintiffs to give security for the reasonable expenses, including attorneys' fees, which may be incurred by the corpora-

tion in connection with such action and by the other parties defendant in connection therewith for which such corporation may become legally liable, to which security such corporation shall have recourse in such amount as the court having jurisdiction of such action shall determine upon the termination of such action. The amount of such security may thereafter from time to time be increased or decreased in the discretion of such court upon showing that the security provided has or may become inadequate or excessive.

(4) If the court having jurisdiction of such action upon final judgment shall find that the action was brought without reasonable cause, such court may require the plaintiff or plaintiffs to pay the parties named as defendant the reasonable expenses, including fees of attorneys, incurred by them in the defense of such action.

(5) If the action on behalf of the corporation is successful, in whole or in part, or if anything is received by the plaintiff or plaintiffs as the result of a judgment, compromise, or settlement, the court may award the plaintiff or plaintiffs the reasonable expenses of maintaining the action, including reasonable attorneys' fees, and direct him or them to account to the corporation for the remainder of the proceeds so received by him or them. This subsection shall not apply to any judgment rendered for the benefit of injured shareholders only and limited to a recovery of the loss or damage sustained by them.

History.—s. 50, ch. 75-250; s. 1, ch. 77-174.

Note.—Former s. 608.131.

#### 607.151 Officers.—

(1) The officers of a corporation shall consist of a president, a secretary, and a treasurer, each of whom shall be elected by the board of directors at such time and in such manner as may be prescribed by the bylaws, unless the bylaws prescribe that all officers or specified officers shall be elected by the shareholders instead of the board. Such other officers and assistant officers and agents as may be deemed necessary may be elected or appointed by the board of directors or chosen in such other manner as may be prescribed by the bylaws.

(2) All officers and agents, as between themselves and the corporation, shall have such authority and perform such duties in the management of the corporation as may be provided in the bylaws or as may be determined by resolution of the board of directors not inconsistent with the bylaws.

(3) Any two or more offices may be held by the same person.

(4) A failure to elect a president, a secretary, or a treasurer shall not affect the existence of the corporation.

History.—s. 51, ch. 75-250.

Note.—Former ss. 608.40 and 608.51.

#### 607.154 Removal of officers.—

(1) Any officer or agent elected or appointed by the board of directors may be removed by the board whenever, in its judgment, the best interests of the corporation will be served thereby.

(2) Any officer or agent elected by the shareholders may be removed only by vote of the shareholders, unless the shareholders shall have authorized the

directors to remove such officer or agent.

(3) Any vacancy, however occurring, in any office may be filled by the board of directors, unless the bylaws shall have expressly reserved such power to the shareholders.

(4) Removal as provided in this section shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

History.—s. 52, ch. 75-250.

#### 607.157 Books and records.—

(1) Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its shareholders, board of directors, and committees of directors.

(2) Each corporation shall keep, at its registered office or principal place of business or at the office of its transfer agent or registrar, a record of its shareholders, giving the names and addresses of all shareholders and the number, class, and series, if any, of the shares held by each.

(3) Any books, records, and minutes may be in written form or in any other form capable of being converted into written form within a reasonable time.

(4) Any person who shall have been a holder of record of one quarter of 1 percent of shares or of voting trust certificates therefor at least 6 months immediately preceding his demand or shall be the holder of record of, or the holder of record of voting trust certificates for, at least 5 percent of the outstanding shares of any class or series of a corporation, upon written demand stating the purpose thereof, shall have the right to examine, in person or by agent or attorney, at any reasonable time or times, for any proper purpose its relevant books and records of accounts, minutes, and record of shareholders and to make extracts therefrom.

(5) Any officer or agent who, or corporation which, shall refuse to allow any such shareholder or holder of voting trust certificates or his agent or attorney so to examine and make extracts from its books and records of account, minutes, and record of shareholders for any proper purpose shall be liable to such shareholder or holder of voting trust certificates in a penalty of 10 percent of the value of the shares owned by such shareholder, or in respect of which such voting trust certificates are issued, in addition to any other damages or remedy afforded him by law. It shall be a defense to any action under this section that the person suing therefor has within 2 years sold or offered for sale any list of shareholders or of holders of voting trust certificates for shares of such corporation or any other corporation, has aided or abetted any person in procuring any list of shareholders or of holders of voting trust certificates for any such purpose, has improperly used any information secured through any prior examination of the books and records of account, minutes, or record of shareholders or of holders of voting trust certificates for shares of such corporation or any other corporation, or was not acting in good faith or for a proper purpose in making his demand.

(6) Nothing herein contained shall impair the power of any court of competent jurisdiction, upon

proof by a shareholder or holder of voting trust certificates of proper purpose, irrespective of the period of time during which such shareholder or holder of voting trust certificates shall have been a shareholder of record or a holder of record of voting trust certificates, and irrespective of the number of shares held by him or represented by voting trust certificates held by him, to compel the production for examination by such shareholder or holder of voting trust certificates of the books and records of account, minutes, and record of shareholders of a corporation.

(7) Unless modified by resolution of the stockholders not later than 4 months after the close of each fiscal year, each corporation shall prepare:

(a) A balance sheet showing in reasonable detail the financial conditions of the corporation as of the close of its fiscal year.

(b) A profit and loss statement showing the results of its operation during its fiscal year.

(8) Upon the written request of any shareholder or holder of voting trust certificates for shares of a corporation, the corporation shall mail to such shareholder or holder of voting trust certificates a copy of the most recent balance sheet and profit and loss statement.

(9) Such balance sheets and profit and loss statements shall be filed in the registered office of the corporation in this state, shall be kept for at least 5 years, and shall be subject to inspection during business hours by any shareholder or holder of voting trust certificates, in person or by agent.

*History.*—s. 53, ch. 75-250; s. 7, ch. 76-209.

**607.161 Incorporators.**—One or more persons or a domestic or foreign corporation, partnership, limited partnership, or association may act as incorporator or incorporators of a corporation by signing and delivering, or causing to be delivered, articles of incorporation for such corporation to the Department of State.

*History.*—s. 54, ch. 75-250; s. 8, ch. 76-209.

**607.164 Articles of incorporation; execution; content; delivery and filing.**—

(1) The articles of incorporation shall be executed by the incorporator or incorporators and acknowledged by one of the incorporators signing such articles, and shall set forth:

(a) The name of the corporation.

(b) The duration of the corporation, if other than perpetual, and the date and time of the commencement of the corporate existence if other than the time of the filing of the articles of incorporation by the Department of State.

(c) The general purpose or purposes for which the corporation is initially organized, which may be stated to include the transaction of any or all lawful business for which corporations may be incorporated under this chapter.

(d) The aggregate number of shares which the corporation shall have authority to issue. If such shares are to consist of one class only, the articles of incorporation shall set forth the par value of each of such shares or a statement that all of such shares are without par value or, if such shares are to be divided into classes, the number of shares of each class and a statement of the par value of the shares of each

such class or that such shares are to be without par value.

(e) If the shares are to be divided into classes, the designation of each class and a statement of the preferences, limitations, and relative rights in respect of the shares of each class.

(f) If the corporation is to issue the shares of any preferred or special class in series, then the designation of each series and a statement of the variations in the relative rights and preferences as between series insofar as the same are to be fixed in the articles of incorporation and a statement of any authority to be vested in the board of directors to establish series and fix and determine the variations in the relative rights and preferences as between series.

(g) If any preemptive right is to be granted to shareholders, the provision therefor.

(h) The street address of its initial registered office and the name of its initial registered agent at such address.

(i) The number of directors constituting the initial board of directors, if any, and the name and address of each person who is to serve as a member thereof.

(j) The name and address of each incorporator.

(2) The articles of incorporation may, as a matter of election, also set forth any provision, not inconsistent with law, which the incorporator or incorporators may elect to set forth in the articles of incorporation for the regulation of the business and for the conduct of the affairs of the corporation and any provision creating, defining, limiting, and regulating the powers of the corporation, the directors, and the stockholders or any class of the stockholders, including, but not limited to, any provision restricting the transfer of shares, any provision for cumulative voting for directors, and any provision which under this chapter is required or permitted to be set forth in the bylaws. Any such provision set forth in the articles of incorporation need not be set forth in the bylaws.

(3) It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter.

(4) The articles of incorporation shall be delivered to the Department of State. If the Department of State finds that the articles of incorporation conform to law, it shall, when all fees have been paid as prescribed in this chapter, file the articles of incorporation in accordance with this chapter.

*History.*—ss. 55, 56, ch. 75-250; s. 1, ch. 77-174.

*Note.*—Former s. 608.03.

**607.167 Commencement of corporate existence.**—The date when corporate existence shall commence shall be upon the filing of the articles of incorporation by the Department of State, except that the date of commencement of corporate existence may be specified in the articles of incorporation:

(1) When the date specified in the articles of incorporation is the date of subscription and acknowledgment and the articles of incorporation are filed by the Department of State within 5 days, exclusive of legal holidays, after such date.

(2) When the date specified in the articles of incorporation is subsequent to, and not later than 90



days after, the date of filing the articles of incorporation by the Department of State.

History.—s. 57, ch. 75-250; s. 1, ch. 77-174.

Note.—Former s. 608.04.

#### **607.171 Effect of certificate of incorporation.**

—The certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this chapter, except as against this state in a proceeding to cancel or revoke the certificate of incorporation or for involuntary dissolution of the corporation.

History.—s. 58, ch. 75-250.

#### **607.174 Organization meeting of directors.**

After the corporate existence has begun, an organization meeting of the board of directors named in the articles of incorporation shall be held, either within or without this state, at the call of a majority of the directors named in the articles of incorporation, for the purpose of adopting bylaws, electing officers, and transacting such other business as may come before the meeting. The directors calling the meeting shall give at least 3 days' written notice thereof to each director so named, stating the time and place of the meeting.

History.—s. 59, ch. 75-250.

#### **607.177 Right to amend the articles of incorporation.**

(1) A corporation may amend its articles of incorporation from time to time in any and as many respects as may be desired, if such amendment contains only such provision as might be lawfully contained in the original articles of incorporation filed at the time of making such amendment.

(2) In particular, and without limitation upon such general power of amendment, a corporation may amend its articles of incorporation from time to time so as:

- (a) To change its corporate name.
- (b) To change its period of duration.
- (c) To change, enlarge, or diminish its corporate purposes.
- (d) To increase or decrease the aggregate number of shares, or shares of any class, which the corporation has authority to issue.
- (e) To increase or decrease the par value of the authorized shares of any class having a par value, whether issued or unissued.
- (f) To exchange, classify, reclassify, or cancel all or any part of its shares, whether issued or unissued.
- (g) To change the designation of all or any part of its shares, whether issued or unissued, and to change the preferences, limitations, and relative rights in respect of all or any part of its shares, whether issued or unissued.
- (h) To change shares at the par value, whether issued or unissued, into the same or a different number of shares without par value and to change shares without par value, whether issued or unissued, into the same or a different number of shares having a par value.
- (i) To change the shares of any class, whether issued or unissued and whether with or without par

value, into a different number of shares of the same class or into the same or a different number of shares, either with or without par value, of other classes.

(j) To create new classes of shares having rights and preferences either prior and superior or subordinate and inferior to the shares of any class then authorized, whether issued or unissued.

(k) To cancel or otherwise affect the right of the holders of the shares of any class to receive dividends which have accrued but have not been declared.

(l) To divide any preferred or special class of shares, whether issued or unissued, into series and fix and determine the designations of such series and the variations in the relative rights and preferences as between the shares of such series.

(m) To authorize the board of directors to establish, out of authorized but unissued shares, series of any preferred or special class of shares and fix and determine the relative rights and preferences of the shares of any series so established.

(n) To authorize the board of directors to fix and determine the relative rights and preferences of the authorized but unissued shares of series theretofore established in respect of which either the relative rights and preferences have not been fixed and determined or the relative rights and preferences theretofore fixed and determined are to be changed.

(o) To revoke, diminish, or enlarge the authority of the board of directors to establish series out of authorized but unissued shares of any preferred or special class and fix and determine the relative rights and preferences of the shares of any series so established.

(p) To limit, deny, or grant to shareholders of any class the preemptive right to acquire additional or treasury shares of the corporation, whether then or thereafter authorized.

History.—s. 60, ch. 75-250.

#### **607.181 Procedure to amend articles of incorporation.**

(1) Amendments to the articles of incorporation shall be made in the following manner:

(a) The board of directors shall adopt a resolution setting forth the proposed amendment and, if shares have been issued, directing that it be submitted to a vote at a meeting of shareholders, which may be either the annual or a special meeting. If no shares have been issued, the amendment shall be adopted by a vote of the majority of directors and the provisions for adoption by shareholders shall not apply.

(b) Written notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each shareholder of record entitled to vote thereon within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders. If the meeting is an annual meeting, the proposed amendment or such summary may be included in the notice of such annual meeting.

(c) At such meeting, a vote of the shareholders entitled to vote thereon shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares entitled to vote thereon, unless any class of shares is entitled to vote

thereon as a class, in which event the proposed amendment shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon.

(2) Any number of amendments may be submitted to the shareholders and voted upon by them at one meeting.

(3) If all of the directors and all of the stockholders of the corporation eligible to vote sign a written statement manifesting their intention that an amendment to the articles of incorporation be adopted, then the amendments shall thereby be adopted as though subsection (1) had been satisfied.

(4) The shareholders may amend the articles of incorporation without an act of the directors at a meeting for which notice of the changes to be made is given.

*History.*—s. 61, ch. 75-250.

#### **607.184 Class voting on amendments.—**

(1) The holders of the outstanding shares of a class shall be entitled to vote as a class upon a proposed amendment, whether or not entitled to vote thereon by the provision of the articles of incorporation, if the amendment would:

(a) Increase or decrease the aggregate number of authorized shares of such class.

(b) Increase or decrease the par value of the shares of such class.

(c) Effect an exchange, reclassification, or cancellation of all or part of the shares of such class.

(d) Effect an exchange, or create a right of exchange, of all or any part of the shares of another class into the shares of such class.

(e) Change the designations, preferences, limitations, or relative rights of the shares of such class.

(f) Change the shares of such class, whether with or without par value, into the same or a different number of shares, either with or without par value, of the same class or another class or classes.

(g) Create a new class of shares having rights and preferences prior and superior to the shares of such class or increase the rights and preferences or the number of authorized shares of any class having rights and preferences prior or superior to the shares of such class.

(h) In the case of a preferred or special class of shares, divide the shares of such class into series and fix and determine the designation of such series and the variations in the relative rights and preferences between the shares of such series, or authorize the board of directors to do so.

(i) Limit or deny any existing preemptive rights of the shares of such class.

(j) Cancel or otherwise affect dividends on the shares of such class which have accrued but have not been declared.

(2) Whenever any such amendment shall operate in any manner specified above upon shares of one or more, but not all, of the series of any preferred or special class at the time outstanding, the holders of the outstanding shares of each such series shall for the purpose of this section be deemed a separate

class and entitled to vote as a class on such amendment.

*History.*—s. 62, ch. 75-250.

#### **607.187 Articles of amendment; execution; content; delivery and filing.—**

(1) The articles of amendment shall be executed by the corporation by its president or a vice president and by its secretary or an assistant secretary and acknowledged by one of the officers signing such articles, and shall set forth:

(a) The name of the corporation.

(b) The amendments so adopted.

(c) The date of the adoption of the amendment by the shareholders or by the board of directors when no shares have been issued.

(d) If such amendment provides for an exchange, reclassification, or cancellation of issued shares, and if the manner in which the same shall be effected is not set forth in the amendment, then a statement of the manner in which the same shall be effected.

(2) If the amendment is made by the incorporator or incorporators or director or directors before the issuance of any shares, the articles of amendment shall be executed by the incorporator or incorporators or director or directors, as the case may be, and shall set forth:

(a) The name of the corporation.

(b) The amendment so adopted and the date of the adoption.

(c) A statement that the amendment is made by the incorporator or incorporators or director or directors before the issuance of any shares.

(3) The articles of amendment shall be delivered to the Department of State. If the Department of State finds that the articles of amendment conform to law, it shall, when all fees and taxes have been paid as prescribed in this chapter, file the articles of amendment in accordance with this chapter.

*History.*—ss. 63, 64, ch. 75-250.

#### **607.191 Effect of amendment.—**

(1) Upon the filing of the articles of amendment by the Department of State, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly.

(2) Notwithstanding subsection (1), the date an amendment to the articles of incorporation shall become effective may be specified in the articles of amendment; however, in no event shall the effective date be prior to, or more than 90 days after, the filing of the articles of amendment by the Department of State.

(3) No amendment shall affect any existing cause of action in favor of or against such corporation, any pending suit to which such corporation shall be a party, or the existing rights of persons other than shareholders. In the event the corporation name shall be changed by amendment, no suit brought by or against such corporation under its former name shall abate for that reason.

*History.*—s. 65, ch. 75-250.

#### **607.194 Restated articles of incorporation.—**

(1) A corporation may at any time integrate into a single instrument all of the provisions of its articles of incorporation which are then in effect and

operative as a result of there having theretofore been filed by the Department of State articles of incorporation and any amendments thereto.

(2) Restated articles of incorporation may be adopted by the board of directors without a vote of the stockholders. Restated articles of incorporation shall be specifically designated as such and shall state, either in the heading or in an introductory paragraph, the corporation's present name and, if it has been changed, the name under which it was originally incorporated and the date of filing of its original articles of incorporation by the Department of State. Restated articles of incorporation shall also state that they were duly adopted by the directors, that the restated articles of incorporation only restate and integrate and do not further amend the provisions of the corporation's articles of incorporation as theretofore amended, and that there is no discrepancy between those provisions and the provisions of the restated articles of incorporation. Restated articles of incorporation may omit the provisions of the original articles of incorporation which named the incorporator or incorporators, the initial board of directors, and the original subscribers for shares, if any.

(3) Restated articles of incorporation shall be executed, acknowledged, and filed in accordance with the provisions relating to the filing of amendments to articles of incorporation. Upon the filing of restated articles of incorporation by the Department of State, the corporation's original articles of incorporation, as theretofore amended, shall be superseded, and thenceforth the restated articles of incorporation shall be the articles of incorporation of the corporation.

(4) Amendments may be made simultaneously with restating the articles of incorporation if the requirements of s. 607.187 are complied with.

*History.*—s. 66, ch. 75-250; s. 1, ch. 77-174.

*Note.*—Former s. 608.061.

#### **607.197 Amendment of articles of incorporation in reorganization proceedings.—**

(1) Whenever a plan of reorganization of a corporation has been confirmed by decree or order of a court of competent jurisdiction in proceedings for the reorganization of such corporation pursuant to the provisions of any applicable statute of the United States relating to reorganizations of corporations, the articles of incorporation of the corporation may be amended, in the manner provided in this section, in as many respects as may be necessary to carry out the plan and put it into effect, so long as the articles of incorporation as amended contain only such provisions as might be lawfully contained in original articles of incorporation at the time of making such amendment.

(2) In particular and without limitation upon the general power of amendment set forth in subsection (1), the articles of incorporation may be amended for such purpose so as to:

(a) Change the corporate name, period of duration, or corporate purposes of the corporation.

(b) Repeal, alter, or amend the bylaws of the corporation.

(c) Change the aggregate number of shares or

shares of any class which the corporation has authority to issue.

(d) Change the preferences, limitations, and relative rights in respect of all or any part of the shares of the corporation and classify, reclassify, or cancel all or any part thereof, whether issued or unissued.

(e) Authorize the issuance of bonds, debentures, or other obligations of the corporation, whether or not convertible into shares of any class or bearing warrants or other evidences of optional rights to purchase or subscribe for shares of any class, and fix the terms and conditions thereof.

(f) Constitute or reconstitute and classify or reclassify the board of directors of the corporation and appoint directors and officers in place of or in addition to all or any of the directors or officers then in office.

(3) Amendments to the articles of incorporation pursuant to this section shall be made in the following manner:

(a) Articles of amendment approved by decree or order of such court shall be executed and acknowledged by such person or persons as the court shall designate or appoint for the purpose and shall set forth:

1. The name of the corporation.

2. The amendments of the articles of incorporation approved by the court.

3. The date of the decree or order approving the articles of amendment.

4. The title of the proceedings in which the decree or order was entered.

5. A statement that such decree or order was entered by a court having jurisdiction of the proceedings for the reorganization of the corporation pursuant to the provisions of an applicable statute of the United States.

(b) The articles of amendment shall be delivered to the Department of State. If the Department of State finds that the articles of amendment conform to law, it shall, when all fees and taxes have been paid as prescribed in this chapter, file the articles of amendment in accordance with this chapter.

(c) Upon the filing of the articles of amendment by the Department of State, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly without any action thereon by the directors or shareholders of the corporation and with the same effect as if the amendments had been adopted by unanimous action of the directors and shareholders of the corporation.

*History.*—s. 67, ch. 75-250.

**607.201 Restriction on redemption or purchase of redeemable shares.**—No redemption or purchase of redeemable shares shall be made by a corporation when it is insolvent, when such redemption or purchase would render it insolvent, or which would reduce the net assets below the aggregate amount payable to the holders of shares having prior or equal rights to the assets of the corporation upon involuntary dissolution.

*History.*—s. 68, ch. 75-250.



**607.204 Cancellation of redeemable or other reacquired shares.—**

(1) Shares that have been issued and have been purchased, redeemed, or otherwise reacquired by a corporation shall be canceled if they are reacquired out of stated capital, if they are exchanged or converted shares, or if the articles of incorporation require that such shares be canceled upon reacquisition.

(2) Any shares reacquired by the corporation and not required under subsection (1) to be canceled may be either retained as treasury shares or canceled by the board of directors at the time of reacquisition or at any time thereafter.

(3) Shares canceled under this section are restored to the status of authorized but unissued shares. However, if the articles of incorporation prohibit the reissue of any shares required or permitted to be canceled under this section, a statement of cancellation shall be filed as provided in this section.

(4) The statement of cancellation shall be executed by the corporation by its president or a vice president and by its secretary or an assistant secretary and acknowledged by one of the officers signing such statement and shall set forth:

(a) The name of the corporation.

(b) The number of shares canceled, itemized by classes and series.

(c) The number of shares which the corporation will have authority to issue, itemized by classes and series, after giving effect to such cancellation.

(5) Such statement shall be delivered to the Department of State. If the Department of State finds that such statement conforms to law, it shall, when all fees and taxes have been paid as prescribed in this chapter, file the statement of cancellation in accordance with this chapter.

(6) The filing of the statement of cancellation pursuant to this section shall constitute an amendment to the articles of incorporation and shall reduce the number of shares of the class so canceled which the corporation is authorized to issue by the number of shares so canceled.

(7) Nothing contained in this section shall be construed to forbid a cancellation of shares in any other manner permitted by this chapter.

*History.—s. 69, ch. 75-250.*

**607.207 Reduction of stated capital in certain cases.—**

(1) Except as otherwise provided in the articles of incorporation, the board of directors may at any time reduce the stated capital of a corporation, when such reduction is not accompanied by any action requiring or constituting an amendment of the articles of incorporation, in the following manner:

(a) By eliminating from stated capital amounts previously transferred by the board from surplus to stated capital and not allocated to any designated class or series of shares.

(b) By eliminating any amount of stated capital represented by issued par value shares which exceeds the aggregate par value of such shares.

(c) By reducing the amount of stated capital represented by issued shares without par value. If the consideration for the issue of shares without par value was fixed by the shareholders pursuant to a right

reserved in the articles of incorporation, the board shall not reduce the stated capital represented by such shares except to the extent, if any, that the board was authorized by the shareholders to allocate any portion of such consideration to surplus.

(2) No reduction of stated capital shall be made under the provisions of this section which would reduce the amount of the aggregate stated capital of the corporation to an amount equal to or less than the aggregate preferential amounts payable upon all issued shares having a preferential right in the assets of the corporation in the event of involuntary liquidation, plus the aggregate par value of all issued shares having a par value but no preferential right in the assets of the corporation in the event of involuntary liquidation.

*History.—s. 70, ch. 75-250.*

**607.211 Special provisions relating to surplus and reserves.—**

(1) The surplus, if any, created by or arising out of a reduction of the stated capital of a corporation shall be capital surplus.

(2) The capital surplus of a corporation may be increased from time to time by resolution of the board of directors directing that all or a part of the earned surplus of the corporation be transferred to capital surplus.

(3) A corporation may, by resolution of its board of directors, apply any part or all of its capital surplus to the reduction or elimination of any deficit arising from losses, however incurred, but only after first eliminating the earned surplus, if any, of the corporation by applying such losses against earned surplus and only to the extent that such losses exceed the earned surplus, if any. Each such application of capital surplus shall, to the extent thereof, effect a reduction of capital surplus.

(4) A corporation may, by resolution of its board of directors, create a reserve or reserves out of its earned surplus for any proper purpose or purposes, and may abolish any such reserve in the same manner. Earned surplus of the corporation to the extent so reserved shall not be available for the payment of dividends or other distributions by the corporation except as expressly permitted by this chapter.

*History.—s. 71, ch. 75-250.*

**607.214 Procedure for merger.—**

(1) Any two or more domestic corporations may merge into one of such corporations pursuant to a plan of merger approved in the manner provided in this chapter.

(2) The board of directors of each corporation shall, by resolution adopted by each such board, approve a plan of merger setting forth:

(a) The names of the corporations proposing to merge and the name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation.

(b) The terms and conditions of the proposed merger.

(c) The manner and basis of converting the shares of each corporation into shares, rights, obligations, or other securities of the surviving corporation or of any other corporation or, in whole or in part, into cash or other property.

(d) A statement of any changes in the articles of incorporation of the surviving corporation to be effected by such merger.

(e) Such other provisions with respect to the proposed merger as are deemed necessary or desirable.

*History.—s. 72, ch. 75-250.*

#### **607.217 Procedure for consolidation.—**

(1) Any two or more domestic corporations may consolidate into a new corporation pursuant to a plan of consolidation approved in the manner provided in this chapter.

(2) The board of directors of each corporation shall, by a resolution adopted by each such board, approve a plan of consolidation setting forth:

(a) The names of the corporations proposing to consolidate and the name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation.

(b) The terms and conditions of the proposed consolidation.

(c) The manner and basis of converting the shares of each corporation into shares, rights, obligations, or other securities of the new corporation or of any other corporation or, in whole or in part, into cash or other property.

(d) With respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this chapter.

(e) Such other provisions with respect to the proposed consolidation as are deemed necessary or desirable.

*History.—s. 73, ch. 75-250.*

#### **607.221 Approval by shareholders.—**

(1) The board of directors of each corporation, upon approving such plan of merger or plan of consolidation, shall, by resolution, direct that the plan be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting. Written notice shall be given to each shareholder of record, whether or not entitled to vote at such meeting, in the manner provided in this chapter for the giving of notice of meetings of shareholders, and, whether the meeting be an annual or a special meeting, shall state that the purpose or one of the purposes is to consider the proposed plan of merger or consolidation. A copy or a summary of the plan of merger or plan of consolidation, as the case may be, shall be included in or enclosed with such notice. The notice shall contain a clear and concise statement that, if the plan of merger or consolidation is effected, shareholders dissenting therefrom are entitled, if they file a written objection to such plan before the vote of the shareholders is taken thereon and comply with the further provisions of this chapter regarding the rights of dissenting shareholders, to be paid the fair value of their shares.

(2) At each such meeting, a vote of the shareholders shall be taken on the proposed plan of merger or consolidation. The plan of merger or consolidation shall be approved upon receiving the affirmative vote of the holders of a majority of the shares entitled to vote thereon of each such corporation, unless any class of shares of any such corporation is entitled to vote thereon as a class, in which event, as to such

corporation, the plan of merger or consolidation shall be approved upon receiving the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon. Any class of shares of any such corporation shall be entitled to vote as a class if the plan of merger or consolidation, as the case may be, contains any provision which, if contained in a proposed amendment to articles of incorporation, would entitle such class of shares to vote as a class.

(3) After such approval by a vote of the shareholders of each corporation and at any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation.

(4) Notwithstanding the requirements of subsections (1) and (2), unless required by its articles of incorporation, no vote of shareholders of a corporation surviving a merger shall be necessary to authorize a merger if:

(a) The plan of merger does not amend in any respect the articles of incorporation of such corporation;

(b) Each share of stock of such corporation outstanding immediately prior to the merger becoming effective shall remain outstanding immediately after the merger as an identical share of the surviving corporation; and

(c) The authorized but unissued shares or the treasury shares of common stock of the surviving corporation to be issued or delivered under the plan of merger plus the number of shares of common stock initially issuable upon conversion of any other shares, securities, or obligations to be issued or delivered under such plan (if any such shares of common stock or stock, securities, or obligations convertible into common shares are to be issued or delivered under the plan of merger) do not exceed 20 percent of the shares of common stock of such corporation outstanding immediately prior to the effective date of the merger.

(5) If a plan of merger is adopted by the corporation surviving the merger by action of its board of directors and without any vote of its shareholders pursuant to subsection (4), the secretary or assistant secretary of that corporation shall certify on the plan that the plan has been adopted pursuant to this subsection and that, as of the date of such certificate, the outstanding shares of the corporation were such to render this subsection applicable.

*History.—s. 74, ch. 75-250.*

#### **607.224 Articles of merger or consolidation.—**

(1) Upon such approval pursuant to s. 607.221, articles of merger or articles of consolidation shall be executed by each corporation by its president or a vice president and by its secretary or an assistant secretary and acknowledged by one of the officers of each corporation signing such articles, and shall set forth:

(a) The names of the corporations which are parties to the merger or consolidation, designating which is the surviving corporation in the case of a merger or including the name of the new corporation

in the case of a consolidation.

(b) The plan of merger or consolidation, or:

1. In the case of a merger, with respect to the surviving corporation, a statement of any changes in the articles of incorporation to be effected by the merger.

2. In the case of a consolidation, with respect to the new corporation, all of the statements required to be set forth in the articles of incorporation for corporations organized under this chapter.

(c) As to each corporation, the date of adoption of the plan of merger or plan of consolidation by the shareholders or by the board of directors when no vote of the shareholders is required.

(d) If a plan of merger is adopted by the corporation surviving the merger by action of its board of directors and without a vote of its shareholders pursuant to s. 607.221, a statement to that effect.

(e) If the plan of merger or plan of consolidation provides for an exchange, classification, or cancellation of issued shares and if the manner in which the same shall be effected is not set forth in the articles of incorporation of the new corporation, in the case of a consolidation, or in the amendments to the articles of incorporation of the surviving corporation, in the case of a merger, then, unless the plan of merger or plan of consolidation is set forth in the articles of merger or articles of consolidation, a statement of the manner in which any exchange, classification, or cancellation of issued shares shall be effected.

(2) The articles of merger or articles of consolidation shall be delivered to the Department of State. If the Department of State finds that such articles conform to law, it shall, when all fees and taxes have been paid as prescribed in this chapter, file the articles of merger or articles of consolidation as provided in this chapter.

(3) The surviving or new corporation may cause a copy of the articles of merger or articles of consolidation certified by the Department of State to be filed in the office of the official who is the recording officer of each county in this state in which real property of a constituent corporation other than the surviving corporation is situated.

History.—s. 75, ch. 75-250; s. 9, ch. 76-209; s. 233, ch. 79-400.

#### **607.227 Merger of subsidiary corporation.—**

(1) Any corporation owning at least 90 percent of the outstanding shares of each class of another corporation may merge such other corporation into itself without approval by a vote of the shareholders of either corporation. Its board of directors shall, by resolution, approve a plan of merger setting forth:

(a) The name of the subsidiary corporation and the name of the corporation owning at least 90 percent of its shares, which is hereinafter designated as the surviving corporation.

(b) The manner and basis of converting the shares of the subsidiary corporation into shares, rights, obligations, or other securities of the surviving corporation or of any other corporation or, in whole or in part, into cash or other property.

(2) A copy of such plan of merger shall be mailed to each shareholder of record of the subsidiary corporation. The plan of merger shall contain a clear and concise statement that shareholders of the subsidiary corporation dissenting from the merger are enti-

tled, if they comply with the provisions of this chapter regarding the rights of dissenting shareholders, to be paid the fair value of their shares.

(3) Articles of merger shall be executed by the surviving corporation by its president or a vice president and by its secretary or an assistant secretary and acknowledged by one of its officers signing such articles and shall set forth:

(a) The names of the corporations which are parties to the merger, designating which is the surviving corporation.

(b) The plan of merger or a statement of any changes in the articles of incorporation of the surviving corporation to be effected by the merger.

(c) The number of outstanding shares of each class of the subsidiary corporation and the number of such shares of each class owned by the surviving corporation.

(d) The date of the mailing to shareholders of the subsidiary corporation of a copy of the plan of merger.

(4) On and after the 30th day after the mailing of a copy of the plan of merger to shareholders of the subsidiary corporation or upon the waiver thereof by the holders of all outstanding shares, the articles of merger shall be delivered to the Department of State. If the Department of State finds that such articles conform to law, it shall, when all fees and taxes have been paid as prescribed in this chapter, file the articles of merger in accordance with this chapter.

(5) The surviving corporation shall thereafter cause a copy of the articles of merger certified by the Department of State to be filed in the office of the official who is the recording officer of each county in this state in which real property of a constituent corporation other than the surviving corporation is situated.

History.—s. 76, ch. 75-250.

#### **607.231 Effect of merger or consolidation.—**

(1) Upon the filing of the articles of merger or the articles of consolidation by the Department of State, the merger or consolidation shall be effected.

(2) Notwithstanding subsection (1), the date on which the merger or consolidation shall be effected may be specified in the articles of merger or consolidation; however, in no event shall the effective date be prior to, or more than 90 days after, the filing of the articles of merger or consolidation by the Department of State.

(3) When such merger or consolidation has been effected:

(a) The several corporations parties to the plan of merger or consolidation shall be a single corporation which, in the case of a merger, shall be the corporation designated in the plan of merger as the surviving corporation or, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation.

(b) The separate existence of all corporations parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease.

(c) Such surviving or new corporation shall have all the rights, privileges, immunities, and powers, and shall be subject to all the duties and liabilities, of a corporation organized under this chapter.



(d) Such surviving or new corporation shall thereupon and thereafter possess all the rights, privileges, immunities, and franchises, of a public as well as a private nature, of each of the merging or consolidating corporations. All property, real, personal, and mixed, all debts due on whatever account, including subscriptions to shares, all other choses in action, and all and every other interest of or belonging to or due to each of the corporations so merged or consolidated shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed; and the title to any real estate, or any interest therein, vested in any of such corporations shall not revert or be in any way impaired by reason of such merger or consolidation.

(e) Such surviving or new corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the corporations so merged or consolidated, and any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted as if such merger or consolidation had not taken place, or such surviving or new corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such corporation shall be impaired by such merger or consolidation.

(f) In the case of a merger, the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation are stated in the plan of merger and, in the case of a consolidation, the statements set forth in the articles of consolidation and which are required or permitted to be set forth in the articles of incorporation of corporations organized under this chapter shall be deemed to be the original articles of incorporation of the new corporation.

History.—s. 77, ch. 75-250; s. 1, ch. 77-174.

#### **607.234 Merger or consolidation of domestic and foreign corporations.—**

(1) One or more foreign corporations and one or more domestic corporations may be merged or consolidated in the following manner, if such merger or consolidation is permitted by the laws of the jurisdiction under which each such foreign corporation is organized:

(a) Each domestic corporation shall comply with the provisions of this chapter with respect to the merger or consolidation, as the case may be, of domestic corporations, and each foreign corporation shall comply with the applicable provisions of the laws of the jurisdiction under which it is organized.

(b) If the surviving or new corporation, as the case may be, is to be governed by the laws of any jurisdiction other than this state, it shall comply with the provisions of this chapter with respect to foreign corporations if it is to transact business in this state, and in every case it shall file with the Department of State of this state an agreement that it will promptly pay to the dissenting shareholders of any such domestic corporation the amount, if any, to which they shall be entitled under the provisions of this chapter with respect to the rights of dissenting shareholders.

(2) The effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations if the surviv-

ing or new corporation is to be governed by the laws of this state. If the surviving or new corporation is to be governed by the laws of any jurisdiction other than this state, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations except insofar as the laws of such other jurisdiction provide otherwise.

(3) At any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation.

History.—s. 78, ch. 75-250; s. 10, ch. 76-209.

Note.—Former s. 608.21.

cf.—ss. 607.327, 607.341 Other forms of service of process on foreign corporations.

**607.237 Mortgage or pledge of assets.—**Unless the articles of incorporation provide otherwise, the mortgage or pledge of, or creation of a security interest in, any or all of the property and assets of a corporation for the purpose of securing the payment or performance of any contract, note, bond, or other obligation of the corporation may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of cash or other property, including shares, obligations, or other securities of any other corporation, domestic or foreign, as shall be authorized by its board of directors; and, in any such case, no authorization or consent of the shareholders shall be required.

History.—s. 79, ch. 75-250.

Note.—Former s. 608.19(2).

**607.241 Sale of assets.—**A sale, lease, exchange, or other disposition of all, or substantially all, the property and assets of a corporation, with or without the good will, may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of cash or other property, including shares, obligations, or other securities of any other corporation, domestic or foreign, as may be authorized in the following manner:

(1) The board of directors shall adopt a resolution recommending such sale, lease, exchange, or other disposition and directing the submission thereof to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(2) Written notice shall be given to each shareholder of record, whether or not entitled to vote at such meeting, in the manner provided in this chapter for the giving of notice of meetings of shareholders and, whether the meeting be an annual or a special meeting, shall state that the purpose, or one of the purposes, is to consider the proposed sale, lease, exchange, or other disposition. The notice shall fairly summarize the material features of the proposed transaction and shall contain a clear and concise statement that, if the sale, lease, exchange, or other disposition is effected, shareholders dissenting therefrom are entitled, if they file a written objection to such transaction before the vote of the shareholders is taken thereon and comply with the further provisions of this chapter regarding the rights of dissenting shareholders, to be paid the fair value of their shares.

(3) At such meeting, the shareholders may au-

thorize such sale, lease, exchange, or other disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. Such authorization shall require the affirmative vote of the holders of a majority of the shares of the corporation entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event such authorization shall require the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote as a class thereon and of the total shares entitled to vote thereon.

(4) After such authorization by a vote of shareholders, the board of directors may abandon such sale, lease, exchange, or other disposition of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by shareholders.

**History.**—s. 80, ch. 75-250.

**Note.**—Former s. 608.19(1).

#### **607.244 Right of shareholders to dissent.—**

(1) Any shareholder of a corporation shall have the right to dissent from any of the following corporate actions:

(a) Any plan of merger or consolidation to which the corporation is a party; or

(b) Any sale or exchange of all or substantially all of the property and assets of the corporation, including a sale in dissolution.

(2) A shareholder may dissent as to less than all the shares registered in his name. In that event, his rights shall be determined as if the shares as to which he has dissented and his other shares were registered in the names of different shareholders.

(3) Unless the articles of incorporation otherwise provide, this section shall not apply:

(a) To the shareholders of the surviving corporation in a merger if a vote of the shareholders of such corporation is not necessary to authorize such merger.

(b) To the holders of shares of any class or series which, on the date fixed to determine the shareholders entitled to vote at the meeting of shareholders at which a plan of merger or consolidation or a proposed sale or exchange of property and assets is to be acted upon, were either registered on a national securities exchange or held of record by not less than 2,000 shareholders.

(c) To a sale or exchange pursuant to an order of a court having jurisdiction in the premises.

(d) To a sale for cash on terms requiring that all or substantially all of the net proceeds of sale be distributed to the shareholders in accordance with their respective interests within 1 year after the date of sale.

**History.**—s. 81, ch. 75-250.

**Note.**—Former s. 608.23.

#### **607.247 Rights of dissenting shareholders.—**

(1) Any shareholder electing to exercise a right of dissent shall file with the corporation, prior to the taking of the vote of shareholders on the proposed corporate action, a written objection to such proposed corporate action. If such proposed corporate action be approved by the required vote and such

shareholder shall not have voted in favor thereof, such shareholder may, within 10 days after the date on which the vote was taken, make written demand on the corporation or, in the case of a merger or consolidation, on the surviving or new corporation, domestic or foreign, for payment of the fair value of such shareholder's shares.

(2) Notwithstanding subsection (1), when a merger, consolidation, or sale or exchange of assets has been approved by written consent of shareholders pursuant to s. 607.394, any shareholder failing to give consent or, when a corporation is to be merged without a vote of its shareholders into another corporation, any of its shareholders, may, within 15 days after the plan of such merger, consolidation, or sale or exchange of assets shall have been mailed to such shareholders, make written demand on the corporation or, in the case of a merger or consolidation, the surviving or new corporation, domestic or foreign, for payment of the fair value of such shareholder's shares.

(3) If such proposed corporate action is effected, such corporation shall pay to such shareholder, upon surrender of the certificate or certificates representing such shares, the fair value thereof as of the day prior to the date on which the vote was effected approving the proposed corporate action by the shareholders of the corporation in which the dissenting shareholder owns shares or, in the case of a merger pursuant to s. 607.227, as of the day prior to the date on which a copy of the plan of merger was mailed to each shareholder of record of the subsidiary corporation. In any case, the fair value of shares shall be computed by excluding any appreciation or depreciation in anticipation of such corporation action. Any shareholder failing to make demand within the applicable 10-day or 15-day period shall be bound by the terms of the proposed corporation action. Any shareholder making such demand shall thereafter be entitled only to payment as provided in this section and shall not be entitled to vote or to exercise any other rights of a shareholder.

(4) No such demand may be withdrawn unless the corporation shall consent thereto. However, the right of such shareholder to be paid the fair market value of his shares shall cease, and his status as a shareholder shall be restored without prejudice to any corporate proceedings which may have been taken in the interim, if:

(a) Such demand shall be withdrawn upon consent.

(b) The proposed corporate action shall be abandoned or rescinded or the shareholders shall revoke the authority to effect such action.

(c) In the case of a merger, on the date of the filing of the articles of merger the surviving corporation is the owner of all the outstanding shares of the other corporations, domestic and foreign, that are parties to the merger.

(d) No demand or petition for the determination of fair value by a court shall have been made or filed within the time provided in this section.

(e) A court of competent jurisdiction shall determine that such shareholder is not entitled to the relief provided by this section.

(5) Within 10 days after such corporate action is

effected, the corporation or, in the case of a merger or consolidation, the surviving or new corporation, domestic or foreign, shall give written notice thereof to each dissenting shareholder who has made demand as herein provided, and shall make a written offer to each such shareholder to pay for such shares at a specified price deemed by such corporation to be the fair value thereof. Such notice and offer shall be accompanied by:

(a) A balance sheet of the corporation, the shares of which the dissenting shareholder holds, as of the latest available date and not more than 12 months prior to the making of such offer; and

(b) A profit and loss statement of such corporation for the 12-month period ended on the date of such balance sheet.

(6) If within 30 days after the date on which such corporate action was effected the fair value of such shares is agreed upon between any such dissenting shareholders and the corporation, payment therefor shall be made within 90 days after the date on which such corporate action was effected, upon surrender of the certificate or certificates representing such shares. Upon payment of the agreed value, the dissenting shareholder shall cease to have any interest in such shares.

(7) If within such period of 30 days a dissenting shareholder and the corporation do not so agree, then the corporation, within 30 days after receipt of written demand from any dissenting shareholder given within 60 days after the date on which such corporate action was effected, shall, or at its election at any time within such period of 60 days may, file an action in any court of competent jurisdiction in the county in this state where the registered office of the corporation is located requesting that the fair value of such shares be found and determined. If, in the case of a merger or consolidation, the surviving or new corporation is a foreign corporation without a registered office in this state, such petition shall be filed in the county where the registered office of the domestic corporation was last located. If the corporation shall fail to institute the proceeding as herein provided, any dissenting shareholder may do so in the name of the corporation. All dissenting shareholders, wherever residing, shall be made parties to the proceeding as an action against their shares quasi in rem. A copy of the initial pleading shall be served on each dissenting shareholder who is a resident of this state and shall be served on each dissenting shareholder who is a nonresident. The jurisdiction of the court shall be plenary and exclusive. All shareholders who are parties to the proceeding shall be entitled to judgment against the corporation for the amount of the fair value of their shares. The court may, if it so elects, appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have such power and authority as shall be specified in the order of their appointment or an amendment thereof. The judgment shall be payable only upon and concurrently with the surrender to the corporation of the certificate or certificates representing such shares. Upon payment of the judgment, the dissenting shareholder shall cease to have any interest in such shares.

(8) The judgment shall include an allowance for interest at such rate as the court may find to be fair and equitable in all the circumstances from the date on which the vote was taken on the proposed corporate action to the date of payment.

(9) The costs and expenses of any such proceeding shall be determined by the court and shall be assessed against the corporation, but all or any part of such costs and expenses may be apportioned and assessed as the court may deem equitable against any or all of the dissenting shareholders who are parties to the proceeding, to whom the corporation shall have made an offer to pay for the shares, if the court shall find that the action of such shareholders in failing to accept such offer was arbitrary or vexatious or not in good faith. Such expenses shall include reasonable compensation for, and reasonable expenses of, the appraisers, but shall exclude the fees and expenses of counsel for, and experts employed by, any party. If the fair value of the shares, as determined, materially exceeds the amount which the corporation offered to pay therefor or if no offer was made, the court in its discretion may award to any shareholder who is a party to the proceeding such sum as the court may determine to be reasonable compensation to any expert or experts employed by the shareholder in the proceeding.

(10) Within 20 days after demanding payment for his shares, each shareholder demanding payment shall submit the certificate or certificates representing his shares to the corporation for notation thereon that such demand has been made. His failure to do so shall, at the option of the corporation, terminate his rights under this section unless a court of competent jurisdiction, for good and sufficient cause shown, shall otherwise direct. If shares represented by a certificate on which notation has been so made shall be transferred, each new certificate issued therefor shall bear similar notation, together with the name of the original dissenting holder of such shares, and a transferee of such shares shall acquire by such transfer no rights in the corporation other than those which the original dissenting shareholder had after making demand for payment of the fair value thereof.

(11) Shares acquired by a corporation pursuant to payment of the agreed value thereof or to payment of the judgment entered therefor, as provided in this section, may be held and disposed of by such corporation as in the case of other treasury shares, except that, in the case of a merger or consolidation, they may be held and disposed of as the plan of merger or consolidation may otherwise provide. The shares of the surviving or resulting corporation into which the shares of such dissenting shareholders would have been converted had they assented to the merger or consolidation shall have the status of authorized but unissued shares of the surviving or resulting corporation.

**History.**—s. 82, ch. 75-250; s. 1, ch. 77-174.

**Note.**—Former s. 608.23.

**607.251 Voluntary dissolution by incorporators or directors.**—A corporation which has not commenced business and which has not issued any shares may be voluntarily dissolved:

(1) Before the organizational meeting of the di-



rectors named in the articles of incorporation by the incorporator or incorporators.

(2) At or after the organizational meeting of said directors by the director or directors in the following manner:

(a) Articles of dissolution shall be executed by the incorporator or by the director or a majority of the directors, as the case may be, and acknowledged by him or them, and shall set forth:

1. The name of the corporation.
2. The date of issuance of its certificate of incorporation.
3. That none of the corporation's shares have been issued.
4. That the corporation has not commenced business.
5. That the amount, if any, actually paid in on subscriptions for the corporation's shares, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto.
6. That no debts of the corporation remain unpaid.
7. That the incorporator or a majority of the incorporators, or the director or a majority of the directors, as the case may be, elect that the corporation be dissolved.

(b) The articles of dissolution shall be delivered to the Department of State. If the Department of State finds that the articles of dissolution conform to law, it shall, when all fees and taxes have been paid as prescribed in this chapter, file the articles of dissolution in accordance with this chapter.

(c) Upon the filing of such certificate of dissolution by the Department of State, the existence of the corporation shall cease.

*History.*—s. 83, ch. 75-250; s. 11, ch. 76-209.  
*Note.*—Former s. 608.31.

#### **607.254 Voluntary dissolution by consent of shareholders.—**

(1) A corporation may be voluntarily dissolved by the written consent of all of its shareholders.

(2) Upon the execution of such written consent and after compliance with other provisions of this chapter, the corporation shall file articles of dissolution as provided in this chapter.

*History.*—s. 84, ch. 75-250.

#### **607.257 Voluntary dissolution by act of corporation.—**A corporation may be dissolved by the act of the corporation, when authorized in the following manner:

(1) The board of directors shall adopt a resolution recommending that the corporation be dissolved and directing that the question of such dissolution be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(2) Written notice shall be given to each shareholder of record entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders and, whether the meeting be an annual or special meeting, shall state that the purpose, or one of the purposes, of such meeting is to consider the advisability of dissolving the corporation.

(3) At such meeting a vote of shareholders entitled to vote thereat shall be taken on a resolution to

dissolve the corporation. Such resolution shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares of the corporation entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event the resolution shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon.

(4) Upon the adoption of such resolution and after compliance with other provisions of this chapter, the corporation shall file articles of dissolution as provided in this chapter.

*History.*—s. 85, ch. 75-250.

#### **607.261 Procedure before filing articles of dissolution.—**Before filing articles of dissolution and after the vote authorizing dissolution:

(1) The corporation shall cease to carry on its business, except insofar as may be necessary for the winding up thereof.

(2) The corporation shall immediately cause notice thereof to be mailed to each known creditor of, and claimant against, the corporation.

(3) The corporation shall proceed to collect its assets, convey and dispose of such of its properties as are not to be distributed in kind to its shareholders, pay, satisfy, or discharge its liabilities and obligations or make adequate provision for payment and discharge thereof, and do all other acts required to liquidate its business and affairs. After paying or discharging all its obligations or making adequate provision for payment and discharge thereof, the corporation shall then distribute the remainder of its assets, either in cash or in kind, among its shareholders according to their respective rights and interests.

(4) The corporation, at any time during the liquidation of its business and affairs, may apply to a circuit court to have the liquidation continued under the supervision of the court as provided in this chapter.

*History.*—s. 86, ch. 75-250.

#### **607.264 Revocation of voluntary dissolution proceedings.—**

(1) At any time prior to the filing of articles of dissolution by the Department of State, a corporation may revoke voluntary dissolution proceedings:

(a) By the written consent of all of its shareholders.

(b) By the act of the corporation in the following manner:

1. The board of directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked and directing that the question of such revocation be submitted to a vote at a special meeting of shareholders.

2. Written notice, stating that the purpose or one of the purposes of such meeting is to consider the advisability of revoking the voluntary dissolution proceedings, shall be given to each shareholder of record entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of special meetings of shareholders.

3. At such meeting, a vote of the shareholders entitled to vote thereat shall be taken on a resolution to revoke the voluntary dissolution proceedings, which shall require for its adoption the affirmative vote of the holders of a majority of the shares entitled to vote thereon.

(2) Upon the revocation of voluntary dissolution proceedings, whether by consent of shareholders or by act of the corporation, the corporation may again carry on its business.

*History.*—s. 87, ch. 75-250; s. 12, ch. 76-209.

**607.267 Articles of dissolution; execution; content; delivery and filing.—**

(1) If voluntary dissolution proceedings have not been revoked, then, when all liabilities and obligations of the corporation have been paid or discharged, or adequate provision has been made therefor, and all of the remaining property and assets of the corporation have been distributed to its shareholders according to their respective rights and interests, articles of dissolution shall be executed by the corporation by its president or a vice president and by its secretary or an assistant secretary, and acknowledged by one of the officers signing such statement, which statement shall set forth:

(a) The name of the corporation.

(b) The names and respective addresses of its officers.

(c) The names and respective addresses of its directors.

(d) That all debts, obligations, and liabilities of the corporation have been paid or discharged or that adequate provision has been made therefor.

(e) That all the remaining property and assets of the corporation have been distributed among its shareholders in accordance with their respective rights and interests or that no property remained for distribution to shareholders after applying it to the payment of the liabilities and obligations of the corporation.

(f) That there are no actions pending against the corporation in any court or that adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered against it in any pending action.

(g) If the corporation elected to dissolve by written consent of all shareholders, a copy, which need not be an executed copy, of the written consent to dissolve and a statement that such written consent has been signed by all shareholders of the corporation or signed in their names by their attorneys thereunto duly authorized.

(h) If the corporation elected to dissolve by act of the corporation, a copy of the resolution to dissolve, a statement that such resolution was adopted by the shareholders of the corporation, and the date of the adoption thereof.

(2) Articles of dissolution shall be delivered to the Department of State. If the Department of State finds that such articles of dissolution conform to law, it shall, when all fees and taxes have been paid as prescribed in this chapter, file the articles of dissolution in accordance with this chapter.

(3) Upon the filing of the articles of dissolution by the Department of State, the existence of the corporation shall cease, except for the purpose of suits,

other proceedings, and appropriate corporate action by shareholders, directors, and officers as provided in this chapter.

*History.*—ss. 88, 89, ch. 75-250; s. 13, ch. 76-209.

**607.271 Involuntary dissolution.—**

(1) A corporation may be dissolved involuntarily by a decree of the circuit court for the county in which the registered office of the corporation is situated in an action filed by the Department of Legal Affairs when it is established that:

(a) The corporation procured its articles of incorporation through fraud.

(b) The corporation has exceeded the authority conferred upon it by law; violated any provision of law whereby it has forfeited its charter; carried on, conducted, or transacted its business in a persistently fraudulent or illegal manner; or has, by the abuse of its powers contrary to the public policy of the state, become liable to be dissolved.

(2) A corporation may be dissolved involuntarily by order of the Department of State when the Department of State has determined that:

(a) The corporation has failed to file its annual report or pay the annual report filing fee within the time required by this chapter.

(b) The corporation has failed for 30 days to appoint and maintain a registered agent in this state.

(c) The corporation has failed for 30 days after change of its registered office or registered agent to file in the office of the Department of State a statement of such change.

(3) No corporation shall be involuntarily dissolved under subsection (2) unless the Department of State gives the corporation not less than 90 days' notice of the proposed dissolution, stating the reasons therefor, addressed to its registered office or to its principal place of business and the corporation has failed prior to such involuntary dissolution to correct the reasons for the proposed involuntary dissolution.

(4) If the Department of State shall involuntarily dissolve any corporation under the provisions of subsection (2), it shall issue a certificate to such effect and mail the certificate to the corporation at its registered office or its principal place of business. Upon the issuance of such certificate of involuntary dissolution, the existence of the corporation shall cease, except as otherwise provided by law.

(5) Any corporation dissolved by the Department of State under the provisions of subsection (2) or prior law may be reinstated by the Department of State at any time upon approval of an application for reinstatement signed by an officer or director of the dissolved corporation. Such application shall be filed by the Department of State whenever it is established to its satisfaction that in fact there was no cause for the dissolution or that the reasons for the dissolution have been corrected and all fees, computed at the rate provided by law at the time the corporation applies for reinstatement, have been paid. If the name of the dissolved corporation has been lawfully assumed in this state by another corporation, the Department of State shall require the dissolved corporation to amend its articles of incorporation to change its name before accepting its application for reinstatement. Whenever the application for rein-

statement is approved and filed by the Department of State, the corporate existence shall be deemed to have continued without interruption from the date of dissolution. The reinstatement shall have no effect upon any personal liability of the directors, officers, or agents of the corporation on account of actions taken during the period between dissolution and reinstatement, but the power of the corporation to indemnify such directors, officers, or agents shall extend to actions taken during such period.

(6) The enumeration in subsections (1) and (2) of grounds for involuntary dissolution shall not exclude actions or special proceedings by the Department of Legal Affairs or any state officials for the annulment or dissolution of a corporation for other causes as provided in any other statute of this state.

History.—s. 90, ch. 75-250; s. 1, ch. 77-174.

#### **607.274 Jurisdiction of court to liquidate assets and business of corporation.—**

(1) The circuit courts shall have full power to liquidate the assets and business of a corporation:

(a) In an action by a shareholder when it is established:

1. That the directors are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock and that irreparable injury to the corporation is being suffered or is threatened by reason thereof.

2. That the shareholders are deadlocked in voting power and have failed to elect successors to directors whose terms have expired or would have expired upon qualification of their successors.

3. That the corporate assets are being misapplied or wasted.

(b) In an action by a creditor:

1. When the claim of the creditor has been reduced to judgment and an execution thereon returned unsatisfied and it is established that the corporation is insolvent.

2. When the corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is insolvent.

(c) Upon application by a corporation to have its liquidation continued under the supervision of the court.

(d) When an action has been filed by the Department of Legal Affairs to dissolve a corporation and it is established that liquidation of its business and affairs should precede the entry of a decree of dissolution.

(2) Proceedings under paragraph (1)(a) shall be brought in the county in which the last known principal office of the corporation, as shown by the records of the Department of State, is situated. It shall not be necessary to make shareholders parties to any such action or proceeding unless relief is sought against them personally.

History.—s. 91, ch. 75-250.

#### **607.277 Procedure in liquidation of corporation by court.—**

(1) In proceedings to liquidate the assets and business of a corporation, the court shall have power:

(a) To issue injunctions.

(b) To appoint a receiver or receivers pendente lite with such powers and duties as the court, from

time to time, may direct.

(c) To take such other proceedings as may be requisite to preserve the corporate assets, wherever situated, and carry on the business of the corporation until a full hearing can be had.

(2) After a hearing had upon such notice as the court may direct to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a liquidating receiver or receivers with authority to collect the assets of the corporation, including all amounts owing to the corporation by subscribers on account of any unpaid portion of the consideration for the issuance of shares. Such liquidating receiver or receivers shall have authority, subject to the order of the court, to sell, convey, and dispose of all or any part of the assets of the corporation, wherever situated, either at public or private sale. The assets of the corporation or the proceeds resulting from a sale, conveyance, or other disposition thereof shall be applied to the expenses of such liquidation and to the payment of the liabilities and obligations of the corporation, and any remaining assets or proceeds shall be distributed among its shareholders according to their respective rights and interests. The order appointing such liquidating receiver or receivers shall state their powers and duties. Such powers and duties may be increased or diminished at any time during the proceedings.

(3) The court shall have power to allow, from time to time as expenses of the liquidation, compensation to the receiver or receivers and to attorneys in the proceeding and to direct the payment thereof out of the assets of the corporation or the proceeds of any sale or disposition of such assets.

(4) A receiver of a corporation appointed under the provisions of this section shall have authority to sue and defend in all courts in his own name as receiver of such corporation. The court appointing such receiver shall have exclusive jurisdiction of the corporation and its property, wherever situated.

(5) The circuit court shall have jurisdiction to appoint an ancillary receiver for the assets and business of such corporation, to serve ancillary to the receiver for the assets and business of the corporation acting under orders of a court having jurisdiction to appoint such a receiver for the corporation, located in any other state, whenever circumstances exist deemed by the court to require the appointment of such ancillary receiver. Moreover, such court, whenever circumstances exist deemed by it to require the appointment of a receiver for all the assets in and out of this state, and the business, of a foreign corporation doing business in this state, in accordance with the ordinary usages of equity, may appoint such a receiver for all its assets in and out of this state, and its business, even though no receiver has been appointed elsewhere. Such receivership shall be converted into an ancillary receivership when deemed appropriate by such circuit court in the light of orders entered by a court of competent jurisdiction in some other state, providing for a receivership of all assets and business of such corporation.

History.—s. 92, ch. 75-250.



**607.281 Qualifications of receivers.**—A receiver shall in all cases be a natural person or a corporation authorized to act as receiver, which corporation may be a domestic corporation or a foreign corporation authorized to transact business in this state, and shall in all cases give such bond as the court may direct, with such sureties as the court may require.

*History.*—s. 93, ch. 75-250.

**607.284 Filing of claims in liquidation proceedings.**—In proceedings to liquidate the assets and business of a corporation, the court may require all creditors of the corporation to file with the clerk of the court or with the receiver, in such form as the court may prescribe, proofs under oath of their respective claims. If the court requires the filing of claims, it shall fix a date, which shall be not less than 4 months from the date of the order, as the last day for filing of claims, and shall prescribe the notice of the date so fixed that shall be given to creditors and claimants. Prior to the date so fixed, the court may extend the time for the filing of claims. Creditors and claimants failing to file proofs of claim on or before the date so fixed may be barred, by order of court, from participating in the distribution of the assets of the corporation. Nothing in this section affects the enforceability of any recorded mortgage or lien or the perfected security interest or rights of a person in possession of real or personal property.

*History.*—s. 94, ch. 75-250; s. 14, ch. 76-209.

**607.287 Discontinuance of liquidation proceedings.**—The liquidation of the assets and business of a corporation may be discontinued at any time during the liquidation proceedings when it is established that cause for liquidation no longer exists. In such event, the court shall dismiss the proceedings and direct the receiver to redeliver to the corporation all its remaining property and assets.

*History.*—s. 95, ch. 75-250.

**607.291 Judgment of involuntary dissolution; entry; filing.**—

(1) In proceedings to liquidate the assets and business of a corporation, when the costs and expenses of such proceedings and all debts, obligations, and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets distributed to its shareholders or, in case its property and assets are not sufficient to satisfy and discharge such costs, expenses, debts, and obligations, all the property and assets have been applied so far as they will go to their payment, the court shall enter a judgment dissolving the corporation, whereupon the existence of the corporation shall cease.

(2) In case the court shall enter a judgment dissolving a corporation, it shall be the duty of the clerk of such court to cause a certified copy of the judgment to be filed with the Department of State. No fee shall be charged by the Department of State for the filing thereof.

*History.*—ss. 96, 97, ch. 75-250.

**607.294 Deposit of amount due certain creditors or shareholders with Department of Banking and Finance.**—Upon the voluntary or involuntary dissolution of a corporation, the portion of the assets that is distributable to a creditor or shareholder who is unknown or cannot be found, or who is under disability without any person being legally competent to receive such distributive portion, shall be deposited, within 6 months from the date fixed for the payment of the final liquidating distribution, with the Department of Banking and Finance, where such funds shall be held as abandoned property and shall be paid over to such creditor or shareholder or to his legal representative upon proof satisfactory to the Department of Banking and Finance of his rights thereto.

*History.*—s. 98, ch. 75-250; s. 1, ch. 77-174.

**607.297 Survival of remedy after dissolution.**—The dissolution of a corporation either:

- (1) By the issuance of a certificate of dissolution by the Department of State;
- (2) By a decree of court; or
- (3) By expiration of its period of duration

shall not take away or impair any remedy available to or against such corporation or its directors, officers, or shareholders for any right or claim existing, or any liability incurred, prior to such dissolution if action or other proceeding thereon is commenced within 3 years after the date of such dissolution. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The shareholders, directors, and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right, or claim. If such corporation was dissolved by the expiration of its period of duration, such corporation may amend its articles of incorporation at any time during such period of 3 years so as to extend its period of duration.

*History.*—s. 99, ch. 75-250.

**607.301 Transfer of property after dissolution; powers and duties of directors as trustees.**—

(1) The directors of the corporation at the time of its dissolution shall thereafter be and constitute a board of trustees for any property owned or acquired by the dissolved corporation. If any such trustee shall be unwilling or unable to serve, any vacancy may be filled by the surviving trustees. In the event there be no surviving trustees or none can be located, the circuit court may appoint a trustee or trustees for the purposes of this section.

(2) Notwithstanding the obligation of any corporation to collect its assets, pay, discharge, or make provision for all of its debts, obligations, and liabilities, and distribute any remaining property to its shareholders prior to dissolution, the trustees for a dissolved corporation shall have the power to convey any property or interest therein remaining in the corporation after dissolution or acquired by it thereafter. If the trustees of any dissolved corporation learn that the corporation continues to own any property or interest therein, the trustees shall apply the property or interest therein to the payment of

any corporate debts, liabilities, or obligations known to them and, if there be none, they shall distribute the property or interest therein or the proceeds of the sale therefrom to the shareholders of the corporation at the time of dissolution.

(3) The trustees shall continue as trustees of the property of the dissolved corporation so long as it holds of record in this state any right, title, interest, claim, lien, or demand in, to, or upon real property or for a period of 3 years after dissolution, whichever shall be longer.

(4) The acts of a majority of the trustees, or of a majority of the surviving trustees, constitute the acts of the board of trustees. The trustees executing any instrument may append thereto an affidavit stating in substance that they are duly qualified to act as the trustees and that they constitute a majority of the trustees then existing. The affidavit, as to purchasers without notice, is conclusive as to the facts stated therein.

History.—s. 100, ch. 75-250; s. 15, ch. 76-209.

#### **607.304 Admission of foreign corporation.—**

(1) No foreign corporation shall have the right to transact business in this state until it shall have filed an application for authority to do so with the Department of State. No foreign corporation shall be entitled to file an application for authority under this chapter to transact any business in this state which a corporation organized under this chapter is not permitted to transact. A foreign corporation shall not be denied authority to transact business in this state by reason of the fact that the laws of the state or country under which such corporation is organized governing its organization and internal affairs differ from the laws of this state, and nothing contained in this chapter shall be construed to authorize this state to regulate the organization or the internal affairs of such corporation.

(2) Without excluding other activities which may not constitute transacting business in this state, a foreign corporation shall not be considered to be transacting business in this state, for the purposes of this act, by reason of carrying on in this state any one or more of the following activities:

(a) Maintaining or defending any action or suit or any administrative or arbitration proceeding or effecting the settlement thereof or the settlement of claims or disputes.

(b) Holding meetings of its directors or shareholders or carrying on other activities concerning its internal affairs.

(c) Maintaining bank accounts.

(d) Maintaining officers or agencies for the transfer, exchange, and registration of its securities or appointing and maintaining trustees or depositaries with relation to its securities.

(e) Effecting sales through independent contractors.

(f) Soliciting or procuring orders, whether by mail or through employees, agents, or otherwise, when such orders require acceptance without this state before becoming binding contracts.

(g) Creating, as borrower or lender, or acquiring, indebtedness, mortgages, or other security interests in real or personal property.

(h) Securing or collecting debts or enforcing any

rights in property securing the same.

(i) Transacting any business in interstate commerce.

(j) Conducting an isolated transaction completed within a period of 30 days and not in the course of a number of repeated transactions of like nature.

(k) Owning and controlling a subsidiary corporation incorporated in or transacting business within this state or voting the stock of any corporation which it has lawfully acquired.

History.—s. 101, ch. 75-250.

**607.307 Powers of foreign corporation.—**A foreign corporation for which an application for authority under this chapter has been filed shall, until a certificate of revocation or of withdrawal shall have been issued as provided in this chapter, enjoy the same, but no greater, rights and privileges as a domestic corporation organized for the purposes set forth in the application and, except as otherwise provided in this chapter, shall be subject to the same duties, restrictions, penalties, and liabilities now or hereafter imposed upon a domestic corporation of like character.

History.—s. 102, ch. 75-250.

**607.311 Corporate name of foreign corporation.—**No application for authority shall be issued to a foreign corporation unless the corporate name of such corporation:

(1) Shall contain the word "corporation," "company," or "incorporated" or such other word, abbreviation, affix, prefix, or suffix as will clearly indicate that it is a corporation instead of a natural person or partnership, or such corporation shall, for use in this state, add to its name one of such words or an abbreviation thereof.

(2) Shall not be the same as, or deceptively similar to, the name of any domestic corporation existing under the laws of this state or any foreign corporation authorized to transact business in this state, a name the exclusive right to which is, at the time, reserved in the manner provided in this chapter, or the name of a corporation which has in effect a registration of its name as provided in this chapter, except that this provision shall not apply if the applicant files with the Department of State one of the following:

(a) A resolution of its board of directors adopting a fictitious name for use in transacting business in this state, which fictitious name is not deceptively similar to the name of any domestic corporation or any foreign corporation authorized to transact business in this state or to any name reserved or registered as provided in this chapter.

(b) The written consent of such other corporation or holder of a reserved or registered name to use the same or deceptively similar name and one or more words are added to make such name distinguishable from such other name.

(c) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of such foreign corporation to the use of such name in this state.

History.—s. 103, ch. 75-250.

**607.314 Change of name by foreign corporation.**—No foreign corporation which is authorized to transact business in this state shall change its name to one under which an application for authority would not be filed unless the corporation files with the Department of State the resolution of its board of directors adopting a fictitious name as described in s. 607.311 or the written consent of the other corporation or holder of a reserved or registered name as described in s. 607.311.

*History.*—s. 104, ch. 75-250; s. 16, ch. 76-209.

**607.317 Application for authority to transact business; content; delivery and filing.**—

(1) A foreign corporation, before transacting business in this state, shall make application therefor to the Department of State, which application shall set forth:

(a) The name of the corporation and the state or country under the laws of which it is incorporated.

(b) If the name of the corporation does not contain the word "corporation," "company," or "incorporated" or such other word, abbreviation, affix, prefix, or suffix as will clearly indicate that it is a corporation instead of a natural person or partnership, then the name of the corporation with the word, abbreviation, affix, prefix, or suffix which it elects to add thereto for use in this state.

(c) The date of incorporation and the period of duration of the corporation.

(d) The address of the principal office of the corporation in the state or country under the laws of which it is incorporated.

(e) The address of the proposed registered office of the corporation in this state and the name of its proposed registered agent in this state at such address.

(f) The purpose or purposes of the corporation which it proposes to pursue in the transaction of business in this state.

(g) The name and respective addresses of the directors and officers of the corporation.

(h) A statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.

(i) An estimate, expressed in dollars, of the value of all property to be owned by the corporation for the following year, wherever located, an estimate of the value of the property of the corporation to be located within this state during such year, an estimate, expressed in dollars, of the gross amount of business which will be transacted by the corporation during such year, and an estimate of the gross amount thereof which will be transacted by the corporation at or from places of business in this state during such year.

(j) Such additional information as may be necessary or appropriate in order to enable the Department of State to determine whether such corporation is entitled to file an application for authority to transact business in this state and to determine and assess the fees and taxes payable as prescribed in this chapter.

(2) Such application shall be made on forms prescribed and furnished by the Department of State and shall be executed by the corporation by its presi-

dent or a vice president and by its secretary or an assistant secretary and acknowledged by one of the officers signing such application.

(3) The application of the corporation for authority to transact business in this state shall be delivered to the Department of State, together with a copy of its articles of incorporation and all amendments thereto, duly authenticated by the proper officer of the state or country under the laws of which it is incorporated.

(4) If the Department of State finds that such application conforms to law, it shall, when all fees and taxes have been paid as prescribed in this chapter, file the application for authority to transact business in this state in accordance with this chapter.

*History.*—ss. 105, 106, ch. 75-250.

**607.321 Effect of filing application for authority to transact business.**—Upon the filing of the application for authority by the Department of State, the corporation shall be authorized to transact business in this state for those purposes set forth in its application, subject, however, to the right of this state to suspend or to revoke such authority as provided in this chapter.

*History.*—s. 107, ch. 75-250.

**607.324 Registered office and registered agent of foreign corporation; requirement; change.**—

(1) Each foreign corporation authorized to transact business in this state shall have and continuously maintain in this state:

(a) A registered office which may be, but need not be, the same as its place of business in this state.

(b) A registered agent, which agent may be either an individual resident in this state whose business office is identical with such registered office or a domestic corporation or a foreign corporation authorized to transact business in this state having a business office identical with such registered office.

(2) A foreign corporation authorized to transact business in this state may change its registered office or change its registered agent, or both, upon compliance with the procedures for change of registered office or change of registered agent for domestic corporation in ss. 607.034(3) and 607.037.

(3) Any registered agent of a foreign corporation may resign as such agent or may change his or its business address to another place within the same county upon compliance with the procedures for resignation or change of business address for registered agents of domestic corporations in ss. 607.034(3) and 607.037.

*History.*—ss. 108, 109, ch. 75-250; s. 2, ch. 79-384.

**607.327 Service of process, notice, or demand on a foreign corporation.**—

(1) Process against any foreign corporation may be served in accordance with chapter 48 or chapter 49.

(2) Any notice to or demand on a foreign corporation made pursuant to this chapter may be made in



accordance with the procedures for notice to or demand on domestic corporations under s. 607.041.

**History.**—s. 110, ch. 75-250.

cf.—ss. 607.234, 607.341 Other forms of service of process on foreign corporations.

**607.331 Amendment to articles of incorporation of foreign corporation.**—Whenever the articles of incorporation of a foreign corporation authorized to transact business in this state are amended, such foreign corporation shall, within 30 days after such amendment becomes effective, file with the Department of State a copy of such amendment or in lieu thereof, if provided for by its jurisdiction of incorporation, a copy of its restated, composite, or consolidated articles of incorporation reflecting such amendment, duly authenticated by the proper officer of the state or country under the laws of which it is incorporated; but the filing thereof shall not of itself enlarge or alter the purpose or purposes which such corporation is authorized to pursue in the transaction of business in this state or authorize such corporation to transact business in this state under any other name than the name set forth in its application for authority.

**History.**—s. 111, ch. 75-250.

**607.334 Merger of foreign corporation authorized to transact business in this state.**—Whenever a foreign corporation authorized to transact business in this state shall be a party to a statutory merger permitted by the laws of the state or country under the laws of which it is incorporated and such corporation shall be the surviving corporation, it shall, within 30 days after such merger becomes effective, file with the Department of State a copy of the articles of merger duly authenticated by the proper officer of the state or country under the laws of which such statutory merger was effected; and it shall not be necessary for such corporation to procure either a new or amended certificate of authority to transact business in this state unless the name of such corporation be changed thereby or unless the corporation desires to pursue in this state other or additional purposes than those which it is then authorized to transact in this state.

**History.**—s. 112, ch. 75-250.

**607.337 Amendment to authorization to transact business.**—

(1) A foreign corporation authorized to transact business in this state shall make application to the Department of State to file an amended application for authority within 30 days after it changes its corporate name or enlarges, limits, or otherwise changes the purpose or purposes of the corporation which it proposes to pursue in the transaction of business in this state.

(2) Such application shall be made on forms prescribed by the Department of State, shall be executed and filed in the same manner as an original application for authority, and shall set forth:

(a) The name of the corporation as it appears in its original application for authority and the jurisdiction under the laws of which it is incorporated.

(b) The proposed amendment to its authority.

(c) If the amendment includes a change of name,

a statement that the change of name has been effected under the laws of its jurisdiction of incorporation.

(d) If the amendment enlarges, limits, or otherwise changes the business or businesses which it proposes to do in this state, a statement that it is authorized to do such business in its jurisdiction of incorporation.

(3) The filing of an amended application for authority shall be governed by the same provisions, and the effect of its issuance shall be the same, as in the case of an original application for authority.

**History.**—s. 113, ch. 75-250; s. 17, ch. 76-209.

**607.341 Withdrawal of foreign corporation; application; content; delivery and filing.**—

(1) A foreign corporation authorized to transact business in this state may withdraw from this state upon filing an application for withdrawal with the Department of State. Such application for withdrawal shall set forth:

(a) The name of the corporation and the state or country under the laws of which it is incorporated.

(b) That the corporation is not transacting business in this state.

(c) That the corporation surrenders its authority to transact business in this state.

(d) That the corporation revokes the authority of its registered agent in this state to accept service of process and consents that service of process in any action, suit, or proceeding based upon any cause of action arising in this state during the time the corporation was authorized to transact business in this state may thereafter be made on such corporation by service thereof on the Department of State.

(e) A post-office address to which the Department of State may mail a copy of any process against the corporation that may be served on it.

(2) The application for withdrawal shall be made on forms prescribed and furnished by the Department of State and shall be executed by the corporation by its president or a vice president and by its secretary or an assistant secretary and acknowledged by one of the officers signing the application or, if the corporation is in the hands of a receiver or trustee, shall be executed on behalf of the corporation by such receiver or trustee and acknowledged by him.

(3) The application for withdrawal shall be delivered to the Department of State. If the Department of State finds that such application conforms to the provisions of this chapter, the department shall, when all fees and taxes have been paid as prescribed in this chapter, file such application for withdrawal in accordance with this chapter.

(4) Upon filing such application for withdrawal by the Department of State, the authority of the corporation to transact business in this state shall cease.

**History.**—ss. 114, 115, ch. 75-250.

cf.—ss. 607.234, 607.327 Other forms of service of process on foreign corporations.

**607.344 Revocation of authority to transact business.**—

(1) The authority of a foreign corporation to transact business in this state may be revoked by the

Department of State upon the conditions prescribed in this section when:

(a) The corporation has failed to file its annual report within the time required by this chapter or has failed to pay any fees or taxes prescribed by this chapter when they have become due and payable.

(b) The corporation has failed to appoint and maintain a registered agent in this state as required by this chapter.

(c) The corporation has failed, after change of its registered office or registered agent, to file a statement of such change with the Department of State as required by this chapter.

(d) The corporation has failed to file any amendment to its articles of incorporation or any articles of merger with the Department of State within the time prescribed by this chapter.

(e) A fraudulent misrepresentation or concealment has been made of any material matter in any application, report, affidavit, or other document submitted by such corporation pursuant to this chapter.

(2) The authority of a foreign corporation to transact business shall not be revoked by the Department of State unless:

(a) It shall have given the corporation not less than 60 days' notice thereof by mail addressed to its registered office in this state; and

(b) The corporation shall fail prior to revocation to file such annual report, pay such fees or taxes, file the required statement of change of registered agent or registered office, file such articles of amendment or articles of merger, or correct such misrepresentation.

*History.*—s. 116, ch. 75-250.

#### **607.347 Issuance of certificate of revocation.—**

(1) Upon revoking the authority of a foreign corporation to transact business, the Department of State shall issue a certificate of revocation and file such certificate in accordance with this chapter. The certificate of revocation shall be mailed to the corporation at its registered office in this state.

(2) Upon the issuance of such certificate of revocation, the authority of the corporation to transact business in this state shall cease.

*History.*—s. 117, ch. 75-250.

**607.351 Application to corporations heretofore authorized to transact business in this state.**—Foreign corporations which are duly authorized to transact business in this state at the time this chapter takes effect for a purpose or purposes for which a corporation might secure such authority under this chapter, shall, subject to the limitations set forth in their respective permits to transact business, be entitled to all the rights and privileges applicable to foreign corporations authorized to transact business in this state under this chapter, and from the time this chapter takes effect, such corporations shall be subject to all the limitations, restrictions, liabilities, and duties prescribed herein for foreign corporations authorized to transact business in this state under this chapter.

*History.*—s. 118, ch. 75-250.

#### **607.354 Transacting business without certificate of authority.—**

(1) No foreign corporation transacting business in this state without authority to do so shall be permitted to maintain any action, suit, or proceeding in any court of this state until such corporation shall have obtained authority to transact business in this state. Nor shall any action, suit, or proceeding be maintained in any court of this state by any successor or assignee of such corporation on any right, claim, or demand arising out of the transaction of business by such corporation in this state until authority to transact business in this state shall have been obtained by such corporation or by a corporation which has acquired all or substantially all of its assets.

(2) The failure of a foreign corporation to obtain authority to transact business in this state shall not impair the validity of any contract, deed, mortgage, security interest, lien, or act of such corporation and shall not prevent such corporation from defending any action, suit, or proceeding in any court of this state.

(3) A foreign corporation which transacts business in this state without authority to do so shall be liable to this state, for the years or parts thereof during which it transacted business in this state without authority, in an amount equal to all fees and taxes which would have been imposed by this chapter upon such corporation had it duly applied for and received authority to transact business in this state as required by this chapter and thereafter filed all reports required by this chapter. In addition to the payments thus prescribed, such corporation shall forfeit to this state an amount not less than \$500 or more than \$1,000 for each year or part thereof during which it so transacts business. The Department of Legal Affairs shall bring proceedings to recover all amounts due this state under the provisions of this section.

*History.*—s. 119, ch. 75-250; s. 18, ch. 76-209.

#### **607.357 Annual report of domestic and foreign corporations.—**

(1) Each domestic corporation and each foreign corporation authorized to transact business in this state shall file with the Department of State, on or after January 1 and on or before July 1 of each year, a sworn report on such forms as the Department of State shall prescribe setting forth:

(a) The name of the corporation and the state or country of incorporation.

(b) The date of incorporation or, if a foreign corporation, the date on which it was admitted to do business in this state.

(c) The street address of the principal office of the corporation.

(d) The corporation's federal employer identification number.

(e) The name and street address of each officer.

(f) The name and mailing address of each director.

(g) Such additional information as may be necessary or appropriate to enable the Department of State to carry out the provisions of this chapter.

(2) Proof to the satisfaction of the Department of State that on or before July 1 such report was depos-

ited in the United States mail in a sealed envelope, properly addressed with postage prepaid, shall be deemed a compliance with this requirement.

(3) If the Department of State finds that such report conforms to the requirements of this chapter, it shall file the same. If the Department of State finds that such report does not so conform, it shall promptly return the same to the corporation for any necessary corrections, in which event the penalties hereinafter prescribed for failure to file such report within the time hereinabove provided shall not apply if such report is corrected to conform with the requirements of this chapter and returned to the Department of State within 30 days from the date on which it was mailed to the corporation by the Department of State.

(4) Each report shall be executed by the corporation by its president, vice president, secretary, assistant secretary, or treasurer or, if the corporation is in the hands of a receiver or trustee, shall be executed on behalf of the corporation by such receiver or trustee, and the signing thereof shall have the same legal effect as if made under oath, without the necessity of appending such oath thereto.

(5) The information required to be shown on each annual report shall be determined as of December 31 immediately preceding the annual report due date.

(6) Any corporation failing to file the annual report required by this section shall not be permitted to maintain or defend any action in any court of this state until such report is filed and all taxes due under this chapter are paid, and any corporation failing to file the annual report shall be subject to dissolution or cancellation of its certificate of authority to do business as provided in this chapter.

**History.**—s. 120, ch. 75-250; s. 19, ch. 76-209; s. 5, ch. 79-384.  
**Note.**—Former s. 608.3205.

**607.361 Fees for filing documents and issuing certificates.**—The Department of State shall charge and collect for:

(1) Filing the following when there is no increase in authorized capital stock:

- (a) Amendment to articles of incorporation, \$15;
- (b) Articles of merger or consolidation, for each party to the merger or consolidation, \$15;
- (c) Amendment to articles of incorporation of a foreign corporation authorized to transact business in this state, \$10.

(2) Filing an annual report, \$10.

(3) Filing an application to reserve a corporate name or a notice of transfer of a reserved corporate name, \$5.

(4) Filing a certificate designating a registered agent, changing a registered agent, or resigning as a registered agent, \$3.

(5) Furnishing a certified copy of a certificate designating a registered agent, \$5.

(6) Filing an application of a foreign corporation for authority to transact business in this state, \$15.

(7) Filing an amended application of a foreign corporation for authority to transact business in this state, \$15.

(8) Filing an application of a foreign corporation for withdrawal, \$15.

(9) Filing an application of a foreign corporation to register its corporate name, \$5 for each month or

fraction thereof between the date of filing such application and December 31 of the calendar year in which such application is filed.

(10) Filing an application of a foreign corporation for renewal registration of its corporate name, \$50.

(11) Filing articles of dissolution, \$15.

(12) Filing an application for reinstatement of articles of incorporation or authority to do business, \$15.

(13) Filing any other corporate document, statement, or report, \$15.

(14) Furnishing a certified copy of any other document, instrument, or paper relating to a corporation, \$15.

(15) Serving as agent for service of process, \$5.

**History.**—s. 121, ch. 75-250; s. 20, ch. 76-209; s. 1, ch. 77-410.  
**Note.**—Former s. 608.05.

### **607.364 Tax on incorporation and increases in capital of domestic corporations.**—

(1) The Department of State shall charge and collect a tax on authorized capital stock from each domestic corporation at the time of:

(a) Filing articles of incorporation.

(b) Filing articles of amendment increasing the number of authorized shares.

(c) Filing articles of merger or consolidation increasing the number of authorized shares which the surviving or new corporation, if a domestic corporation, will have authority to issue above the aggregate number of shares which the constituent domestic corporations and constituent foreign corporations authorized to transact business in this state had authority to issue.

(2) The tax for a corporation organized under this chapter to conduct a banking, safe deposit, trust, insurance, surety, express, railroad, canal, telegraph, telephone, or cemetery company, a building and loan association, a mutual fire insurance association, a cooperative association, a fraternal benefit society, a state fair, or an exposition shall be assessed according to the following schedule:

(a) Four dollars upon each \$1,000 of par value of capital stock up to and including \$125,000.

(b) One dollar upon each \$1,000 of par value of capital stock in excess of \$125,000.

(c) Fifty cents upon each \$1,000 of par value of capital stock in excess of \$2 million.

(3) For the purpose of subsection (2), all no-par value stock shall be valued at \$100 per share.

(4) The tax for any corporation organized under this chapter and not included in subsection (2) shall be assessed according to the following schedule:

(a) Four dollars upon each \$1,000 of par value of capital stock up to and including \$125,000.

(b) One dollar upon each \$1,000 of par value of capital stock in excess of \$125,000 and not in excess of \$1 million.

(c) Fifty cents upon each \$1,000 of par value of capital stock in excess of \$1 million and not in excess of \$2 million.

(d) Twenty-five cents upon each \$1,000 of par value of capital stock in excess of \$2 million.

(e) Fifty cents upon each share of no-par value stock up to and including 1,250 shares.

(f) Ten cents upon each share of no-par value



stock in excess of 1,250 and not in excess of 10,000 shares.

(g) One twentieth of one cent upon each share of no-par value stock in excess of 10,000 shares and not in excess of 20,000 shares.

(h) One fortieth of one cent upon each share of no-par value stock in excess of 20,000 shares.

(5) In no case shall the license fee under subsection (4) be less than \$30.

(6) The tax payable on an increase in the number of authorized shares under this section shall be imposed only on the increased number of shares, and the number of previously authorized shares shall be taken into account in determining the rate applicable to the increased number of authorized shares.

**History.**—s. 122, ch. 75-250.

**Note.**—Former s. 608.05.

#### **607.367 Tax on qualification and increases in capital of foreign corporation.—**

(1) The Department of State shall charge and collect a tax on authorized capital stock from each foreign corporation at the time of:

(a) Filing an application for authority to transact business in this state.

(b) Filing articles of amendment increasing the number of authorized shares.

(c) Filing articles of merger or consolidation increasing the number of authorized shares which the surviving or new corporation will have authority to issue above the aggregate number of shares which the constituent domestic corporations and constituent foreign corporations authorized to transact business in this state had authority to issue.

(2) The tax under this section for a foreign corporation shall be that which the corporation would have been required to pay as a tax under s. 607.364 if it had been incorporated under the laws of this state, except that the tax shall be based upon the authorized capital stock represented in this state.

(3) The tax payable on an increase in the number of authorized shares shall be imposed only on the increased number of such shares represented in this state, and the number of previously authorized shares represented in this state shall be taken into account in determining the rate applicable to the increased number of authorized shares.

(4) The number of authorized shares represented in this state shall be that proportion of the corporation's total authorized shares which the sum of the value of its property located in this state and the gross amount of business transacted by it at or from places of business in this state bears to the sum of the value of all of its property, wherever located, and the gross amount of its business, wherever transacted. Such proportion shall be determined from information contained in the application for authority to transact business in this state until the filing of an annual report, and thereafter from information contained in the latest annual report filed by the corporation.

**History.**—s. 123, ch. 75-250.

**607.371 Powers of Department of State.**—The Department of State shall have the power and authority reasonably necessary to enable it to administer this chapter efficiently, to perform the duties

herein imposed upon it, and to promulgate reasonable rules necessary to carry out its duties and functions under this chapter.

**History.**—s. 124, ch. 75-250; s. 21, ch. 76-209.

#### **607.374 Appeal from Department of State.—**

(1) If the Department of State shall fail to approve any articles of incorporation, amendment, merger, consolidation or dissolution, or any other document required by this chapter to be approved by the Department of State before the same shall be filed by the department, it shall, within 10 days after the delivery thereof, give written notice of its disapproval to the person or corporation, domestic or foreign, delivering the same, specifying the reasons therefor. Within 30 days from such disapproval, such person or corporation may appeal to the circuit court of the county in which the registered office of such corporation is, or is proposed to be, situated by filing with the clerk of such court a petition setting forth a copy of the articles or other document sought to be filed and a copy of the written disapproval thereof by the Department of State, whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the Department of State or direct the department to take such action as the court may deem proper.

(2) If the Department of State shall revoke the authority of any foreign corporation to transact business in this state pursuant to the provisions of this chapter, such foreign corporation may likewise appeal to the court of the county where the registered office of such corporation in this state is situated by filing with the clerk of such court a petition setting forth a copy of its application for authority to transact business in this state and a copy of the notice of revocation given by the Department of State, whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the Department of State or direct the department to take such action as the court may deem proper.

(3) Appeals from all final orders and judgments entered by the circuit court under this section in review of any ruling or decision of the Department of State may be taken as in other civil actions.

**History.**—s. 125, ch. 75-250; s. 1, ch. 77-174.

**607.377 Certificates and certified copies to be received in evidence.**—All certificates issued by the Department of State in accordance with the provisions of this chapter, and all documents filed by the Department of State in accordance with the provisions of this chapter and certified copies thereof, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts therein stated. A certificate by the Department of State under the great seal of this state as to the existence or nonexistence of the facts relating to corporations which would not appear from any of the foregoing documents or certificates shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts therein stated.

**History.**—s. 126, ch. 75-250.

**Note.**—Former s. 608.06.

**607.381 Forms to be promulgated by the Department of State.**—Forms may be promulgated by the Department of State for all reports and all other documents required to be filed with the Department of State. The use of such forms, however, shall not be mandatory, except in instances in which the law may specifically so provide.

History.—s. 127, ch. 75-250.

**607.384 Filing by the Department of State.**—When any provision of this chapter provides for filing by the Department of State of any corporate document:

(1) The Department of State shall place on the document or an appendage thereto the word "filed" and the time, day, month, and year of the filing thereof.

(2) The document shall be recorded by photograph, microphotograph, or any other photographic, mechanical, or other process designated by the Department of State for the preservation of corporate documents.

(3) The document may be returned to the corporation or its representative.

History.—s. 128, ch. 75-250.

**607.387 Greater voting requirements for shareholders.**—

(1) Whenever, with respect to any action to be taken by the shareholders of a corporation, the articles of incorporation require the vote or concurrence of the holders of a greater proportion of the shares, or of any class or series thereof, than required by this chapter with respect to such action, the provisions of the articles of incorporation shall control.

(2) Any such provision in the articles of incorporation requiring such greater vote shall not be altered, amended, or repealed except by such greater vote.

(3) The authorization or taking of any action by vote or concurrence of the shareholders may be rescinded or revoked by the same vote or concurrence as at the time of rescission or revocation would be required to authorize or take such action in the first instance, subject to the contract rights of other persons.

History.—s. 129, ch. 75-250.

**607.391 Waiver of notice of meetings of shareholders.**—Whenever any notice is required to be given to any shareholder of a corporation under the provisions of this chapter or under the provisions of the articles of incorporation or bylaws of the corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the shareholders need be specified in any

written waiver of notice unless so required by the articles of incorporation or the bylaws.

History.—s. 130, ch. 75-250.

**607.394 Action by shareholders without a meeting.**—

(1) Unless otherwise provided in the articles of incorporation, any action required by this chapter to be taken at any annual or special meeting of shareholders of a corporation, or any action which may be taken at any annual or special meeting of such shareholders, may be taken without a meeting, without prior notice, and without a vote if a consent in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. If any class of shares is entitled to vote thereon as a class, such written consent shall be required of the holders of a majority of the shares of each class of shares entitled to vote as a class thereon and of the total shares entitled to vote thereon.

(2) Within 10 days after obtaining such authorization by written consent, notice must be given to those shareholders who have not consented in writing. The notice shall fairly summarize the material features of the authorized action and, if the action be a merger, consolidation, or sale or exchange of assets for which dissenters rights are provided under this chapter, the notice shall contain a clear statement of the right of shareholders dissenting therefrom to be paid the fair value of their shares upon compliance with further provisions of this chapter regarding the rights of dissenting shareholders.

(3) In the event that the action to which the shareholders consent is such as would have required the filing of a certificate under any other section of this chapter if such action had been voted on by shareholders at a meeting thereof, the certificate filed under such other section shall state that written consent has been given in accordance with the provisions of this section.

History.—s. 131, ch. 75-250.

**607.397 Unauthorized assumption of corporate power.**—All persons who assume to act as a corporation without authority to do so shall be jointly and severally liable for all debts and liabilities incurred or arising as a result thereof.

History.—s. 132, ch. 75-250.

**607.401 Estoppel.**—No body of persons acting as a corporation shall be permitted to set up the lack of legal organization as a defense to an action against them as a corporation, nor shall any person sued on a contract made with the corporation or sued for an injury to its property or a wrong done to its interests be permitted to set up the lack of such legal organization in his defense.

History.—s. 133, ch. 75-250.

Note.—Former s. 608.50.

**607.404 Application to existing corporation.**—

(1) Subject to the provisions of this section and

existing contract rights, the provisions of this act shall apply to any corporation in existence on the effective date of this act, which was formed or qualified to transact business under the general corporation laws of this state or formed by special act for a purpose or purposes for which a corporation might be formed under this act when the power has been reserved to amend, repeal, or modify the act under which such corporation was organized and when such act is repealed by the act.

(2) Each existing corporation's registered office as of the effective date of this act shall continue to constitute the registered office of the corporation, until changed in accordance with this act.

(3) Each existing corporation's registered agent as of the effective date of this act shall continue to constitute the registered agent of the corporation, until changed in accordance with this act.

(4) It shall not be necessary for any such corporation to amend its articles to set forth the provisions required by this chapter to be set forth in the articles of incorporation or to amend any existing corporate documents or contracts to comply with the provisions of this act.

(5) Each such corporation shall have all of the powers enumerated in s. 607.011 except to the extent that such powers are limited by its articles of incorporation.

(6) Certificates representing shares, fractions of shares, or scrip issued before the effective date of

this act need not be reissued in a form that complies with this act, but certificates issued after the effective date of this act shall comply with this act.

*History.*—s. 134, ch. 75-250.

**607.407 Application to foreign and interstate commerce.**—The provisions of this chapter shall apply to commerce with foreign nations and among the several states only insofar as the same may be permitted under the Constitution and laws of the United States.

*History.*—s. 135, ch. 75-250.

**607.411 Reservation of power.**—The Legislature shall at all times have power to prescribe such regulations, provisions, and limitations as it may deem advisable, which regulations, provisions, and limitations shall be binding upon any and all corporations subject to the provisions of this chapter, and the Legislature shall have power to amend, repeal, or modify this chapter at pleasure.

*History.*—s. 136, ch. 75-250.

**607.414 Effect of repeal of prior acts.**—The repeal of a prior act by this chapter shall not affect any right accrued or established or any liability or penalty incurred under the provisions of such act prior to the repeal thereof.

*History.*—s. 137, ch. 75-250.



## CHAPTER 609

## COMMON LAW DECLARATIONS OF TRUST

- 609.01 Common law declaration of trust.
- 609.02 Filing a declaration of trust.
- 609.03 Issuance of certificate to association.
- 609.04 Unlawful to transact business prior to compliance.
- 609.05 Qualification with Department of Banking and Finance.
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- 609.06 Penalties.
- 609.07 Issuance of certain units, shares, etc.
- 609.08 Merger of association into wholly-owned subsidiary corporation; dissenters' rights of appraisal.

**609.01 Common law declaration of trust.—**

Two or more persons, whether residents of this state or not, may organize and associate themselves together for the purpose of transacting business in this state under what is commonly designated or known as a "declaration of trust"; provided, however, no such association shall ever be permitted or authorized to transact a banking or security business, of any kind, in this state.

*History.*—s. 1, ch. 9125, 1923; s. 1, ch. 11995, 1927; CGL 7091.

**609.02 Filing a declaration of trust.—**

Every such organization organized for the purpose of transacting business in this state, or organized in this state for the purpose of transacting business elsewhere, which intends to sell or offer for sale any units, shares, contracts, notes, bonds, mortgages, oil or mineral leases or other security of such association shall, prior to transacting any such business, file with the Department of State a true and correct copy of the "declaration of trust" under which the association proposes to conduct its business, which copy shall be sworn to, as being a true and correct copy, by the chairman of the board of trustees named in such declaration of trust. When such copy shall have been filed with the Department of State it shall constitute public notice as to the purposes and manner of the business to be engaged in by such association. The Department of State, prior to the issuance of the certificate by it, shall collect from the said association a filing fee of \$200, which fee shall be paid by it into the general fund of the state.

*History.*—ss. 1, 2, ch. 9125, 1923; s. 1, ch. 11995, 1927; CGL 7091, 7092; ss. 10, 35, ch. 69-106; s. 12, ch. 71-114.  
cf.—s. 215.32 State funds, segregation.

**609.03 Issuance of certificate to association.—**

Upon the filing of the copy of the "declaration of trust" and the payment of the filing fee, in compliance with s. 609.02, the Department of State shall issue to the trustees named in the said "declaration of trust" a certificate showing that such "declaration of trust" has been duly filed in its office; whereupon, such association shall be authorized to transact business in this state; provided that all other applicable laws have been complied with.

*History.*—s. 2, ch. 9125, 1923; CGL 7092; ss. 10, 35, ch. 69-106.

**609.04 Unlawful to transact business prior to compliance.**—No person may transact or conduct any business, within this state, under any "declaration of trust," or like association, without first complying with the provisions and requirements of this chapter, and no person organized to do business under any such "declaration of trust," may offer for sale, barter, or exchange any unit, share, contract, note, bond, mortgage, oil or mineral lease or other security of such organization or association, without first having complied with the provisions and requirements of this chapter.

*History.*—s. 1, ch. 9125, 1923; s. 1, ch. 11995, 1927; CGL 7091.

**609.05 Qualification with Department of Banking and Finance.**—Before any person may offer for sale, barter or sell any unit, share, contract, note, bond, mortgage, oil or mineral lease or other security of an association doing business under what is known as a "declaration of trust" in this state, such person shall procure from the Department of Banking and Finance a permit to offer for sale and sell such securities, which permit shall be applied for and granted under the same conditions as like permits are applied for and granted to corporations.

*History.*—s. 3, ch. 9125, 1923; CGL 7093; ss. 12, 35, ch. 69-106.

**609.051 Shares, personal property.**—Shares, however designated, in such trusts are declared for purposes of taxation, to be personal property, and not interest in land, notwithstanding the nature of the property of which the trust shall consist unless otherwise provided in the trust instrument.

*History.*—s. 3, ch. 63-488.

**609.06 Penalties.**—Any person who shall violate any of the provisions of this chapter shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

*History.*—s. 4, ch. 9125, 1923; CGL 8130; s. 635, ch. 71-136.

**609.07 Issuance of certain units, shares, etc.—**

The declaration of trust may provide that the units, shares, certificates of beneficial ownership or interest, or other security issued, or to be issued, in accordance with the provisions thereof shall be fully paid and nonassessable. When the declaration of trust so provides, every holder of any such unit, share, certificate of beneficial ownership or interest, or other security issued by the trust, who has not paid in full the sum agreed to be paid for each unit, share, certificate of beneficial ownership or interest, or other security, shall be personally liable to the trust, or to its creditors, as the case may be, in an amount equal to the portion of said sum remaining unpaid. Such holders shall not otherwise be liable for any debt or obligation of the trust.

*History.*—s. 1, ch. 63-171.

**609.08 Merger of association into wholly-owned subsidiary corporation; dissenters' rights of appraisal.—**

(1) Any association organized under the laws of

this state pursuant to a declaration of trust filed in accordance with the provisions of this chapter, which owns all of the outstanding shares of any corporation, domestic or foreign, may merge into such corporation as provided in this section if such merger is permitted by the laws of the jurisdiction under which such corporation is organized.

(2) The association shall comply with the provisions of this section, and the subsidiary corporation, hereinafter designated the surviving corporation, shall comply with the applicable provisions of the laws of the jurisdiction under which it is organized.

(3) If the surviving corporation is to be governed by the laws of any jurisdiction other than this state, it shall comply with the provisions of chapter 607 with respect to foreign corporations if it is to transact business in this state, and in every case it shall file with the Department of State of this state:

(a) An agreement that it may be served with process in this state in any proceeding for the enforcement of any obligation of the association and in any proceeding for the enforcement of any rights under the declaration of trust of the association of a dissenting shareholder of the association against the surviving corporation.

(b) An irrevocable appointment of the Secretary of State as its agent to accept service of process in any such proceeding.

(c) An agreement that it will promptly pay to the dissenting shareholders of the association the amount, if any, to which they shall be entitled under the provisions of its declaration of trust with respect to the rights of dissenting shareholders.

(4) The board of trustees of the association shall, by resolution adopted by such board, approve a plan of merger setting forth:

(a) The name of the association and the name of the surviving corporation.

(b) The articles of incorporation of the surviving corporation, if revised from original filing.

(c) The manner and basis of converting the shares of the association into shares of the surviving corporation, which shall consist entirely of shares having the characteristics of corporation shares but otherwise with the same relative preferences, limitations and rights amongst themselves as the shares of the association.

(5) The board of trustees of the association, upon approving such plan of merger, shall by resolution direct that the plan be submitted to a vote at a meeting of shareholders of the association, which may be either an annual or a special meeting. Written notice shall be given to each shareholder of record, whether or not entitled to vote at such meeting, in the manner provided in the declaration of trust of the association for giving of notice of meetings of shareholders and, whether the meeting be an annual or a special meeting, shall state that the purpose or one of the purposes is to consider the proposed plan of merger. A copy of a summary of the plan of merger shall be included in or enclosed with such notice. The notice shall contain a clear and concise statement of appraisal rights, if any, to which shareholders of the association dissenting from the plan may be entitled under the provisions of the declaration of trust and the terms, conditions, and procedures for preserving

and perfecting such rights.

(6) At such meeting of shareholders, a vote of the shareholders shall be taken on the proposed plan of merger. The plan of merger shall be approved upon receiving the affirmative vote of a majority of the shares of the association entitled to vote thereon, or such higher percentage as may be required under the provisions of the declaration of trust of the association, unless any class of shares of the association is entitled to vote thereon as a class, in which event the plan of merger shall be approved upon receiving the like percentage of affirmative vote of the holders of each class entitled to vote thereon as a class. Any class of shares of the association shall be entitled to vote as a class if the plan of merger contains any provision which, if contained in a proposed amendment to the declaration of trust, would entitle such class of shares to vote as a class.

(7) After such approval by a vote of the shareholders of the association, and at any time prior to the filing of the articles of merger, the merger may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger.

(8) Upon such approval pursuant to subsection (6), articles of merger shall be executed by the association by the chairman of the board of trustees and acknowledged by him in such capacity, and shall set forth:

(a) The name of the association and the name of the corporation, designating the corporation as the surviving corporation.

(b) The plan of merger.

(c) The dates of adoption of the plan of merger by the shareholders of the association and by the board of directors of the surviving corporation.

(9) The articles of merger shall be delivered to the Department of State. If the Department of State finds that such articles conform to law, it shall, when all fees and taxes have been paid as prescribed in this chapter, and when a filing fee of \$200 has been paid to the Department of State (which fee shall be paid by it into the General Revenue Fund of the state), file the articles of merger.

(10) The surviving corporation shall thereafter cause a copy of the articles of merger certified by the Department of State to be filed in the office of the official who is the recording officer of each county of this state in which real property of the association is situated, but no delay or failure to so file shall impair the validity or effectiveness of the merger.

(11) Upon the filing of the articles of merger by the Department of State, the merger shall be effected.

(12) Notwithstanding the provisions of subsection (11), the date on which the merger shall be effected may be specified in the articles of merger; however, in no event shall the effective date be prior to, or more than 90 days after, the filing of the articles of merger by the Department of State.

(13) When such merger has been effected, it shall have the same effects as those specified for mergers between corporations in s. 607.231(3), regardless of the location of any property, rights, interests, or obligations of any kind or nature whatsoever, within or without this state, except insofar as provided otherwise by the laws of the jurisdiction under which the

surviving corporation is organized if the surviving corporation be a foreign corporation. The personal liability, if any, of any shareholder of the association existing at the time of such merger shall not thereby be extinguished, shall remain personal to such shareholder, and shall not become the liability of any subsequent transferee of any share in the surviving corporation or of any other stockholder of the surviving corporation.

(14) Except as otherwise expressly provided to the contrary in the declaration of trust of any association organized under the laws of this state pursuant to a declaration of trust filed in accordance with this chapter, no shareholder of the association shall have any dissenters' rights of appraisal on account of any merger pursuant to this section or for any other reason.

*History.*—s. 1, ch. 76-150.



## CHAPTER 610

## UNIFORM ACT FOR SIMPLIFICATION OF FIDUCIARY SECURITY TRANSFERS

- 610.011 Short title.
- 610.021 Definitions.
- 610.031 Registration in the name of a fiduciary.
- 610.041 Assignment by a fiduciary.
- 610.051 Evidence of appointment or incumbency.
- 610.061 Adverse claims.
- 610.071 Nonliability of corporation or transfer agent.
- 610.081 Nonliability of third persons.
- 610.091 Territorial application.
- 610.101 Tax obligations.
- 610.111 Uniformity of interpretation.

**610.011 Short title.**—This act may be cited as the "Uniform Act for Simplification of Fiduciary Security Transfers."

*History.*—s. 11, ch. 61-204.

**610.021 Definitions.**—In this act, unless the context otherwise requires:

(1) "Assignment" includes any written stock power, bond power, bill of sale, deed, declaration of trust or other instrument of transfer.

(2) "Claim of beneficial interest" includes a claim of any interest by a decedent's legatee, distributee, heir or creditor, a beneficiary under a trust, a ward, a beneficial owner of a security registered in the name of a nominee, or a minor owner of a security registered in the name of a custodian, or a claim of any similar interest, whether the claim is asserted by the claimant or by a fiduciary or by any other authorized person on his behalf, and includes a claim that the transfer would be in breach of fiduciary duties.

(3) "Corporation" means a private or public corporation, association or trust issuing a security.

(4) "Fiduciary" means an executor, administrator, trustee, guardian, committee, conservator, curator, tutor, custodian or nominee.

(5) "Person" includes an individual, a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(6) "Security" includes any share of stock, bond, debenture, note or other security issued by a corporation which is registered as to ownership on the books of the corporation.

(7) "Transfer" means a change on the books of a corporation in the registered ownership of a security.

(8) "Transfer agent" means a person employed or authorized by a corporation to transfer securities issued by the corporation.

*History.*—s. 1, ch. 61-204.

**610.031 Registration in the name of a fiduciary.**—A corporation or transfer agent registering a security in the name of a person who is a fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent, or correct description of the fiduciary relationship, and thereafter the

corporation and its transfer agent may assume without inquiry that the newly registered owner continues to be the fiduciary until the corporation or transfer agent receives written notice that the fiduciary is no longer acting as such with respect to the particular security.

*History.*—s. 2, ch. 61-204.

**610.041 Assignment by a fiduciary.**—Except as otherwise provided in this act, a corporation or transfer agent making a transfer of a security pursuant to an assignment by a fiduciary:

(1) May assume without inquiry that the assignment, even though to the fiduciary himself or to his nominee, is within his authority and capacity and is not in breach of his fiduciary duties;

(2) May assume without inquiry that the fiduciary has complied with any controlling instrument and with the law of the jurisdiction governing the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer; and

(3) Is not charged with notice of and is not bound to obtain or examine any court record or any recorded or unrecorded document relating to the fiduciary relationship or to the assignment, even though the record or document is in its possession.

*History.*—s. 3, ch. 61-204.

**610.051 Evidence of appointment or incumbency.**—A corporation or transfer agent making a transfer pursuant to an assignment by a fiduciary who is not the registered owner shall obtain the following evidence of an appointment or incumbency:

(1) In the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of that court or an officer thereof and dated within 60 days before the transfer; or

(2) In any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by the corporation or transfer agent to be responsible or, in the absence of such a document or certificate, other evidence reasonably deemed by the corporation or transfer agent to be appropriate. Corporations and transfer agents may adopt standards with respect to evidence of appointment or incumbency under this subsection provided such standards are not manifestly unreasonable. Neither the corporation nor transfer agent is charged with notice of the contents of any document obtained pursuant to this subsection except to the extent that the contents relate directly to the appointment or incumbency.

*History.*—s. 4, ch. 61-204.

**610.061 Adverse claims.**—

(1) A person asserting a claim of beneficial interest adverse to the transfer of a security pursuant to an assignment by a fiduciary may give the corporation or transfer agent written notice of the claim. The corporation or transfer agent is not put on notice unless the written notice identifies the claimant,

the registered owner and the issue of which the security is a part, provides an address for communication directed to the claimant and is received before the transfer. Nothing in this act relieves the corporation or transfer agent of any liability for making or refusing to make the transfer after it is so put on notice, unless it proceeds in the manner authorized in subsection (2).

(2) As soon as practicable after the presentation of a security for transfer pursuant to an assignment by a fiduciary, a corporation or transfer agent which has received notice of a claim of beneficial interest adverse to the transfer may send notice of the presentation by registered or certified mail to the claimant at the address given by him. If the corporation or transfer agent so mails such a notice it shall withhold the transfer for 30 days after the mailing and shall then make the transfer unless restrained by a court order.

History.—s. 5, ch. 61-204.

**610.071 Nonliability of corporation or transfer agent.**—A corporation or transfer agent incurs no liability to any person by making a transfer or otherwise acting in a manner authorized by this act.

History.—s. 6, ch. 61-204.

**610.081 Nonliability of third persons.—**

(1) No person who participates in the acquisition, disposition, assignment or transfer of a security by or to a fiduciary including a person who guarantees the signature of the fiduciary is liable for participation in any breach of fiduciary duty by reason of failure to inquire whether the transaction involves such a breach unless it is shown that he acted with actual knowledge that the proceeds of the transaction were being or were to be used wrongfully for the individual benefit of the fiduciary or that the transaction was otherwise in breach of duty.

(2) If a corporation or transfer agent makes a transfer pursuant to an assignment by a fiduciary, a person who guaranteed the signature of the fiduciary is not liable on the guarantee to any person to whom the corporation or transfer agent by reason of this act incurs no liability.

(3) This section does not impose any liability upon the corporation or its transfer agent.

History.—s. 7, ch. 61-204.

**610.091 Territorial application.—**

(1) The rights and duties of a corporation and its transfer agents in registering a security in the name of a fiduciary or in making a transfer of a security pursuant to an assignment by a fiduciary are governed by the laws of the jurisdiction under whose laws the corporation is organized.

(2) This act applies to the rights and duties of a person other than the corporation and its transfer agents with regard to acts and omissions in this state in connection with the acquisition, disposition, assignment or transfer of a security by or to a fiduciary and of a person who guarantees in this state the signature of a fiduciary in connection with such a transaction.

History.—s. 8, ch. 61-204.

**610.101 Tax obligations.**—This act does not affect any obligations of a corporation or transfer agent with respect to estate, inheritance, succession or other taxes imposed by the laws of this state.

History.—s. 9, ch. 61-204.

**610.111 Uniformity of interpretation.**—This act shall be so construed as to effectuate its general purpose to make uniform the laws of those states which enact it.

History.—s. 10, ch. 61-204.

## CHAPTER 615

## STATE FAIRS AND EXPOSITIONS

- 615.01 Number of persons required to form corporation.
- 615.02 Requisites of proposed charter.
- 615.03 Signing and acknowledgment; approval of charter; letters patent; charter fees.
- 615.04 Evidence of existence and contents of charter.
- 615.05 Not to transact business until charter recorded and certain amount of capital stock subscribed and paid in.
- 615.06 Management until directors elected; board of directors; executive committee.
- 615.07 Other officers.
- 615.08 First meeting; notice; incorporators may waive notice.
- 615.09 Kind of stock; limitation on issuance of preferred stock; redemption; stockholders not personally liable.
- 615.10 Power to operate livestock, agricultural or other fairs.
- 615.11 Not authorized to permit gambling, etc.; forfeiture of charter; annulment proceedings.
- 615.12 Annual audit of accounts by Department of Banking and Finance.
- 615.13 Right to amend act reserved by state.
- 615.14 Liability of stockholders.
- 615.15 Increase and reduction of capital stock.
- 615.16 Amendment of charter.
- 615.17 Change of name.
- 615.18 Provisions of general corporation laws applicable.

**615.01 Number of persons required to form corporation.**—Three or more persons may associate themselves together to form and create a corporation under the laws of Florida to hold, conduct and operate state fairs or expositions, and to exercise other powers granted by this chapter upon making and filing a proposed charter in writing in the manner mentioned in this chapter.

**History.**—s. 1, ch. 7387, 1917; RGS 4481; CGL 6445.  
cf.—Ch. 616 Public Fairs And Expositions.

**615.02 Requisites of proposed charter.**—The proposed charter of every corporation organized under this chapter shall set forth:

- (1) The name of the corporation, which shall contain the word "company," "corporation," "incorporated" or "association."
- (2) The name of the place in the state, where the principal office or place of business is to be located.
- (3) The general nature of the business, objects and purposes proposed to be transacted or carried on.
- (4) The total amount of the authorized capital stock of such corporation which, however, shall be not less than \$25,000 in any case, and the number and par value of the shares into which the same is divided. No corporation organized under this chapter shall commence business until at least \$25,000 of the capital stock shall be subscribed by the incorporators in the proposed charter and shall be paid into

the treasury of said corporation in cash. The capital stock shall be divided into shares of not less than \$1 per share and the amount of the par value shall be fixed in the proposed charter. All payment for capital stock shall be in cash.

(5) The name and the residence of each of the incorporators and the amount of stock subscribed for by each, the total amount of which shall be not less than \$25,000.

(6) The term for which said corporation is to exist.

(7) The highest amount of indebtedness to which the corporation may at any time subject itself.

(8) The proposed charter may also contain any provision which the incorporators may insert therein for the regulation of the business and conduct of the affairs of the corporation and any provisions, creating, defining, limiting and regulating the powers of the corporation and of its directors and stockholders or any class of stockholders.

**History.**—s. 2, ch. 7387, 1917; RGS 4482; CGL 6446.

**615.03 Signing and acknowledgment; approval of charter; letters patent; charter fees.**—

The proposed charter shall be signed by at least three subscribers to the capital stock and shall be acknowledged before an officer authorized to take acknowledgments of deeds; and thereupon said proposed charter shall be filed with the Department of State, which shall produce the same to the Governor, who shall examine the same and if he shall find it to be in proper form and for the objects authorized by law, letters patent shall be issued by the Governor and the Department of State incorporating said subscribers, their associates and successors into a body politic and corporate by deed and in law by the name chosen, for the purposes and upon the terms and provisions set forth in said charter. The Department of State shall annex to the letters patent a certified copy of said charter, retaining the original on file, and before delivering the letters patent shall record them and said charter in a book kept for that purpose, and shall receive from the corporation, before delivery, in addition to the fees allowed by law, the same charter tax or fee as now provided by law in respect to the incorporation of corporations for profit under the laws of Florida.

**History.**—s. 3, ch. 7387, 1917; RGS 4483; CGL 6447; ss. 10, 35, ch. 69-106.

**615.04 Evidence of existence and contents of charter.**—The letters patent or a certified copy thereof given by the Department of State under the great seal shall be evidence of the existence of such corporation in all actions and proceedings. The original charter with the certificate of the recording thereof in the Department of State endorsed thereon, or a copy from the record thereof certified by the Department of State shall be evidence of the contents of said charter in all actions and proceedings.

**History.**—s. 4, ch. 7387, 1917; RGS 4484; CGL 6448; ss. 10, 35, ch. 69-106.



**615.05 Not to transact business until charter recorded and certain amount of capital stock subscribed and paid in.**—No such corporation shall transact any business until it shall have had said letters patent or a certified copy thereof with a certified copy of said charter recorded in the office of the Clerk of the Circuit Court for the county wherein the principal place of business is located, and shall file with the Department of State and with the Clerk of the Circuit Court duplicate affidavits by its treasurer that \$25,000 of its capital stock has been duly subscribed and has been paid for in cash.

*History.*—s. 5, ch. 7387, 1917; RGS 4485; CGL 6449; ss. 10, 35, ch. 69-106.

**615.06 Management until directors elected; board of directors; executive committee.**—Until the directors are elected, the signers of the charter shall have the direction of the affairs and organization of said corporation, and shall take such steps as are proper to obtain subscriptions to the corporate stock and complete the organization of the corporation. The business of every corporation organized under this chapter shall be managed by a board of not less than three directors, who shall be elected by the stockholders and shall hold office until their successors are respectively elected and qualified. The number of the directors shall be fixed by the charter, but may be changed, increased or diminished at any time by the stockholders, and there shall be no restriction on the number of directors, except that there shall never be less than three directors. The board of directors may by resolution designate three or more of their number to constitute an executive committee, who, to the extent provided in such resolution or bylaws of the company, shall have and exercise the powers of the board of directors in the conduct and management of the business and affairs of the corporation, and shall have the power to authorize the seal of the company to be affixed to all papers requiring it. The charter may provide that the directors may be divided into two or more classes, each class to hold office for such period as may be therein prescribed.

*History.*—s. 6, ch. 7387, 1917; RGS 4486; CGL 6450.

**615.07 Other officers.**—Every corporation organized under this chapter shall have a president, one or more vice presidents, a secretary and a treasurer, who shall be chosen by the directors as and when the bylaws may direct. The bylaws of said corporation may provide for as many vice presidents as may be desired. The corporation may have such other officers, agents or representatives as may be deemed necessary, who shall be chosen in such manner and hold their offices for such terms as may be prescribed by the bylaws, or, in the absence of the bylaws, then by the board of directors. The failure to elect any officer of this corporation at the time prescribed by law or by the certificate of incorporation or bylaws shall not dissolve or affect the validity of the corporation. Any vacancy occurring in the office of any officer, by death, resignation, removal or otherwise, shall be filled as provided for in the bylaws, or, in the absence of such provision, by the directors. It shall not be necessary for the president, vice presi-

dent, secretary and treasurer or any of them to be members of the board of directors.

*History.*—s. 7, ch. 7387, 1917; RGS 4487; CGL 6451.

**615.08 First meeting; notice; incorporators may waive notice.**—The first meeting of the corporation shall be called by a notice signed by a majority of the subscribing incorporators, designating the time, place, and purpose of the meeting. Such notice shall be published once a week for at least 2 weeks before such meeting in a newspaper published in the county where the corporation has its principal place of business, but said subscribing incorporators may waive such notice and in writing fix the time and place of such meeting without such publication.

*History.*—s. 8, ch. 7387, 1917; RGS 4488; CGL 6452.

**615.09 Kind of stock; limitation on issuance of preferred stock; redemption; stockholders not personally liable.**—Every corporation organized under this chapter may create two or more kinds of stock of such classes, with such designation, preferences or voting stated in the certificate of incorporation. The power to increase or decrease stock shall apply to all or any of such classes of stock. At no time shall the total amount of preferred stock exceed two-thirds of the actual paid-in capital. Such preferred stock may, if desired, be subject to redemption at not less than par at a time and price to be stated in such stock certificate. In no event shall the holders of any stock of any such corporation organized under this chapter, of whatever character or class, be personally liable for any of the debts of such corporation. All stock of every kind of any corporation organized under this chapter shall be issued for cash only.

*History.*—s. 9, ch. 7387, 1917; RGS 4489; CGL 6453.

**615.10 Power to operate livestock, agricultural or other fairs.**—Every corporation organized under this chapter shall have the power, in addition to the provisions contained in the charter thereof for the regulation of the business and conduct of the affairs of said corporation and creating, limiting, defining and regulating the powers of said corporations, to hold, conduct and operate state, livestock, agricultural, horticultural or other fairs or expositions at any or all times, or from time to time, and for that purpose to buy, lease, acquire, and occupy lands, and to erect buildings and improvements of all kinds thereon, and to develop the same, and to sell, mortgage, lease or convey such property, or any part thereof in its discretion from time to time; and to charge and receive compensation for admission to such fairs or expositions, and the sale or renting of space for exhibition or other privileges, and to conduct and hold public meetings, to supervise and conduct lectures and demonstration work in connection with or for the improvement of agriculture, horticulture and stockraising and all kinds of farming and matters connected therewith; to hold exhibits of agricultural and horticultural products, livestock, chickens and domestic animals and to give certificates or diplomas of excellence, and generally to do, perform and carry out all matters, acts and businesses usual or proper in connection with state or county fairs or expositions; but this enumeration of

particular powers shall not be in derogation of or limit any special provision of the charter of such corporation inserted for the regulation of its business and the conduct of its affairs, or creating, defining, limiting and regulating the powers of the corporation, its directors, stockholders or any class of stockholders.

**History.**—s. 10, ch. 7387, 1917; RGS 4490; CGL 6454.

**615.11 Not authorized to permit gambling, etc.; forfeiture of charter; annulment proceedings.**—Nothing in this chapter shall be held or construed to authorize or permit any corporation organized hereunder to carry on, conduct, supervise, permit or suffer any gambling or game of chance, lottery, betting or other act in violation of the criminal laws of the state; and any corporation organized under this chapter which shall violate any of said laws or which shall knowingly permit the same to be done shall be subject to forfeiture of its charter; and if any citizen shall complain to the Department of Legal Affairs that any corporation organized under this chapter was organized for or is being used as a cover to evade any of the laws of Florida against crime and shall submit prima facie evidence to sustain such charge, the Department of Legal Affairs shall institute and in due course prosecute to final judgment such proceedings as may be necessary to annul the charter and letters patent of such corporation, and writs of injunction or other extraordinary process shall be issued by courts of chancery on the application of the Department of Legal Affairs on complaint pending any such annulment proceeding and in aid thereof, and all such cases shall be given precedence over all civil cases pending in such courts and shall be heard and disposed of with as little delay as practicable.

**History.**—s. 11, ch. 7387, 1917; RGS 4491; CGL 6455; s. 2, ch. 29737, 1955; ss. 11, 35, ch. 69-106.

**615.12 Annual audit of accounts by Department of Banking and Finance.**—Once each year a complete audit of the books and accounts of every corporation organized under this chapter shall be made by or under the direction of the Department of Banking and Finance at an expense to said corporation not to exceed \$100 for such examination. The said department may make such additional audits of the books and accounts of said corporation from time to time as it may deem proper upon the application of any creditor or stockholder of any such corporation, accompanied by a cash deposit of not less than \$100 but no such examination shall be made upon the application of a creditor or stockholder unless in the judgment of the department the same shall promote the best interests of the corporation, its creditors and stockholders. The results of all such audits shall be kept on file in the department, and one copy certified by it shall be forwarded to the secretary of said corporation, who shall at the request of any stockholder or creditor exhibit the same for inspection. The department shall furnish a certified copy of any such audit to any stockholder or creditor applying therefor upon the payment of the same fees

as prescribed by law for certified copies made by clerks of the circuit courts.

**History.**—s. 12, ch. 7387, 1917; RGS 4492; CGL 6456; ss. 12, 35, ch. 69-106. cf.—s. 28.24 Service charges by clerk of the circuit court.  
s. 696.05 Photographic recording by clerk of circuit court.

**615.13 Right to amend act reserved by state.**—The right to amend, alter, modify or repeal this chapter is reserved by the state, and any corporation organized under this chapter may avail itself of any amendment of this chapter.

**History.**—s. 13, ch. 7387, 1917; RGS 4493; CGL 6457.

**615.14 Liability of stockholders.**—The stockholders of any corporation organized under this chapter shall be liable only to an extent equal in amount for so much as remains unpaid upon their subscription to the capital stock, and no further and not otherwise and no stockholder of any such corporation shall be liable to any such corporation or to any subscriber of the proposed charter thereof for the payment of any debts, obligations or liabilities of any such corporation, except only to the extent of the amount remaining unpaid upon his subscription.

**History.**—s. 14, ch. 7387, 1917; RGS 4494; CGL 6458.

**615.15 Increase and reduction of capital stock.**—Any corporation organized under this chapter may increase its capital stock to any amount by holding an election of the stockholders at its place of business after having published notice of the time, place and object of the meeting once a week for 2 successive weeks prior thereto in a newspaper published in the county, and having served or mailed the usual notice for stockholders' meeting, and if at such meeting two-thirds of all the stockholders shall vote to increase the capital stock, the president, within 30 days thereafter shall make return to the Department of State, under oath, of the amount of such increase and the terms under which such additional stock is issued, and from the time said return is made and filed the increase of stock shall be authorized and when issued shall become a part of the capital of said corporation. Any corporation may reduce its capital stock or the number or par value of the shares thereof within the limits allowed by law by a two-thirds vote of its stockholders in the same manner as is provided herein for the increase of capital stock, provided that the Department of Banking and Finance endorse its certificate upon the affidavit that in its judgment the ability of the corporation to meet its outstanding indebtedness and liabilities will not be impaired thereby.

**History.**—s. 15, ch. 7387, 1917; RGS 4495; CGL 6459; ss. 10, 12, 35, ch. 69-106.

**615.16 Amendment of charter.**—Any corporation organized under this chapter desiring to amend or alter its charter shall adopt the proposed amendment or alteration by a vote of two-thirds of all of its stock at a meeting called or notified as provided for meetings for the increase of capital stock. If the proposed amendment be so adopted, the corporation shall prepare a certificate under its common seal verified by the president or a vice president, of the proposed alteration or amendment adopted as aforesaid, which certificate shall be filed with the Department of State, which shall produce the same to the Governor, who shall examine the same, and if he

finds it to be in proper form and in accordance with law, he shall approve the same; and thereupon letters patent shall be issued reciting the alteration or amendment in question, and said letters patent shall then be recorded with the Department of State and in the office of the Clerk of the Circuit Court where the original charter was recorded, and from the date of recording with the Department of State, said alteration or amendment shall be taken and considered as a part of said charter.

**History.**—s. 16, ch. 7387, 1917; RGS 4496; CGL 6460; ss. 10, 35, ch. 69-106.

**615.17 Change of name.**—Any corporation organized under this chapter desiring to change its name shall so resolve at any general meeting of its stockholders, and upon filing a certificate of the resolution, under its common seal, with the Department of State, letters patent shall issue reciting the change of name, which letters patent shall be recorded as provided for amendment of the charter. No two corporations shall bear the same corporate name.

**History.**—s. 17, ch. 7387, 1917; RGS 4497; CGL 6461; ss. 10, 35, ch. 69-106; s. 206, ch. 77-104.

**615.18 Provisions of general corporation laws applicable.**—Provisions of chapter 607, relating to corporations for profit, so far as not in conflict or inconsistent with the terms of this chapter, shall apply to corporations formed or organized under this chapter as fully and to the same extent as if the provisions of such statutes were set forth and repeated therein, and every corporation formed under this chapter shall have all of the rights, powers and privileges, in addition to those conferred by this chapter, granted and prescribed by the laws of the state to and for corporations for profit; provided, however, that in case of any conflict between the express provisions of this chapter and said statutes this chapter shall control; and provided, further, that nothing herein contained or in said statutes above referred to shall limit the power of any corporation formed under this chapter to have as many directors and vice presidents or other officers as may be prescribed by its charter.

**History.**—s. 18, ch. 7387, 1917; RGS 4498; CGL 6462; s. 7, ch. 79-9.



## CHAPTER 616

## PUBLIC FAIRS AND EXPOSITIONS

- 616.001 Definitions.
- 616.01 Number of persons required; requisites of proposed charter.
- 616.02 Acknowledgment of charter.
- 616.03 Notice of application; approval and record of charter.
- 616.04 Evidence of existence and contents of charter.
- 616.05 Amendment of charter.
- 616.051 Dissolving a charter.
- 616.06 Amount of indebtedness authorized.
- 616.07 Members not personally liable; property of association held in trust; exempt from taxation.
- 616.08 Additional powers of association.
- 616.09 Not authorized to carry on gambling, etc.; forfeiture of charter for violations; annulment proceedings.
- 616.091 Operation of shows.
- 616.101 Annual audit of accounts.
- 616.11 Authorized to contract with city or county for use of land; admission fees to fair; counties and cities authorized to make contributions.
- 616.12 Licenses upon certain shows, distribution of fees and exempting certain traveling shows from license tax.
- 616.121 Making false application.
- 616.13 Licenses upon shows within 1 mile of fair.
- 616.14 Number of annual fairs; penalty.
- 616.15 Permit from Department of Agriculture and Consumer Services required.
- 616.17 Minimum exhibits.
- 616.19 Florida State Fair, Tampa; designation of other fairs.
- 616.21 Agricultural and livestock exhibit buildings; conditions for expenditures; Agricultural and Livestock Fair Council created.
- 616.22 Same; matching funds.
- 616.23 Use of buildings.
- 616.251 Florida State Fair Authority; creation; responsibility for staging annual state fair.
- 616.252 Membership; number, terms, compensation.
- 616.253 Officers; quorum.
- 616.254 Authority to sue and be a party to suits.
- 616.255 Duties.
- 616.256 Powers.
- 616.257 Issuance of revenue bonds.
- 616.258 Revenues of project.
- 616.259 Trust funds.
- 616.260 Tax exemption.
- 616.261 Finances.
- 616.262 Conveyance by the authority, option to acquire by Board of Trustees of Internal Improvement Trust Fund.
- 616.263 Annual reports and audit.
- 616.265 Issuance of beverage license to the authority.

- 616.266 Trespass; penalty; arrests.

**616.001 Definitions.—**

(1) "Community fair" means a fair serving an area of less than an entire county and which exhibits are in accordance with s. 616.17 where premiums or awards are given to exhibitors thereof. Agricultural products shall be produced in the community it represents. The majority of its board of directors shall reside, be employed, or operate a business in the community it represents.

(2) "County fair" is a fair serving an entire county and which exhibits are in accordance with s. 616.17; and premiums or awards are given to exhibitors thereof. Agricultural products shall be typical of that produced in the county it represents in meeting minimum exhibit requirements. The majority of its board of directors shall reside, be employed, or operate a business in the county it represents.

(3) "District fair" is a fair serving at least five counties and which exhibits are in accordance with s. 616.17; and shall pay not less than a minimum of \$7,500 in cash premiums or awards to exhibitors thereof. Agricultural products shall be typical of that produced in the county it represents. Livestock may originate from outside the district, but must be registered in exhibitor's name 30 days prior to opening day of fair. Each county shall be encouraged to have proportionate exhibits, typical of its respective natural resources. Each county shall have exhibits in some phase of basic resources in agriculture and industry.

(4) "State fair" is a fair serving the entire state and which no less than 20 percent of the counties are represented in agricultural and industrial exhibits, and 50 percent of its counties having individual exhibitors, youth or adult. Exhibits shall be in accordance with s. 616.17 and cash premiums or awards totaling no less than \$50,000 shall be given to exhibitors thereof. Agricultural and industrial products and livestock shall be typical of that produced in the county it represents.

(5) "Regional fair" or "interstate fair" is a fair of several states of which one is Florida and which exhibits are in accordance with s. 616.17. Agricultural products shall be typical of that produced in the area it represents.

(6) "Specialized fair" is a fair exhibiting and emphasizing livestock or poultry show, fruit or vegetable festival, and shall meet the minimum exhibit requirements as defined in s. 616.17. Specialized fairs may qualify under definitions, subsections (1)-(4).

(7) "Entry" is one item entered for competition or show. It may or may not constitute an exhibit, depending upon the regulations as stated in the premium book.

(8) "Exhibit" is one or more entries entered for exhibition and constituting a unit. An exhibit may consist of one or more entries, dependent upon the regulations as stated in the premium book.

(9) "Exhibitor" is an individual, group of individ-

uals, or business having an entry or entries in a show or fair.

History.—s. 8, ch. 63-247.

**616.01 Number of persons required; requisites of proposed charter.**—Twenty-five or more persons who are residents and qualified electors of the county wherein the fair is to be located, wishing to form an association not for profit for the purpose of conducting and operating public fairs or expositions for the benefit and development of the educational, agricultural, horticultural, livestock, and other resources of the state or any county or counties of Florida, may become incorporated in the following manner. They shall present to the judge of the circuit court for the county in which the principal office of said association is to be located a proposed charter signed by the intended incorporators, which shall set forth:

(1) The name of the association and the place where the principal office is to be located. The name of said association shall include the word, "Inc."

(2) The general nature of its objects and powers, including a provision that the association is incorporated for the sole purpose of conducting and operating public fairs or expositions for the benefit and development of the educational, agricultural, horticultural, livestock and other resources of the state or any county or counties of the state.

(3) The qualifications and terms of members and the manner of their admission and expulsion. Provision may be made in the charter for ex officio membership, and memberships may be for terms of years.

(4) The time for which it is to exist.

(5) The names and residences of the subscribers.

(6) By what officers its affairs are to be managed, and the time at which they will be elected or appointed.

(7) The names of the officers who are to manage its affairs until the first election or appointment under the charter.

(8) By whom its bylaws are to be made, altered or rescinded.

(9) The highest amount of indebtedness or liability to which it may at any time subject itself.

History.—s. 1, ch. 7388, 1917; RGS 4517; CGL 6516; s. 1, ch. 57-796; s. 1, ch. 59-166.

**616.02 Acknowledgment of charter.**—The proposed charter shall be acknowledged by at least three of the subscribers, each a man of good character and reputation, before an officer authorized to make acknowledgment of deeds, which subscribers shall also make and subscribe an oath, to be attached to the proposed charter, that the sole object of the association is public service, that there has been provided for the purposes of the association property, money and other available assets in value exceeding \$5,000, and that it is intended in good faith to carry out the purposes and objects therein set forth.

History.—s. 1, ch. 7388, 1917; RGS 4518; CGL 6517.

**616.03 Notice of application; approval and record of charter.**—Notice of intention to apply to the circuit judge for any such charter, stating the time when the application will be made, shall be published in a newspaper in the county where the

principal office of said association shall be located once each week for 4 consecutive weeks, setting forth briefly the charter and objects of the association to be formed. The proposed charter shall be submitted to and approved by the board of county commissioners of the county in which the principal office of said association is to be located. Upon approval of said board of county commissioners, the proposed charter with proof of such approval and proof of publication shall be produced to the circuit judge at the time named in the notice and, if no cause be shown to the contrary and if he finds it to be in proper form and so sworn to and for an object authorized by this chapter, he shall approve the same and render a decree incorporating said subscribers under said charter and for the objects and purposes and with the powers therein specified. Said charter and said decree of incorporation shall then be recorded in the office of the clerk of the circuit court in the county where the principal office of the said corporation or association shall be located, and thenceforth the subscribers and their associates shall be incorporated by the name given in said charter and with the objects and powers set forth therein. The proposed charter, during the time of publication, shall be on file in the office of the clerk of the circuit court and in the office of the Department of Agriculture and Consumer Services.

History.—s. 1, ch. 7388, 1917; s. 1, ch. 17806, 1937; RGS 4519; CGL 6518; s. 1, ch. 63-247; ss. 14, 35, ch. 69-106.

**616.04 Evidence of existence and contents of charter.**—A certified copy of said charter and decree of incorporation shall be evidence of the contents of said charter in all actions and proceedings, and shall be conclusive evidence of the existence of the incorporated association in all actions and proceedings where the question of its existence is only collaterally involved, and prima facie evidence in all other actions and proceedings.

History.—s. 2, ch. 7388, 1917; RGS 4520; CGL 6519.

**616.05 Amendment of charter.**—Any such association desiring to propose an amendment of its charter may do so by resolution as provided in its bylaws, which proposed amendment, upon publication of notice, placement on file in the office of the clerk of the circuit court and in the office of the Department of Agriculture and Consumer Services, decree of said circuit judge approving and allowing said amendment, and being recorded in the clerk's office, shall become and be taken as a part of the original charter.

History.—s. 3, ch. 7388, 1917; RGS 4521; CGL 6520; s. 2, ch. 63-247; ss. 14, 35, ch. 69-106.

**616.051 Dissolving a charter.**—Any association desiring to dissolve its charter may do so by resolution as provided in its bylaws. Upon publication of notice and proof that all indebtedness has been paid and no claims are outstanding against the corporation, the circuit judge may, by decree, dissolve the corporation and order such public funds remaining to be distributed as recommended by the board of directors.

History.—s. 1, ch. 29914, 1955.

**616.06 Amount of indebtedness authorized.**

—Any association formed and incorporated under this chapter may subject itself to indebtedness or liability in an aggregate sum not greater than the limit stated in said charter or any amendment thereto, without regard to the value of its property. But any association organized under this chapter may also subject itself to specific bonded or mortgage indebtedness, in addition to and without regard to its general powers or limit as to indebtedness or liability.

**History.**—s. 4, ch. 7388, 1917; RGS 4522; CGL 6521.

**616.07 Members not personally liable; property of association held in trust; exempt from taxation.—**

(1) No member or officer of any association organized under this chapter shall be personally liable for any of the debts of such association; and no money or property of any such association shall be distributed as profits or dividends among its members or officers, but all money and property of such association shall, except for the payment of its just debts and liabilities, be and remain perpetually public property, administered by the association as trustee, to be used exclusively for the legitimate purpose of the association, and shall be, so long as so used, exempt from all forms of taxation.

(2) Any public funds or property remaining in a corporation organized under this chapter when a corporation is dissolved shall be distributed by resolution of the board of directors, upon order of the circuit judge to any county or any city within the county, and may provide in the distribution resolution the public project on which the funds shall be used or the use to which the property shall be put, provided, however, that where property has been contributed by a city or county, the property shall be reconveyed to the city or county making the contribution of said property.

**History.**—s. 5, ch. 7388, 1917; RGS 4523; CGL 6522; s. 2, ch. 29914, 1955; s. 1, ch. 57-745.  
cf.—s. 212.08 Sales, rental, storage, use tax; specified exemptions.

**616.08 Additional powers of association.—**

Every association organized under this chapter shall have the power to hold, conduct and operate fairs and expositions as defined herein annually and for such purpose to buy, lease, acquire and occupy lands, erect buildings and improvements of all kinds thereon and to develop the same; to sell, mortgage, lease, or convey such property or any part thereof, in its discretion, from time to time; to charge and receive compensation for admission to such fairs and expositions, and the sale or renting of space for exhibitions, or other privileges; to conduct and hold public meetings; to supervise and conduct lectures and all kinds of demonstration work in connection with or for the improvement of agriculture, horticulture and stock-raising and poultry raising and all kinds of farming and matters connected therewith; to hold exhibits of agriculture and horticultural products, livestock, chickens and other domestic animals; to give certificates or diplomas of excellence; and generally to do, perform and carry out all matters, acts and business usual or proper in connection with fairs and expositions as defined herein; but this enumeration of par-

ticular powers shall not be in derogation of or limit any special provisions of the charter of such association inserted for the regulation of its business, and the conduct of its affairs of creating, defining, limiting and regulating the powers of the association, its officers or members; provided, the treasurer or similar officer of said association shall be required to give a good and sufficient bond with a surety company duly authorized under the laws of the state, payable to said association and in an amount equal to the value of the total amount of money and other property in his possession or custody, in addition to the value of any money and property of such association that may reasonably be expected to come into his possession or custody.

**History.**—s. 6, ch. 7388, 1917; RGS 4524; CGL 6523; s. 2, ch. 17806, 1937; s. 3, ch. 63-247.

**616.09 Not authorized to carry on gambling, etc.; forfeiture of charter for violations; annulment proceedings.**—Nothing in this chapter shall be held or construed to authorize or permit any association organized hereunder to carry on, conduct, supervise, permit or suffer any gambling or game of chance, lottery, betting or other act in violation of the criminal laws of the state; provided that nothing in this chapter shall permit horse or dog racing or any other pari-mutuel wagering, for money or upon which money is placed, and any association organized under this chapter which shall violate any of said laws or which shall knowingly permit the same to be done shall be subject to forfeiture of its charter; and if any citizen shall complain to the Department of Legal Affairs that any association organized under this chapter was organized for or is being used as a cover to evade any of the laws of Florida against crime, and shall submit prima facie evidence to sustain such charge, the Department of Legal Affairs shall institute, and in due time prosecute to final judgment such proceedings as may be necessary to annul the charter and incorporation of such association, and writs of injunction or other extraordinary process shall be issued by courts of competent jurisdiction on the application of the Department of Legal Affairs on complaint pending any such annulment proceeding and in aid thereof, and all such cases shall be given precedence over all civil cases pending in such courts, and shall be heard and disposed of with as little delay as practicable.

**History.**—s. 7, ch. 7388, 1917; RGS 4525; CGL 6524; s. 2, ch. 29737, 1955; s. 4, ch. 63-247; ss. 11, 35, ch. 69-106.

**616.091 Operation of shows.—**

(1) **TRADE STANDARDS FOR OPERATION OF SHOWS.**—Trade standards for the operation of shows and amusement devices in connection with public fairs and expositions are as follows:

(a) *Walk-through shows.*—Where donations are accepted, are prohibited.

(b) *Wildlife shows.*—May be permitted only when admission is charged and plainly posted at entrance.

(c) *Shows generally.*—The approval of all other shows will be left to the discretion of fair management.

(d) *Specifications for ticket or change booth.*—The counter of the ticket or change booth patro-



nized by children shall not be more than 4 feet above the ground.

(e) *Athletic shows requirements.*—Athletic shows are allowed with rings not less than 16 feet square. Mat platform shall not be less than 40 inches from ground. The appearance of the tent and equipment must meet the approval of the inspector and fair management.

(f) *Protection to fair patrons.*—In order to provide adequate protection to fair patrons, all motor dome shows or any other similar shows, where equipment is used as a ballyhoo or for any other purpose, there shall be a barrier, guardrail, or chain of sufficient strength or height to prevent any equipment out of control from leaving the platform.

(g) *Game regulations.*—The operator of a game at any fair as defined in this act, before and during operation, must have and keep in a conspicuous place, a sign stating the cost of a play and an explanation of how the game is played. Lettering on signs shall be plain and not less than 2 inches in height. Signs or placards shall be of permanent material so they can be used from one fair to the next. Game shall be closed until compliance with the regulation is provided.

(h) *Capital prize.*—Prices shall be left to the discretion of fair management, however, capital prize must be given. No operator shall be permitted to display merchandise of any type which is not one of the prizes possible to be won. Each prize shall be so marked that any player may know in advance what is necessary for him to do to win any one of the prizes displayed. No flash display will be permitted.

(i) *Operators of games regulated.*—Operators of games must work inside of the concessions at all times except in those concessions where the operator has secured permission from management to work on the outside, not over 4 feet from the barrier and only in front of his own game.

(j) *False advertising.*—False advertising by banner, word-of-mouth or otherwise is prohibited.

(k) *Violations; reporting.*—The Florida law forbids lotteries, gambling, raffles, and other games of chance at community, county, district and state fairs, and enforcement is the responsibility of local boards and authorities.

(l) *Milk bottle game.*—The operator of a milk bottle ball game must operate at all times with the number of milk bottles on sign. No bottle may weigh over 3 pounds. All bottles shall be free from defects and each set shall be uniform in size. The base on which the bottles shall set shall be not less than 18 inches from the ground. The front barrier shall not be higher than the base on which the bottles set. The base shall be at least 6 feet from the front barrier. A rim not to exceed one-half inch will be permitted if operating the game "all over." No obstruction whatsoever will be permitted around the base on which the bottles set if operating the game "all off."

(m) *Certain games.*—Huckla buck kegs, milk can or similar games, must be set on a frame and kept level at all times. Each operator must operate the number of kegs indicated on the sign throughout the season without change. Rubber and plastic balls are prohibited. The width of the opening of the kegs in huckla buck, milk can or similar games, shall be

such that there shall be not less than three-fourths inch from the center position of the ball.

(n) *Roll-a-game.*—The board shall be level laterally and unwarped with no obstruction to make the ball jump. All slots or holes shall be colored or well-numbered to show wins. All slots or holes must be in an even row at the back of board—not staggered. Ball shall be solid and round at all times.

(o) *Break-balloon ball games.*—Balloons shall be stationary on targets. Rubber, plastic or cork balls are prohibited.

(p) *Break-the-record games.*—Records shall be placed in a stationary grooved rack at least 20 feet from front barrier. The operator of this game must provide a protective covering on three sides and top to protect the public. A canvas backdrop shall be used. Unbreakable records shall not be used.

(q) *Clown pop-em-in or bungalow board.*—This game must have at least one-half inch clearance over size of the ball and the target must not be over 10 feet distance.

(r) *Bowling alleys.*—Automatic bowling alleys shall be allowed.

(s) *Cat racks regulated.*—Cat racks shall have but one rail which shall be in front only. The rail shall not extend over 1 inch above shelves where cats are placed. The width of the shelves on which cats are placed shall not exceed the length of cat plus 3 inches; fur trim not included in length of cat. The distance of the separations between the shelf boards where cats set shall not exceed 1 inch; no more than three separations per shelf shall be permitted. Shelves shall be level at all times. The canvas backdrop must be at least the length of cats plus 3 inches back from the rear edge of shelf. Weight of cats shall not exceed 2 pounds.

(t) *African dip or similar games.*—When men or women are used on target seat they shall not use foul or insulting language and shall be properly dressed. Rubber, plastic or cork balls are prohibited.

(u) *Break-balloon dart game.*—The target board playing area must be at least 75 percent full of target balloons inflated at all times. Blunt-pointed darts are prohibited.

(v) *Ring-bottle game.*—The table or stand supporting the bottles shall be a height that the top of bottles to be rung will not exceed 4 feet in height from ground level. No obstruction shall be placed between or around the bottles at any time. The clearance of the ring shall be such that there will be not less than one-fourth inch clearance measured from inside of ring to neck of bottle. Ring-bottle games shall be operated level at all times. The use of grease or wax on rings, platforms, or bottles is prohibited.

(w) *Cane rack.*—Cane racks shall be 90 percent filled with canes at all times. Canes shall be so arranged that each and every cane can be rung. The clearance of the ring shall be such that there will be not less than three-eighths inch clearance measured from the inside of ring to head of cane.

(x) *Fishing pole or bottle setup game.*—The platform on which bottles are placed must be not less than 12 inches square. Bottles must be placed in center of platform. The platform shall be level at all times. Rings shall not have more than three-eighths inch clearance. The use of grease or wax on rings,

platforms or bottles is prohibited.

(y) *Hoop-la games regulated.*—Hoop-la games shall have three-eighths inch clearance on flat solid blocks uncovered, and no prizes may project over blocks. Blocks must be placed on table with sufficient clearance to permit any hoop to surround block unobstructed. Blocks are unnecessary under cigarettes. All prizes displayed on block entitle player to win all prizes on block. Hoops must be round and uniform in size. The platform shall not be more than 24 inches from the ground.

(z) *Wooden-duck game.*—Ring wooden duck game or any other game using rings, the clearance of the ring shall not be less than three-eighths inch.

(aa) *Guess-weight game.*—Guess-your-weight-or-age operators shall guess weight and age by observation only. Scale dials must have clear figures and illuminated at all times so they can be read by the public.

(bb) *Hi-strikers regulated.*—Hi-strikers shall be in good condition at all times. The slides or wires shall be straight and free of any obstruction or controls. Slide board must be plumb at all times. All mallets must be in good condition. There shall be a fence of sufficient strength and not less than 36 inches high around striker to protect the public.

(cc) *Pitch game.*—Stand on which prizes are placed shall be 90 percent filled at all times. Each and every prize shall have a large enough opening and be so arranged that they can be won. When a target is used for choice it must be so stated by sign how choice prize is won.

(dd) *Long range, cork, bazooka galleries.*—The guns shall be attached to counter in a manner to protect the public. Lead gallery shall use nonspatter bullets only. Galleries must have good side and back-wall protection at all times.

(ee) *Cork-shooting gallery.*—Must use guns in good mechanical condition. No chipped or crooked corks may be used. Shelves where targets are placed are not to exceed 4 inches in width and no obstruction shall interfere with prize falling off said shelf. No targets shall be used which cork guns cannot shoot off shelf.

(ff) *Archery.*—The operator of this game must provide a protective covering on three sides and top to protect fair patrons from stray arrows.

(gg) *Ring-the-pin game.*—Operators of this game must arrange pins so that they remain stationary and perpendicular at all times. Pins shall be so arranged that it is possible to ring each and every pin. The top row of pins must not be higher than 4 feet above the ground.

(hh) *Football game.*—Operators of this game, where a hole in the canvas is used as a target, must provide regulation footballs to be thrown and the clearance in the target shall be at least 1 inch measured from the largest part of the football.

(ii) *Ball games.*—The operator of any ball game must provide balls which are round, firm, smooth and not broken or frayed. All games operated at any fair, as defined in this chapter, must be maintained in good condition and be under the supervision of a competent operator at all times the game is in operation.

(jj) *Concessionaires generally.*—All concession-

aires are prohibited from exhibiting at any fair, as defined in s. 616.001, any game or device which has been ruled out by this statute.

(2) **SAFETY STANDARDS.**—Safety standards for the operation of amusement devices and temporary structures at public fairs and expositions are as follows:

(a) *Purpose, intent and general requirement.*—The purpose of this rule is to guard against personal injuries in the assembly, disassembly and use of amusement devices and temporary structures at carnivals, fairs, and amusement parks, to persons employed at or attending same. Such devices and structures shall be designed, constructed, assembled, or disassembled, maintained, and operated as to prevent such injuries.

(b) *Application.*—These provisions apply throughout the state to amusement devices and temporary structures at public fairs and expositions.

(c) *Definition.*—“Manager” is a person having possession, custody or managerial control of an amusement device or temporary structure, whether as owner, lessee, agent or otherwise.

(d) *Equipment tests.*—Each ride shall be subject to inspection prior to operation so as to test the full operation of all control devices, speed-limiting devices, brakes and other equipment provided for safety.

(e) *Identification and rating plates.*—Every amusement device shall be identified by a trade or descriptive name and an identification number, and there shall be firmly attached thereto in a readily visible location, a metal plate upon which there is legibly impressed the name and number of the device, its model number, if any, and the name and address of the manufacturer. Upon the same or another metal plate there shall be the maximum safe number of passengers and the maximum safe speed.

(f) *Assembly and disassembly; quality of assembly work.*—Parts shall be properly aligned, and shall not be bent, distorted, cut or otherwise injured to force a fit. Parts requiring lubrication shall be lubricated in course of assembly. Fastening and locking devices shall be installed where required for dependable operation.

(g) *Persons in work area.*—A sufficient number of persons to do the work properly shall be engaged for the assembly or disassembly. Persons not so engaged shall be prevented from entering the area in which the work may create a hazard.

(h) *Daily inspection and test.*—Rides must be tested every day on location.

(i) *Overloading and overspeeding.*—An amusement device shall not be overcrowded, or loaded in excess of its safe carrying capacity; nor shall it be operated at an unsafe speed or at any speed beyond that recommended by the manufacturer.

(j) *Imminent danger.*—If the Department of Agriculture and Consumer Services finds that an amusement device or a temporary structure presents an imminent danger, it may attach a notice warning all persons against the use thereof. Such notice shall not be removed until the device is made safe, and then only by a representative of the department and in the meantime the device shall not be used.

(k) *Design and construction requirements.*—Be-

fore being used by the public, amusement devices shall be so placed or secured with blocking, cribbing, outriggers, guys or other means as to be stable under all operating conditions.

(l) *Public protection.*—An amusement device shall not be used or operated while any person is so located as to be endangered by it. Areas in which persons may be endangered shall be fenced, barricaded or otherwise effectively guarded against contact.

(m) *Guarding of machinery.*—Machinery used in or with an amusement device shall be enclosed, barricaded or otherwise effectively guarded against contact.

(n) *Speed-limiting devices required.*—An amusement device powered so as to be capable of exceeding its maximum safe operating speed shall be provided with a maximum speed-limiting device.

(o) *Passenger-carrying devices.*—The interior and exterior parts of all passenger-carrying amusement devices with which a passenger may come in contact shall be smooth and rounded, free from sharp, rough or splintered edges and corners, with no protecting studs, bolts, screws or other projections which might cause injury. Interior parts upon or against which a passenger may be forcibly thrown by the action of the ride shall be adequately padded.

(p) *Electrical safety requirements.*—

1. High voltage lines.—The outlets of electrical powerlines carrying more than 120 volts shall be clearly marked to show their voltage.

2. Outdoor apparatus and wiring.—Electrical apparatus and wiring located outdoors shall be of such quality and so constructed or protected that exposure to weather will not interfere with its normal operation.

3. Exposed conductors.—Bare wires and other uninsulated current-carrying parts shall be guarded against inadvertent contact by means of proper location or by a fence or other barrier.

4. Abrasion protection.—Wiring laid on surface traversed by vehicular or pedestrian traffic shall be adequately protected against wear and abrasion.

(q) *Fire prevention and protection.*—

1. Fire resistance of fabrics.—Fabrics constituting part of an amusement device or a temporary structure shall be fire-resistant.

2. Flammable waste.—Flammable waste such as oily rags and other flammable materials shall be placed in covered metal containers which shall be kept in easily accessible locations. Such containers shall not be kept at or near exits.

(r) *Cleanliness.*—A suitable number of metal containers for refuse shall be provided in and around all amusement devices and temporary structures. Excessive accumulations of trash or refuse shall be promptly removed. All parts of amusement devices and temporary structures used by passengers or customers shall be maintained in a clean condition.

History.—s. 6, ch. 63-247; ss. 1-3, ch. 67-491; ss. 14, 35, ch. 69-106.

**616.101 Annual audit of accounts.**—Once each year an audit of the accounts of every association organized under this chapter, based on sound accounting practices and procedures, shall be made by a qualified accountant licensed by the state. The results of all such audits shall be kept in the official

records of each corporation, available to all directors of each corporation, and a certified copy of proper section of audit shall be filed in the office of the Department of Agriculture and Consumer Services on request to certify expenditure of state premium or building funds, or where there is evidence of flagrant violation of state laws.

History.—s. 7, ch. 63-247; ss. 14, 35, ch. 69-106.

**616.11 Authorized to contract with city or county for use of land; admission fees to fair; counties and cities authorized to make contributions.**—Any association incorporated under this chapter may enter into any contract, lease or agreement with any city or county in the state for the donation to, or the use and occupation by such association of any land owned, leased or held by any such county or city during such time and on such terms as such county or city may authorize, with the right on the part of such association to charge and receive an admission fee to such fair or exposition or any part thereof; and the board of county commissioners of any county within which such fair or exhibition is held and the mayor and city council of any city within such county may make contributions of money or property to such associations to assist in carrying out the purposes of such associations as defined by this chapter, and boards of county commissioners of the various counties of the state, may expend in their discretion such sums of money as they deem for the best interests of their counties and in aiding the development of the agricultural, horticultural and livestock resources of their counties and in giving publicity to the advantages, facilities and agricultural, horticultural and livestock possibilities and production of their counties by providing for, aiding and assisting the exhibition and demonstration of such resources at and in connection with such fairs and expositions including the offering and paying of premiums for such exhibitions of resources of their respective counties.

History.—s. 9, ch. 7388, 1917; RGS 4527; CGL 6526.

**616.12 Licenses upon certain shows, distribution of fees and exempting certain traveling shows from license tax.**—Every person who may operate under any terms whatsoever, including lease arrangement, traveling shows, exhibitions, or amusement enterprises, carnivals, vaudeville, minstrels, rodeos, theatricals, games or tests of skill, riding devices, dramatic repertoires and all other shows or amusements including concessions operating in tents, enclosures or other temporary structures whether covered or uncovered, within the grounds of, and in connection with any fair held by a fair association incorporated under the provisions of this chapter, shall pay the license taxes now or hereafter provided by law; provided, however, in event such association shall fully qualify with all other provisions of this act including securing the required fair permit from the Department of Agriculture and Consumer Services, then such traveling shows, exhibitions, or amusement enterprises, carnivals, vaudeville, minstrels, rodeos, theatricals, games or tests of skill, riding devices, dramatic repertoires and all other shows or amusements including concessions operating in tents, enclosures or other temporary



structures whether covered or uncovered, within the grounds of, and in connection with any fair held by a fair association incorporated under the provisions of this chapter, shall not be required to pay any such license tax except as provided in s. 205.271, but shall operate under a tax exemption certificate which such fair association shall have first secured from the Department of Agriculture and Consumer Services the necessary permit required under s. 616.15 and otherwise fully comply with all other provisions of s. 616.15. The Department of Agriculture and Consumer Services shall prescribe the proper forms, rules and regulations for carrying out the purpose and intent as expressed herein including the necessary tax exemption certificate to be completed by the tax collector showing that such traveling shows, exhibitions, or amusement enterprises, carnivals, vaudeville, minstrels, rodeos, theatricals, games or tests of skill, riding devices, dramatic repertoires and all other shows or amusements including concessions in tents, enclosures or other temporary structures whether covered or uncovered, within the grounds of and in connection with any fair held by a fair association incorporated under the provisions of this chapter, had met in full all requirements of this act and accordingly are fully exempt.

**History.**—s. 1, ch. 17759, 1937; CGL 1940 Supp. 6526(1); s. 2, ch. 57-796; s. 2, ch. 59-166; s. 5, ch. 63-247; ss. 14, 35, ch. 69-106.

**616.121 Making false application.**—Any person who shall make or cause to be made any false statement in an application for permit to hold a fair or exposition or in an application for distribution of amount paid for license taxes under provisions of this chapter, with fraudulent intent of obtaining such permit or amount, and shall by such false statement obtain such permit or any part of such amount for himself or for any firm or corporation in which such person has a financial interest, or for whom he is acting, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 3, ch. 57-796; s. 3, ch. 59-166; s. 638, ch. 71-136.

**616.13 Licenses upon shows within 1 mile of fair.**—Every person, engaged in the business of traveling shows, exhibitions or amusement enterprises including carnivals, vaudeville, minstrels, rodeos, theatricals, games or tests of skill, riding devices, dramatic repertoires and all other shows or amusements operating in tents or temporary structures whether covered or uncovered, within 1 mile of any such fair or exposition being operated by an association incorporated under the provisions of this chapter when not operating in connection with such fair or exposition, shall pay a license tax of \$1,000 per day.

**History.**—s. 3, ch. 17759, 1937; CGL 1940 Supp. 6526(2); s. 4, ch. 59-166.

**616.14 Number of annual fairs; penalty.**—Any association incorporated under the provisions of this chapter that conducts more than one fair or exposition during any one calendar year shall be subject to revocation of its charter by the court granting such charter.

**History.**—s. 2, ch. 17759, 1937; CGL 1940 Supp. 6526(3); s. 5, ch. 59-166.

**616.15 Permit from Department of Agriculture and Consumer Services required.**—No public fair or exposition shall be conducted by an association incorporated under the provisions of this chapter without a permit issued by the Department of Agriculture and Consumer Services. Such permit shall be issued in the following manner: The association shall present to the Department of Agriculture and Consumer Services a written request for the permit, signed by an officer of the association, at least 3 months prior to holding the fair or exposition; this request shall be accompanied by a fee in an amount to be determined by the department not to exceed \$50 nor less than \$25 to cover the costs necessary to processing such permit and making any required investigation. The fees collected hereunder shall be deposited in the General Inspection Trust Fund of the State Treasury in a special account to be known as the "Agricultural and Livestock Fair Account." The Department of Agriculture and Consumer Services may issue such permit upon the recommendation and approval of the Agricultural and Livestock Fair Council provided the request shall set forth:

(1) The opening and closing dates of the proposed fair or exposition.

(2) The name and address of the owner of the central amusement attraction to operate during the fair or exposition.

(3) An affidavit properly executed by the president or other chief executive officer of the applicant association certifying as to the existence of a binding contract entered into by such association or exposition and the owner of the central amusement attraction covering the period for which the permit from the department is requested, provided, further, such contract or contracts between such parties shall be available for inspection by duly authorized agents of the department in administering this act.

(4) A statement that the main purpose of the association is to conduct and operate the proposed fair or exposition for the benefit and development of the educational, agricultural, horticultural, livestock and other resources of the state. The statement shall be in writing, subscribed and acknowledged by an officer of the association before an officer authorized to take acknowledgments.

(5) A premium list of the current fair to be conducted or a copy of the previous year premium list showing all premiums and awards to be offered to exhibitors in various departments of the fair such as: art exhibition, beef cattle, county exhibits, dairy cattle, horticulture, swine, women's department, 4-H Club activities, Future Farmers of America activities, Future Homemakers of America activities, poultry and egg exhibits, and community exhibits, the foregoing being a list of the usual exhibitors of a fair and shall not be construed as limiting said premium list to these departments; provided that such list may be submitted separately at any time not later than 60 days prior to the holding of the fair or exposition, and the Department of Agriculture and Consumer Services shall issue the permit as hereinbefore provided for within 10 days thereafter if the applicant properly qualified.

(6) The Department of Agriculture and Consum-

er Services shall administer and enforce the provisions of this chapter except as to the regulation of games, which shall be regulated by local law enforcement agencies. The department, is authorized to make and publish such rules and regulations not inconsistent with this chapter as to the form and contents of the application for the permit and any reports that it may deem necessary in enforcing its provisions.

(7) Notwithstanding any fair association meeting the requirements set forth in subsections (1) to (5), inclusive, the said department may order a full investigation to determine whether or not said fair association meets in full the purpose set forth in s. 616.01, and accordingly may withhold a permit from, deny a permit to or withdraw a permit once issued to such association. The determination by the Department of Agriculture and Consumer Services shall be final.

**History.**—s. 4, ch. 57-796; s. 6, ch. 59-166; s. 2, ch. 61-119; s. 4, ch. 67-491; ss. 14, 35, ch. 69-106.

#### 616.17 Minimum exhibits.—

(1) No public fair or exposition conducted by an association incorporated under the provisions of this chapter shall be approved by the Agricultural and Livestock Fair Council for a tax exemption certificate to be issued by the Department of Agriculture and Consumer Services unless such fair or exposition shall display the following minimum exhibits, but this shall not be construed as a limitation on the number of exhibits which such fair or exposition may have:

(a) Three exhibits from 4-H Clubs or Future Farmers of America chapters which are officially approved by such clubs or chapters.

(b) Three exhibits of community, individual, or county farm displays.

(c) Three exhibits of field crops in at least three different crops.

(d) Three exhibits of horticultural products.

(e) Three culinary exhibits such as canned fruits, canned vegetables, canned pickles or juices, jams, jellies, etc., cakes, bread, candies or eggs.

(f) Three exhibits of household arts such as homemade spreads, towels, luncheon sets, rugs, clothing, or baby apparel.

(g) Three exhibits of fruit or vegetable crops in at least three different crops.

(h) Three exhibits of arts, crafts, photography, antiques or of scout handiwork.

(i) Three exhibits from home demonstration, home economics, educational, religious or civic groups.

(j) Three exhibits of livestock such as dairy cows, beef cattle, hogs, sheep, poultry, horses or mules.

(2) The provisions of subsection (1) shall not apply to specialized livestock shows or fruit or vegetable festivals. The minimum exhibits required of such shows or festivals shall be as follows:

(a) Each specialized livestock show shall consist of at least 50 head of animals or 300 head of poultry.

(b) Each specialized fruit, vegetable, or crop festival or exposition shall consist of at least 50 entries

in the specialty, which shall occupy at least 1,000 square feet of display area.

**History.**—s. 8, ch. 59-166; ss. 14, 35, ch. 69-106.

#### 616.19 Florida State Fair, Tampa; designation of other fairs.—

(1) The winter exposition held in Tampa, by the Florida State Fair and Gasparilla Association, Inc., is hereby designated as the "Florida State Fair."

(2) Any agricultural and livestock fair heretofore or hereafter created pursuant to this chapter shall be designated by the name stated in the permit required or stated by such fair association and shall be recognized by the state with equal dignity and as fully as the Florida State Fair designated in subsection (1).

**History.**—ss. 1, 2, ch. 61-513.

#### 616.21 Agricultural and livestock exhibit buildings; conditions for expenditures; Agricultural and Livestock Fair Council created.—

(1) No part of appropriated funds shall be expended except upon approval and with the recommendation of the Department of Agriculture and Consumer Services. It is further provided that no part of such appropriation shall be expended for the construction of a building unless and until a good fee simple title to the land on which such building is to be constructed is vested in the county, city or fair association for which such building is to be constructed.

<sup>1</sup>(2) There is created in the Department of Agriculture and Consumer Services the Agricultural and Livestock Fair Council which shall be composed of five members, one of whom shall be appointed chairman by the commissioner, as follows: The administrator of agricultural education of the Department of Education; a representative of the Department of Agriculture and Consumer Services designated by the commissioner; the director of the Florida Agricultural Extension Service; the president of the Florida Federation of Fairs and Livestock Shows; and the executive vice president of the Florida Farm Bureau Federation. No official action shall be taken by such council unless three of its members are in agreement on the particular proposal, recommendation or motion.

(3) It is hereby made the duty and responsibility of the Department of Agriculture and Consumer Services to either approve or disapprove within a reasonable length of time:

(a) Expenditures of moneys appropriated for the construction of agricultural and livestock exhibit buildings in the state.

(b) Issuance of permits to conduct fairs or expositions for the benefit and development of the educational, agricultural, horticultural, livestock and other resources, of the state as provided in s. 616.15.

**History.**—s. 2, ch. 29832, 1955; s. 1, ch. 59-367; s. 2, ch. 61-119; s. 2, ch. 63-393; ss. 3, 14, 35, ch. 69-106; s. 1, ch. 71-2; s. 260, ch. 71-377; s. 207, ch. 77-104; s. 17, ch. 77-108; s. 4, ch. 78-323.

<sup>1</sup>**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

**Note.**—Former s. 603.21.

**616.22 Same; matching funds.**—In the construction of buildings as authorized by the appropriation act the money to be expended therefor from

said appropriation shall be matched by the county, city or fair association for which such buildings are to be constructed on the basis of 50 percent from the county, city or fair association to 50 percent from said appropriation, and the contribution from the county, city or fair association for such construction shall be provided and made available before such construction is begun. In no event shall an amount greater than \$25,000 be expended from said appropriation for the construction of exhibit buildings for any one county, city or fair association, from funds hereby appropriated for such purpose, provided however, that after July 1, 1964, any amount not greater than \$25,000 may be expended from the appropriation for the construction of exhibit buildings for any one county, city or fair association from the unexpended balance of this appropriation regardless of the amount previously expended under any other legislative appropriation for that one county, city or fair association.

**History.**—s. 3, ch. 29832, 1955; s. 2, ch. 59-367; s. 3, ch. 63-393; s. 207, ch. 77-104.

**Note.**—Former s. 603.22.

**616.23 Use of buildings.**—The buildings authorized by ss. 616.21-616.23 may be used by the county, city or fair association for which same are built as agricultural or livestock exhibition buildings for fair purposes in the promotion of agriculture and livestock industry and as office space for agricultural agents; provided that no more than 20 percent of such buildings shall be used for such office space.

**History.**—s. 4, ch. 29832, 1955; s. 3, ch. 59-367; s. 4, ch. 63-393.

**Note.**—Former s. 603.23.

**616.251 Florida State Fair Authority; creation; responsibility for staging annual state fair.**—

(1) There is hereby created and constituted the "Florida State Fair Authority," a public body corporate and politic, under the supervision of the Commissioner of Agriculture, for the purposes and with the powers herein set forth. Said instrumentality, hereinafter referred to as "the authority," shall have perpetual succession. For the purposes of implementing the intent of this act the authority shall be considered an instrumentality of the state.

(2) The authority is hereby charged with the responsibility of staging an annual fair. The fair shall serve the entire state, and no less than 20 percent of the counties are to be represented in agricultural and industrial exhibits, and 50 percent of the counties are to have individual exhibitors, youth or adult. Cash premiums or awards totaling no less than \$50,000 shall be given to exhibitors. Agricultural and industrial products shall be typical of that produced in the area it represents.

(3) The principal offices of the authority shall be in such place or places in or near the City of Tampa, as the authority may from time to time designate.

**History.**—ss. 1, 5, ch. 74-322; s. 4, ch. 78-323.

**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

**616.252 Membership; number, terms, compensation.**—

(1) The authority shall be composed of 25 members and shall meet at least quarterly. The Gover-

nor, the Commissioner of Agriculture, the Dean of Agriculture of the Florida Cooperative Extension Service, and the Administrator of Agri-business and Natural Resources Education shall serve ex officio. The Commissioner of Agriculture shall nominate three persons for each other membership from which the Governor shall appoint a member of the authority. Such appointment shall be subject to Senate confirmation. After July 1, 1982, at least one member shall be selected from each congressional district as described in s. 8.01. The terms of the initial members selected shall be as follows: Six members shall serve for terms of 4 years; five members shall serve for terms of 3 years; five members shall serve for terms of 2 years; and five members shall serve for terms of 1 year. Thereafter, all members shall serve for terms of 4 years. Any vacancy shall be filled pursuant to the method herein provided for appointment. However, six of the initial members shall serve 4 years and one of the initial members shall serve 3 years and such members shall be from Hillsborough County. Thereafter, six of the members may be from Hillsborough County.

(2) Members of the authority shall not be entitled to compensation for their services as members, but shall be reimbursed for traveling expenses as provided in s. 112.061 and may be compensated for any special or full-time service performed in its behalf as officers or agents of the authority.

(3) At least 80 percent of the members of the authority shall be persons who are or have been directors or officers of a fair association or who have otherwise actively participated in conducting a public fair, festival, show, exposition, or similar activity. Holding a commission as a member of another board or authority shall not render a person ineligible to serve as a member of the fair authority so long as the common-law rule of incompatibility does not prohibit holding both commissions.

**History.**—s. 2, ch. 74-322; s. 1, ch. 78-409.

**616.253 Officers; quorum.**—The authority shall elect from among its members an executive committee to consist of a chairman who shall preside, a vice chairman, a secretary, a treasurer, and such other officers as the authority may deem necessary or expedient in the performance of its functions, whether or not they be members. The same person may serve both as secretary and treasurer, if thus designated. No more than three directors from any congressional district or county may serve on the executive committee. The authority may delegate to any of its members, officers, agents, or employees such powers and duties as it may deem proper and shall establish bylaws and such rules of conduct and procedure as it may deem necessary to govern its own functioning. A majority of the appointed members of the authority shall constitute a quorum. No vacancy in the membership shall impair the right of a quorum to exercise all of the powers, functions, and duties of the authority.

**History.**—s. 3, ch. 74-322; s. 2, ch. 78-409.

**616.254 Authority to sue and be a party to suits.**—The authority may sue and be sued, plead and be impleaded, and complain and defend in all courts of law and equity with respect to its contractu-



al rights and obligations and to carry out its proper purposes and functions.

History.—s. 4, ch. 74-322.

**616.255 Duties.**—The authority shall:

(1) Designate a suitable location in Hillsborough County as the Florida State Fairgrounds.

(2) Throughout each year, promote the progress of the state and stimulate public interest in the advantages and development of the state by providing facilities for agricultural and industrial exhibitions, public gatherings, cultural activities, and other functions calculated to advance the educational, physical, economic, and cultural interests of the public.

(3) Hold an annual fair on the Florida State Fairgrounds for the exhibition of agricultural, industrial, mechanical, horticultural, dairy, forestry, poultry, livestock, mineral, cultural, and all other interests of the state, and establish rules of exhibition and operation for the fair. Such fair shall be subject to the requirements of s. 616.17.

(4) Erect and repair buildings on the Florida State Fairgrounds, make any and all necessary or proper improvements, and generally carry on a program of development and extension of facilities designed to accomplish the objectives defined in this section.

History.—s. 6, ch. 74-322.

**616.256 Powers.**—The authority shall have power to:

(1) Have a seal and to alter the same at pleasure.

(2) Acquire, hold, lease, and dispose of real and personal property for its authorized purposes.

(3) Own, operate, maintain, repair, and improve its facilities.

(4) Acquire in its own name by purchase, grant, gift, or lease, on such terms and conditions and in such manner as it may deem proper, real and personal property, and acquire, construct, reconstruct, improve, alter, repair, maintain, operate, sell, convey, lease, and dispose of any building, structure, or facility.

(5) Employ consulting engineers, architects, superintendents or managers, accountants, inspectors, attorneys, and such other employees as may be deemed necessary and prescribe their powers and duties and fix their compensation.

(6) Accept loans or grants of money, property, or personal services from any agency, corporation, or person.

(7) Make and enter into all contracts or agreements, as the authority may determine, which are necessary or incidental to the performance of its duties or the execution of its powers under this act.

(8) Borrow money for any of its authorized purposes and for expenses incidental thereto, including expenses incurred during the period of organization and construction prior to the operation of the Florida State Fair, and incur obligations with respect to such borrowings, including notes, secured or unsecured, and negotiable revenue bonds, as hereinafter provided, payable solely from revenues accruing from the operation of the Florida State Fair or any part or parts thereof and from authorized activities incidental thereto; to pay interest with respect to

such borrowings not exceeding the maximum allowable by law; to provide for the payment of such borrowings and interest as hereinafter provided; to fix rates and make collections for the use of the facilities and services of the authority; and to execute mortgages, trust indentures or other instruments, as may be required for the financing of the authorized activities of the authority.

(9) Engage in any lawful business or activity deemed by it to be necessary, convenient, appropriate, or useful in the full exercise of its powers to establish, finance, and operate the Florida State Fair under the provisions of this act, including the leasing for revenue of any land, improved real estate, or personal property directly related to, or appropriate in connection with, the financing or conduct of the Florida State Fair or reserved for its future use or expansion. Within the meaning of this act, any use of the property of the authority, real or personal, shall be deemed necessary, convenient, appropriate, or useful which stimulates, assists, fosters, and promotes all phases of the economy of the state, including agricultural, industrial, commercial, cultural, and recreational pursuits, or which provides revenue to the authority from said property, pending its future use for any of the purposes of the state fair.

History.—s. 7, ch. 74-322.

**616.257 Issuance of revenue bonds.**—

(1) Revenue bonds may be issued on behalf of and at the request of the authority, as provided in the State Bond Act. The proceeds of each issue of bonds shall be used solely for the payment of the cost of the state fair project or projects for which such bonds were issued, as provided in the proceedings authorizing the issuance of such bonds.

(2) No revenue bonds shall be issued under the provisions of this act unless the authority shall have theretofore found and determined:

(a) The estimated cost of the project for which such bonds are proposed to be issued.

(b) The estimated annual revenues of the project, and of any other special funds provided for in this act, which may be pledged as security for the bonds.

(c) The estimated annual cost of maintaining, repairing, and operating the project.

(3) Revenue bonds issued under the provisions of this act shall not be deemed to be a debt of the state or to pledge the faith and credit or taxing power of the state, but such bonds shall be payable exclusively from the funds pledged for their payment as authorized herein. State funds, other than any initial appropriation, shall not be used, appropriated, or expended to construct, reconstruct, maintain, service, repair, purchase, or lease any property or project or projects authorized hereunder.

(4) All projects of the authority shall be deemed to be state capital projects within the meaning of s. 11, Art. VII of the State Constitution.

History.—ss. 8, 9, ch. 74-322.

cf.—ss. 215.57-215.83 State Bond Act.

**616.258 Revenues of project.**—

(1) The authority shall fix and revise from time to time rates, fees, rentals, tolls, or other charges for the use of each project or for the services and facilities furnished thereby and charge and collect the

same. Such rates, fees, rentals, tolls, or other charges shall be so fixed and adjusted, in respect of the aggregate of rates, fees, rentals, tolls, or other charges from the project or projects for which bonds are issued, as to provide a fund sufficient, together with any other special funds pledged therefor as provided in this act, to pay the cost of maintaining, repairing, and operating such project or projects and the principal of, and interest on, the revenue bonds as the same shall become due and to provide reserves for such purposes, and to make all such other payments required by the proceedings authorizing the issuance of such revenue bonds. The rates, fees, rentals, tolls, and other charges shall not be subject to supervision or regulations by any state commission, board, bureau, or agency other than the authority.

(2) All, or a sufficient amount of, the revenues derived from a project or projects for which revenue bonds have been issued shall be set aside, at such regular intervals as may be provided in the resolution authorizing the issuance of the bonds, or in the trust agreement securing the same, in a sinking fund for the payment of the principal and interest on such bonds as the same shall become due and any premium upon bonds retired by call or purchase as therein provided, and for reserves therefor, and to pay the cost of maintaining, repairing, and operating the project or projects and of providing reserves therefor, all in the order of priority and manner as shall be provided in such resolution or trust agreement. The use and disposition of the sinking fund shall be subject to such regulations as may be provided in the resolution authorizing the issuance of the bonds or in the trust agreement.

History.—s. 10, ch. 74-322; s. 1, ch. 77-174.

**616.259 Trust funds.**—All moneys received pursuant to the authority of this act, whether as proceeds from the sale of revenue bonds or as revenues, shall be deemed to be trust funds. Proceeds from the sale of revenue bonds shall be held and applied as provided by law. Revenues of the authority shall be held and applied, consistent with law, as provided by resolutions of the authority.

History.—s. 11, ch. 74-322.

**616.260 Tax exemption.**—It is hereby found and determined that all of the projects authorized by this act constitute essential governmental purposes, and all of the properties, revenues, moneys, and other assets owned and used in the operation of such projects shall be exempt from all taxation by the state or by any county, municipality, political subdivision, agency, or instrumentality thereof. However, nothing contained herein shall grant any person other than the authority an exemption from the tax imposed in chapter 220, and if property of the authority is leased, the property shall be exempt from ad valorem taxation only if the use by the lessee qualifies the property for exemption under s. 196.199. The exemption granted by this section shall not be applicable to any tax imposed by chapter 220 on interest, income, or profits on debt obligations

owned by corporations. The property of the authority shall be subject to the provisions of s. 196.199.

History.—s. 12, ch. 74-322.

**616.261 Finances.**—Operation of the state fair, and custody and maintenance of the buildings and grounds, shall be financed from the revenues derived from the state fair and other exhibits or events, revenue bonds, and lease, rental, or other charges for the use of the buildings or grounds.

History.—s. 13, ch. 74-322.

**616.262 Conveyance by the authority, option to acquire by Board of Trustees of Internal Improvement Trust Fund.**—Any provision of this act to the contrary notwithstanding, no transfer, lease, conveyance, or encumbrance of any land or interest therein inconsistent with the development of a state fair as provided in this act shall be made without prior approval from the Board of Trustees of the Internal Improvement Trust Fund or its successors. Prior to any lawful transfer of title to all or any part of the property owned by the authority by any public entity to any private person, individual, group, partnership, association, corporation, organization, or other private entity or entities, the board of trustees or its successors shall have an option to acquire the subject property without payment of consideration.

History.—s. 14, ch. 74-322.

**616.263 Annual reports and audit.**—

(1) The authority shall submit each year, at least 60 days prior to the convening of the Legislature, a comprehensive report to the Governor and the Commissioner of Agriculture outlining the progress and the activities of the authority. The Commissioner of Agriculture shall transmit the authority's report to the Legislature, together with any comments and recommendations for legislation.

(2) The authority shall at all times maintain proper accounting systems and procedures and shall be subject to annual auditing by the Auditor General as provided in s. 11.45.

History.—ss. 15, 16, ch. 74-322.

**616.265 Issuance of beverage license to the authority.**—

(1) The Division of Alcoholic Beverages and Tobacco of the Department of Business Regulation is authorized, upon application, to issue a beverage license as contemplated in ss. 561.17 and 565.02 to the Florida State Fair Authority for use within any of those certain buildings known as the Exposition Building, the Exhibition Building, and Old MacDonald's Farm, located within the Florida State Fairgrounds complex in Hillsborough County; however, the license issued pursuant to this section shall not permit the licensee or its assigns to:

(a) Use such license in more than one building at a time.

(b) Use such license during the time the authority is staging the annual Florida State Fair.

(c) Sell alcoholic beverages in sealed containers for consumption off the premises where sold.

(2) The application for the license authorized in subsection (1) shall be made in the name of the Florida State Fair Authority, and the applicant shall

comply with the provisions of chapter 561 prior to the issuance of said license in the name of the Florida State Fair Authority.

(3) It is the intent and purpose of this section that any business operated under the beverage license authorized in subsection (1) shall be operated only by a concessionaire under contract, entered into under competitive bid, with the Florida State Fair Authority to furnish alcoholic beverages within those certain buildings known as the Exposition Building, the Exhibition Building, or Old MacDonald's Farm. No contract shall be entered into by the authority with any concessionaire which discriminates on the basis of race, sex, age, or religion. The Florida State Fair Authority shall make application for the transfer of the license to the concessionaire, and the application shall be approved by the Director of the Division of Alcoholic Beverages and Tobacco in compliance with the applicable provisions of chapter 561. However, any transfer of the beverage license authorized in subsection (1) to a concessionaire operating under contract with the Florida State Fair Authority shall be on the condition that, if the concession contract is terminated at any time and for any cause, the concessionaire shall immediately retransfer the beverage license to the Florida State Fair Authority. In the event of the failure or refusal of the concessionaire so to retransfer the beverage license, it shall be retransferred to the Florida State Fair Authority upon proper request made in writing to the Division of Alcoholic Beverages and Tobacco of the Department of Business Regulation. Thereafter the beverage license may again be transferred upon the same terms and conditions to any new concessionaire under contract with the Florida State Fair Authority. It is the intent and purpose of this section that the beverage license shall at all times be the property of the Florida State Fair Authority, subject to its transfer, from time to time, to enable the concessionaire under contract with the Florida State Fair Authority to furnish alcoholic beverages within the Exposition Building, the Exhibition Building, or Old MacDonald's Farm to operate under the beverage license authorized by this section.

History.—ss. 1-3, ch. 77-252; s. 33, ch. 79-11.

#### **616.266 Trespass; penalty; arrests.—**

(1) For the purposes of this chapter, "trespass" upon the grounds of the Florida State Fair Authority or any other fair or exposition permitted under s. 616.15 means:

(a) Entering and remaining upon any grounds or facilities owned, operated, or controlled by the Florida State Fair Authority or any other fair or exposition permitted under s. 616.15 and committing any act which disrupts the orderly conduct of any authorized activity of any such organization or its lessees on the said grounds or facilities; or

(b) Entering and remaining on the said grounds or facilities after being directed not to enter, or to leave, the same by the executive director of the authority, chief administrative officer of such fair or exposition, or any employee or agent thereof designated by him to maintain order on the said grounds and facilities, after a determination by said executive director, administrator, employee, or agent that the entering or remaining on the said grounds or facilities is in violation of the rules and regulations of the Florida State Fair Authority or permitted fair or exposition or is disrupting the orderly conduct of any authorized activity of any such organization or its lessees on the said grounds or facilities.

(2) Any person found guilty of committing the offense of trespass upon the grounds of the Florida State Fair Authority or any other fair or exposition permitted under s. 616.15 is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) A peace officer may arrest any person on or off the premises, without a warrant, if the officer has probable cause for believing such person has committed the offense of trespass upon the grounds of the Florida State Fair Authority or any such permitted organization. Such arrest shall not render the peace officer criminally or civilly liable for false arrest, false imprisonment, or unlawful detention.

History.—s. 1, ch. 78-427.



## CHAPTER 617

## CORPORATIONS NOT FOR PROFIT

PART I CORPORATIONS NOT FOR PROFIT, GENERALLY  
(ss. 617.01-617.21)

## PART II SCHOLARSHIP PLANS (ss. 617.50-617.81)

## PART I

CORPORATIONS NOT FOR PROFIT,  
GENERALLY

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- 617.21 Corporations not for profit; when authorized to act as trustee.

**617.01 Corporations which may be incorporated hereunder.—**

(1) Corporations may be organized and incorporated under this part for any one or more lawful

purposes not for pecuniary profit; provided, however, that corporations not for profit which may be incorporated under any other law of this state governing particular types of corporations may not be incorporated hereunder.

(2) As used in this part "corporation not for profit" means a corporation no part of the income of which is distributable to its members, directors or officers.

**History.**—RS 2259; s. 1, ch. 4231, 1893; GS 2830; RGS 4499; s. 1, ch. 10095, 1925; CGL 6495; ch. 19108, 1939; s. 1, ch. 59-427.

**617.0105 Prohibited activities by private foundations.—**

(1) As used in this section, section references, unless otherwise indicated, shall refer to the Internal Revenue Code of 1954, Title 26 of the United States Code, as in effect on December 16, 1971, including corresponding provisions of any subsequent federal tax laws.

(2) No corporation, during the period it is a "private foundation" as defined in s. 509(a), shall:

(a) Engage in any act of "self-dealing," as defined in s. 4941(d), which would give rise to any liability for the tax imposed by s. 4941(a);

(b) Retain any "excess business holdings," as defined in s. 4943(c), which would give rise to any liability for the tax imposed by s. 4943(a);

(c) Make any investment which would jeopardize the carrying out of any of its exempt purposes, within the meaning of s. 4944, so as to give rise to any liability for the tax imposed by s. 4944(a); and

(d) Make any "taxable expenditures," as defined in s. 4945(d), which would give rise to any liability for the tax imposed by s. 4945(a).

(3) Each corporation, during the period it is a "private foundation" as defined in s. 509, shall distribute, for the purposes specified in its articles of organization, for each taxable year, amounts at least sufficient to avoid liability for the tax imposed by s. 4942(a).

(4) The provisions of subsections (2) and (3) shall not apply to any corporation to the extent that a court of competent jurisdiction shall determine that such application would be contrary to the terms of the articles of organization or other instrument governing such corporation or governing the administration of charitable funds held by it and that the same may not properly be changed to conform to such subsections.

(5) Nothing in this section shall impair the rights and powers of the courts or of the Department of Legal Affairs with respect to any corporation.

**History.**—ss. 1-5, ch. 71-976.

**617.011 Shares of stock and dividends prohibited.**—No corporation incorporated hereunder shall have or issue shares of stock. No dividend shall be paid, and no part of the income of the corporation shall be distributed to its members, directors or officers. A corporation may pay compensation in a reasonable amount to its members, directors and officers for services rendered, may confer benefits upon its members in conformity with its purposes, and upon dissolution or final liquidation may make distributions to its members as permitted by the court having jurisdiction thereof, and no such payment, benefit or distribution shall be deemed to be a dividend or a distribution of income.

*History.*—s. 2, ch. 59-427.

**617.012 Reincorporation.**—

(1) Any corporation which has a charter approved by a circuit judge, under this part and the laws from which derived, or a charter granted by the Legislature of this state, on or prior to September 1, 1959, the effective date of chapter 59-427, Laws of Florida, may reincorporate hereunder by filing with the Department of State a copy of its charter and all amendments thereto, certified by the clerk of the circuit court of the county wherein recorded, as to charters and amendments granted by circuit judges, and by the Department of State, as to legislative charters, together with a certificate containing the provisions required in original articles of incorporation by s. 617.013, and accepting the provisions of this part, as amended.

(2) Said certificate shall be executed by its president and attested by its secretary under the corporate seal, if any, and it shall show that its issuance was duly authorized by a meeting of its members regularly called, or if its members have no voting rights, by meeting of its board of directors, managers or trustees regularly called. Upon the filing thereof and payment of the filing fees specified in s. 617.015, for filing articles of incorporation, the corporation shall be deemed to be incorporated hereunder and the certificate shall constitute its articles of incorporation hereunder.

(3) The corporation shall then be entitled to and be possessed of all the privileges, franchises and powers as if originally incorporated under this part, as amended; and all the properties, rights and privileges theretofore belonging to the corporation, which were acquired by gift, grant, conveyance, assignment or otherwise shall be and they are hereby ratified, approved, confirmed and assured to the corporation with like effect and to all intents and purposes as if they had been originally acquired through incorporation under this part, as amended; provided, however, that any corporation thus reincorporating hereunder shall be subject to all the contracts, duties and obligations theretofore resting upon the corporation or to which the corporation shall then be in any way liable.

*History.*—s. 3, ch. 59-427; s. 1, ch. 63-405; ss. 10, 35, ch. 69-106.

**617.013 Manner of incorporation.**—

(1) Corporations may be organized hereunder by any three or more persons who shall make, subscribe, acknowledge and file articles of incorporation with the Department of State, and shall obtain ap-

proval thereof by the Department of State.

(2) The articles of incorporation shall contain:

(a) The name of the proposed corporation, which shall include the word "Incorporated" or "Inc." The name shall be such as will distinguish the corporation from any other domestic corporation, or any foreign corporation admitted to conduct its affairs in this state; provided, however, that all corporations heretofore organized under this part may reincorporate under s. 617.012 with their same corporate names notwithstanding duplication of names.

(b) The purpose or purposes for which the corporation is organized.

(c) The qualification of members and the manner of their admission.

(d) The term for which it is to exist, which may be perpetual.

(e) The names and residences of the subscribers.

(f) By what officers the affairs of the corporation are to be managed, and the times at which they will be elected or appointed.

(g) The names of the officers who are to serve until the first election or appointment under the articles of incorporation.

(h) The number of persons constituting the first board of directors, managers, or trustees, which shall not be less than three, and the names and addresses of the persons who are to serve as directors, managers, or trustees until the first election thereof.

(i) By whom the bylaws of the corporation are to be made, altered or rescinded.

(j) By whom and in what manner amendments to the articles of incorporation may be proposed and adopted.

(k) Any provision which the incorporators may choose to insert for the conduct of the affairs of the corporation and any provision creating, dividing, limiting and regulating the powers of the corporation, the directors, managers or trustees, and the members, including, but not limited to, provisions establishing classes of membership and limiting voting rights to one or more of such classes.

(3) The articles of incorporation shall be in writing, subscribed by not less than three natural persons competent to contract and acknowledged by all of the subscribers before an officer authorized to take acknowledgments, and filed with the Department of State for approval. A duplicate copy so subscribed and acknowledged may also be filed.

*History.*—s. 4, ch. 59-427; ss. 10, 35, ch. 69-106.

**617.014 Approval of articles; beginning of corporate existence.**—When the articles of incorporation have been filed with the Department of State and approved by it and the filing fee herein specified has been paid, the subscribers thereof and their associates and successors shall constitute a corporation. The approval of the articles of incorporation by the Department of State shall be indicated by its endorsement thereof with the date and time of approval on the original. The original shall be filed in the records of the department. If a duplicate is received with the original, it shall, on receipt of the fee required for certified copies, be so endorsed, certi-

fied and returned to the person from whom it is received.

**History.**—s. 5, ch. 59-427; ss. 10, 35, ch. 69-106.

**617.015 Filing fees.**—Upon filing any articles of incorporation, amendment thereof or other paper relating to the incorporation, merger, consolidation or dissolution of any corporation not for profit with the Department of State, the following fees shall be paid to it for the use of the state:

(1) A filing fee of \$30 for the filing and approval of articles of incorporation.

(2) A fee of \$5 in each case for furnishing certified copies of articles of incorporation or other documents concerning a corporation not for profit.

(3) A fee of \$15 in each case for filing papers relating to dissolution, amendment of articles of incorporation, or a merger or consolidation agreement.

**History.**—s. 6, ch. 59-427; s. 1, ch. 67-561; ss. 10, 35, ch. 69-106; s. 14, ch. 71-114.

**617.02 Amendment of charter or articles of incorporation.**—Any corporation reincorporated hereunder may amend its articles of incorporation as provided in the articles. Any corporation heretofore incorporated hereunder which has not reincorporated under s. 617.012, may amend its charter by resolution as provided in the bylaws. In any case, the charter or articles of incorporation shall be amended and the amendment incorporated therein only when the amendment has been filed with the Department of State, approved by it, and all filing fees have been paid. The Department of State shall not approve or file any amendment to the charter of a corporation heretofore incorporated hereunder which has not reincorporated pursuant to s. 617.012, unless such corporation has previously filed certified copies of its charter and all amendments thereto with the Department of State together with an affidavit executed by its president stating that such documents constitute copies of the charter of the corporation and all amendments thereto. Such certified copies and accompanying affidavit shall be received and filed by the Department of State when they are submitted to it and the filing fees specified in s. 617.015 are paid.

**History.**—RS 2261; GS 2832; RGS 4501; CGL 6497; s. 7, ch. 59-427; ss. 10, 35, ch. 69-106.

**617.021 Corporate powers.**—Every corporation not for profit organized hereunder, unless otherwise provided in its articles of incorporation or by law, shall have power to:

(1) Have succession by its corporate name for the period set forth in its articles of incorporation.

(2) Sue and be sued and appear and defend in all actions and proceedings in its corporate name to the same extent as a natural person.

(3) Adopt and use a common corporate seal and alter the same; provided, however, that such seal shall always contain the words "corporation not for profit."

(4) Elect or appoint such officers and agents as its affairs shall require and allow them reasonable compensation.

(5) Adopt, change, amend and repeal bylaws, not inconsistent with law or its articles of incorporation,

for the administration of the affairs of the corporation and the exercise of its corporate powers.

(6) Increase, by a vote of its members cast as the bylaws may direct, the number of its directors, managers or trustees so that the number shall not be less than three but may be any number in excess thereof.

(7) Make contracts and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds and other obligations, and secure any of its obligations by mortgage and pledge of all or any of its property, franchises or income.

(8) Conduct its affairs, carry on its operations, and have offices and exercise the powers granted by this part in any state, territory, district, or possession of the United States or any foreign country.

(9) Purchase, take, receive, lease, take by gift, devise or bequest, or otherwise acquire, own, hold, improve, use, or otherwise deal in and with real or personal property, or any interest therein, wherever situated.

(10) Acquire, enjoy, utilize and dispose of patents, copyrights and trademarks and any licenses and other rights or interests thereunder or therein.

(11) Sell, convey, mortgage, pledge, lease, exchange, transfer or otherwise dispose of all or any part of its property and assets.

(12) Purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge or otherwise dispose of and otherwise use and deal in and with, shares and other interests in, or obligations of, other domestic or foreign corporations, whether for profit or not for profit, associations, partnerships or individuals, or direct or indirect obligations of the United States, or of any other government, state, territory, governmental district, municipality, or of any instrumentality thereof.

(13) Lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested.

(14) Make donations for the public welfare or for religious, charitable, scientific, educational or other similar purposes.

(15) Have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized.

(16) Merge and consolidate with other corporations both for profit and not for profit, domestic and foreign, provided that the surviving corporation is a corporation not for profit.

**History.**—s. 8, ch. 59-427; s. 1, ch. 73-171; s. 1, ch. 74-70.

**617.022 Estoppel; ultra vires.**—

(1) No body of persons acting as a corporation hereunder shall be permitted the want of legal organization as a defense to an action against it as a corporation, nor shall any person sued on a contract or sued for an injury to its property or a wrong done to its interests, be permitted to set up a want of such organization in his defense.

(2) No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or



transfer, but such lack of capacity or power may be asserted:

(a) In any action by a member or a director against the corporation to enjoin the doing of any act or the transfer of real or personal property by or to the corporation, but in any such action the plaintiff shall sustain the burden of proof that he has not at any time prior thereto assented to the act or transfer in question and that in bringing the action he is not acting in collusion with officials of the corporation. If the unauthorized acts or transfer sought to be enjoined are being, or are to be, performed or made pursuant to any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the action and if deemed equitable, set aside and enjoin the performance of such contract, and in so doing may allow to the corporation or to the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as loss or damage sustained.

(b) In an action by the corporation or by its receiver, trustee or other legal representative, or by its members in a representative suit, against the incumbent or former officers or directors of the corporation.

(c) In an action by the Department of Legal Affairs under the provisions of s. 617.09 or s. 617.11(4).

**History.**—s. 9, ch. 59-427; ss. 11, 35, ch. 69-106.

**617.023 Office and resident agent.**—Every corporation organized hereunder shall maintain an office in this state with a resident agent thereat upon whom process may be served. The resident agent may be either an individual or a corporation. The corporation shall keep the Department of State informed of the current city, town or village and street address of said office together with the name of the resident agent.

**History.**—s. 10, ch. 59-427; ss. 10, 35, ch. 69-106.

**617.025 Directors; qualifications.**—Members of corporations organized under this part who are of less than majority age shall be eligible to serve as directors, except that a majority of the board of directors must be persons who are competent to contract.

**History.**—s. 1, ch. 73-42.

**617.03 Evidence of incorporation.**—A copy of the articles of incorporation of any corporation organized under this chapter with thereon the certificate of the Department of State that they are copied from its records, or the original charter of a corporation heretofore incorporated and not reincorporated hereunder with the certificate of the recording thereof in the clerk's office endorsed thereon, or a copy of the record thereof certified by the clerk, shall be prima facie evidence of the contents and effect of such documents, and shall be conclusive evidence of

the existence of the corporation in all actions and proceedings where the question of its existence is only collaterally involved, and prima facie evidence in all other actions and proceedings.

**History.**—RS 2260; GS 2831; RGS 4500; CGL 6496; s. 11, ch. 59-427; ss. 10, 35, ch. 69-106.

#### **617.05 Dissolution.**—

(1) Any corporation organized hereunder wishing to dissolve may present a petition therefor to the circuit court of the county in which the principal office of the corporation is located. The circuit judge shall direct notice thereof to be published for such time as he may deem to be expedient, and after the expiration of such time he may decree a dissolution and may make all necessary orders and decrees for the winding up of the affairs of such corporation, taking care that the claims of creditors be satisfied as far as may be out of the assets of the corporation. Upon filing a certified copy of the decree of dissolution with the Department of State and the payment of all filing fees, the corporation shall be dissolved; provided, that in the case of corporations heretofore incorporated hereunder and not reincorporated, the decree of dissolution shall also be recorded in the office of clerk of the circuit court which approved the charter of the corporation.

(2) When any corporation organized hereunder is defunct, the circuit court of the county in which the last known principal office of the corporation is located or the circuit court which approved the charter of the corporation may decree a dissolution of such corporation upon the sworn petition of any person. Notice thereof shall be served by the petitioner by mail to the last known officers and agents of such corporation, specifying the date and time when the petition shall be presented to the circuit judge. In addition, the circuit judge shall direct notice to be published for such time as he shall deem to be expedient. Upon the presentation of proof of such service and publication of notice, which may be by affidavit, if the circuit judge shall find from the evidence presented that the corporation is defunct, he may decree a dissolution and make all necessary orders and decrees for the winding up of the affairs of such corporation, taking care that the claims of creditors be satisfied as far as may be out of the assets of the corporation. The circuit judge may in his discretion direct that the costs of the proceeding be satisfied out of the assets of the corporation after the claims of creditors, if any, are satisfied. Upon filing a certified copy of the decree of dissolution with the Department of State and the payment of all filing fees, the corporation shall be dissolved; provided, that in the case of corporations heretofore incorporated hereunder, the decree of dissolution shall also be recorded in the office of the clerk of the circuit court which approved the charter of the corporation.

**History.**—s. 2262 RS 1892; GS 2836; RGS 4506; CGL 6502; s. 13, ch. 59-427; ss. 10, 35, ch. 69-106.

#### **617.051 Merger.**—

(1)(a) Any two or more domestic corporations organized hereunder may merge into one of such corporations pursuant to a plan of merger approved in the manner provided in this part.

(b) Any corporation organized under chapter 608

or chapter 607 may merge into a corporation organized hereunder, provided the latter corporation is the surviving corporation. The provisions of chapter 607 dealing with merger shall apply to a corporation organized under that chapter, and the merger provisions of this chapter shall apply to a corporation organized hereunder.

(2) Each corporation shall adopt a plan of merger setting forth:

(a) The names of the corporations proposing to merge, and the name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation.

(b) The terms and conditions of the proposed merger.

(c) A statement of any changes in the articles of incorporation of the surviving corporation to be effected by such merger.

(d) Such other provisions with respect to the proposed merger as are deemed necessary or desirable.

*History.*—s. 14, ch. 59-427; s. 2, ch. 74-70; s. 1, ch. 77-174.

#### **617.052 Consolidation.—**

(1) Any two or more domestic corporations organized hereunder may consolidate into a new corporation pursuant to a plan of consolidation approved in the manner provided in part I of this chapter.

(2) Each corporation shall adopt a plan of consolidation setting forth:

(a) The names of the corporations proposing to consolidate, and the name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation.

(b) The terms and conditions of the proposed consolidation.

(c) With respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this part.

(d) Such other provisions with respect to the proposed consolidation as are deemed necessary or desirable.

*History.*—s. 15, ch. 59-427.

#### **617.0525 Consolidation or merger of domestic and foreign corporations.—**

(1) When a foreign corporation not for profit is authorized by the law of the state or place of incorporation to effect a merger or consolidation with a corporation not for profit foreign to that state or place, a merger or consolidation of a domestic corporation not for profit with such a foreign corporation may be effected.

(2) In case of consolidation, the new corporation may be incorporated under the laws of any state or place under which a constituent corporation was incorporated. In case of merger, the surviving corporation may be any constituent corporation. With respect to any constituent corporation, the provisions, forms, or manner of execution and acknowledgment of the agreement of merger or consolidation, and the certification of the proceedings for adoption of the agreement, may be effected in accordance with the laws of the state or place of incorporation, or proposed incorporation, of the surviving or new corporation.

(3) When a domestic corporation merges or consolidates with a foreign corporation pursuant to the law of a state or place other than this state, the single corporation shall file for record with the Department of State of this state a copy of the agreement of merger or consolidation, certified by the proper official of such other state or place. Before such foreign corporation may transact any business in this state it shall comply with s. 617.11.

(4) If the consolidated or merged corporation is to be a Florida corporation, the plan of consolidation or merger shall be adopted, signed and acknowledged, and filed with the Department of State pursuant to ss. 617.053 and 617.054.

*History.*—s. 2, ch. 73-171.

#### **617.053 Approval of merger or consolidation.—**

(1) A plan of merger or consolidation shall be adopted in the following manner:

(a) Where the members of any merging or consolidating corporation have voting rights, the board of directors, managers, or trustees of such corporation shall adopt a resolution approving the proposed plan and directing that it be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice setting forth the proposed plan or a summary thereof shall be given to each member entitled to vote at such meeting within the time and in the manner provided in the bylaws for the giving of notice of meetings of members. The proposed plan shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast.

(b) Where any merging or consolidating corporation has no members, or no members having voting rights, a plan of merger or consolidation shall be adopted at a meeting of the board of directors, managers, or trustees of such corporation upon receiving the vote of a majority of the members of the board.

(2) After such approval, and at any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation.

*History.*—s. 16, ch. 59-427.

#### **617.054 Articles of merger or consolidation.—**

(1) Upon such approval, articles of merger or articles of consolidation shall be executed in duplicate by each corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers of each corporation signing such articles, and shall set forth:

(a) The plan of merger or the plan of consolidation.

(b) Where the members of any merging or consolidating corporation have voting rights, then as to each such corporation a statement setting forth the date of the meeting of members at which the plan was adopted, that a quorum was present at such meeting, and that such plan received at least two-thirds of the votes which members present at such meeting or represented by proxy were entitled to cast; or a statement that such amendment was

adopted by a consent in writing signed by all members entitled to vote with respect thereto.

(c) Where any merging or consolidating corporation has no members, or no members having voting rights, then as to each such corporation a statement of such fact, the date of the meeting of the board of directors, managers, or trustees at which the plan was adopted and a statement of the fact that such plan received the vote of a majority of the members of the board.

(2) The original and a duplicate copy of the articles of merger or articles of consolidation shall be delivered to the Department of State. If the Department of State finds that such articles conform to law, it shall, when all fees have been paid as in part I of this chapter prescribed:

(a) Endorse its approval on the original with the date and time of approval.

(b) File the original in the records of the department.

(c) Issue a certificate of merger or a certificate of consolidation to which it shall affix the duplicate copy.

(3) The certificate of merger or certificate of consolidation, together with the duplicate copy of the articles of merger or articles of consolidation affixed thereto by the Department of State shall be returned to the person from whom the articles were received.

**History.**—s. 17, ch. 59-427; ss. 10, 35, ch. 69-106.

**617.055 Effective date of merger or consolidation.**—Upon the issuance of the certificate of merger, or the certificate of consolidation by the Department of State, the merger or consolidation shall be effected.

**History.**—s. 18, ch. 59-427; ss. 10, 35, ch. 69-106.

**617.056 Effect of merger or consolidation.**—When such merger or consolidation has been effected:

(1) The several corporations parties to the plan of merger or consolidation shall be a single corporation, which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation, and, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation.

(2) The separate existence of all corporations parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease.

(3) Such surviving or new corporation shall have all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under part I of this chapter.

(4) Such surviving or new corporation shall thereupon and thereafter possess all the rights, privileges, immunities, and franchises, as well of a public as of a private nature, of each of the merging or consolidating corporations; and all property, real, personal and mixed, and all debts due on whatever account, and all other choses in action, and all and every other interest, of or belonging to or due to each of the corporations so merged or consolidated, shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed; and the title to any real estate, or any interest therein, vested in any of such corporations shall not

revert or be in any way impaired by reason of such merger or consolidation.

(5) Such surviving or new corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the corporations so merged or consolidated; and any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted as if such merger or consolidation had not taken place, or such surviving or new corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such corporation shall be impaired by such merger or consolidation.

(6) In the case of a merger, the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation are stated in the plan of merger; and, in the case of a consolidation, the statements set forth in the articles of consolidation and which are required or permitted to be set forth in the articles of incorporation of corporations organized under this part shall be deemed to be the articles of incorporation of the new corporation.

**History.**—s. 19, ch. 59-427.

**617.09 Proceedings to revoke articles of incorporation, etc.**—In the event any member or citizen shall complain to the Department of Legal Affairs that any corporation organized under this part was organized or is being used as a cover to evade any of the laws against crime, or for purposes inconsistent with those stated in its articles of incorporation or charter, and shall submit prima facie evidence to sustain such charge, together with sufficient money to cover court costs and expenses, the said department forthwith shall institute and in due course prosecute to final judgment such legal or equitable proceedings as may be considered advisable either to revoke the articles of incorporation or charter or prevent its improper use.

**History.**—s. 5, ch. 4898, 1901; GS 2839; RGS 4509; CGL 6505; s. 23, ch. 59-427; ss. 11, 35, ch. 69-106.

**617.10 Bylaws.**—Any corporation organized under part I of this chapter may, in its bylaws:

(1) Delegate to its board of directors, managers, or trustees full discretionary power of admitting or expelling members;

(2) Prescribe that an incorporator or member shall not have any vested right, interest or privilege of, in or to the assets, functions, affairs or franchises of the corporation, or any right, interest or privilege which may be transferable or inheritable, or which shall continue if his membership ceases, or while he is not in good standing; provided, that before his membership shall cease against his consent he shall be given an opportunity to be heard, unless he is absent from the county where the corporation is located; and,

(3) Delegate to its board of directors, managers, or trustees the power of fixing regular or special dues and assessing fines in such sums as may be fixed, or the limits or occasions determined, by said bylaws. The amount of dues so fixed shall become, on



and after notice, an indebtedness to the corporation collectible by due course of law. The failure to pay any dues or fines assessed shall render the member liable to expulsion.

**History.**—ss. 1-4, ch. 4898, 1901; GS 2837, 2838; RGS 4507, 4508; CGL 6503, 6504; s. 24, ch. 59-427.

#### **617.11 Foreign nonprofit corporations; qualifications.—**

(1) Any corporation not for profit duly incorporated under the laws of any other state or territory and which desires to carry on, in the state, the objects and purposes of its incorporation, may file with the Department of State a duly authenticated copy of its charter or articles of incorporation, together with a filing fee of \$60.

(2) Upon the filing of such copy of its charter or articles of incorporation, and the payment of the fee aforesaid, and the objects of the corporation are such as are not prohibited by or contrary to the laws of this state, the Department of State shall issue a permit to such corporation to carry on in the state the objects and purposes of its incorporation.

(3) Any foreign corporation not for profit failing to obtain such permit, and its successors and assigns, shall not be permitted to bring or maintain any suit or other proceeding before any court or administrative body of this state; but failure to obtain such permit shall not affect the validity of any contract with or conveyance by such foreign corporation.

(4) In the event any member or citizen shall complain to the Department of Legal Affairs that any foreign corporation permitted under this part to carry on in this state the objects and purposes of its incorporation, or doing business in this state, was organized or is being used in this state as a cover to evade any of the laws against crime, or for purposes inconsistent with those stated in its articles of incorporation or charter, and shall submit prima facie evidence to sustain such charge, together with sufficient money to cover court costs and expenses, the said department forthwith shall institute and in due course prosecute to final judgment such legal or equitable proceedings as may be considered advisable either to revoke the permit, to prevent its improper use, or to prevent such foreign corporation from exercising its corporate powers within this state.

**History.**—ss. 1-3, ch. 11909, 1927; CGL 6506-6508; s. 25, ch. 59-427; s. 2, ch. 67-561; ss. 10, 11, 35, ch. 69-106; s. 15, ch. 71-114.

**617.12 Extinct churches and religious societies; property.**—Property, both real and personal, belonging to or held in trust for any church or any religious society belonging to any religious denomination in this state that has or shall become extinct, shall vest in and become the property of that denomination of which the said church or religious society is a member; provided, that nothing herein contained shall affect the title to any property that is now held by any of the denominational associations or organizations of the state; and provided further, that this section shall not affect the reversionary interest of any person in such property or any valid lien thereon.

**History.**—s. 1, ch. 16291, 1933; CGL 1936 Supp. 6508(1); s. 26, ch. 59-427.

**617.13 Extinct churches and religious societies; dissolution.**—Any church or religious society in this state which has ceased or failed to maintain religious worship or service, or to use its property for religious worship or services according to the tenets, usages and customs of a church of the denomination of which it is a member in this state for the space of 2 consecutive years immediately prior thereto, or whose membership has so diminished in numbers or in financial strength as to render it impossible for such church or society to maintain religious worship or services, or to protect its property from exposure to waste and dilapidation for a period of 2 years, shall be deemed and taken to be extinct; and upon the facts being duly established to the satisfaction of the circuit court in and for the county in which such church or society has been theretofore situated, an order of such court may be made dissolving said church or religious society and the property of such church or society, or the property which may be held in trust for such church or society, may in said order be transferred to and the title and possession thereof vested in the denomination of which said church or society shall have been a member. A copy of the decree of dissolution shall be filed with the Department of State.

**History.**—s. 2, ch. 16291, 1933; CGL 1936 Supp. 6508(2); s. 27, ch. 59-427; ss. 10, 35, ch. 69-106.

**617.14 Incorporation of labor unions or bodies.**—Any group or combination of groups of working men or wage earners, bearing the name labor, organized labor, federation of labor, brotherhood of labor, union labor, union labor committee, trade union, trades union, union labor council, building trades council, building trades union, allied trades union, central labor body, central labor union, federated trades council, local union, state union, national union, international union, district labor council, district labor union, American Federation of Labor, Florida Federation of Labor, or the component parts thereof, or the significant words therein, whether the same be used in juxtaposition or with interspace, may be incorporated under this part, provided, however:

(1) In addition to the requirements of s. 617.013, the articles of incorporation shall set forth the necessity for the incorporation, and shall be subscribed to by not less than five persons, and shall be acknowledged by all of the subscribers, who shall also make and subscribe to an oath, to be endorsed on the articles of incorporation, that it is intended in good faith to carry out the purposes and objects therein set forth. The articles of incorporation shall be filed in the office of the clerk of the circuit court of the proper county, and the approval of the judge of the circuit court shall be obtained.

(2) The subscribers of the articles of incorporation shall give notice of their intention to obtain approval thereof by the circuit judge. Such notice shall state the name of the judge, the date the articles of incorporation will be presented, the general nature of the articles of incorporation and the necessity therefor. Notice shall be published in a newspaper of general circulation in said county at least once, or posted at the courthouse door in counties having no newspapers, at least 10 days prior to the

date the articles of incorporation will be presented to the judge.

(3) When presented to the judge, the articles of incorporation shall be accompanied by a petition, signed and sworn to by the subscribers, stating fully the aims and purposes of such organization and the necessity therefor.

(4) Upon the filing of the articles of incorporation and the petition, and the giving of such notice, the circuit judge to whom such petition may be addressed shall, upon the date stated in such notice, take testimony and inquire into the admissions and purposes of such organization and the necessity therefor, and upon such hearing, if the circuit judge shall be satisfied that the allegations set forth in the petition and articles of incorporation have been substantiated, and shall find that such organization will not be harmful to the community in which it proposes to operate, or to the state, and that it is intended in good faith to carry out the purposes and objects set forth therein, and that there is a necessity therefor, the judge shall approve the articles of incorporation and endorse his approval thereon. Upon the filing of the articles of incorporation with its endorsements thereupon with the Department of State and payment of the filing fees specified in s. 617.015, the subscribers and their associates and successors shall be a corporation by the name given.

(5) Any person shall have the right to intervene by filing an answer to the said petition stating his reasons, if any, and be heard thereon, why the circuit judge shall not approve the articles of incorporation.

(6) The existence, amendment of the articles of incorporation, and dissolution of any such corporation shall be in accordance with this part.

**History.**—ss. 1-8, ch. 19271, 1939; CGL 1940 Supp. 6526(4)-(11); s. 28, ch. 59-427; ss. 10, 35, ch. 69-106.  
cf.—Ch. 448 General Labor Regulations.

**617.15 Sponge packing and marketing corporations.**—Persons engaged in the business of buying, selling, packing and marketing commercial sponges may incorporate under the provisions of this chapter to aid in facilitating the orderly cooperative buying, selling, packing and marketing of commercial sponges, and no such association shall be deemed to be a combination in restraint of trade or an illegal monopoly, or an attempt to lessen competition or fix prices arbitrarily nor shall any marketing contract or agreement by the corporation and its members, or the exercise of any power granted by this part be considered illegal or in restraint of trade.

**History.**—ss. 1-5, ch. 17805, 1937; CGL 1940 Supp. 6508(4)-(8); s. 29, ch. 59-427.

**617.16 Corporations for profit; when may become corporations not for profit.**—Any corporation for profit now or hereafter incorporated under any of the laws of the state, engaged solely in carrying out the purposes and objects for which corporations not for profit are authorized under the laws of Florida to carry out, is hereby authorized and empowered to change its corporate nature from a corporation for profit to that of a corporation not for profit as defined in this part, by filing a petition in the circuit court of the county wherein its principal place of business is located in the name of the corpo-

ration signed by an officer of the corporation and under its corporate seal setting forth the purposes and objects in which it is solely engaged, and requesting that the nature of the corporation be changed; provided, that any profit corporation, which has transferred, or is in the process of transferring its functions and assets to a nonprofit corporation by proceedings under this part shall, upon the recital of the facts, circumstances and intentions surrounding such transfer proceedings in a petition filed in accordance with s. 617.17, and the subsequent approval thereof by the circuit judge to whom presented, be deemed to have acted under this chapter and such nonprofit corporation shall succeed to the rights, liabilities and assets of its corporate predecessor as fully and completely as if the original petition had been filed under the provisions of this chapter.

**History.**—s. 1, ch. 22657, 1945; s. 1, ch. 57-90; s. 30, ch. 59-427.

**617.17 Same; petition and contents.**—Said petition shall be accompanied by the written consent of all the stockholders authorizing the change in the corporate nature and directing an authorized officer to file such petition before the court, together with proposed articles of incorporation signed by the president and secretary of the petitioning corporation which shall set forth the provisions required in original articles of incorporation by s. 617.013, and in addition shall contain a provision agreeing to accept all the property of the petitioning corporation and agreeing to assume and pay all its indebtedness and liabilities.

**History.**—s. 2, ch. 22657, 1945; s. 31, ch. 59-427.

**617.18 Same; authority of circuit judge.**—If the circuit judge to whom the petition and proposed articles of incorporation are presented finds that the petition and proposed articles are in proper form, he shall approve the articles of incorporation and endorse his approval thereon; such approval shall provide that all of the property of the petitioning corporation shall become the property of the successor corporation not for profit, subject to all indebtedness and liabilities of the petitioning corporation. The articles of incorporation with such endorsements thereupon shall be sent to the Department of State, which shall, upon receipt thereof and upon payment of all taxes due the state by the petitioning corporation, if any, issue a certificate showing the receipt of the articles of incorporation with the endorsement of approval thereon and of the payment of all taxes to the state. Upon payment of the filing fees specified in s. 617.015, the Department of State shall file the articles of incorporation, and from thenceforth the petitioning corporation shall become a corporation not for profit under the name adopted in the articles of incorporation and subject to all the rights, powers, immunities, duties and liabilities of corporations not for profit under the laws of Florida, and its rights, powers, immunities, duties and liabilities as a corporation for profit shall cease and determine.

**History.**—s. 3, ch. 22657, 1945; s. 32, ch. 59-427; ss. 10, 35, ch. 69-106.

**617.19 Same; application of other laws.**—All the provisions of this chapter relating to corporations not for profit organized hereunder, except insofar as they are inconsistent herewith, shall be appli-

cable to any corporation whose character has been changed hereunder and shall henceforth govern such corporation.

**History.**—s. 4, ch. 22657, 1945; s. 33, ch. 59-427.

**617.21 Corporations not for profit; when authorized to act as trustee.**—Any corporation not for profit, organized under this part, is authorized to act as trustee of property whenever the corporation has either a beneficial, contingent or remainder interest in said property, and any such corporation may likewise accept and hold the legal title to property, the beneficial interest of which is owned by any other eleemosynary institution or nonprofit corporation, or fraternal, benevolent, charitable or religious society or association.

**History.**—s. 1, ch. 25346, 1949; s. 34, ch. 59-427.

## PART II

### SCHOLARSHIP PLANS

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**617.50 Definitions.**—As used herein, the following terms shall have the meaning defined unless the context clearly requires otherwise:

(1) "Department" means the Department of Insurance of this state.

(2) "Plan" means any educational cooperative plan or scholarship plan subject to the provisions of this part.

(3) "Corporation" means a corporation not for profit authorized to administer a plan in the state.

(4) "Scholarship" means the educational benefits payable pursuant to a plan which shall not be deemed to be distribution of income to a member of a corporation.

(5) "Member" means any person who is accepted as a member by the plan and who may later become eligible for a scholarship as provided in the charter and bylaws of the plan.

(6) "Trustee of member" means the person or persons including corporations, partnerships or other entities, who on behalf of a minor executes an application for membership in the plan.

(7) "Recipient of scholarship" means any member who has been granted a scholarship by the plan.

(8) "Fiscal year" means the period beginning January 1 and ending December 31 of each year.

(9) "Financial institution" means any state or federally approved bank or savings and loan association whose accounts are insured by the Federal Deposit Insurance Corporation, Federal Savings and Loan Insurance Corporation, or any other agency of the Federal Government in which a savings account is maintained for the benefit of a member.

(10) "Trustee" means any state or national bank having trust powers, or any other trust company regulated by a state or federal agency, in which the scholarship fund is maintained.

(11) "Person" means an individual, company, association, organization, society, partnership, syndicate, business trust, corporation, agent, counselor, corporation for profit, and every legal entity.

(12) "Scholarship fund" means the scholarship fund that receives the income from savings accounts maintained by or for members in financial institutions and any earnings thereon and income from any other source from which disbursements are made for scholarships.

**History.**—s. 1, ch. 61-496; s. 1, ch. 65-228; s. 1, ch. 67-599; ss. 13, 35, ch. 69-106; s. 1, ch. 71-127; s. 261, ch. 71-377; s. 1, ch. 72-126.



**617.51 Scholarship plans subject to part.**—No person, firm, corporation, or corporation for profit shall solicit or collect contributions for the operation and administration of any plan except as specifically authorized hereunder. Any educational cooperative plan or scholarship plan the principal features of which shall consist of:

- (1) Participation by a specific person based on contributions made on behalf of such person; and
- (2) Qualification for participation in whole or in part based upon amount and duration of such contribution,

shall be deemed a plan subject to the provisions of this part.

*History.*—s. 2, ch. 61-496; s. 2, ch. 65-228.

**617.52 Regulation of operation and administration of plans by department; authority to promulgate rules and regulations.**—

(1) The department is authorized to regulate the operation and administration of any plan or plans, as herein provided, and to adopt and promulgate such reasonable regulations as shall be necessary to the exercise of the powers herein vested in it. In the adoption of such regulations the department shall give paramount consideration to the safeguarding of funds and the protection of scholarship recipients.

(2) No plan shall be approved by the department which does not comply with regulations relating to the following:

- (a) Right of a member or trustee of a member to terminate the plan and withdraw the savings account;
- (b) Establishment of a scholarship fund with a trustee;
- (c) Incorporation and qualification with the Department of State by a corporation;
- (d) Security of funds for scholarships;
- (e) Qualifications of institutions in which scholarships may be granted;
- (f) Maximum duration of scholarship;
- (g) Scholastic achievement as qualification for commencement or continuation of scholarship not exceeding requirements of institution;
- (h) Amount of contributions and duration necessary to participation in benefits of plan;
- (i) Good moral character of management personnel;
- (j) Voting rights of members or trustees of members.

(3) The rules of procedure for the adoption of any rules and regulations promulgated by the Department of Insurance hereunder shall be governed by the provisions of chapter 120.

*History.*—s. 3, ch. 61-496; s. 1, ch. 63-329; s. 3, ch. 65-228; s. 2, ch. 67-599; ss. 10, 13, 35, ch. 69-106; s. 2, ch. 72-126; s. 1, ch. 77-117.

**617.53 Solicitations of funds; advertisement of plan.**—

(1) It shall be unlawful for any person, firm, corporation or corporation for profit to solicit funds for the operation of any plan, unless such person, firm, corporation or corporation for profit holds a currently effective license as provided in this part.

(2) It shall be unlawful for any person, firm, corporation or corporation for profit to advertise any

plan prior to the approval of such advertising material by the department to prevent material misrepresentation of law or fact with regard to any such plan.

*History.*—s. 4, ch. 61-496; s. 4, ch. 65-228; s. 3, ch. 67-599; ss. 13, 35, ch. 69-106.

**617.531 "Twisting" prohibited.**—No person shall make any misleading representations or incomplete or fraudulent comparison of any authorized scholarship plan for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, or to enroll a member in another authorized scholarship plan.

*History.*—s. 4, ch. 67-599.

**617.532 Permit required to form corporation; application.**—

(1) No corporation shall hereafter be formed unless the persons proposing to form such corporation have applied to the department for and have received from it a permit therefor.

(2) Written application for such permit shall be filed with the department and shall include:

- (a) Proposed name of corporation;
- (b) Name, residence address, business background, and qualifications of each person associated in the formation or financing of the corporation;
- (c) Full disclosure of the terms of all understandings and agreements existing or proposed among persons so associated relative to the corporation, or the formation or financing thereof, accompanied by a copy of each such agreement or understanding;
- (d) Full disclosure of the terms of all understandings and agreements existing or proposed for management or agency contracts;
- (e) A copy of each of any or all proposed articles or certificates of incorporation and proposed bylaws of the proposed corporation; and
- (f) Such other pertinent information as the department may reasonably require.

(3) The applicant shall file with the department:

- (a) A copy of each of any and all articles or certificates of incorporation of involved corporations, if a copy of the same is not already on file in the department;
- (b) A copy of each of any and all syndicate, association, firm, partnership, organization or other similar agreement, by whatever name called, involved in the formation of the proposed corporation or its financing;
- (c) A copy of any other pertinent document as reasonably requested by the department.

(4) The application shall be accompanied by a filing fee of \$25.

*History.*—s. 5, ch. 67-599; ss. 13, 35, ch. 69-106; s. 162, ch. 79-164.

**617.54 Formation of corporation not for profit for operation of plan; filing; approval of articles of incorporation and name of corporation; amendment of articles of incorporation.**—

(1) Any seven or more persons may, pursuant to the provisions of part I, form a corporation not for profit for the purpose of establishing, maintaining and operating a plan or plans subject to regulation hereunder. Every such corporation so organized and licensed hereunder shall be deemed to be a charitable and benevolent institution.

(2) No such corporation shall hereafter be formed in this state unless the articles of incorporation thereof are approved by the Department of Insurance prior to filing the same with and approval by the Department of State as otherwise provided by law.

(3) The incorporators shall file triplicate originals of the articles of incorporation with the Department of Insurance, accompanied by a filing fee of \$10. The department shall promptly examine the articles of incorporation. If it finds that the articles of incorporation conform to law, and that a certificate of authority has been or will be issued as provided by s. 617.55, it shall endorse its approval on each of the triplicate originals of the articles of incorporation, retain one copy thereof for its files, and return the two remaining copies to the incorporators for filing with the Department of State as required by law. If, after examining the articles of incorporation, the Department of Insurance does not find that the same conform to law, as provided above, it shall refuse to approve the articles of incorporation and shall return all copies thereof to the incorporators.

(4) No such corporation shall be formed or authorized in this state under a name which is the same as that of any other authorized corporation under this part, or is so nearly similar thereto as to cause or tend to cause confusion, or which would tend to mislead the public as to its type of organization. Before incorporating under or using any name the corporation or proposed corporation shall submit its name or proposed name to the department for its approval.

(5) Before approving or disapproving the name or proposed name of such corporation, the department shall notify all other corporations holding a certificate of authority whose name might be adversely affected, allowing them 30 days after date of mailing of the notice within which to file their objections with it. If a name is so objected to, the department shall disapprove the name unless it is of the opinion that the objections are not well-founded.

**History.**—s. 5, ch. 61-496; s. 5, ch. 65-228; s. 6, ch. 67-599; ss. 10, 13, 35, ch. 69-106; s. 21, ch. 78-95.

#### **617.55 Certificate of authority; license; requirements.—**

(1)(a) No corporation shall commence or continue operation in Florida, or advertise any plan, subject to regulation hereunder, prior to the issuance to it of a certificate of authority by the department.

(b) Applications for certificate of authority hereunder shall be made on forms prescribed by the department and shall contain such information as it shall deem necessary to determine compliance with this law and regulations adopted pursuant thereto.

(2) Applications shall be accompanied by such supplemental data as the department may require, including, but not limited to, the following:

(a) Charter certified by the Department of State, together with all amendments thereto as of the date of such certification.

(b) Bylaws of the corporation.

(c) Proposed plan or plans for payment of scholarships.

(d) Copies of membership certificates, applications and other documents to be used in connection

with the operation and administration of the plan.

(e) Financial statement of the corporation shall include but not be limited to assets such as cash, bonds, stocks, real estate (less encumbrances), enrollment fees and dues in the course of collection; liabilities such as unearned enrollment fees, notes payable, surplus, and any other category of assets or liabilities as may be required by the department. Each category of assets and liabilities is to be supported by schedules describing the items included in each such category.

(f) Names and addresses of officers and directors of corporation. All such data shall be submitted with oath, to be prescribed by the department, taken and subscribed by two officers of the corporation, that the facts are true and that documents submitted are truly representative and in use or to be put in use. Proposed changes in the charter, bylaws or forms used, including contracts with educational institutions, shall be submitted to the department for its approval at least 10 days before such change or use. A filing fee of \$5 for filing amendments to articles of incorporation, other than at time of approval for original certificate of authority, and a filing fee of \$5 for filing bylaws, or amendments thereof, shall be paid by each such corporation to the department.

(g) A filing fee of \$25.

(3) The department shall issue a certificate of authority to each qualified applicant if the department finds that:

(a) The applicant has been organized for the bona fide purpose of establishing, maintaining and operating a plan in accordance with applicable statutes, regulations promulgated by the department, and has been registered or licensed by the Federal Securities and Exchange Commission;

(b) The plan is fair and reasonable and actuarially capable of providing all or a substantial portion of the educational scholarship needs of members in accordance with representations contained in the plan;

(c) The operation of the plan complies with s. 617.56 and regulations of the department respecting the security of scholarship funds; and

(d) The applicant has paid a license fee of \$50.

The license shall cover the period expiring on October 1 next following the date of issue.

**History.**—s. 6, ch. 61-496; s. 6, ch. 65-228; s. 7, ch. 67-599; ss. 10, 13, 35, ch. 69-106; s. 208, ch. 77-104.

**617.551 Annual license fee.**—Each corporation holding a certificate of authority shall pay an annual license fee of \$50 on or before October 1.

**History.**—s. 7, ch. 67-599.

**617.56 Deposit of scholarship funds with trustee.**—The scholarship fund shall be deposited with a trustee appointed by the corporation and approved by the department. The scholarship fund shall be held separately and apart from the assets of the corporation and not subject to levy, attachment, or garnishment on account of any debts or liabilities of the corporation or any member or trustee of a member. Except for expenses incurred by the trustee for the investment and maintenance of the scholarship fund, the scholarship fund shall be used exclu-

sively and solely for scholarships for members who become eligible pursuant to the bylaws adopted by the corporation. Any advisory or management agreement relating to the scholarship fund shall be approved by the corporation and the department. The department is authorized to adopt rules and regulations as shall be necessary to assure the availability of funds to members for scholarships. Such regulations, if adopted, shall become part of the trust agreement.

**History.**—s. 7, ch. 61-496; s. 7, ch. 65-228; s. 8, ch. 67-599; ss. 13, 35, ch. 69-106; s. 2, ch. 71-127; s. 3, ch. 72-126.

#### **617.561 Deposit requirements.—**

(1) Every corporation organized under part II of this chapter, to assure the faithful performance of its obligations to its members or subscribers, shall deposit with the department securities of the type, in which by the laws of this state an insurance company may invest its funds, the sum of \$50,000 before the department may issue it a certificate of authority.

(2) Any such corporation holding a certificate of authority on January 1, 1967, shall, on or before April 1, 1968, deposit \$25,000 in securities with the department, as set forth in subsection (1), and on or before April 1, 1969, deposit with the department an additional \$25,000 in such securities.

(3) The state shall be responsible for the safekeeping of all securities deposited with the department under this part. Securities deposited with the department under this part shall not, on account of such securities being in the state, be subject to taxation but shall be held exclusively and solely to insure the corporation's faithful performance of its obligations to its members or trustees of members.

(4) Corporations depositing securities as required herein, during solvency, have the right to exchange or substitute other securities of like quality and value for securities so on deposit, to receive the interest and other income accruing on such securities, and to inspect the deposit at all reasonable times.

(5) Such deposit shall be maintained unimpaired as long as the corporation continues business in this state. Whenever such corporation ceases to do business in this state and furnishes to the department proof satisfactory to the department that it has discharged or otherwise adequately provided for all of its obligations to its members, sponsors, trustees of members and qualified recipients of scholarships in this or any other state, possession or territory of the United States, the department shall release the deposited securities to the corporation, or the party or parties entitled thereto, on presentation of the department's receipts for such securities.

(6) The department may, in its discretion, prior to acceptance for deposit of any particular asset or security, or at any time thereafter while so deposited, have the same appraised or valued by competent appraisers. The reasonable costs of any such appraisal or valuation shall be borne by the corporation.

**History.**—s. 9, ch. 67-599; ss. 13, 35, ch. 69-106.

#### **617.562 Reserve fund for administration of plan in event of liquidation, insolvency or appointment of receiver.—**

(1) Whenever the department determines that the \$50,000 deposit required in s. 617.561, is insufficient to assure administration of a plan, it shall require such corporation organized under this part, to assure the faithful performance of its obligations to its sponsors, members, subscribers or qualified scholarship recipients, to establish a special trust account, separate and apart from the trust fund required by s. 617.56. The purpose of this special trust account shall be to establish a fund sufficient to enable the receiver or other official appointed by the department or court in the event of the default of the corporation by insolvency or otherwise, to effectively pay for the administrative expenses of rehabilitating or liquidating the plan.

(2) The proceeds from the special trust account shall be deposited in a trust bank, whose deposits are insured by the Federal Deposit Insurance Corporation, Federal Savings and Loan Insurance Corporation or any other agency of the Federal Government, designated by the department in the name of the department, and its successors, as trustee, for use in the event of the default of said corporation and may be used in any manner which, in the department's opinion, will most effectively and efficiently carry out the purposes of the scholarship plan and protect the interests of the sponsors, members, trustees of members or qualified scholarship recipients of the plan.

(3) The department is authorized to adopt such rules and regulations respecting such trust fund as shall be necessary to the protection of such funds and to assure their availability for the purposes set forth in the plan or plans under which said moneys are received.

**History.**—s. 10, ch. 67-599; ss. 13, 35, ch. 69-106.

**617.57 Operating capital.**—Operating capital of the corporation shall not be deemed scholarship funds. Operating capital shall consist of enrollment fees and annual dues of members. Advancements to the corporation for working capital shall be deemed operating capital repayable from such fees and dues only.

**History.**—s. 8, ch. 61-496; s. 8, ch. 65-228; s. 4, ch. 72-126.

**617.58 Annual financial statement.**—Each corporation shall annually on or before March 1 after the end of the fiscal year, as herein defined, file with the department a statement showing the financial condition of the corporation as of the last day of such fiscal year in such form and containing such information as the department may require. Such report shall be verified by a certified public accountant or be submitted under oath subscribed by two officers of the corporation.

**History.**—s. 9, ch. 61-496; s. 9, ch. 65-228; ss. 13, 35, ch. 69-106.

**617.59 Examination of books and records.**—The department shall have the power of visitation and examination into the affairs of each such corporation. All of the books and records of the corporation shall be available to the department for examination by it. The department shall have the power to



summon and examine under oath any person in relation to the affairs, transactions, and conditions of any corporation and to require the production of books, records, papers and other documents relating to any of the activities of the corporation. Each such corporation shall pay for such examinations the fees prescribed by the department which shall not be less than \$100.

**History.**—s. 10, ch. 61-496; s. 10, ch. 65-228; ss. 13, 35, ch. 69-106.

**617.60 Dissolution or liquidation.**—The department shall have the power and authority to bring proceedings in the Circuit Court in and for Leon County for the dissolution or liquidation of any corporation organized under part II of this chapter, upon any one or more of the following grounds; that the corporation:

- (1) Is impaired or insolvent;
- (2) Has refused to submit any of its books, records, accounts or affairs to reasonable examination by the department;
- (3) Has concealed or removed records or assets from this state;
- (4) Has failed to comply with an order of the department or the provisions of this part to make good an impairment of capital;
- (5) Has transferred or attempted to transfer substantially its entire property or business, or has entered into any transaction the effect of which is to merge substantially its entire business in that of any other corporation without having first obtained the written approval of the department;
- (6) Is found by the department to be in such condition that further transaction of business by it will be hazardous to the public, its members or trustees of members;
- (7) Has willfully violated its certification of incorporation, bylaws or any law of this state, or any regulation of the Federal Securities and Exchange Commission;
- (8) Has an officer, director, agent, manager or employee who has unlawfully refused to be examined under oath concerning its affairs;
- (9) Has been or is the subject of an application for the appointment of a receiver, trustee, custodian or sequestrator of the corporation or its property, but only if such appointment has been made or is imminent and its effect is or would be to oust the courts of this state of jurisdiction hereunder;
- (10) Has consented to such an order through a majority of its directors, members or trustees of members;
- (11) Has ceased the selling of memberships for a period of 6 months; or
- (12) Is solvent and has commenced voluntary liquidation or dissolution, or attempts to commence or prosecute any action or proceeding to liquidate its business or affairs, or to dissolve its corporate charter, or to procure the appointment of a receiver, trustee, custodian or sequestrator under any other law.

All such proceedings shall be brought and prosecuted by the department pursuant to statutes or rules and regulations promulgated by it for the protection of members and trustees of members, and it shall have and exercise the same authority and powers in connection therewith as are granted to it under laws

respecting the dissolution and liquidation of insurance companies, including, but not limited to, chapter 631.

**History.**—s. 11, ch. 61-496; s. 11, ch. 65-228; s. 11, ch. 67-599; ss. 13, 35, ch. 69-106.

**617.61 Revocation of certificate of authority.**

—The department shall have the power to revoke the certificate of authority or bring proceedings for the dissolution or liquidation of any such corporation whenever the department finds that:

- (1) The corporation is being operated for profit;
- (2) The affairs of the corporation are being fraudulently conducted;
- (3) The corporation is guilty of a violation of any of the provisions of this part;
- (4) The certificate of authority was obtained by fraud;
- (5) The corporation is guilty of false or misleading advertising;
- (6) Trust funds have been or are being used for purposes other than scholarships;
- (7) There has been a material variance between any plan or plans as filed with the department and the actual administration thereof to the detriment of any member, trustee of member or class thereof;
- (8) The corporation has willfully failed to file reports required by the department pursuant to this law;
- (9) The corporation has refused or prevented examination of its books and records by the department; or
- (10) The corporation was engaged in such activity on the effective date of this part and did not, within 60 days after such date, apply for a certificate as provided in s. 617.55(1).

**History.**—s. 12, ch. 61-496; s. 12, ch. 65-228; ss. 13, 35, ch. 69-106; s. 21, ch. 78-95.

**617.62 Exemption from occupational license tax.**

—Every corporation holding a certificate of authority under the provisions hereof and its officers, agents and solicitors shall be exempt from the payment of any occupational license taxes levied by virtue of any of its activities or those of its officers, agents or solicitors authorized hereunder.

**History.**—s. 13, ch. 61-496; s. 13, ch. 65-228.

**617.63 Corporate powers; fronting companies or corporations prohibited.**

(1) Each corporation shall have all the powers provided by law for corporations not for profit not inconsistent herewith, but the exercise of such powers shall be subject to the approval of the department where, in the opinion of the department, any such exercise of powers may impair or interfere with the ability of the corporation properly to execute, administer or operate any of the plans approved by the department.

(2) No corporation which has been issued a certificate of authority shall act as a fronting company or corporation for any unauthorized corporation. A "fronting company or corporation" is a corporation which has been issued a certificate of authority by the department to operate a scholarship plan under the provisions of this part, which in anywise generally transfers to an unauthorized person, corporation,

or corporation for profit the direction and control of its activities.

**History.**—s. 14, ch. 61-496; s. 14, ch. 65-228; s. 13, ch. 67-599; ss. 13, 35, ch. 69-106.

**617.64 Board of directors.**—The charter of each corporation shall provide for a board of directors of not less than seven persons.

**History.**—s. 15, ch. 61-496; s. 15, ch. 65-228; ss. 13, 35, ch. 69-106; s. 5, ch. 72-126.

**617.641 Officers and directors of corporation not to be stockholder, director, agent, etc.**—No officer or director of a corporation organized under the provisions of this part shall be a stockholder, director, agent, counselor, or employee of any person or corporation for profit which shall represent said corporation in the promotion or sale of memberships in plans authorized by this section, nor shall such person in any manner whatsoever receive or anticipate any compensation, profit or other thing of value from such person or corporation for profit. This provision shall not apply to those banks or other financial institutions as provided in s. 617.67.

**History.**—s. 14, ch. 67-599.

**617.65 Penalty for violations.**—

(1) Any person, firm or corporation who shall violate any of the provisions of part II of this chapter shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Each instance of violation shall be considered a separate offense.

(2) The willful making of any false and material statement on any report to or required by the department shall constitute perjury and be punishable as such.

**History.**—s. 16, ch. 61-496; s. 16, ch. 65-228; s. 15, ch. 67-599; ss. 13, 35, ch. 69-106; s. 639, ch. 71-136; s. 209, ch. 77-104.

**617.66 Exemptions from provisions of this part.**—The provisions of this part shall not apply to any nonprofit educational corporation or association which makes provision for scholarships as incidental to its principal functions and activities only; nor shall the provisions hereof apply to scholarships under any insurance plan subject to supervision of the department of this state.

**History.**—s. 17, 61-496; s. 17, ch. 65-228; s. 16, ch. 67-599; ss. 13, 35, ch. 69-106.

**617.67 Participation by banks and other financial institutions.**—All banks and trust companies, industrial savings banks, building and loan associations and savings and loan associations located in Florida whose accounts are insured by the Federal Deposit Insurance Corporation, Federal Savings and Loan Insurance Corporation or any other agency of the Federal Government are hereby authorized to participate in scholarship plans operating under the provisions of this part.

**History.**—s. 2, ch. 63-329; s. 18, ch. 65-228; s. 17, ch. 67-599.

**617.68 Licensing procedures and general requirements for agents and counselors; penalty for violation.**—

(1) Sections 617.68-617.81 of this part may be referred to as the "Licensing Procedures Law."

(2) As used in said law "agent" means any per-

son, firm, partnership or corporation for profit who contracts with or is employed by a corporation under this part for the solicitation or sale of memberships in a plan, hereunder.

(3) As used in said law "counselor" means any person who contracts with or is employed by an "agent" for the solicitation or sale of memberships in a plan, hereunder.

(4) No person, firm, partnership or corporation shall be, act as, or advertise or hold himself or itself out to be an agent or counselor in this state unless he or it is then licensed as such agent or counselor under a currently effective license issued by the department pursuant to the provisions of this part, except as otherwise provided herein.

(5) For the protection of the people of this state, the department shall not issue, continue, renew or permit to exist any such license as to any person, firm, partnership or corporation who has not established to the department's satisfaction that he or it is qualified therefor.

(6) The department shall prescribe and furnish all forms required under this section in connection with the application for and issuance of such licenses and for appointment and termination of appointment of agents and counselors.

(7) The department shall not issue a license as to an agent or counselor except upon written application therefor filed with it at its offices in Tallahassee, to any person who has not met the qualifications therefor, and paid in advance all applicable license fees as provided herein. All such applications shall be made under oath of the applicant.

(8) Application for license as an agent shall be signed by the applicant and the appointing corporation and shall be filed with the department by the corporation proposed to be so represented, and shall be accompanied by an executed copy of all contracts entered into between the corporation and the agent.

(9) Application for license as a counselor shall be signed by the applicant and the agent to be represented and shall be filed with the department by the agent proposed to be so represented, accompanied by executed copies of any contracts entered into between the agent and counselor.

(10) Each application for license as an agent shall be accompanied by payment of a license fee of \$25, and each application for license as a counselor shall be accompanied by payment of a license fee of \$10.

(11) The department may propound any reasonable interrogatories, in addition to those contained in the application, to any applicant for a license, or on any renewal or continuation thereof, relating to his or its qualifications and any other matter which, in the department's opinion, is deemed necessary or advisable for the protection of the public and to ascertain the applicant's qualifications. The department may, upon completion of the application, make such further investigation as it may deem advisable of the applicant's character, reputation, experience, background and fitness for a license.

(12) If, upon the basis of the completed application for a license and such further inquiry or investigation as the department may make concerning the applicant, the department is satisfied that the appli-

cant is qualified for the license applied for and that all pertinent license fees have been paid, it shall approve the application and promptly issue the same.

(13)(a) The department shall transmit the original and a copy of each license as follows:

1. Agent's license, original to the corporation and copy to the licensee;
2. Counselor's license, original to the agent and copy to the licensee.

While the license is in force the original thereof shall be retained by the appointing corporation in the case of agents, and by the agent in the case of counselor.

(b) Each license shall be in such form as the department may designate and show the type and serial number of license, date of issuance, name and address of the licensee, general conditions pertaining to expiration, continuation or renewal, and such other matters as the department deems advisable.

(14) If, upon the basis of the completed application and such further inquiry or investigation, the department deems the applicant to be lacking in any one or more of the qualifications for the license applied for, it shall disapprove the application. At the same time the department shall return to the applicant or other person entitled thereto any license fee received by it in connection with the application for a license.

(15) All licenses as to which all requisite applications, payment of license fees and evidence thereof in customary form received by the department at its office in Tallahassee, within 1 calendar month prior to the expiration of the license year then current or within 1 calendar month after the commencement of the next following new license year, shall be dated and effective as of the first day of such new license year and shall be as for the entire such license year (subject to suspension, revocation, renewal, continuation or termination as otherwise provided in this part); but such a license, if issued pursuant to qualification thereof during the last calendar month of the preceding license year as hereinabove provided, shall be deemed to relate back in effectiveness to the date within such calendar month on which the last of such qualifying requirements was received by the department at its offices in Tallahassee.

(16) The license of an agent or counselor shall continue in force until suspended, revoked or otherwise terminated, but subject to annual continuation by the corporation as to an agent and by an agent as to a counselor named therein, on or before October 1, by payment of a renewal or continuation fee of \$25 for an agent's license and a fee of \$10 for a counselor's license, accompanied by the corporation's or agent's written request, as the case may be, for such renewal or continuation.

(17) Annually on or before October 1, each corporation and agent shall file with the department the alphabetical lists, statements and information as to licenses being renewed or continued, or being terminated, accompanied by payment of the applicable renewal or continuation fee as set forth in subsection (15).

(18) Any such license as to which request for renewal or continuation is not received by the depart-

ment at its offices at Tallahassee, as required by subsection (15), shall be deemed to have expired at midnight on October 30 next following such failure. Request for renewal or continuation of any such license or payment of fee therefor which is received by the department after such October 1, but on or before the next following November 1, may be accepted and effectuated by the department, in its discretion.

(19) Upon the expiration of any license, the licensee formerly so licensed shall be completely without any of the authority or rights theretofore conferred by the license, and shall not thereafter, while without the required license, engage or attempt to engage in any transaction or business for which such license was issued. No licensee shall again be granted such a license unless and until he or it applies and fully qualifies therefor as provided in this part except as provided in subsection (15). A license issued hereunder is valid only as to the licensee named therein and is not transferable.

(20) Each corporation and agent appointing an agent or counselor in this state, as the case may be, shall file the appointment with the department, and at the same time pay the license fee as prescribed in subsection (16). Every such appointment shall be subject to the issuance of the appropriate agent's or counselor's license.

(21) As a part of each appointment there shall be a certified statement or affidavit of an executive officer of the appointing authority stating what investigation, if any, has been made concerning the proposed licensee and his background, including a credit report or summary thereof, and the appointing authority's opinion to the best of his or its knowledge and belief as to the moral character, fitness and reputation of the proposed licensee.

(22) In the appointment of a counselor, the agent shall also certify therein, if true, that the applicant has the necessary training or that the agent will guarantee that he will have the necessary training to hold himself out as a counselor, and the agent shall further certify that he or it is willing to be bound by the acts of such counselor within the scope of his employment.

(23) Subject to annual renewal or continuation by the corporation as to agents and by the agents as to counselors as provided in subsection (16), appointment of licensees shall continue in effect until the licensee's license is revoked or otherwise terminated, unless written notice of earlier termination of the appointment is filed with the department by either the corporation as to agents or the agent as to counselors.

(24)(a) Subject to the agent's or counselor's contract rights, a corporation, in the case of agents, and the agent, in the case of counselors, may terminate the appointment of any agent or counselor at any time. The appointing authority shall promptly give written notice of termination to the licensee, either by delivery thereof to the licensee in person or by mailing it, postage prepaid and addressed to the licensee at his address last of record with the appointing authority. Notice so mailed shall be deemed to have been given when deposited in the United States Post Office mail depository. As soon as possible, and at all events within 30 days after terminating the



appointment of an agent or counselor (other than as an appointment terminated by the appointing authority's failure to continue or renew it), the appointing authority shall file written notice thereof with the department, together with a statement that it has given the licensee notice thereof as herein provided.

(b) Upon termination of the appointment of an agent or counselor, whether by failure to renew or continue the appointment or license or otherwise, the appointing authority shall file with the department the information required under subsection (27).

(25) An agent or counselor may terminate his or its appointment at any time by giving written notice thereof to the appointing authority and filing a copy of the notice with the department. Such termination shall be subject to the appointing authority's contract rights.

(26) Upon receipt of notice of termination of the appointment of an agent or counselor, the department shall forthwith terminate the pertinent license of the licensee.

(27) The appointing authority shall annually, prior to October 1, file with the department an alphabetical list for each such license-type of the names and addresses of each licensee whose appointment and license in this state is being terminated and is not to remain in effect, accompanied by a statement of the appointing authority and such other reasonable proof as the department may prescribe or accept, that written notice of intention so to terminate the appointment and license has been given to each such licensee.

(28)(a) Any appointing authority terminating the appointment and license of an agent or counselor, whether such termination is by direct action of the appointing authority or by failure to renew or continue the appointment and license, shall file with the department a statement of the reasons for, if any, and facts relative to such termination.

(b) In the case of termination by failure to renew or continue the appointment or license, the above-required information shall be filed with the department as soon as possible and, at all events, within 30 days after the date of notice of intention not to so renew or continue was filed with the department. In all other cases, such information shall be filed with the department at the time of or, at all events, within 10 days after notice of the termination was filed with the department.

(c) Any information, document, record or statement so furnished or disclosed to the department shall be absolutely privileged and shall not be admissible as evidence in or as basis for any action against the appointing authority or any of its representatives.

(29)(a) As to each applicant who for the first time in this state is applying and qualifying for a license as an agent or counselor, the appointing authority shall, coincidentally with such appointment or employment, secure and thereafter keep on file a full detailed credit report or character report, made by an established and reputable independent credit reporting service, relative to the agent or counselor so appointed or employed. Within 30 days after such

appointment or employment has been made or commenced, the appointing authority shall furnish to the department on a form furnished by it such information as it may reasonably require relative to such agent or counselor and investigation.

(b) Any information so furnished shall be absolutely privileged and shall not be admissible or used as evidence in any action against the appointing authority, reporting service or other persons furnishing the same.

(30)(a) All funds belonging to the corporation or agents or others received by an agent or counselor in transactions under his license shall be trust funds so received by the licensee in a fiduciary capacity, and the licensee in the applicable regular course of business shall account for and pay the same to the corporation or the agent, as the case may be, or to any other person entitled thereto.

(b) Any agent or counselor who, not being lawfully entitled thereto, diverts or appropriates such funds or any portion thereof to his or its own use shall, upon conviction, be guilty of larceny by embezzlement and shall be punished as provided by law.

(31) Every agent licensed hereunder shall maintain in his or its office such records as will enable the department and the public to obtain all necessary information relative to his or its business activities, including daily reports concerning memberships in such plans, and such other records as the department shall designate in its discretion.

(32) Any person, other than a corporation, who violates any provision of the licensing procedures and general requirements set forth in part II of this chapter shall, in addition to denial, suspension, revocation or refusal of license or other administrative penalties, be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Each instance of violation shall be considered a separate offense.

(33) Any person, firm, partnership or corporation registered pursuant to the provisions of s. 517.12 shall be exempt from the agent or counselor licensing provisions of this part.

**History.**—s. 18, ch. 67-599; ss. 13, 35, ch. 69-106; s. 3, ch. 71-127; s. 640, ch. 71-136; s. 21, ch. 78-95.

**617.69 Qualifications for agent license.**—The department shall not grant or issue a license as agent to any person, firm, corporation, corporation for profit, or partnership found by it to be untrustworthy, financially unstable, or incompetent, or who does not meet such requirements as to good repute, financial stability and such other qualifications as to competency as it may prescribe by reasonable rule or regulation.

**History.**—s. 19, ch. 67-599; ss. 13, 35, ch. 69-106.

**617.70 Qualifications for counselor license.**—The Department of Insurance shall not grant or issue a license as counselor as to any person found by it to be untrustworthy or incompetent, or who does not meet the following qualifications:

- (1) Must be a natural person of at least 18 years of age.
- (2) Must be a bona fide resident of this state.
- (3) Must not be an employee of an insurance company, agent or agency, nor on active duty in the

Armed Forces of the United States or an employee of the United States Veterans' Administration or Division of Veterans' Affairs of the Department of Community Affairs.

(4) Must have received or will have received before engaging in any transactions under his license, training from his agent to familiarize himself with this part, the rules and regulations of the Department of Insurance governing scholarship plans and with the provisions of contracts to be negotiated with the public in connection with such plans.

(5) Must have never had a license to solicit and sell insurance issued by the Department of Insurance of this or any other state, or a license issued by the Federal Securities and Exchange Commission or the Department of Banking and Finance denied, suspended or revoked unless such person is eligible for such license at time of application.

(6) Must be of good character and reputation for trustworthiness and integrity.

(7) Must not have been convicted of a felony within 5 years prior to application for a license and must have had his citizenship restored to him.

(8) Must agree, should his employer or the Department of Insurance request it, to have his fingerprints taken.

**History.**—s. 20, ch. 67-599; ss. 12, 13, 18, 35, ch. 69-106; s. 1, ch. 77-116; s. 51, ch. 77-121.  
cf.—s. 112.011 Felons; removal of disqualifications for employment, exceptions.

#### **617.71 Corporations, liability of counselor.—**

Any counselor who is an officer, director, stockholder or employee of a corporate agency shall remain personally and fully liable and accountable for any wrongful acts, misconduct or violations of any provisions of this part committed by such licensee or by any person under his direct supervision and control while acting on behalf of the corporation.

**History.**—s. 21, ch. 67-599.

#### **617.72 Improper conduct; inquiry.—**

(1) The department may, upon its own motion, and shall, upon a written complaint signed by any interested person and filed with it, inquire into any alleged improper conduct of any corporation holding a certificate of authority, or agent or counselor, licensed hereunder, in this state.

(2) In the prosecution of such inquiries the corporation, agent or counselor shall, whenever so required by the department, cause its or his books and records to be open for inspection for the purpose of such inquiries.

(3) As a prerequisite to exercising the right or authority to investigate the books and records of such corporations or licensees, the department shall serve upon such corporations or licensees a copy of the general charges against it or him, so as to apprise it or him of the general purpose, nature and scope of the investigation or inquiry, and including the name and identity of the person, if any, who may have filed a complaint with the department as referred to in subsection (1) if the investigation is any way related to such complaint.

(4) Such general charges are not required to allege any facts constituting such improper conduct as would justify the department in instituting proceedings to suspend or revoke the certificate of authority

of a corporation or the license of an agent or counselor.

(5) Service of such copy of general charges may be made by delivering copy to the corporation or licensee or mailing same by registered or certified mail with return receipt requested, addressed to its or his business or residence address. If so mailed, notice shall be deemed to have been given when deposited in a mail depository of the United States Post Office.

(6) The charges or complaints against any corporation, agent or counselor may be informally alleged and need not be in any such language as is necessary to charge a crime on an indictment or information.

(7) The expense for any hearings or investigations under this law, as well as the fees and mileage of witnesses, may be paid out of the Insurance Commissioner's Regulatory Trust Fund.

**History.**—s. 22, ch. 67-599; ss. 13, 35, ch. 69-106.

**617.73 Grounds for compulsory refusal, suspension, or revocation of license.**—The department shall deny, suspend, revoke, or refuse to renew or continue the license of any agent or counselor if it finds that as to the applicant or licensee any one or more of the following applicable grounds exist:

(1) Lack of one or more of the qualifications for the license as specified in this part.

(2) Material misstatement, misrepresentation or fraud in obtaining the license or in attempting to obtain the same.

(3) If the license is willfully used, or to be used, to circumvent any of the requirements or prohibitions of this part.

(4) Willful misrepresentation of any contract or willful deception with regard to any such contract, done either in person or by any form of dissemination of information or advertising.

(5) Demonstrated lack of fitness or trustworthiness to engage in the scholarship plan business.

(6) Demonstrated lack of reasonably adequate knowledge and technical competence to engage in the transactions authorized by the license.

(7) Fraudulent or dishonest practices in the conduct of business under the license.

(8) Misappropriation, conversion, or unlawful withholding of moneys belonging to others and received in conduct of business under the license.

(9) Willful failure to comply with, or willful violation of, any proper order, rule, or regulation of the department, or willful violation of any provision of this part.

**History.**—s. 23, ch. 67-599; ss. 13, 35, ch. 69-106; s. 21, ch. 78-95.

**617.74 Grounds for discretionary refusal, suspension, or revocation of license.**—The department may, in its discretion, deny, suspend, revoke, or refuse to renew or continue the license of any agent or counselor if it finds that as to the applicant or licensee any one or more of the following applicable grounds exist under circumstances for which such denial, suspension, revocation, or refusal is not mandatory under s. 617.73:

(1) For any cause for which issuance of the license could have been refused had it then existed and been known to the department.

(2) Violation of any provision of this part or of

any other law applicable to the business of scholarship plans in the course of dealing under the license.

(3) Violation of any lawful order or rule or regulation of the department.

(4) Failure or refusal, upon demand, to pay over to anyone he represents or has represented any money coming into his hands belonging to such person, firm, agent, corporation, or partnership.

(5) Violation of the provision against "twisting," as defined in s. 617.531.

(6) If in the conduct of business under the license he has engaged in unfair methods of competition or in unfair or deceptive acts or practices, or has otherwise shown himself to be a source of injury or loss to the public or detrimental to the public interest.

(7) Conviction of a felony.

History.—s. 24, ch. 67-599; ss. 13, 35, ch. 69-106; s. 21, ch. 78-95.

**617.75 Procedure for refusal, suspension, or revocation of license.—**

(1) If any licensee is convicted by a court of a violation of this part, the license of such licensee shall thereby be deemed to be immediately revoked.

(2) If after an investigation or upon other evidence the department has reason to believe that there may exist any one or more grounds for the suspension, revocation, or refusal to renew or continue the license of any agent or counselor as such grounds are specified in ss. 617.73 and 617.74, the department may proceed to suspend, revoke, or refuse to renew the license.

(3)(a) As to the subject of any examination or investigation being conducted by it, the department or any assistant, deputy, or examiner appointed by it may administer oaths, examine and cross-examine witnesses, receive oral and documentary evidence, and shall have the power to subpoena witnesses, compel their attendance and testimony, and require by subpoena the production of books, papers, records, files, correspondence, documents, or other evidence which it deems relevant to the inquiry.

(b) If any person refuses to comply with any such subpoena or to testify as to any matter concerning which he may be lawfully interrogated, the Circuit Court of Leon County or of the county wherein such examination or investigation is being conducted, or of the county wherein such person resides, on the department's application may issue an order requiring such person to comply with the subpoena and to testify; and any failure to obey such an order of the court may be punished by the court as a contempt thereof.

(c) Subpoenas shall be served, and proof of such service made, in the same manner as if issued by a circuit court. Witness fees and mileage, on behalf of the state, if claimed, shall be allowed the same as for testimony in a circuit court.

(d) Any person willfully testifying falsely under oath as to any matter material to any such examination, investigation, or hearing shall upon conviction thereof be guilty of perjury and shall be punished accordingly.

(4)(a) If any person asks to be excused from attending or testifying or from producing any books, papers, records, contracts, documents, or other evidence in connection with any examination, hearing, or investigation being conducted by the department

or its examiner on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture, and shall notwithstanding be directed to give such testimony or produce such evidence, he must, if so directed by the department, nonetheless comply with such direction, but he shall not thereafter be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may have so testified or produced evidence, and no testimony so given or evidence produced shall be received against him upon any criminal action, investigation or proceeding; except that no such person so testifying shall be exempt from prosecution or punishment for any perjury committed by him in such testimony, and the testimony or evidence so given or produced shall be admissible against him upon any criminal action, investigation, or proceeding concerning such perjury; nor shall he be exempt from the refusal, suspension, or revocation of any license, permission, or authority conferred, or to be conferred, pursuant to this part.

(b) Any such individual may execute, acknowledge, and file with the department a statement expressly waiving such immunity or privilege in respect to any transaction, matter, or thing specified in such statement, and thereupon the testimony of such individual or such evidence in relation to such transaction, matter, or thing may be received or produced before any judge or justice, court, tribunal, grand jury, or otherwise, and if so received or produced such individual shall not be entitled to any immunity or privileges on account of any testimony he may so give or evidence so produced.

(5) Any person who refuses or fails, without lawful cause, to testify relative to the affairs of any corporation, agent, or counselor or other person when subpoenaed and requested by the department to so testify as provided in subsection (3) shall, in addition to the penalty provided in said subsection, be guilty of a misdemeanor and upon conviction shall be subject to the penalties provided under s. 617.65.

(6) The department's papers, documents, reports, or evidence relative to a hearing for revocation or suspension of a license pursuant to the provisions of this chapter and chapter 120 shall not be subject to subpoena without the department's consent, except for subpoenas issued pursuant to the hearing for revocation or suspension, until after the same shall have been published at the hearing, unless after notice to the department and hearing a circuit court determines that the department would not be unnecessarily hindered or embarrassed by such subpoenas.

(7)(a) The department shall, in its order suspending a license, specify the period during which the suspension is to be in effect, but such period shall not exceed 1 year. The license shall remain suspended during the period so specified; subject, however, to any rescission or modification of the order by the department, or modification or reversal thereof by the court, prior to expiration of the suspension period. A license which has been suspended shall not be reinstated except upon request for such reinstatement, but the department shall not grant such rein-



statement if it finds that the circumstance or circumstances for which the license was suspended still exist or are likely to recur.

(b) No licensee under any license which has been revoked by the department shall have the right to apply for another license under this part within 2 years from the effective date of such revocation, or, if judicial review of such revocation is sought, within 2 years from the date of final court order or decree affirming the revocation. The department shall not, however, grant a new license to any licensee if it finds that the circumstance or circumstances for which the previous license was revoked still exist or are likely to recur.

(c) If licenses as agent or counselor as to the same individual have been revoked at two separate times, the department shall not thereafter grant or issue any license under this part as to such agent or counselor.

(d) During the period of suspension, or after revocation of the license, the former licensee shall not engage in or attempt to profess to engage in any transaction or business for which a license is required under this part.

**History.**—s. 25, ch. 67-599; ss. 13, 35, ch. 69-106; s. 1, ch. 69-267; s. 21, ch. 78-95.

#### **617.76 Surrender of license.—**

(1) Though issued to a licensee, all certificates of licenses issued under this part are at all times the property of the state, and upon notice of any suspension, revocation, refusal to renew, failure to renew, expiration or other termination of the license, such license shall no longer be in force and effect.

(2) This section shall not be deemed to require the surrender to the department of any certificate of license, unless such surrender has been requested by the department.

**History.**—s. 26, ch. 67-599; ss. 13, 35, ch. 69-106.

#### **617.77 Administrative fine in lieu of suspension of, revocation of, or refusal to renew license.—**

(1) If the department finds that one or more grounds exist for the suspension, revocation, or refusal to renew or continue any license issued under this part, the department may, in its discretion, in lieu of such suspension, revocation, or refusal, and except on a second offense or where such suspension, revocation, or refusal is mandatory, impose upon the licensee an administrative penalty in the amount of \$100, or, if the department has found willful misconduct or willful violation on the part of the licensee, \$500. The administrative penalty may, in the department's discretion, be augmented in amount by an amount equal to any commissions received by or accruing to the credit of the licensee in connection with any transaction as to the grounds for suspension, revocation, or refusal related.

(2) The department may allow the licensee a reasonable period, not to exceed 30 days, within which to pay to the department the amount of the penalty so imposed. If the licensee fails to pay the penalty in its entirety to the department at its office at Tal-

lahassee, within the period so allowed, the license of the licensee shall stand suspended, revoked, or renewal or continuation refused, as the case may be, upon expiration of such period.

**History.**—s. 27, ch. 67-599; ss. 13, 35, ch. 69-106; s. 21, ch. 78-95.

#### **617.78 Probation.—**

(1) If the department finds that one or more grounds exist for the suspension, revocation, or refusal to renew or continue any license issued under this part, the department may, in its discretion, except where an administrative fine is not permissible under s. 617.77, or where such suspension, revocation, or refusal is mandatory, in lieu of such suspension, revocation, or refusal, or in connection with any administrative monetary penalty imposed under s. 617.77, place the offending licensee on probation for a period, not to exceed 2 years, as specified by the department in its order.

(2) As a condition to such probation or in connection therewith, the department may specify in its order reasonable terms and conditions to be fulfilled by the probationer during the probation period. If during the probation period the department has good cause to believe that the probationer has violated such terms and conditions or any of them, it shall forthwith suspend, revoke, or refuse to renew or continue the license of the probationer, as upon the original ground or grounds referred to in subsection (1), by its order given to the licensee and corporations or agents represented by him.

**History.**—s. 28, ch. 67-599; ss. 13, 35, ch. 69-106; s. 21, ch. 78-95.

**617.79 Fees, fines, and charges; deposit.—**All fees, fines and charges collected by the department pursuant to the provisions of this part shall be deposited in the Insurance Commissioner's Regulatory Trust Fund as provided in s. 624.523(1)(s).

**History.**—s. 29, ch. 67-599; ss. 13, 35, ch. 69-106.

#### **617.80 Service of process; appointment of department as process agent.—**

(1) Each corporation applying for authority to transact business in this state under the provisions of this part, whether domestic or foreign, shall file with the department its appointment of the department and its successors, on a form as furnished by it, as its attorney to receive service of all legal process issued against it in any civil action or proceeding in this state, and agreeing that process so served shall be valid and binding upon the corporation. The appointment shall be irrevocable, shall bind the corporation and any successor in interest as to the assets or liabilities of the corporation, and shall remain in effect as long as there is outstanding in this state any obligation or liability of the corporation resulting from its business transactions therein.

(2) At the time of such appointment of the department as its process agent, the corporation shall file with the department designation of the name and address of the person to whom process against it, served upon the department, is to be forwarded. The corporation may change the designation at any time by a new filing.

(3) Service of process upon the department as the corporation's attorney pursuant to such an appointment shall be the sole method of service of process

upon a corporation authorized to transact business under the provisions of this part in this state.

**History.**—s. 30, ch. 67-599; ss. 13, 35, ch. 69-106.

**617.81 Exclusive jurisdiction of department.**  
—The Department of Insurance shall have exclusive jurisdiction in administering the provisions of this part.

**History.**—s. 31, ch. 67-599; ss. 13, 35, ch. 69-106.

## CHAPTER 618

## AGRICULTURAL COOPERATIVE MARKETING ASSOCIATIONS

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- 618.27 Use of term "cooperative."
- 618.28 This chapter not to affect certain laws.

**618.01 Definitions.**—In construing this chapter, where the context permits, the word, phrase, or term:

- (1) "Agricultural products" shall include horticultural, viticultural, forestry, aquatic, dairy, live-stock, poultry, bee, and any farm products;
- (2) "Member" shall include actual members of associations without capital stock and holders of common stock in associations organized with capital stock;
- (3) "Association" means any corporation organized as a cooperative association, for the mutual benefit of its members either as producers of agricultural products or as nonprofit cooperative organizations of producers of agricultural products, or both, and in which the return on the stock or membership capital is limited to an amount not to exceed 8 percent per annum, and in which during any fiscal year thereof the value of business done with nonmembers shall not exceed the business done with members during the same period.
- (4) Associations organized hereunder shall be

deemed "nonprofit," inasmuch as they are not organized to make profit for themselves, as such, or for their members, as such, but only for their members as producers.

**History.**—s. 2, ch. 9300, 1923; CGL 6467; s. 2, ch. 14675, 1931; s. 1, ch. 74-88.

**618.02 Who may organize association.**—

Three or more persons engaged in the production of any agricultural products, or three or more associations, may form a nonprofit cooperative association under the provisions of this chapter.

**History.**—s. 3, ch. 9300, 1923; CGL 6468; s. 3, ch. 14675, 1931.

**618.03 Preliminary investigation.**—Every

group of persons contemplating the organization of an association under this chapter is urged to communicate with the Department of Agriculture and Consumer Services, which will inform it whatever a survey of the marketing conditions affecting the commodities to be handled by the proposed association indicates regarding probable success.

**History.**—s. 5, ch. 9300, 1923; CGL 6470; s. 5, ch. 14675, 1931; ss. 14, 35, ch. 69-106.

**618.04 Articles of incorporation; fees.**—Each association organized under this chapter shall prepare and file articles of incorporation setting forth:

- (1) The name of the association, which may or may not include the word "cooperative" or any abbreviation thereof;
- (2) The purpose for which it is formed;
- (3) The place where its principal office within the state will be located;
- (4) Whether the association is to have perpetual existence and, if not, the term of its existence.
- (5) The names and addresses (not less than three), of those who are to serve as directors for the first term or until the election of their successors;
- (6) If organized without capital stock, whether the property rights and interest of each member shall be equal or unequal; if unequal, the general rules applicable to all members by which the property rights and interest, respectively, of each member may and shall be determined and fixed; and provision for the admission of new members, who shall be entitled to share in the property of the association with the old members, in accordance with such general rules. This provision or paragraph of the articles of incorporation shall not be altered, amended or repealed, except by the written consent or vote of three-fourths of the members;
- (7) If organized with capital stock, the amount of such stock and the number of shares into which the capital stock is to be divided, whether all or part of the same shall have a par value, and if so, the par value thereof, whether all or part of the same shall have no par value, and if there is to be more than one class of stock created, a description of the different classes, the number of shares in each class, and the relative rights, interests, and preferences each class shall represent;
- (8)(a) In addition to the foregoing, the articles of incorporation of any association incorporated here-



under may contain any provision consistent with law with respect to management, regulation, government, financing, indebtedness, membership, the establishment of voting districts, and the election of delegates for representative purposes, the issuance, retirement and transfer of its stock, if formed with capital stock or any provisions relative to the way or manner in which it shall operate or with respect to its members, officers or directors, and any other provisions relating to its affairs.

(b) The articles shall be subscribed by the incorporators and acknowledged by one of them, if individuals, or by the president or any vice president of one of them, if corporations, before an officer authorized by law to take and certify acknowledgments of deeds and conveyances, and shall be filed with the Department of State accompanied by a fee of \$30 which shall be the only fee required therefor; and thereupon the association shall be and constitute a body corporate under the provisions of this chapter, and a copy of said articles of incorporation certified by the Department of State shall be received in all the courts of this state and other places, as prima facie evidence of the facts contained therein and of the due incorporation of such association.

**History.**—s. 8, ch. 9300, 1923; CGL 6473; s. 8, ch. 14675, 1931; s. 2, ch. 16879, 1935; s. 1, ch. 29813, 1955; ss. 10, 35, ch. 69-106; s. 16, ch. 71-114.

**618.05 Amendment of articles of incorporation.**—The articles of incorporation may be altered or amended at any regular meeting or any special meeting called for the purpose. An amendment must first be approved by two-thirds of the directors and then adopted by a vote representing a majority of a quorum of the members attending a meeting of which notice of the proposed amendment shall have been given. Thereupon the association shall make under its corporate seal and the hands of its president or vice president and secretary or assistant secretary, a certificate accordingly, and the president or vice president shall duly execute and acknowledge such certificate before an officer authorized by law to take and certify acknowledgments of deeds, and such certificate so executed and acknowledged shall be filed with the Department of State; and upon so filing the same, the articles of incorporation of such association shall be deemed to be amended accordingly; provided, however, a fee of only \$15 shall be required therefor by the Department of State.

**History.**—s. 9, ch. 9300, 1923; CGL 6474; s. 9, ch. 14675, 1931; s. 3, ch. 16879, 1935; ss. 10, 35, ch. 69-106; s. 17, ch. 71-114.

**618.06 Purposes of incorporation.**—An association may be organized under this chapter for the purpose of engaging in any cooperative activity in connection with the producing, marketing, or selling of agricultural products; or with the growing, harvesting, preserving, drying, processing, canning, packing, grading, storing, warehousing, handling, shipping, or utilizing such products; or the manufacturing or marketing of the byproducts thereof; or in connection with any of the activities mentioned herein, the manufacturing, selling, or supplying of machinery, equipment or supplies; or in the financing of any of the above-enumerated activities; or in performing or furnishing business or educational services, on a cooperative basis for those engaged in

agriculture as bona fide producers of agricultural products or in any one or more of the activities specified herein.

**History.**—s. 4, ch. 9300, 1923; CGL 6469; s. 4, ch. 14675, 1931.

**618.07 Powers of corporations.**—Except as the same may be limited in its articles of incorporation, each association organized under this chapter shall have the following powers:

(1) To engage in any activity in connection with the producing, marketing, selling, preserving, growing, harvesting, drying, processing, manufacturing, canning, packing, grading, warehousing, storing, handling, or utilizing of agricultural products or in the manufacturing or marketing of the byproducts thereof; or in any activities in connection with the manufacturing, purchasing, hiring or using supplies, machinery or equipment; or in the financing of any of the above-enumerated activities, or in performing business or educational services, on a cooperative basis, for those engaged in agriculture as bona fide producers of agricultural products; or in any one or more of the activities specified herein;

(2) To borrow money from any source without limitation as to amount of corporate indebtedness or liability, with authority to give any kind or form of obligation or security therefor;

(3) To act as the agent or representative of any person in any of the above-mentioned activities;

(4) To make loans or advances to members and to their members, to nonmember patrons, and to nonmember patrons of members, with authority to accept therefor any kind, form or type of obligation with or without security; to purchase, endorse, discount, sell, or guarantee the payment of any note, draft, bill of exchange, indenture, bill of sale, mortgage, or other obligation, the proceeds of which have been advanced or used in the first instance for any of the purposes provided for herein; to discount for or purchase from any association organized under the laws of any state, with or without its endorsement, any note, draft, bill of exchange, indenture, bill of sale, mortgage, or other obligation the proceeds of which are advanced or used in the first instance for carrying on any cooperative activity authorized in this chapter and with authority to dispose of same with or without endorsement. An association organized under this chapter and exercising any of the powers provided in this subsection shall not engage in the business of banking;

(5) To purchase or otherwise acquire, to hold, own, and exercise all rights of ownership in, and to sell, transfer, pledge, or guarantee the payment of dividends or interest on, or the retirement or redemption of shares, of capital stock, bonds, or other obligations of any corporation or association, engaged in any directly or indirectly related activity, or in the producing, picking, hauling, packing, shipping, handling, warehousing, financing, canning, preserving, processing, manufacturing, utilizing, marketing, or selling of any of the products handled by the association, or any byproducts thereof;

(6) To establish reserves and to invest the funds thereof in bonds, or in such other property as may be provided in the bylaws;

(7) To buy, hold, and exercise all privileges of ownership over such real or personal property, as

may be necessary or convenient for the conduct and operation of any of the business of the association or incidental thereto;

(8) To sell, convey, and transfer all of the assets of the association; provided, such sale shall be consented to by not less than two-thirds of its members or by the holders of not less than two-thirds of its common stock, which consent shall be given either in writing, or by vote at a special meeting of its members or stockholders called for that purpose;

(9) To establish, secure, own, and develop patents, trademarks, and copyrights;

(10) To do each and everything necessary, suitable or proper for the accomplishment of any one of the purposes, or the attainment of any one or more of the objects herein enumerated, or conducive to or expedient for the interest or benefit of the association, and to contract accordingly; and in addition, to exercise and possess all powers, rights, and privileges necessary or incidental to the purposes for which the association is organized or to the activities in which it is engaged, and any other rights, powers, and privileges granted by the laws of this state to corporations for profit, except such as are inconsistent with the express provisions of this chapter; and to do any such thing anywhere;

(11) No association organized under this chapter, during any fiscal year thereof, shall deal in or handle products, machinery, equipment, supplies, or perform services for and on behalf of nonmembers to an amount greater in value than such as are dealt in, handled, or performed by it for and on behalf of members during the same period.

**History.**—s. 6, ch. 9300, 1923; CGL 6471; s. 6, ch. 14675, 1931; s. 1, ch. 16879, 1935.

**618.08 Corporations may mortgage farm supplies, etc.**—A mortgage, executed by a cooperative association, may cover its stock of farm supplies, changing in specifics, which stock mortgagor is permitted to retain in its possession and sell in the usual course of business. The lien of such mortgage shall be lost on all farm supplies sold up to the time of foreclosure, and shall attach to the farm supplies acquired to replenish the stock. No such mortgage shall be invalid as to creditors of the mortgagor because the mortgagor is permitted to retain possession and sell such mortgaged property in the usual course of business; provided, the mortgagor replenishes such property from the proceeds of sale or applies such proceeds in payment of the mortgage debt. In all other respects the laws relating to chattel mortgages shall be applicable to such mortgages. The provisions of this section shall not be construed as, in anywise, affecting the Bulk Sales Law.

**History.**—ss. 1, 2, ch. 1711, 1935; CGL 1936 Supp. 6471(1).

**618.09 Bylaws.**—Each association incorporated under this chapter shall adopt for its government and management, a code of bylaws not inconsistent with the powers granted by this chapter. A majority vote of a quorum of the members or stockholders attending a meeting, of which notice of the proposed bylaws shall have been given, is sufficient to adopt or amend the bylaws. Each association, under its bylaws, may provide for any or all of the following matters:

(1) The time, place, and manner of calling and conducting its meetings, which meetings and meetings of its directors, may be held either within or without the state.

(2) The number of stockholders or members constituting a quorum.

(3) The right of members or stockholders to vote by proxy or by mail or both; and the conditions, manner, form and effects of such votes.

(4) The number of directors constituting a quorum.

(5) The qualifications, compensation and duties and term of office of directors and officers; time of their election and the mode and manner of giving notice thereof.

(6) Penalties for violations of the bylaws.

(7) The amount of entrance, organization and membership fees, if any; the manner and method of collection of the same; and the purposes for which they may be used.

(8) The amount which each member or stockholder shall be required to pay annually or from time to time, if at all, to carry on the business of the association; the charge, if any, to be paid by each member or stockholder for services rendered by the association to him and the time of payment and the manner of collection; and the form of marketing contract between the association and its members or stockholders, which marketing contract shall be binding upon every member or stockholder, unless otherwise agreed upon in writing.

(9) The number and qualification of members or stockholders of the association and the conditions precedent to membership or ownership of common stock; the method, time, and manner of permitting members to withdraw or the holders of common stock to transfer their stock; the manner of assignment and transfer of the interest of members and of the shares of common stock; the condition upon which and time when membership of any member shall cease; the automatic suspension of the rights of a member when he ceases to be eligible to membership in the association; the mode, manner, and effect of the expulsion of a member; whether a member upon withdrawal, death, or expulsion shall have any interest in the property of the association, if organized without capital stock; the manner of determining the value of the property interest or the shares of common stock of retiring or expelled members, which interest or stock may be conclusively appraised by the board of directors of the association and purchased by the association at such value within 1 year after the date of such retirement or expulsion.

**History.**—s. 10, ch. 9300, 1923; CGL 6475; s. 10, ch. 14675, 1931; s. 4, ch. 16879, 1935; s. 7, ch. 22858, 1945.

#### **618.10 Membership of corporation.**—

(1) Under the terms and conditions prescribed in the bylaws adopted by it, an association may admit as members, or issue common stock only to persons engaged in the production of agricultural products and to associations as defined in this chapter.

(2) An association organized hereunder may be-

come a member or stockholder of any other association or corporation.

**History.**—s. 7, ch. 9300, 1923; CGL 6472; s. 7, ch. 14675, 1931; s. 7, ch. 22858, 1945.

**618.11 How meetings called.**—In its bylaws each association shall provide for one or more regular meetings annually. The board of directors shall have the right to call a special meeting at any time, and 10 percent of the members or stockholders may file a petition stating the specific business to be brought before the association and demand a special meeting at any time. Such meeting must thereupon be called by the directors. Notice of all special meetings, together with a statement of the purpose thereof, shall be mailed to each member at least 10 days prior to the meeting; provided, however, that the bylaws may require instead that such notice may be given by publication in a newspaper of general circulation, published at the principal place of business of the association.

**History.**—s. 11, ch. 9300, 1923; CGL 6476; s. 11, ch. 14675, 1931.

**618.12 Directors; election.—**

(1) The affairs of the association shall be managed by a board of not less than three directors, to be elected by the members or stockholders, with such qualifications as may be provided for in the articles of incorporation or the bylaws. The bylaws may provide that the territory in which the association has members shall be divided into districts and that the directors shall be nominated according to such district, either directly or by district delegates elected by the members in that district. In such case the bylaws shall specify the number of directors to be nominated by each district, the manner and method of reapportioning the directors and of redistricting the territory covered by the association. The bylaws may provide that primary elections shall be held in each district to nominate the directors apportioned to such districts and the result of all such primary elections may be ratified by the next regular meeting of the association or may be considered final as to the association. The bylaws may provide that one or more directors may be nominated by the Department of Agriculture and Consumer Services or by the other directors nominated by the members or their delegates. Such directors shall represent primarily the interest of the general public in such associations. Such directors shall not number more than one-third of the entire number of directors.

(2) An association may provide a fair remuneration for the time actually spent by its officers and directors in the service and for the service of the members of its executive committee. No director, during the term of his office, shall be a party to a contract for profit with the association differing in any way from the business relations accorded regular members or holders of common stock of the association or others, or differing from terms generally current in that district.

(3) The bylaws may provide for an executive committee to be elected by the board of directors from within or without the membership of the board and may allot to such committee all the functions and powers of the board of directors, subject to the general direction and control of the board.

(4) When a vacancy on the board of directors occurs other than by expiration of term, the remaining members of the board, by a majority vote, shall fill the vacancy, unless the bylaws provide for the nomination of directors by districts. In such case the board of directors shall call a special meeting of the members or stockholders in the respective district to nominate a person qualified to fill the vacancy.

**History.**—s. 12, ch. 9300, 1923; CGL 6477; s. 12, ch. 14675, 1931; ss. 14, 35, ch. 69-106.

**618.13 Officers; election.**—The directors shall elect from their number a president and one or more vice presidents. They shall also elect a secretary, a treasurer, and such other officers as may be provided for in the bylaws, none of whom need be directors or members of the association. The office of secretary and treasurer may be combined into one office designated as secretary-treasurer, or both functions and titles may be united in one person. The treasurer may be a bank or any depository, and as such, shall not be considered as an officer, but as a function of the board of directors, and in such case the secretary shall perform the usual accounting duties of the treasurer excepting that the funds shall be deposited only as and where authorized by the board of directors.

**History.**—s. 13, ch. 9300, 1923; CGL 6478; s. 13, ch. 14675, 1931.

**618.14 Removal of officers and directors.—**

(1) Any member may bring charges against an officer or director by filing them in writing with the secretary of the association, together with a petition signed by 10 percent of the members, requesting the removal of the officer or director in question. The removal shall be voted upon at the next regular or special meeting of the association, and by a vote of a majority of the members, the association may remove the officer or director and fill the vacancy. The director or officer against whom such charges have been brought shall be informed in writing of the charges previous to the meeting and shall have an opportunity at the meeting to be heard in person or by counsel and to present witnesses, and the person bringing the charges against him shall have the same opportunity.

(2) In case the bylaws provide for election of directors by districts with primary elections in each district then the petition for removal of a director must be signed by 20 percent of the members residing in the district from which he was elected. The board of directors must call a special meeting of the members residing in that district to consider the removal of the director. By a vote of the majority of the members of that district, the director in question shall be removed from office.

**History.**—s. 15, ch. 9300, 1923; CGL 6480; s. 15, ch. 14675, 1931.

**618.15 Capital stock and membership, etc.—**

(1) When a member of an association organized without capital stock has paid his membership fee in full he shall receive a certificate of membership. An association may issue its shares of stock having no par value from time to time for such consideration as may be fixed by the board of directors. No association shall issue stock until it has been fully paid for. Promissory notes may be accepted by the association



as full or partial payment for such stock. The association shall hold the stock as security for the payment of the note; but such retention as security shall not affect the right of any stockholder to vote unless such notes are past due.

(2) No member shall be liable for the debts of the association to an amount exceeding the sum remaining unpaid on his membership fee or his subscription to capital stock, including any unpaid balance on any promissory notes given in payment thereof.

(3) No stockholder of an association organized under this chapter, except an association organized under this chapter or an association as defined in this chapter, shall own more than one-third of the outstanding common stock of the association; and an association in its bylaws may limit the amount of common stock which one member may own to an amount less than one-third of the outstanding common stock. The association shall limit its dividends on stock both common and preferred, to any amount not greater than 8 percent per annum on the par value thereof, or if such capital stock is without par value, then upon the actual cash value of the consideration received by the association therefor. The association by the vote of its directors, may establish and accumulate reserves out of earnings, including a permanent surplus fund as an addition to capital. Net income in excess of additions to reserves and surpluses so established shall be distributed to the members of the association on the basis of patronage. Any distribution of reserves and surpluses at any time shall be made to members at the time such distribution is ordered on the basis of patronage.

(4) Any receipts or dividends from subsidiary corporations or from stock or other securities owned by the association shall be included in the ordinary receipts of the association.

(5) No member in any association without capital stock shall be entitled to more than one vote; but the bylaws may provide that such members or the holders of common stock in an association with capital stock, may vote upon any or all questions on a patronage basis.

(6) Preferred stock may be sold to any person, member or nonmember, and may be redeemable or retirable by the association on such terms and conditions as may be provided for in the articles of incorporation, and printed on the stock certificates. The bylaws, except as otherwise provided for in this chapter, shall prohibit the transfer of the common stock of the association to persons not engaged in the production of agricultural products and such restrictions shall be printed upon every certificate of stock subject thereto.

**History.**—s. 14, ch. 9300, 1923; CGL 6479; s. 14, ch. 14675, 1931.

#### **618.16 Referendum upon certain motions.**

Upon demand of one-third of the entire board of directors made immediately and so recorded at the same meeting at which the original motion was passed any matter that has been approved or passed by the board must be referred to the entire membership or the stockholders for decision at the next spe-

cial or regular meeting; provided, however, that a special meeting may be called for the purpose.

**History.**—s. 16, ch. 9300, 1923; CGL 6481; s. 16, ch. 14675, 1931.

**618.17 Marketing contracts.**—The association and its members may make and execute marketing contracts requiring the members to sell, for any period of time, all or any specified part of their agricultural products or specified commodities exclusively to or through the association or any agencies designated by the association. The contracts may provide that the association may sell or resell the products of its members with or without taking title thereto; and pay to its members the resale price, after deducting all necessary selling, overhead and other costs and expenses, including interest or dividends on stock, not exceeding 8 percent per annum, and reserves for retiring the stock, if any; and other proper reserves; and any other proper deductions.

**History.**—s. 17, ch. 9300, 1923; CGL 6482(1); s. 17, ch. 14675, 1931.

#### **618.18 Remedies for breach of marketing contract.**

(1) The bylaws and the marketing contract may fix, as liquidated damages, specific sums to be paid by the member or stockholder of the association upon the breach by him of any provisions of the marketing contract regarding the sale or delivery or withholding of products; and may further provide that the member will pay all costs, premiums for bonds, expenses and fees in case any action is brought upon the contract by the association; and any such provisions shall be valid and enforceable in the courts of this state.

(2) In the event of any such breach or threatened breach of such marketing contract by a member, the association shall be entitled to an injunction to prevent the further breach of the contract and to a decree of specific performance thereof. Pending the adjudication of such an action and upon filing a verified complaint showing the breach or threatened breach, and upon filing a sufficient bond, the association shall be entitled to a temporary restraining order and preliminary injunction against the member.

**History.**—s. 17, ch. 9300, 1923; CGL 6482(1); s. 18, ch. 14675, 1931; CGL 1936 Supp. 6482(1); s. 7, ch. 22858, 1945.

#### **618.19 Contracts and agreements with other like associations.**

Any association may, upon resolution adopted by its board of directors, enter into all necessary and proper contracts and agreements and make all necessary and proper stipulations, agreements and contracts, and arrangements with any other cooperative corporation, association or associations, formed in this or in any other state, for the cooperative and more economical carrying on of its business or any part thereof. Any two or more associations may, by agreement between them, unite in employing and using or may separately employ and use the same personnel, methods, means, and agencies for carrying on and conducting their respective businesses.

**History.**—s. 22, ch. 9300, 1923; CGL 6487; s. 22, ch. 14675, 1931.

### 618.20 Purchase of interest in like corporations.—

(1) An association may organize, form, operate, own, control, have an interest in, own stock of, or be a member of any other association or corporation, with or without capital stock, and engaged in planting, growing, producing, preserving, drying, processing, canning, packing, storing, warehousing, handling, shipping, utilizing, manufacturing, or selling of agricultural products, or byproducts thereof; or in performing business or educational services; or in the financing of any of the above enumerated activities.

(2) If such corporations are warehousing corporations, they may issue legal warehouse receipts to the associations against the commodities delivered by it, or to any other person and such legal warehouse receipts shall be considered as adequate collateral to the extent of the usual and current value of the commodity represented thereby. In case such warehouse is licensed, or licensed and bonded under the laws of this or any other state or the United States, its warehouse receipt delivered to the association on commodities of the association or its members, or delivered by the association or its members, shall not be challenged or discriminated against because of ownership or control wholly or in part, by the association.

History.—s. 21, ch. 9300, 1923; CGL 6486; s. 21, ch. 14675, 1931.

### 618.21 Corporations not in restraint of trade.

—No association as defined in this chapter while engaged in any of the activities specified in s. 618.20 shall be deemed to be a conspiracy, or a combination in unlawful restraint of trade, or an illegal monopoly, or an attempt to lessen competition or to fix prices arbitrarily; nor shall the marketing contracts and agreements between the association and its members or any agreements authorized in this chapter, be considered illegal as such, or in unlawful restraint of trade, or part of a conspiracy or combination to accomplish an improper or illegal purpose.

History.—s. 24, ch. 9300, 1923; CGL 6489; s. 24, ch. 14675, 1931.  
cf.—s. 542.01 Excluded from definition of "trust."

### 618.22 Adoption of provisions of this chapter by prior corporations.—

Any corporation or association, organized under previously existing statutes, may, by a majority vote of its stockholders or members, be brought under the provisions of this chapter by limiting its membership and adopting the other restrictions as provided herein. It shall make out in duplicate a statement signed and sworn to by its directors to the effect that the corporation or association has, by a majority vote of its stockholders or members, decided to accept the benefits and be bound by the provisions of this chapter and has authorized all changes accordingly. Articles of incorporation shall be filed as required in s. 618.04, except that they shall be signed by the members of the then board of directors. The filing fee shall be the same as for filing an amendment to articles of incorporation.

History.—s. 23, ch. 9300, 1923; CGL 6488; s. 23, ch. 14675, 1931.

**618.221 Conversion into a corporation for profit.**—Any association incorporated under or that has adopted the provisions of this chapter, may, by a majority vote of its stockholders or members be brought under the provisions of chapter 607, as a corporation for profit by surrendering all right to carry on its business under this chapter, and the privileges and immunities incident thereto. It shall make out in duplicate a statement signed and sworn to by its directors to the effect that the association has, by a majority vote of its stockholders or members, decided to surrender all rights, powers, and privileges as a nonprofit cooperative marketing association under this chapter and to do business under and be bound by the provisions of said chapter 607, as a corporation for profit and has authorized all changes accordingly. Articles of incorporation shall be delivered to the Department of State for filing as required in and by s. 607.164, except that they shall be signed by the members of the then board of directors. The filing fees and taxes shall be as provided in chapter 607. Such articles of incorporation shall adequately protect and preserve the relative rights of the stockholders or members of the association so converting into a corporation for profit; provided that no rights or obligations due any stockholder or member of such association or any other person, firm or corporation which has not been waived or satisfied shall be impaired by such conversion into a corporation for profit as herein authorized.

History.—s. 2, ch. 29813, 1955; s. 8, ch. 79-9; s. 234, ch. 79-400.

**618.23 Quo warranto to test validity of corporation.**—The right of an association claiming to be organized and incorporated and carrying on its business under this chapter to do and to continue its business, may be inquired into by quo warranto at the suit of the Department of Legal Affairs, but not otherwise.

History.—s. 26, ch. 14675, 1931; CGL 1936 Supp. 6489(2); ss. 11, 35, ch. 69-106.

**618.24 Application of general corporation laws.**—The provisions of the laws of this state with respect to corporations for profit and all powers and rights thereunder shall apply to associations organized under this chapter, except where such provisions are in conflict with or inconsistent with the express provisions of this chapter.

History.—s. 26, ch. 9300, 1923; CGL 6491; s. 29, ch. 14675, 1931.

### 618.25 Dissolution.—

(1) Any association incorporated under or adopting the provisions of this chapter may be dissolved and its affairs wound up voluntarily by a petition signed by two-thirds of the members or by the holders of two-thirds of the common stock, either in person or by their agent, which petition shall be presented to the circuit judge, who shall direct notice thereof to be published for such time as he may judge expedient. After the expiration of the time of such notice, the circuit judge may decree a dissolution and make all necessary orders and decrees for the winding up of its affairs, including the application of its assets toward the satisfaction of the claims of creditors so far as may be and the distribution of any moneys then remaining among its members in pro-

portion to their respective property interests.

(2) Any such association shall continue to be a body corporate for a term of 2 years after the date of the decree or dissolution for the purpose of prosecuting and defending suits and settling its affairs, and the president and directors at the time of its dissolution, and the survivors of them, or such other person as may be appointed by the circuit judge, shall be trustees of such association for that purpose during said term with full power in its name to settle its affairs, collect all sums due it, sell and convey its property, pay its debt as far as may be, and distribute any moneys or property then remaining among those entitled thereto.

**History.**—s. 27, ch. 14675, 1931; CGL 1936 Supp. 6489(3).

**618.26 Conditions under which foreign similar corporation may do business in this state.—**

Any cooperative association with or without capital stock as defined in this chapter heretofore or hereafter organized under the laws of another state shall be allowed to carry on any proper activities, operations and functions in this state upon the filing with the Department of State of a certified copy of its articles of incorporation and the payment of a filing fee of \$10 in lieu of all franchise or license or corporation taxes as required of associations organized under this chapter, and all contracts which could be made by any association organized under this chap-

ter, made by or with such associations shall be legal and valid and enforceable in this state with all of the remedies set forth in this chapter.

**History.**—s. 25, ch. 14675, 1931; CGL 1936 Supp. 6489(1); ss. 10, 35, ch. 69-106.

**618.27 Use of term "cooperative."—**

(1) No person doing business in this state, shall be entitled to use the word "cooperative" as part of its corporate or other business name or title unless it has complied with the provisions of this chapter.

(2) Any person now organized and existing or doing business in this state, and embodying the word "cooperative" as part of its corporate or other business name or title, and which is not organized in compliance with the provisions of this chapter, shall eliminate the word "cooperative" from its said corporate or other business name or title.

**History.**—s. 20, ch. 9300, 1923; CGL 6485; s. 20, ch. 14675, 1931; s. 7, ch. 22858, 1945.

**618.28 This chapter not to affect certain laws.—**The provisions of this chapter shall not be construed to affect, limit or in anywise interfere with the rights, powers, or privileges of any corporation or association which exists or which may be hereafter organized under chapter 619 and laws prior thereto.

**History.**—s. 29, ch. 9300, 1923; CGL 6494; s. 30, ch. 14675, 1931; s. 6, ch. 16879, 1935.



## CHAPTER 619

## NONPROFIT COOPERATIVE ASSOCIATIONS

- 619.01 Nonprofit cooperative associations; powers.
- 619.02 Associations not in restraint of trade.
- 619.03 Not to have capital stock; not for profit; membership; membership not assignable; directors may consent to assignment.
- 619.04 Articles of incorporation.
- 619.05 Amendment of articles of incorporation.
- 619.06 Bylaws.
- 619.07 Special powers; marketing contracts; voluntary dissolution.
- 619.08 May own stock in certain corporations.
- 619.09 Quo warranto to test validity of incorporation.

**619.01 Nonprofit cooperative associations; powers.**—Three or more persons engaged in the production, preserving, drying, packing, canning, bottling, shipping, or marketing of agricultural, viticultural, or horticultural products, or all or any of them, or in the manufacture or preparation of any confection, extracts, oils, juices, or byproducts, or any or all of them, or three or more persons engaged in the production and marketing of aquatic products and sponges, may form a nonprofit cooperative association under the provisions of this chapter to carry on said business; and such associations shall have and may exercise powers authorized by this chapter, and powers, necessarily incidental thereto and all other powers granted to private corporations by the laws of this state, except such powers as are inconsistent with those granted by this chapter.

**History.**—s. 1, ch. 5958, 1909; RGS 4510; s. 1, ch. 9144, 1923; s. 1, ch. 10097, 1925; CGL 6509; s. 1, ch. 14544, 1929; s. 2, ch. 74-88.

**619.02 Associations not in restraint of trade.**—No association organized under this chapter shall be deemed to be a combination in restraint of trade or an illegal monopoly; or an attempt to lessen competition to fix prices arbitrarily, nor shall the marketing contracts, or any agreements authorized in this chapter be considered illegal or in restraint of trade.

**History.**—s. 1, ch. 5958, 1909; RGS 4510; s. 1, ch. 9144, 1923; s. 1, ch. 10097, 1925; CGL 6509; s. 1, ch. 14544, 1929.  
cf.—s. 542.01 Excluded from definition of "trust."

**619.03 Not to have capital stock; not for profit; membership; membership not assignable; directors may consent to assignment.**—Such associations shall not have a capital stock, and its business shall not be carried on for profit. Any person, or any number of persons, in addition to the original incorporators, may become members of such association, upon such terms and conditions as to membership and subject to such rules and regulations as to their, and each of their, contract and other rights and liabilities between it and the member, as the said association shall provide in its bylaws. The association shall issue a certificate of membership to each member but the said membership, or the said certificate thereof, shall not be assigned by a member to any other person, nor shall the assigns thereof be entitled to membership in the association or to any property rights or interest therein. Nor shall a purchaser

at execution sale, or any other person who may succeed, by operation of law or otherwise, to the property interests of a member, be entitled to membership or become a member of the association by virtue of such transfer. The board of directors may, however, by motion duly adopted by it, consent to such assignment or transfer and to the acceptance of the assignee or transferee as a member of the association, but the association may, by its bylaws, provide for or against the transfer of membership and for or against the assignment of membership certificates, and also the terms and conditions upon which any such transfer or assignment shall be allowed.

**History.**—s. 2, ch. 5958, 1909; RGS 4511; CGL 6510.

**619.04 Articles of incorporation.**—Each association formed under this chapter must prepare and file articles of incorporation in the same manner and under the same regulations as required under chapter 607, and therein shall set forth:

- (1) The name of the association.
- (2) The purpose for which it is formed.
- (3) The place where its principal business will be transacted.
- (4) The term for which it is to exist, not exceeding 50 years.
- (5) The number of directors thereof, which must not be less than three and which may be any number in excess thereof, and the names and residences of those selected for the first year and until their successors shall have been elected and shall have accepted office.
- (6) Whether the voting power and the property rights and interest of each member shall be equal, or unequal, and if unequal these articles shall set forth a general rule applicable to all members by which the voting power and the property rights and interests, respectively, of each member may and shall be determined and fixed, but the association shall have power to admit new members, who shall be entitled to vote and to share in the property of the association with the old members, in accordance with such general rule. This provision of the articles of incorporation shall not be altered, amended or repealed except by the unanimous written consent or the vote of all the members.

(7) Said articles must be subscribed by the original members and acknowledged by one of them before an officer authorized by the law of this state to take and certify acknowledgments of deeds of conveyance, and shall be filed in accordance with the provisions of law, and when so filed the said articles of incorporation or certified copies thereof shall be received in all the courts of this state and other places as prima facie evidence of the facts contained therein.

**History.**—s. 3, ch. 5958, 1909; RGS 4512; CGL 6511; s. 9, ch. 79-9.

**619.05 Amendment of articles of incorporation.**—

- (1) Any nonprofit cooperative association heretofore or hereafter organized may amend its charter by a two-thirds vote of all its members at any regular

meeting, or at a special meeting called for that purpose.

(2) If the proposed alteration or amendment shall be so adopted, the corporation shall prepare a certificate, under its common seal, of the proposed alteration or amendment as adopted by said corporation, which certificate accompanied by said proposed amendment or alteration, shall be signed by the president or vice president of said corporation and attested by its secretary, and file the same with the Department of State; which certificate accompanied by said proposed amendment or alteration, shall be produced to the governor, who shall examine the same, and if it is found to be in proper form, and that the proposed alteration or amendment has been properly adopted, is lawful and not injurious to the community, and is in accord with the purpose of the charter, the governor shall approve the same, and thereupon letters patent shall issue, reciting the alteration or amendment; and the said letters patent shall then be recorded by the Department of State, and from the date of the record thereof in the Department of State, said alteration or amendment shall be treated and considered as a part of the charter of said corporation.

**History.**—s. 1, ch. 17132, 1935; CGL 1936 Supp. 6515(1); s. 17, ch. 61-530; ss. 10, 35, ch. 69-106.

**619.06 Bylaws.**—Each association incorporated under this chapter must, within 30 days after its incorporation, adopt a code of bylaws for its government and management not inconsistent with the provisions of this law. A majority vote of the members or the written assent of members representing a majority of the votes, is necessary to adopt such bylaws. The provisions of the general laws of this state not inconsistent with the provisions of this chapter shall apply to the bylaws of the corporations provided for in this chapter. Each association may also, by its bylaws adopted as aforesaid, provide for the following matters:

(1) The manner of removal of any one or more of its directors and for filling any and all vacancies in the board of directors.

(2) The number of directors and the number of members or votes thereof constituting a quorum.

(3) The conditions upon which, and the time when, membership of any member in the association shall cease; the mode, manner and effect of expulsion of a member, subject to the right of the expelled member to have the board of directors (equitably) appraise his property interests in the association and to affix the amount thereof in money, and to have the money paid to him within 60 days after such expulsion.

(4) The amount of membership fee, if any, and the amount which each member shall be required to pay annually, or from time to time, if at all, to carry on the business of the association, and also the compensation, if any, to be paid by each member for any services rendered by the association to him, and the time of payment and the manner of collecting the same, and for forfeiture of the interest of the member in the association for nonpayment of the same.

(5) The number and qualification of members of the association and the conditions precedent to membership, and the method, time and manner of

permitting members to withdraw, and providing for the assignment and transfer of the interest of the member, and the manner of determining the value of such interest, and providing for the purchase of such interest by the association upon the death, withdrawal or expulsion of a member or upon the forfeiture of his membership, at the option of the association.

(6) Permitting members to vote by their proxies and determining the conditions, manner, form and effect thereof.

**History.**—s. 4, ch. 5958, 1909; RGS 4513; CGL 6512.

**619.07 Special powers; marketing contracts; voluntary dissolution.**—Each association incorporated under this chapter shall have the powers granted by the provisions of this law and other laws of Florida relating to private corporations, and shall also have the following powers:

(1) To appoint such agents and officers as its business may require, and such appointed agents may be either persons or corporations; to admit persons to membership in the association, and to expel any member pursuant to the provisions of its bylaws; to forfeit the membership of any member for violation of any agreement between him and the association, or for his violation of its bylaws.

(2) To purchase or otherwise acquire, hold, own, sell, and otherwise dispose of any and every kind of real and personal property necessary to carry on its business, and to acquire by purchase or otherwise the interest of any member in the property of the association.

(3) Upon the written assent or by a vote of members representing two-thirds of the total votes of all members to cooperate with any other cooperative corporation or corporations for the cooperative and more economical carrying on of their respective business, by consolidation; upon resolution adopted by board of directors, to enter into all necessary and proper contracts and agreements, and to make all necessary and proper stipulations and arrangements with any other cooperative corporation or corporations, for the cooperative and more economical carrying on of its business, or any part thereof; or any two or more cooperative corporations organized under this title, upon resolutions adopted by their respective boards of directors, may for the purpose of more economically carrying on their respective business, by agreement between them, unite in employing and using, or several associations may separately employ and use, the same methods, means and agencies for carrying on and conducting their respective businesses.

(4) To organize, form, operate, own, control, have interest in, own stock of, or be a member of any other corporation, with or without capital stock, and engaged in preserving, drying, processing, canning, picking, hauling, packing, storing, handling, shipping, utilizing, manufacturing, marketing, or selling any of the agricultural or horticultural products handled by the association, or the byproducts thereof.

(5) To make and execute marketing contracts requiring the members to sell, for any period of time, not over 10 years, all or any specified part of their agricultural or horticultural products exclusively to

or through the association or any facilities to be created by the association. The contracts may provide that the association may sell or resell the products of its members with or without taking title thereto, and pay over to its members the sale or resale price, after deducting all necessary selling, overhead and other costs and expenses, including interest on bonds, not exceeding 8 percent per annum and reserves for retiring the bonds, if any, and other proper reserves.

(6) Either the bylaws or the marketing contracts, or both the said bylaws and marketing contracts may fix, as liquidated damages, specific sums to be paid by the member to the association upon the breach by him of any provision of the marketing contract regarding the sale or delivery or withholding of products; and may further provide that the member will pay all costs, premiums for bonds, expenses and fees in case any action is brought upon the contract by the association and any such provisions shall be valid and enforceable in the courts of this state.

(7) In the event of any breach or threatened breach of a marketing contract by a member, the association shall be entitled to an injunction to prevent the further breach of the contract, and to a decree of specific performance thereof. Pending the adjudication of such an action, and upon filing a verified complaint showing the breach or threatened breach, and upon filing a sufficient bond, the association shall be entitled to a temporary restraining or-

der and a preliminary injunction against the member.

(8) Any association formed or consolidated under this chapter may be dissolved and its affairs wound up voluntarily by the written request of members representing two-thirds of the total votes, in the manner and with the effect now provided by law, except that the moneys remaining after liquidation shall be divided among the members in proportion to their property interest therein.

**History.**—s. 5, ch. 5958, 1909; RGS 4514; s. 2, ch. 10097, 1925; CGL 6513.

**619.08 May own stock in certain corporations.**—Any agricultural or horticultural nonprofit, cooperative association, heretofore, or hereafter, organized under the laws of the state, may own or hold stock in any corporation organized under the laws of the state, if such corporation is organized, or conducts, or operates, its business, solely for the benefit or advancement of the interests of persons engaged in agricultural or horticultural pursuits in this state.

**History.**—s. 1, ch. 7383, 1917; RGS 4515; CGL 6514.

**619.09 Quo warranto to test validity of incorporation.**—The right of an association claiming to be organized and incorporated and carrying on its business under this chapter to do and to continue its business, may be inquired into by quo warranto at the suit of the Department of Legal Affairs, but not otherwise.

**History.**—s. 8, ch. 5958, 1909; RGS 4516; CGL 6515; ss. 11, 35, ch. 69-106.



## CHAPTER 620

## PARTNERSHIP LAWS

## PART I UNIFORM LIMITED PARTNERSHIP LAW (ss. 620.01-620.32)

## PART II FOREIGN LIMITED PARTNERSHIPS (ss. 620.40-620.49)

## PART III UNIFORM PARTNERSHIP ACT (ss. 620.56-620.77)

## PART I

## UNIFORM LIMITED PARTNERSHIP LAW

- 620.01 Limited partnership defined.
- 620.011 Definition of terms.
- 620.02 Formation.
- 620.03 Business that may be carried on.
- 620.04 Character of limited partner's contribution.
- 620.05 Name of limited partnership; use of partner's surname; exceptions.
- 620.06 Liability for false statements in certificate.
- 620.07 Limited partner not liable to creditors.
- 620.08 Admission of additional limited partners.
- 620.081 Partnership property.
- 620.09 Rights, powers, and liabilities of general partner.
- 620.10 Rights of limited partner.
- 620.11 Status of person erroneously believing himself limited partner.
- 620.12 One person both general and limited partner.
- 620.13 Loan and other business transactions with limited partner.
- 620.14 Relation of limited partners inter se.
- 620.15 Compensation of limited partner.
- 620.16 Withdrawal or reduction of limited partner's contribution.
- 620.17 Liability of limited partner to partnership.
- 620.18 Nature of limited partner's interest in partnership.
- 620.19 Assignment of limited partner's interest.
- 620.20 Effect of retirement, death, or insanity of general partner.
- 620.21 Death of limited partner.
- 620.22 Rights of creditors of limited partner.
- 620.23 Distribution of assets.
- 620.24 When certificate canceled or amended.
- 620.25 Requirements for amendment and cancellation of certificate.
- 620.26 Parties to actions.
- 620.27 Short title.
- 620.28 Rules of construction.
- 620.29 Rules for cases not provided for in this chapter.
- 620.30 Service of process on limited partnerships.
- 620.31 Expiration of certificate for failure to renew; reinstatement.
- 620.32 Department of State to prescribe forms.

**620.01 Limited partnership defined.**—A "limited partnership" is a partnership formed by two or more persons under the provisions of s. 620.02, hav-

ing as members one or more general partners and one or more limited partners. The limited partners as such shall not be bound by the obligations of the partnership.

*History.*—s. 1, ch. 21887, 1943.

**620.011 Definition of terms.**—In part I of this chapter the word "person" includes individuals, partnerships, corporations and other associations, and persons owning property and doing business as husband and wife.

*History.*—s. 1, ch. 61-155.

**620.02 Formation.**—

(1) Two or more persons desiring to form a limited partnership shall:

(a) Sign and swear to a certificate, which shall state:

1. The name of the partnership;
2. The character of the business;
3. The location of the principal place of business;
4. The name and place of residence of each member, general and limited partners being respectively designated;
5. The term for which the partnership is to exist;
6. The amount of cash and a description of and the agreed value of the other property contributed by each limited partner;
7. The additional contributions, if any, agreed to be made by each limited partner and the times at which or events on the happening of which they shall be made;
8. The time, if agreed upon, when the contribution of each limited partner is to be returned;
9. The share of the profits or the other compensation by way of income which each limited partner shall receive by reason of his contribution;
10. The right, if given, of a limited partner to substitute an assignee as contributor in his place and the terms and conditions of the substitution;
11. The right, if given, of the partners to admit additional limited partners;
12. The right, if given, of one or more of the limited partners to priority over other limited partners, as to contributions or as to compensation by way of income, and the nature of such priority;
13. The right, if given, of the remaining general partner or partners to continue the business on the death, retirement, or insanity of a general partner; and
14. The right, if given, of a limited partner to demand and receive property other than cash in return for his contribution.

(b) File for record the certificate with the Department of State, a certified copy of which is to be re-

corded with the clerk of the circuit court in the county where the principal place of business is located, in a book to be provided therefor by the said clerk of said court.

(2) The fees of the Department of State under this chapter shall be as follows:

(a) For certified copies, the same as is provided by law for the Department of State for certificates and copying;

(b) For receiving, filing, and indexing certificates, statements, affidavits, decrees, or any other papers provided for by this chapter, a filing fee in each case to be paid at the time of the first filing and, on January 1 annually thereafter, an amount based upon the amount of invested capital according to the following schedule: Four dollars per \$1,000 of invested capital; provided, however, that no filing fee shall be less than \$30 nor more than \$1,000; and provided, further, that the annual filing fee payable on January 1 next following the date of the original filing the amount of the filing fee shall be prorated for that portion of the year the limited partnership has existed between the original filing date and the next ensuing January 1.

(3) Upon the payment of such filing fee on the first filing and on each annual payment thereafter, the Department of State shall issue its certificate of authority to do business to said limited partnership, and it shall be unlawful for such limited partnership to transact business as such until such filing fee has been paid. Such certificate of authority to be issued by the Department of State shall be prima facie evidence of the right of such limited partnership to do business under the terms and provisions of this chapter and shall be considered as the payment to the state for the rights, privileges, protection, and benefits conveyed by the provisions of this chapter, and no such limited partnership shall do business in this state without first having obtained the certificate of authority of the Department of State for the ensuing year.

(4) The clerk of the circuit court shall receive as compensation for the recording of any papers required hereby, fees as provided in s. 28.24.

**History.**—s. 2, ch. 21887, 1943; s. 1, ch. 67-563; ss. 10, 35, ch. 69-106; s. 18, ch. 71-114.  
cf.—s. 15.09 Department of State's certification fee.  
s. 620.25 Requirement for amendment and cancellation of certificate.

**620.03 Business that may be carried on.**—A limited partnership may carry on any business that a partnership without limited partners may carry on.

**History.**—s. 3, ch. 21887, 1943; s. 1, ch. 70-301; s. 1, ch. 71-9.

**620.04 Character of limited partner's contribution.**—The contributions of a limited partner may be cash or other property, but not services.

**History.**—s. 4, ch. 21887, 1943.

**620.05 Name of limited partnership; use of partner's surname; exceptions.**—

(1) The name of every limited partnership shall contain the word (Limited) or its abbreviation (Ltd.) with a conspicuous sign exhibiting this name at every place of business.

(2) The surname of a limited partner shall not appear in the partnership name unless:

(a) There is sufficient designation attached to his surname to indicate that he is a limited partner, or,

(b) It is also the surname of a general partner, or,

(c) Prior to the time when the limited partner became such, the business had been carried on under a name in which his surname appeared.

(3) A limited partner, whose name appears in a partnership name, contrary to the provision of subsection (2), is liable as a general partner to partnership creditors who extend credit to the partnership without actual knowledge that he is not a general partner.

**History.**—s. 5, ch. 21887, 1943.

**620.06 Liability for false statements in certificate.**—If the certificate contains a false statement, one who suffers loss by reliance on such statement may hold liable any party to the certificate who knew the statement to be false:

(1) At the time he signed the certificate, or,

(2) Subsequently, but within a sufficient time before the statement was relied upon to enable him to cancel or amend the certificate, or to file a petition for its cancellation or amendment as provided in s. 620.25(3).

**History.**—s. 6, ch. 21887, 1943.  
cf.—s. 620.19 Assignment of interest.

**620.07 Limited partner not liable to creditors.**—A limited partner shall not become liable as a general partner unless, in addition to the exercise of his rights and powers as a limited partner, he takes part in the control of the business or violates s. 620.05. The right, if given pursuant to s. 620.71(1)(d), of a limited partner to demand that a general partner be expelled from the partnership shall not be considered as taking part in the control of the business.

**History.**—s. 7, ch. 21887, 1943; s. 1, ch. 79-279.

**620.08 Admission of additional limited partners.**—After the formation of a limited partnership, additional limited partners may be admitted upon filing an amendment to the original certificate in accordance with the requirements of s. 620.25.

**History.**—s. 8, ch. 21887, 1943.

**620.081 Partnership property.**—

(1) All property originally brought into the partnership or subsequently acquired by purchase or otherwise is partnership property.

(2) Unless otherwise provided in the certificate or by agreement of all general and limited partners, property acquired with partnership funds is partnership property.

(3) Any estate in real property may be acquired in the partnership name. Title so acquired shall be conveyed or encumbered in the partnership name. Unless otherwise provided in the certificate, a conveyance or encumbrance of real property held in the partnership name, and any other instrument affecting title to real property in which the partnership has an interest, shall be executed in the partnership name by one of the general partners. Inchoate dower shall not exist in any interest in partnership real property, and spouses of either limited or general partners who execute conveyances, encumbrances,

or other instruments affecting title to its real property need not join in the conveyance, encumbrance, or instrument.

(4) All conveyances to a partnership in its name heretofore recorded as required by law while the partnership was in existence are validated and shall be deemed to convey the title to the real property described in them to the partnerships named as grantees.

**History.**—s. 2, ch. 71-9.  
cf.—s. 732.111 Dower and curtesy abolished.

#### **620.09 Rights, powers, and liabilities of general partner.—**

(1) A general partner shall have all the rights and powers, and be subject to all the restrictions and liabilities, of a partner in a partnership without limited partners. Every general partner has authority to execute any instrument in the partnership name, including conveyances of its real property.

(2) Without the written consent or ratification of the specific act by all the limited partners, any general partner, or all of the general partners, does not have the authority to:

- (a) Do any act in contravention of the certificate;
- (b) Confess a judgment against the partnership;
- (c) Admit a person as a general partner;
- (d) Admit a person as a limited partner unless the right so to do is given in the certificate;
- (e) Continue the business with partnership property on the death, retirement, or insanity of a general partner, unless the right so to do is given in the certificate.

**History.**—s. 9, ch. 21887, 1943; s. 1, ch. 71-70; s. 1, ch. 75-53.

#### **620.10 Rights of limited partner.—**

(1) A limited partner shall have the same rights as a general partner to:

- (a) Have the partnership books kept at the principal place of business of the partnership, and at all times to inspect and copy any of them;
- (b) Have on demand true and full information of all things affecting the partnership, and a formal account of partnership affairs whenever circumstances render it just and reasonable; and,
- (c) Have dissolution and winding up by decree of court.

(2) A limited partner shall have the right to receive a share of the profits or other compensation by way of income, and to the return of his contribution as provided in ss. 620.15 and 620.16.

**History.**—s. 10, ch. 21887, 1943.

**620.11 Status of person erroneously believing himself limited partner.—**A person who has contributed to the capital of a business conducted by a person or partnership erroneously believing that he has become a limited partner in a limited partnership is not, by reason of his exercise of the rights of a limited partner, a general partner with the person or in the partnership carrying on the business, or bound by the obligations of such person or partnership; provided, that on ascertaining the mistake he promptly renounces his interest in the profits of

the business or other compensation by way of income.

**History.**—s. 11, ch. 21887, 1943.

#### **620.12 One person both general and limited partner.—**

(1) A person may be a general partner and a limited partner in the same partnership at the same time.

(2) A person who is a general, and also at the same time a limited partner, shall have all the rights and powers and be subject to all the restrictions of a general partner; except, that in respect to his contribution, he shall have the rights against the other members which he would have had if he were not also a general partner.

**History.**—s. 12, ch. 21887, 1943.

#### **620.13 Loan and other business transactions with limited partner.—**

(1) A limited partner also may loan money to and transact other business with the partnership, and unless he is also a general partner, receive on account of resulting claims against the partnership, with general creditors, a pro rata share of the assets. No limited partner shall in respect to any such claim:

(a) Receive or hold as collateral security any partnership property, or

(b) Receive from a general partner or the partnership any payment, conveyance, or release from liability, if at the time the assets of the partnership are not sufficient to discharge partnership liabilities to persons not claiming as general or limited partners.

(2) The receiving of collateral security, or a payment, conveyance, or release in violation of the provisions of subsection (1) is a fraud on the creditors of the partnership.

**History.**—s. 13, ch. 21887, 1943.

#### **620.14 Relation of limited partners inter se.—**

Where there are several limited partners the members may agree that one or more of the limited partners shall have a priority over other limited partners as to the return of their contributions, as to their compensation by way of income, or as to any other matter. If such an agreement is made it shall be stated in the certificate, and in the absence of such a statement all the limited partners shall stand upon equal footing.

**History.**—s. 14, ch. 21887, 1943.

**620.15 Compensation of limited partner.—**A limited partner may receive from the partnership the share of the profits or the compensation by way of income stipulated for in the certificate; provided, that after such payment is made, whether from the property of the partnership or that of a general partner, the partnership assets are in excess of all liabilities of the partnership, except liabilities to limited partners on account of their contributions and to general partners.

**History.**—s. 15, ch. 21887, 1943.  
cf.—s. 620.10 Rights of limited partner.



**620.16 Withdrawal or reduction of limited partner's contribution.—**

(1) A limited partner shall not receive from a general partner or out of partnership property any part of his contribution until:

(a) All liabilities of the partnership, except liabilities to general partners and to limited partners on account of their contributions, have been paid or there remains property of the partnership sufficient to pay them.

(b) The consent of all members is had, unless the return of the contribution may be rightfully demanded under the provisions of subsection (2), and

(c) The certificate is canceled or so amended as to set forth the withdrawal or reduction.

(2) Subject to the provisions of subsection (1), a limited partner may rightfully demand the return of his contribution:

(a) On the dissolution of a partnership, or

(b) When the date specified in the certificate for its return has arrived, or

(c) After he has given 6 months' notice in writing to all other members, if no time is specified in the certificate either for the return of the contribution or for the dissolution of the partnership.

(3) In the absence of any statement in the certificate to the contrary or the consent of all members, a limited partner, irrespective of the nature of his contribution, has only the right to demand and receive cash in return for his contribution.

(4) A limited partner may have the partnership dissolved and its affairs wound up when:

(a) He rightfully but unsuccessfully demands the return of his contribution, or

(b) The other liabilities of the partnership have not been paid, or the partnership property is insufficient for their payment as required by subsection (1)(a) and the limited partner would otherwise be entitled to the return of his contribution.

**History.**—s. 16, ch. 21887, 1943.  
cf.—s. 620.10 Rights of limited partner.

**620.17 Liability of limited partner to partnership.—**

(1) A limited partner is liable to the partnership:

(a) For the difference between his contribution as actually made and that stated in the certificate as having been made; and

(b) For any unpaid contribution which he agreed in the certificate to make in the future at the time and on the conditions stated in the certificate.

(2) A limited partner holds as trustee for the partnership:

(a) Specific property stated in the certificate as contributed by him, but which was not contributed or which has been wrongfully returned, and

(b) Money or other property wrongfully paid or conveyed to him on account of his contribution.

(3) The liabilities of a limited partner as set forth in this section can be waived or compromised only by the consent of all members; but a waiver or compromise shall not affect the right of a creditor of a partnership, who extended credit or whose claim arose after the filing and before a cancellation or amendment of the certificate, to enforce such liabilities.

(4) When a contributor has rightfully received the return in whole or in part of the capital of his

contribution, he is nevertheless liable to the partnership for any sum, not in excess of such return with interest, necessary to discharge its liabilities to all creditors who extended credit or whose claims arose before such return.

**History.**—s. 17, ch. 21887, 1943.

**620.18 Nature of limited partner's interest in partnership.—**A limited partner's interest in the partnership is personal property.

**History.**—s. 18, ch. 21887, 1943.

**620.19 Assignment of limited partner's interest.—**

(1) A limited partner's interest is assignable.

(2) A substituted limited partner is a person admitted to all the rights of a limited partner who has died or has assigned his interest in a partnership.

(3) An assignee, who does not become a substituted limited partner, has no right to require any information or account of the partnership transactions or to inspect the partnership books; he is only entitled to receive the share of the profits or other compensation by way of income, or the return of his contribution to which his assignor would otherwise be entitled.

(4) An assignee shall have the right to become a substituted limited partner if all the members (except the assignor) consent thereto or if the assignor, being thereunto empowered by the certificate, gives the assignee that right.

(5) An assignee becomes a substituted limited partner when the certificate is appropriately amended in accordance with s. 620.25.

(6) The substituted limited partner has all the rights and powers, and is subject to all the restrictions and liabilities of his assignor, except those liabilities of which he was ignorant at the time he became a limited partner and which could not be ascertained from the certificate.

(7) The substitution of the assignee as a limited partner does not release the assignor from liability to the partnership under ss. 620.06 and 620.17.

**History.**—s. 19, ch. 21887, 1943.

**620.20 Effect of retirement, death, or insanity of general partner.—**The retirement, death, or insanity of a general partner dissolves the partnership, unless the business is continued by the remaining general partners:

(1) Under a right so to do stated in the certificate, or

(2) With the consent of all members.

**History.**—s. 20, ch. 21887, 1943.  
cf.—s. 620.24 When certificate canceled or amended.

**620.21 Death of limited partner.—**

(1) On the death of a limited partner his executor or administrator shall have all the rights of a limited partner for the purpose of settling his estate, and such power as the deceased had to constitute his assignee a substituted limited partner.

(2) The estate of a deceased limited partner shall be liable for all his liabilities as a limited partner.

**History.**—s. 21, ch. 21887, 1943.

**620.22 Rights of creditors of limited partner.—**

(1) On due application to a court of competent jurisdiction by any creditor of a limited partner, the court may charge the interest of the indebted limited partner with payment of the unsatisfied amount of such claim; and may appoint a receiver, and make all other orders, directions, and inquiries which the circumstances of the case may require.

(2) The interest may be redeemed with the separate property of any general partner, but may not be redeemed with partnership property.

(3) The remedies conferred by subsection (1) shall not be deemed exclusive of others which may exist.

(4) Nothing in this part shall be held to deprive a limited partner of his statutory exemption.

History.—s. 22, ch. 21887, 1943.

**620.23 Distribution of assets.—**

(1) In settling accounts after dissolution the liabilities of the partnership shall be entitled to payment in the following order:

(a) Those to creditors, in the order of priority as provided by law, except those to limited partners on account of their contributions, and to general partners,

(b) Those to limited partners in respect to their share of the profits and other compensation by way of income on their contributions,

(c) Those to limited partners in respect to the capital of their contributions,

(d) Those to general partners other than for capital and profits,

(e) Those to general partners in respect to profits,

(f) Those to general partners in respect to capital.

(2) Subject to any statement in the certificate or to subsequent agreement, limited partners share in the partnership assets in respect to their claims for capital, and in respect to their claims for profits or for compensation by way of income on their contributions respectively, in proportion to the respective amounts of such claims.

History.—s. 23, ch. 21887, 1943.

**620.24 When certificate canceled or amended.—**

(1) The certificate shall be canceled when the partnership is dissolved or all limited partners cease to be such.

(2) A certificate shall be amended when:

(a) There is a change in the name of the partnership or in the amount or character of the contribution of any limited partner,

(b) A person is substituted as a limited partner,

(c) An additional limited partner is admitted,

(d) A person is admitted as a general partner,

(e) A general partner retires, dies, or becomes insane, and the business is continued under s. 620.20,

(f) There is a change in the character of the business of the partnership,

(g) There is a false or erroneous statement in the certificate,

(h) There is a change in the time as stated in the certificate for the dissolution of the partnership or

for the return of a contribution,

(i) A time is fixed for the dissolution of the partnership, or the return of a contribution, no time having been specified in the certificate, or

(j) The members desire to make a change in any other statement in the certificate in order that it shall accurately represent the agreement between them.

History.—s. 24, ch. 21887, 1943.

**620.25 Requirements for amendment and cancellation of certificate.—**

(1) The writing to amend a certificate shall:

(a) Conform to the requirements of s. 620.02(1)(a) as far as necessary to set forth clearly the change in the certificate which it is desired to make, and,

(b) Be signed and sworn to by all members, and an amendment substituting a limited partner or adding a limited or general partner shall be signed also by the member to be substituted or added, and when a limited partner is to be substituted, the amendment shall also be signed by the assigning limited partner.

(2) The writing to cancel a certificate shall be signed by all members.

(3) A person desiring the cancellation or amendment of a certificate, if any person designated in subsections (1) and (2) as a person who must execute the writing refuses to do so, may petition the circuit court in the county where the principal place of business of the limited partnership is located to direct a cancellation or amendment thereof.

(4) If the court finds that the petitioner has a right to have the writing executed by a person who refuses to do so, it shall order the Department of State to record the cancellation or amendment of the certificate; and where the certificate is to be amended, the court shall also cause to be filed for record in said office a certified copy of its decree setting forth the amendment.

(5) A certificate is amended or canceled when there is filed for record with the Department of State where the certificate is recorded:

(a) A writing in accordance with the provisions of subsection (1) or (2), or

(b) A certified copy of the order of court in accordance with the provisions of subsection (4).

(6) After the certificate is duly amended in accordance with this section, the amended certificate shall thereafter be for all purposes the certificate provided for by this chapter.

History.—s. 25, ch. 21887, 1943; ss. 10, 35, ch. 69-106. cf.—ss. 620.06, 620.08, 620.19 Assignment of interest.

**620.26 Parties to actions.—**A contributor, unless he is a general partner, is not a proper party to proceedings by or against a partnership, except where the object is to enforce a limited partner's right against or liability to the partnership.

History.—s. 26, ch. 21887, 1943.

**620.27 Short title.—**This part may be cited as the "Uniform Limited Partnership Law."

History.—s. 27, ch. 21887, 1943; s. 163, ch. 79-164.

**620.28 Rules of construction.—**

(1) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this part.

(2) This part shall be so interpreted and construed as to effect its general purpose to make uniform the law of those states which enact it.

(3) This part shall not be so construed as to impair the obligations of any contract existing on May 31, 1943, nor to affect any action on proceedings begun or right accrued before May 31, 1943.

**History.**—s. 28, ch. 21887, 1943.

**620.29 Rules for cases not provided for in this chapter.**—In any case not provided for in this part the rules of law and equity, including the law merchant, shall govern.

**History.**—s. 29, ch. 21887, 1943.

**620.30 Service of process on limited partnerships.**—When any original process is sued out against a limited partnership, the service of said process on any general partner in the limited partnership shall be as valid as if served on each individual member thereof; and the plaintiff may, after service upon any one member as aforesaid, proceed to judgment and execution against the limited partnership and the general partners individually. Service of process as provided by s. 48.181, shall apply to limited partnerships organized under this part.

**History.**—s. 30, ch. 21887, 1943.  
cf.—Ch. 48 Process and service of process.

**620.31 Expiration of certificate for failure to renew; reinstatement.—**

(1) The Department of State shall publish a list compiled by it of each limited partnership which received a certificate of authority to do business in this state during the previous calendar year but which failed for 6 months to maintain a current certificate of authority pursuant to s. 620.02(3). Such notice shall be published before October 1 by the department in a newspaper in the county in which the home office of each such limited partnership is located and shall state that such partnership's certificate of authority to do business in this state is canceled for the partnership's failure to maintain a current certificate.

(2) If the general and limited partners find it desirable to reactivate the limited partnership after publication of notice that its certificate has expired, they shall file a new certificate pursuant to s. 620.02 and all delinquent reports and fees or taxes required under law. After satisfying itself that the foregoing requirements have been met, the department shall issue to the limited partnership a preliminary certificate which the limited partnership shall have published in a newspaper in the county in which the notice in subsection (1) was published. Upon filing with the department by the manager or publisher of such newspaper proof of publication of the notice and payment by the limited partnership of the cost of publication, the Department of State shall issue a new certificate. Upon such issuance, the certificate shall be renewed and reinstated as of December 31 of the year for which the limited partnership was last granted a certificate, and all business transacted

by it since expiration of such last certificate shall be deemed to be the business of the limited partnership pursuant to a valid certificate of authority.

**History.**—s. 31, ch. 21887, 1943; s. 24, ch. 57-1; ss. 10, 35, ch. 69-106; s. 1, ch. 72-195; s. 1, ch. 73-67.

**620.32 Department of State to prescribe forms.**—The Department of State shall prescribe the forms and furnish the blanks upon request to make the annual reports called for in this part. It shall be the duty of the Department of State to examine the reports when received and if the information called for in this part is given in such reports it shall file the same as information and keep such reports as public records. It shall pay into the State Treasury, to the credit of the General Revenue Fund, all moneys collected under the provisions of this part. Such amounts for printing forms, postage, files, clerical, and other expenses found to be actually necessary in carrying out the provisions of this part shall be included in the annual appropriations act.

**History.**—s. 32, ch. 21887, 1943; s. 139, ch. 26869, 1951; ss. 10, 35, ch. 69-106; s. 1, ch. 73-305.

## PART II

### FOREIGN LIMITED PARTNERSHIPS

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**620.40 Foreign limited partnerships; definition.**—For the purpose of part II of this chapter a "foreign limited partnership" is defined to be a partnership formed by two or more persons under the laws of any other state or territory or of any other country having as members one or more general partners and one or more limited partners. The limited partners as such shall not be bound by the obligations of the partnership.

**History.**—s. 1, ch. 59-395.

**620.41 Permit required.—**

(1) No foreign limited partnership shall transact business or acquire, hold or dispose of property in this state until it shall have filed with the Department of State a duly authenticated copy of its certificate and shall have received from it a permit to transact business in this state.

(2) Any foreign limited partnership which shall violate the provisions of part II of this chapter shall render itself and its partners, both limited and general, severally liable to the penalties and fines prescribed by part II of this chapter.

**History.**—s. 2, ch. 59-395; ss. 10, 35, ch. 69-106.



**620.42 Contents of certificate.—**

(1) The certificate required by s. 620.41 shall reflect the following:

(a) The name of the partnership; provided said name shall comply with the provisions of s. 620.05, part I of this chapter;

(b) The character of the business;

(c) The location of the principal place of business;

(d) The name and place of residence of each member; general and limited partners being respectively designated;

(e) The term for which the partnership is to exist;

(f) The amount of cash and a description of and the agreed value of the other property contributed by each limited partner;

(g) The additional contributions, if any agreed to be made by each limited partner and the times at which or events on the happening of which they shall be made;

(h) The time, if agreed upon, when the contribution of each limited partner is to be returned;

(i) The share of the profits or the other compensation by way of income which each limited partner shall receive by reason of his contribution;

(j) The right, if given, of a limited partner to substitute an assignee as contributor in his place and the terms and conditions of the substitution;

(k) The right, if given, of the partners to admit additional limited partners;

(l) The right, if given, of one or more of the limited partners to priority over other limited partners, as to compensation by way of income, and the nature of such priority;

(m) The right, if given, of the remaining general partner or partners to continue the business on the death, retirement or insanity of a general partner;

(n) The right, if given, of a limited partner to demand and receive property other than cash in return for his contribution, and

(2) An affidavit shall accompany the authenticated copy of the partnership certificate naming the principal place of business in Florida and shall also contain such information required by paragraphs (a)-(n) of subsection (1), not set out in said partnership certificate.

History.—s. 3, ch. 59-395.

**620.43 Issuance of permit.**—Upon the filing of such copy the Department of State shall, if the objects of the limited partnership are such as are not prohibited by the laws of the state, issue a permit allowing such foreign limited partnership to transact business in this state and such partnership shall thereupon be empowered to exercise all and be limited to the same rights, powers, and privileges as like partnerships organized under the laws of this state.

History.—s. 4, ch. 59-395; ss. 10, 35, ch. 69-106.

**620.44 Fees payable to Department of State.**

—The fees of the Department of State under part II of this chapter shall be as follows: For receiving, filing and indexing certificates, statements, affidavits, decrees, or any other papers provided for by this chapter, a filing fee in each case to be paid at the time of the first filing and on January 1 annually thereafter an amount based upon the amount of capital employed or to be employed in the state accord-

ing to the following schedule: Four dollars per \$1,000 of invested capital; provided, however, that no filing fee shall be less than \$30 nor more than \$1,000. Upon the payment of such filing fee, on the first filing, and on each annual payment thereafter, the Department of State shall issue its permit of authority to do business to said limited partnership and it shall be unlawful for such limited partnership to transact business as such until such filing fee has been paid; provided, further, that the annual filing fee payable on January 1 next following the date of the original filing the amount of the filing fee shall be prorated for that portion of the year the limited partnership has existed between the original filing date and the next ensuing January 1. Such permit of authority to be issued by the Department of State shall be prima facie evidence of the right of such limited partnership to do business under the terms and provisions of this part and shall be considered as the payment to the state for the rights, privileges, protection, and benefits conveyed by the provisions of part II of this chapter, and no such limited partnership shall do business in this state without first having obtained the permit of authority of the Department of State for the ensuing year.

History.—s. 5, ch. 59-395; ss. 10, 35, ch. 69-106; s. 19, ch. 71-114.

**620.45 Filing of amendments to certificate.—**

Every foreign limited partnership amending its certificate after receiving a permit as provided in s. 620.43, shall within 60 days after such amendment, file a duly authenticated copy thereof with the Department of State. The Department of State shall issue to the partnership a certificate of the filing after receipt of a filing fee of \$10.

History.—s. 6, ch. 59-395; ss. 10, 35, ch. 69-106.

**620.46 Revocation of permit.**—The Department of State may revoke a permit of any foreign limited partnership failing to file any report or pay any tax required by part II of this chapter.

History.—s. 6, ch. 59-395; ss. 10, 35, ch. 69-106.

**620.47 Validity of contracts of partnership unaffected by noncompliance.**—The failure of any foreign limited partnership to comply with the provisions of part II of this chapter, shall not affect the validity of any contract with such foreign limited partnership, but no action shall be maintained or recovery had in any of the courts of this state by any such partnership or its successors or assigns so long as such foreign limited partnership fails to comply with the provisions of part II of this chapter.

History.—s. 7, ch. 59-395.

**620.48 Penalty for violations.**—The members of any foreign limited partnership, whether general or special partners, who shall violate the provisions of this part prescribing the terms and conditions upon which foreign limited partnerships for profit may transact business or acquire, hold, or dispose of property in this state shall be held liable for the debts of the limited partnership as general partners.

History.—s. 8, ch. 59-395.

**620.49 Service of process.**—Service of process may be had on any general partner found in Florida and shall be valid as if served on each individual member of the partnership. In the event no general partner can be found in Florida, service of process may be effected by service upon the Department of State as agent of said limited partnership as provided for in s. 48.181.

**History.**—s. 9, ch. 59-395; ss. 10, 35, ch. 69-106.  
cf.—Ch. 48 Process and service of process.

### PART III

#### UNIFORM PARTNERSHIP ACT

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**620.56 Short title.**—This part may be cited as the "Uniform Partnership Act."

**History.**—s. 1, ch. 72-108.

**620.565 Definition of terms.**—In this part:

- (1) "Court" means every court and judge having jurisdiction in the action.
- (2) "Business" means every trade, occupation, or profession.
- (3) "Person" means those entities listed in s. 1.01(3).
- (4) "Bankrupt" means a bankrupt under the Federal Bankruptcy Act or an insolvent person under any state insolvency act.
- (5) "Conveyance" means every assignment, lease, mortgage, or encumbrance.
- (6) "Real property" means land and any interest or estate in land.

**History.**—s. 2, ch. 72-108.

**620.57 Interpretation of knowledge and notice.**—In this part:

- (1) A person has knowledge of a fact not only when he has actual knowledge of it, but also when he has knowledge of such other facts as in the circumstances show bad faith.
- (2) A person has notice of a fact when another person claiming the benefit of the notice:
  - (a) States the fact to the person, or
  - (b) Delivers through the mail or by other means of communication a written statement of the fact to the person or to his agent at his place of business or residence.

**History.**—s. 3, ch. 72-108.

**620.575 Rules of construction.**—

- (1) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this part.
- (2) The law of estoppel and of agency shall apply under this part.
- (3) This part shall be so interpreted and construed as to make uniform the law of those states that enact it.
- (4) This part shall not be construed to impair the obligation of any contract existing when the act goes into effect nor to affect any action or proceedings begun or right that has accrued before this act takes effect, but otherwise all partnerships shall be governed by this part, whether formed before or after its effective date.

**History.**—s. 4, ch. 72-108.

**620.58 Rules for cases not provided for in this part.**—In any case not provided for in this part, the rules of law and equity, including the law merchant, shall govern.

History.—s. 5, ch. 72-108.

**620.585 "Partnership" defined.—**

(1) A "partnership" is an association of two or more persons to carry on a business for profit as coowners.

(2) An association formed under any other statute of this state, or any statute adopted by authority other than the authority of this state, is not a partnership under this part unless the association would have been a partnership in this state before the adoption of this part. This part shall apply to limited partnerships except insofar as the statutes relating to limited partnerships are inconsistent with this part.

History.—s. 6, ch. 72-108.

**620.59 Rules for determining the existence of a partnership.**—In determining whether a partnership exists, these rules shall apply:

(1) Except as provided by s. 620.635, persons who are not partners as to each other are not partners as to third persons.

(2) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership of itself does not establish a partnership, whether the coowners do or do not share any profits made by the use of the property.

(3) The sharing of gross returns of itself does not establish a partnership, whether the persons sharing them do or do not have a joint or common right or interest in any property from which the returns are derived.

(4) The receipt by a person of a share of the profits of a business is prima facie evidence that he is a partner in the business, but no such inference shall be drawn if the profits were received in payment:

- (a) Of a debt by installments or otherwise;
- (b) As wages of an employee or rent to a landlord;
- (c) As an annuity to a widow or representative of a deceased partner;
- (d) As interest on a loan, though the amount of payment varies with the profits of the business; or
- (e) As the consideration for the sale of goodwill of a business or other property by installments or otherwise.

History.—s. 7, ch. 72-108.

**620.595 Partnership property.—**

(1) All property originally brought into the partnership or subsequently acquired by purchase or otherwise on account of the partnership is partnership property.

(2) Unless a contrary intention appears, property acquired with partnership funds is partnership property.

(3) Any estate in real property may be acquired in the partnership name. Title so acquired may be conveyed in the partnership name.

(4) A conveyance to a partnership in the partnership name, though without words of inheritance,

passes the entire estate of the grantor, unless a contrary intent appears.

History.—s. 8, ch. 72-108.

**620.60 Partner agent of partnership.—**

(1) Every partner is an agent of the partnership for the purpose of its business. The act of every partner, including the execution in the partnership name of any instrument, for apparently carrying on in the usual way the business of the partnership of which he is a member, binds the partnership, unless the partner so acting has in fact no authority to act for the partnership in the particular matter, and the person with whom he is dealing has knowledge of the fact that he has no authority.

(2) An act of a partner that is not apparently for the carrying on of the business of the partnership in the usual way does not bind the partnership unless authorized by the other partners.

(3) Unless authorized by the other partners or unless they have abandoned the business, one or more, but less than all, of the partners have no authority to:

- (a) Assign the partnership property in trust for creditors or on the assignee's promise to pay the debts of the partnership.
- (b) Dispose of the goodwill of the business.
- (c) Do any other act that would make it impossible to carry on the ordinary business of a partnership.
- (d) Confess a judgment.
- (e) Submit a partnership claim or liability to arbitration or reference.

(4) No act of a partner in contravention of a restriction on authority shall bind the partnership to persons having knowledge of the restriction.

History.—s. 9, ch. 72-108.

**620.605 Conveyance of real property of the partnership.—**

(1) When title to real property is in the partnership name, any partner may convey title to the property by a conveyance executed in the partnership name; but the partnership may recover the property unless the partner's act binds the partnership under the provisions of s. 620.60(1), or unless the purchaser or his assignee is a holder for value without knowledge that the partner has exceeded his authority in making the conveyance. When title is held in the partnership name and it is necessary to identify the partners at the time of a conveyance, encumbrance, or other instrument affecting partnership real property, one of the partners may execute an affidavit stating the names of the partners and that they are the partners then existing. The affidavit shall be conclusive as to the facts therein stated as to purchasers without notice.

(2) When title to real property is in the name of one or more, but not all, of the partners, and the public records do not disclose the right of the partnership, the partners in whose name the title stands may convey title to the property, but the partnership may recover the property if the partners' act does not bind the partnership under the provisions of s. 620.60(1) unless the purchaser or his assignee is a holder for value without knowledge that the part-



ners have exceeded their authority in making the conveyance.

(3) When the title to real property is in the names of all the partners, a conveyance must be executed by all the partners, including the personal representative of a deceased partner.

**History.**—s. 10, ch. 72-108; s. 159, ch. 73-333.

**620.61 Partnership bound by admission of partner.**—An admission or representation made by any partner concerning partnership affairs within the scope of his authority is evidence against the partnership.

**History.**—s. 11, ch. 72-108.

**620.615 Partnership charged with knowledge of or notice.**—Notice to any partner of a matter concerning partnership affairs, and the knowledge of the partner acting in the particular matter, acquired while a partner or then present to his mind, and the knowledge of any other partner who reasonably could and should have communicated it to the acting partner, operate as notice to or knowledge of the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner.

**History.**—s. 12, ch. 72-108.

**620.62 Partnership bound by partner's wrongful act.**—When loss or injury is caused to a person, not a partner in the partnership, or any penalty is incurred by a wrongful act or omission of a partner acting in the ordinary course of the business of the partnership or with the authority of his co-partners, the partnership is liable for it to the same extent as the partner so acting or omitting to act.

**History.**—s. 13, ch. 72-108.

**620.625 Partnership bound by partner's breach of trust.**—The partnership is bound to make good the loss:

(1) When one partner acting within the scope of his apparent authority receives money or property of a third person and misapplies it; and

(2) When the partnership in the course of its business receives money or property of a third person and the money or property so received is misapplied by a partner while it is in the custody of the partnership.

**History.**—s. 14, ch. 72-108.

**620.63 Nature of partner's liability.**—All partners are liable:

(1) Jointly and severally for everything chargeable to the partnership under ss. 620.62 and 620.625.

(2) Jointly for all other debts and obligations of the partnership; but a partner may enter into a separate obligation to perform a partnership contract.

**History.**—s. 15, ch. 72-108.

**620.635 Partner by estoppel.**—

(1) When a person represents himself, or consents to another representing him, to anyone as a partner in an existing partnership or with one or more persons not actual partners by words spoken or written or by conduct, he is liable to any person to whom the representation has been made who has

given credit on the faith of the representation to the actual or apparent partnership, and if he has made the representation or consented to its being made in a public manner, he is liable to the person, whether the representation has or has not been made or communicated to the person giving credit by or with the knowledge of the apparent partner making the representation or consenting to its being made.

(a) When a partnership liability results, he is liable as though he were an actual member of the partnership.

(b) When no partnership liability results, he is liable jointly with the other persons, if any, so consenting to the contract or representation as to incur liability; otherwise he is liable separately.

(2) When a person has been thus represented to be a partner in an existing partnership, or with one or more persons not actual partners, he is an agent of the persons consenting to the representation to bind them to the same extent and in the same manner as though he were a partner with respect to persons who rely upon the representation. When all members of the existing partnership consent to the representation, a partnership act or obligation results; but otherwise it is the joint act or obligation of the person acting and the persons consenting to the representation.

**History.**—s. 16, ch. 72-108.

**620.64 Liability of incoming partner.**—A person admitted as a partner into an existing partnership is liable for all the obligations of the partnership arising before his admission as though he had been a partner when the obligations were incurred, except that this liability shall be satisfied only out of partnership property.

**History.**—s. 17, ch. 72-108.

**620.645 Rules determining rights and duties of partners.**—The rights and duties of the partners in relation to the partnership shall be determined, subject to any agreement between them, by the following rules:

(1) Each partner shall be repaid his contributions, whether by way of capital or advances, to the partnership property, and shall share equally in the profits and surplus remaining after all liabilities, including those to partners, are satisfied; and must contribute toward the losses, whether of capital or otherwise, sustained by the partnership according to his share in the profits.

(2) The partnership must indemnify every partner for payments made and personal liabilities reasonably incurred by him in the ordinary and proper conduct of its business or for the preservation of its business or property.

(3) A partner who in aid of the partnership makes any payment or advance beyond the amount of capital that he agreed to contribute shall be paid interest from the date of the payment or advance.

(4) A partner shall receive interest on the capital contributed by him from the date when repayment should be made.

(5) All partners have equal rights in the management and conduct of the partnership business.

(6) No partner is entitled to remuneration for acting in the partnership business, except that a sur-

viving partner is entitled to reasonable compensation for his services in winding up the partnership affairs.

(7) No person can become a member of a partnership without the consent of all the partners.

(8) Any difference arising about ordinary matters connected with the partnership business may be decided by a majority of the partners; but no act in contravention of any agreement between the partners may be done rightfully without the consent of all the partners.

History.—s. 18, ch. 72-108.

**620.65 Partnership books.**—The partnership books shall be kept, subject to any agreement between the partners, at the principal place of business of the partnership, and every partner shall have access to and may inspect and copy any of them at all times.

History.—s. 19, ch. 72-108.

**620.655 Duty of partners to render information.**—On demand partners shall render true and full information of all things affecting the partnership to any partner or the legal representative of any deceased partner or partner under legal disability.

History.—s. 20, ch. 72-108.

**620.66 Partner accountable as a fiduciary.**—

(1) Every partner must account to the partnership for any benefit, and hold as trustee for it any profits, derived by him without the consent of the other partners from any transaction connected with the formation, conduct, or liquidation of the partnership or from any use by him of its property.

(2) This section applies also to the representatives of a deceased partner engaged in the liquidation of the affairs of the partnership as the personal representatives of the last surviving partner.

History.—s. 21, ch. 72-108.

**620.665 Right to an account.**—Any partner shall have the right to a formal account of partnership affairs:

(1) If he is wrongfully excluded from the partnership business or possession of its property by his copartners.

(2) If the right exists under the terms of an agreement.

(3) As provided by s. 620.66.

(4) At any other reasonable time.

History.—s. 22, ch. 72-108.

**620.67 Continuation of partnership beyond fixed term.**—

(1) When a partnership for a fixed term or particular undertaking is continued after the termination of the term or undertaking without an express agreement, the rights and duties of the partners remain the same as they were at termination so far as is consistent with a partnership at will.

(2) A continuation of the business by the partners or such of them as habitually acted in it during the term without any settlement or liquidation of

the partnership affairs is prima facie evidence of a continuation of the partnership.

History.—s. 23, ch. 72-108.

**620.675 Extent of property rights of a partner.**—The property rights of a partner are:

- (1) His rights in specific partnership property;
- (2) His interest in the partnership; and
- (3) His right to participate in the management.

History.—s. 24, ch. 72-108.

**620.68 Nature of a partner's right in specific partnership property.**—

(1) A partner is coowner with his partners of specific partnership property holding as a tenant in partnership.

(2) The incidents of this tenancy are such that:

(a) Subject to the provisions of this part and to any agreement between the partners, a partner has an equal right with his partners to possess specific partnership property for partnership purposes; but he has no right to possess the property for any other purpose without the consent of his partners.

(b) A partner's right in specific partnership property is not assignable except in connection with the assignment of rights of all the partners in the same property.

(c) A partner's right in specific partnership property is not subject to attachment or execution, except on a claim against the partnership. When partnership property is attached for a partnership debt, the partners, or any of them, or the representatives of a deceased partner, cannot claim any right under the homestead or exemption laws.

(d) On the death of a partner his right in specific partnership property vests in the surviving partner or partners, except when the deceased was the last surviving partner, his right in the property vests in his legal representative. The surviving partner or partners or the legal representative of the last surviving partner has no right to possess the partnership property except for a partnership purpose.

(e) A partner's right in specific partnership property is not subject to dower, curtesy, or allowances to widows, heirs, or next of kin.

History.—s. 25, ch. 72-108.

**620.685 Nature of partner's interest in the partnership.**—A partner's interest in the partnership is his share of the profits and surplus. It is personal property.

History.—s. 26, ch. 72-108.

**620.69 Assignment of partner's interest.**—

(1) A conveyance by a partner of his interest in the partnership of itself does not dissolve the partnership, nor, as against the other partners in the absence of agreement, entitle the assignee to interfere in the management or administration of the partnership business or affairs, to require any information or account of partnership transactions, or to inspect the partnership books during the continuance of the partnership. It entitles the assignee to receive the profits to which the assigning partner would otherwise be entitled in accordance with his contract.

(2) If the partnership is dissolved, the assignee is

entitled to receive his assignor's interest and may require an account from the date of the last account agreed to by all the partners.

*History.*—s. 27, ch. 72-108.

**620.695 Partner's interest subject to charging order.**—

(1) On application to a court having jurisdiction by any judgment creditor of a partner, the court may charge the interest of the debtor partner with payment of the unsatisfied amount of the judgment with interest, and may then or later appoint a receiver of his share of the profits and of any other money due or to become due to him from the partnership, and make all other orders to take the actions that the debtor partner might have made or that the circumstances of the case may require.

(2) The partner's interest charged may be redeemed at any time before foreclosure, or, in case of a sale being directed by the court, may be purchased without thereby causing a dissolution:

(a) With separate property by any one or more of the partners; or

(b) With partnership property by any one or more of the partners with the consent of all the partners whose interests are not charged or sold.

(3) Nothing in this part shall deprive a partner of any right under the exemption laws covering his interest in the partnership.

*History.*—s. 28, ch. 72-108.

**620.70 "Dissolution" defined.**—The "dissolution" of a partnership is the change in the relation of the partners caused by a partner ceasing to be associated in the carrying on, as distinguished from the winding up, of the business.

*History.*—s. 29, ch. 72-108.

**620.705 Partnership not terminated by dissolution.**—On dissolution the partnership is not terminated, but continues until the winding up of partnership affairs is completed.

*History.*—s. 30, ch. 72-108.

**620.71 Causes of dissolution.**—Dissolution is caused:

(1) Without violation of the agreement between the partners:

(a) By the termination of the definite term or particular undertaking specified in the agreement,

(b) By the expressed decision of a partner when no definite term or particular undertaking is specified,

(c) By the express will of all the partners who have not assigned their interests or suffered them to be charged for their separate debts, either before or after the termination of any specified term or particular undertaking, or

(d) By the expulsion of a partner from the business bona fide in accordance with such a power conferred by the agreement between the partners;

(2) In contravention of the agreement between the partners when the circumstances do not permit a dissolution under any other provision of this section by the expressed decision of a partner at any time;

(3) By any event that makes it unlawful for the

business of the partnership to be carried on or for the members to carry it on in partnership;

(4) By the death of any partner;

(5) By the bankruptcy of a partner or the partnership;

(6) By judgment of court under s. 620.715.

*History.*—s. 31, ch. 72-108.

**620.715 Dissolution by decree of court.**—The court shall adjudge a dissolution:

(1) On application by or for a partner when:

(a) A partner has been declared a lunatic in a judicial proceeding or is shown to be of unsound mind.

(b) A partner becomes in any other way incapable of performing his part of the partnership contract.

(c) A partner has been guilty of conduct that tends to affect prejudicially the carrying on of the business.

(d) A partner willfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable to carry on the business in partnership with him.

(e) The business of the partnership can only be carried on at a loss.

(f) Any ground under s. 620.71 is found to exist.

(2) On the application of the purchaser of a partner's interest under ss. 620.69 and 620.695:

(a) After the termination of the specified term or particular undertaking.

(b) At any time if the partnership was a partnership at will when the interest was assigned or when the charging order was issued.

*History.*—s. 32, ch. 72-108.

**620.72 General effect of dissolution on authority of partner.**—Except as may be necessary to wind up partnership affairs or to complete transactions begun but not then finished, dissolution terminates all authority of a partner to act for the partnership:

(1) With respect to the partners when the dissolution is not by the act, bankruptcy, or death of a partner; or when the dissolution is by the act, bankruptcy, or death of a partner when s. 620.725 so requires.

(2) With respect to persons not partners, as declared in s. 620.73.

*History.*—s. 33, ch. 72-108.

**620.725 Right of partner to contribution from copartners after dissolution.**—When the dissolution is caused by the act, death, or bankruptcy of a partner, each partner is liable to his copartners for his share of any liability created by a partner acting for the partnership as if the partnership had not been dissolved unless:

(1) The dissolution being by act of a partner, the partner acting for the partnership had knowledge of the dissolution, or

(2) The dissolution being by the death or bankruptcy of a partner, the partner acting for the part-



nership had knowledge or notice of the death or bankruptcy.

History.—s. 34, ch. 72-108.

**620.73 Power of partner to bind partnership to third persons after dissolution.—**

(1) After dissolution a partner can bind the partnership except as provided in subsection (3):

(a) By an act appropriate for winding up partnership affairs or completing transactions unfinished at dissolution;

(b) By a transaction that would bind the partnership if dissolution had not taken place, provided the other party to the transaction:

1. Had extended credit to the partnership before dissolution and had no knowledge or notice of the dissolution; or

2. Though he had not extended credit, had nevertheless known of the partnership before dissolution and, having no knowledge or notice of dissolution, the fact of dissolution had not been advertised in a newspaper of general circulation in the place or in each place, if more than one, at which the partnership business was regularly carried on.

(2) The liability of a partner under subsection (1)(b) shall be satisfied out of partnership assets alone when before dissolution that partner had been:

(a) Unknown as a partner to the person with whom the contract is made; and

(b) So far unknown and inactive in partnership affairs that the business reputation of the partnership could not be said to have been in any degree due to his connection with it.

(3) The partnership is in no case bound by an act of a partner after dissolution:

(a) When the partnership is dissolved because it is unlawful to carry on the business, unless the act is appropriate for winding up partnership affairs;

(b) When the partner has become bankrupt; or

(c) When the partner has no authority to wind up partnership affairs; except by a transaction with one who:

1. Had extended credit to the partnership before dissolution and had no knowledge or notice of his want of authority; or

2. Had not extended credit to the partnership before dissolution, and, having no knowledge or notice of his want of authority, the fact of his want of authority had not been advertised in the manner provided for advertising the fact of dissolution in subsection (1)(b)2.

(4) Nothing in this section shall affect the liability of a person under s. 620.635 who after dissolution represents himself or consents to another representing him as a partner in a partnership engaged in carrying on business.

History.—s. 35, ch. 72-108.

**620.735 Effect of dissolution on partner's existing liability.—**

(1) The dissolution of the partnership of itself does not discharge the existing liability of any partner.

(2) A partner is discharged from any existing liability upon dissolution of the partnership by an agreement to that effect between himself, the partnership creditor and the person or partnership con-

tinuing the business. The agreement may be inferred from the course of dealing between the creditor having knowledge of the dissolution and the person or partnership continuing the business.

(3) When a person agrees to assume the existing obligations of a dissolved partnership, the partners whose obligations have been assumed shall be discharged from any liability to any creditor of the partnership who, knowing of the agreement, consents to a material alteration in the nature or time of payment of the obligations.

(4) The individual property of a deceased partner shall be liable for all obligations of the partnership incurred while he was a partner but subject to the prior payment of his separate debts.

History.—s. 36, ch. 72-108.

**620.74 Right to wind up.—**Unless otherwise agreed the partners who have not wrongfully dissolved the partnership or the legal representative of the last surviving partner, not bankrupt, has the right to wind up the partnership affairs; but any partner, his legal representative or his assignee may obtain winding up by the court.

History.—s. 37, ch. 72-108.

**620.745 Rights of partners to application of partnership property.—**

(1) When dissolution is caused in any way except in contravention of the partnership agreement, each partner as against his copartners and all persons claiming through them, unless otherwise agreed, may have the partnership property applied to discharge its liabilities and the surplus applied to pay in cash the net amount owing to the respective partners. If dissolution is caused by the bona fide expulsion of a partner under the partnership agreement and if the expelled partner is discharged from all partnership liabilities, either by payment or agreement under s. 620.735(2), he shall receive in cash only the net amount due him from the partnership.

(2) When dissolution is caused in contravention of the partnership agreement, the rights of the partners shall be as follows:

(a) Each partner who has not caused dissolution wrongfully shall have:

1. All the rights specified in subsection (1), and

2. The right to damages for breach of the agreement against each partner who has caused the dissolution wrongfully.

(b) If all the partners who have not caused the dissolution wrongfully desire to continue the business in the same name, either by themselves or jointly with others, they do so during the agreed term for the partnership and for that purpose may possess the partnership property, if they secure the payment by bond approved by the court or pay the value of his interest in the partnership at the dissolution to a partner who has caused the dissolution wrongfully, less any damages recoverable under paragraph (a)2., and in like manner indemnify him against all present or future partnership liabilities.

(c) A partner who has caused the dissolution wrongfully shall have:

1. If the business is not continued under the provisions of paragraph (b), all the rights of a partner under subsection (1), subject to paragraph (a)2.

2. If the business is continued under paragraph (b), the right, as against his copartners and all claiming through them in respect of their interests in the partnership, to have the value of his interest in the partnership, less any damages caused to his copartners by the dissolution, ascertained and paid to him in cash, or the payment secured by bond approved by the court, and to be released from all existing liabilities of the partnership; but in ascertaining the value of the partner's interest, the value of the good will of the business shall not be considered.

*History.*—s. 38, ch. 72-108.

**620.75 Rights when partnership is dissolved for fraud or misrepresentation.**—When a partnership contract is rescinded on the ground of the fraud or misrepresentation of one of the parties to it, the party entitled to rescind is, without prejudice to any other right, entitled:

(1) To a lien on, or a right of retention of, the surplus of the partnership property after satisfying the partnership liabilities to third persons for any sum of money paid by him for the purchase of an interest in the partnership and for capital or advances contributed by him; and

(2) After all liabilities to third persons have been satisfied to stand in the place of the creditors of the partnership for payments made by him for partnership liabilities; and

(3) To be indemnified by the person guilty of the fraud or making the representation against all debts and liabilities of the partnership.

*History.*—s. 39, ch. 72-108.

**620.755 Rules for distribution.**—In settling accounts between the partners after dissolution, the following rules shall be observed, subject to any agreement to the contrary:

(1) The assets of the partnership are:

(a) The partnership property,

(b) The contributions of the partners necessary for the payment of all the liabilities specified in subsection (2).

(2) The liabilities of the partnership shall rank in order of payment, as follows:

(a) Those owing to creditors other than partners,

(b) Those owing to partners other than for capital and profits,

(c) Those owing to partners for capital,

(d) Those owing to partners for profits.

(3) The assets shall be applied in the order of their declaration in subsection (1) to the satisfaction of the liabilities.

(4) As provided by s. 620.645(1), the partners shall contribute the amount necessary to satisfy the liabilities; but if any, but not all, of the partners are insolvent or, not being subject to process, refuse to contribute, the other partners shall contribute their share of the liabilities and, in the relative proportions in which they share the profits, the additional amount necessary to pay the liabilities.

(5) An assignee for the benefit of creditors or any person appointed by the court may enforce the contributions specified in subsection (4).

(6) Any partner or his legal representative may enforce the contributions specified in subsection (4) to the extent of the amount that he has paid in ex-

cess of his share of the liability.

(7) The individual property of a deceased partner shall be liable for the contributions specified in subsection (4).

(8) When partnership property and the individual properties of the partners are in possession of a court for distribution, partnership creditors shall have priority on partnership property and separate creditors on individual property, saving the rights of lien or secured creditors as heretofore provided.

(9) When a partner has become bankrupt or his estate is insolvent, the claims against his separate property shall rank in the following order:

(a) Those owing to separate creditors,

(b) Those owing to partnership creditors,

(c) Those owing to partners by way of contribution.

*History.*—s. 40, ch. 72-108.

**620.76 Liability of persons continuing the business in certain cases.**—

(1) When a new partner is admitted into an existing partnership, or a partner retires and assigns, or the representative of the deceased partner assigns, his rights in partnership property to two or more of the partners, or to one or more of the partners and one or more third persons, and the business is continued without liquidation of the partnership affairs, creditors of the first or dissolved partnership are also creditors of the partnership continuing the business.

(2) When all but one partner retire and assign, or the representative of a deceased partner assigns, their rights in partnership property to the remaining partner who continues the business without liquidation of partnership affairs, either alone or with others, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(3) When any partner retires or dies and the business of the dissolved partnership is continued as set forth in subsections (1) and (2) with the consent of the retired partners or the representative of the deceased partner, but without any assignment of his right in partnership property, rights of creditors of the dissolved partnership and of the creditors of the person or partnership continuing the business shall be the same as if the assignment had been made.

(4) When all the partners or their representatives assign their rights in partnership property to one or more third persons who promise to pay the debts and who continue the business of the dissolved partnership, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(5) When any partner wrongfully causes a dissolution and the remaining partners continue the business under the provisions of s. 620.745(2)(b), either alone or with others, and without liquidation of the partnership affairs, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(6) When a partner is expelled and the remaining partners continue the business, either alone or with others without liquidation of the partnership affairs, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(7) The liability of a third person becoming a partner in the partnership continuing the business under this section to the creditors of the dissolved partnership shall be satisfied out of partnership property only.

(8) When the business of a partnership after dissolution is continued under any conditions set forth in this section, the creditors of the dissolved partnership, as against the separate creditors of the retiring or deceased partner or the representative of the deceased partner, have a prior right to any claim of the retired partner or the representative of the deceased partner against the person or partnership continuing the business on account of the retired or deceased partner's interest in the dissolved partnership or on account of any consideration promised for the interest or for his right in partnership property.

(9) Nothing in this section shall modify any right of creditors to set aside an assignment on the ground of fraud.

(10) The use by the person or partnership continuing the business of the partnership name, or the name of a deceased partner as part of it of itself shall not make the individual property of the deceased partner liable for any debts contracted by the person or partnership.

History.—s. 41, ch. 72-108.

**620.765 Rights of retiring partner or estate of deceased partner when the business is contin-**

**ued.**—When a partner retires or dies and the business is continued under any of the conditions set forth in s. 620.76(1), (2), (3), (5), or (6) or s. 620.745(2)(b), without any settlement of accounts between him or his estate and the person or partnership continuing the business, unless otherwise agreed, he or his legal representative, as against the persons or partnership, may have the value of his interest at the date of dissolution ascertained, and shall receive as an ordinary creditor an amount equal to the value of his interest in the dissolved partnership with interest or, at his option or that of his legal representative, instead of interest, the profits attributable to the use of his right in the property of the dissolved partnership; but the creditors of the dissolved partnership as against the separate creditors, or the representative of the retired or deceased partner, shall have priority on any claim arising under this section, as provided by s. 620.76(8).

History.—s. 42, ch. 72-108.

**620.77 Accrual of actions.**—The right to an account of his interest shall accrue to any partner or his legal representative as against the winding up partners or the surviving partners or the person or partnership continuing the business at the date of dissolution in the absence of any agreement to the contrary.

History.—s. 43, ch. 72-108.



## CHAPTER 621

## PROFESSIONAL SERVICE CORPORATIONS

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**621.01 Legislative intent.**—It is the legislative intent to provide for the incorporation of an individual or group of individuals to render the same professional service to the public for which such individuals are required by law to be licensed or to obtain other legal authorization.

*History.*—s. 1, ch. 61-64.

**621.02 Short title.**—This act may be cited as the "Professional Service Corporation Act."

*History.*—s. 2, ch. 61-64.

**621.03 Definitions.**—As used in this act the following words shall have the meaning indicated:

(1) The term "professional service" means any type of personal service to the public which requires as a condition precedent to the rendering of such service the obtaining of a license or other legal authorization and which prior to the passage of this act and by reason of law could not be performed by a corporation. By way of example and without limiting the generality thereof, the personal services which come within the provisions of this act are the personal services rendered by certified public accountants, public accountants, chiropractors, dentists, osteopaths, physicians and surgeons, doctors of medicine, doctors of dentistry, podiatrists, chiropodists, architects, veterinarians, attorneys-at-law, and life insurance agents.

(2) The term "professional corporation" means a corporation which is organized under this act for the sole and specific purpose of rendering professional service and which has as its shareholders only individuals who themselves are duly licensed or otherwise legally authorized within this state to render the same professional service as the corporation.

*History.*—s. 3, ch. 61-64.

**621.04 Exemptions.**—This act shall not apply to any individuals or groups of individuals within this state who prior to the passage of this act were permitted to organize a corporation and perform per-

sonal services to the public by the means of a corporation, and this act shall not apply to any corporations organized by such individual or group of individuals prior to the passage of this act; provided, however, any such individual or group of individuals or any such corporation may bring themselves and such corporation within the provisions of this act by amending the articles of incorporation in such a manner so as to be consistent with all the provisions of this act and by affirmatively stating in the amended articles of incorporation that the shareholders have elected to bring the corporation within the provisions of this act.

*History.*—s. 4, ch. 61-64.

**621.05 Corporation organization.**—An individual or group of individuals duly licensed or otherwise legally authorized to render the same professional services within this state may organize and become a shareholder or shareholders of a professional corporation for pecuniary profit under the provisions of chapter 607 for the sole and specific purpose of rendering the same and specific professional service.

*History.*—s. 5, ch. 61-64; s. 10, ch. 79-9.

**621.06 Rendition of professional services, limitations.**—No corporation organized and incorporated under this act may render professional services except through its officers, employees, and agents who are duly licensed or otherwise legally authorized to render such professional services within this state; provided, however, this provision shall not be interpreted to include in the term "employee," as used herein, clerks, secretaries, bookkeepers, technicians, and other assistants who are not usually and ordinarily considered by custom and practice to be rendering professional services to the public for which a license or other legal authorization is required; and provided further, that nothing contained in this act shall be interpreted to require that the right of an individual to be a shareholder of a corporation organized under this act, or to organize such a corporation, is dependent upon the present or future existence of an employment relationship between him and such corporation, or his present or future active participation in any capacity in the production of the income of such corporation or in the performance of the services rendered by such corporation.

*History.*—s. 6, ch. 61-64; s. 1, ch. 67-590.

**621.07 Liability of officers, shareholders, corporation, etc.**—Nothing contained in this act shall be interpreted to abolish, repeal, modify, restrict, or limit the law now in effect in this state applicable to the professional relationship and liabilities between the person furnishing the professional services and the person receiving such professional service and to the standards for professional conduct; provided, however, that any officer, agent, or employee of a corporation organized under this act shall be personally liable and accountable only for negligent or

wrongful acts or misconduct committed by him, or by any person under his direct supervision and control, while rendering professional service on behalf of the corporation to the person for whom such professional services were being rendered; and provided further that the personal liability of shareholders of a corporation organized under this act, in their capacity as shareholders of such corporation, shall be no greater in any aspect than that of a shareholder-employee of a corporation organized under chapter 607. The corporation shall be liable up to the full value of its property for any negligent or wrongful acts or misconduct committed by any of its officers, agents, or employees while they are engaged on behalf of the corporation in the rendering of professional services.

**History.**—s. 7, ch. 61-64; s. 2, ch. 67-590; s. 11, ch. 79-9.

**621.08 Limitation on corporation's business transactions; investment of funds.**—No corporation organized under this act shall engage in any business other than the rendering of the professional services for which it was specifically incorporated; provided, however, nothing in this act or in any other provisions of existing law applicable to corporations shall be interpreted to prohibit such corporation from investing its funds in real estate, mortgages, stocks, bonds, or any other type of investments, or from owning real or personal property necessary for the rendering of professional services.

**History.**—s. 8, ch. 61-64.

**621.09 Limitation on issuance and transfer of stock.**—No corporation organized under the provisions of this act may issue any of its capital stock to anyone other than an individual who is duly licensed or otherwise legally authorized to render the same specific professional services as those for which the corporation was incorporated. No shareholder of a corporation organized under this act shall enter into a voting trust agreement or any other type agreement vesting another person with the authority to exercise the voting power of any or all of his stock.

**History.**—s. 9, ch. 61-64.

**621.10 Disqualification of shareholder, officer, etc.; forfeiture of charter.**—If any officer, shareholder, agent, or employee of a corporation organized under this chapter who has been rendering professional service to the public becomes legally disqualified to render such professional services within this state or accepts employment that, pursuant to existing law, places restrictions or limitations upon his continued rendering of such professional services, he shall sever all employment with, and financial interests in, such corporation forthwith. A corporation's failure to require compliance with this provision shall constitute a ground for the forfeiture of its articles of incorporation and its dissolution. When a corporation's failure to comply with this provision is brought to the attention of the Department of State, the department forthwith shall certify that fact to the Department of Legal Affairs for appropriate action to dissolve the corporation.

**History.**—s. 10, ch. 61-64; ss. 10, 11, 35, ch. 69-106; s. 1, ch. 69-288; s. 1, ch. 70-305; s. 1, ch. 70-439.

**621.11 Alienation of shares, restrictions.**—No shareholder of a corporation organized under this act may sell or transfer his shares in such corporation except to another individual who is eligible to be a shareholder of such corporation.

**History.**—s. 11, ch. 61-64; s. 3, ch. 67-590.

**621.12 Identification with shareholders.**—The corporate name of a corporation organized under this act shall contain the last names of some or all of the shareholders and may contain the last names of retired or deceased former shareholders of the corporation or of a predecessor corporation or partnership. The corporate name shall also contain the word "chartered" or "professional association" or the abbreviation "P.A." The use of the word "company," "corporation," or "incorporated" or any other word, abbreviation, affix, or prefix indicating that it is a corporation in the corporate name of a corporation organized under this act, other than the word "chartered" or "professional association," or the abbreviation "P.A.," is specifically prohibited. It shall be permissible, however, for the corporation to render professional services and to exercise its authorized powers under a name which is identical to its corporate name except that the words "chartered" or "professional association" or the abbreviation "P.A." is omitted, provided that the corporation has first registered the name to be so used in the manner required for the registration of fictitious names.

**History.**—s. 12, ch. 61-64; s. 1, ch. 77-134.

**621.13 Applicability of chapter 607.**—Chapter 607 is applicable to a corporation organized pursuant to this act except to the extent that any of the provisions of this act are interpreted to be in conflict with the provisions of chapter 607, and in such event the provisions and sections of this act shall take precedence with respect to a corporation organized pursuant to the provisions of this act. A professional corporation organized under this act shall consolidate or merge only with another domestic professional corporation organized under this act to render the same specific professional service, and a merger or consolidation with any foreign corporation is prohibited. A professional corporation heretofore or hereafter organized under this act may change its business purpose from the rendering of professional service to provide for any other lawful purpose by amending its certificate of incorporation in the manner required for an original incorporation under chapter 607. However, such an amendment, when filed with and accepted by the Department of State, shall remove such corporation from the provisions of chapter 621 including, but not limited to, the right to practice a profession. A change of business purpose shall not have any effect on the continued existence of the corporation and the limitations of s. 607.177(1) shall not preclude such an amendment.

**History.**—s. 13, ch. 61-64; ss. 10, 35, ch. 69-106; s. 2, ch. 69-288; s. 210, ch. 77-104.

**621.14 Construction of law.**—The provisions of this act shall not be construed as repealing, modifying, or restricting the applicable provisions of law relating to incorporations, sales of securities, or regulating the several professions enumerated in this

act except insofar as such laws conflict with the provisions of this act.

**History.**—s. 15, ch. 61-64.

**621.15 Applicability of chapter 67-590.—The**

amendments to ss. 621.06, 621.07 and 621.11 by chapter 67-590, Laws of Florida, shall apply to all corporations heretofore or hereafter organized under this act.

**History.**—s. 4, ch. 67-590.



## CHAPTER 622

## FOREIGN UNINCORPORATED ASSOCIATIONS

- 622.01 Chapter permissive.
- 622.02 Definitions.
- 622.03 Qualification.
- 622.04 Process.
- 622.05 Annual reports.
- 622.06 Name.
- 622.07 Powers.

**622.01 Chapter permissive.**—Qualification in compliance with this chapter is not and shall not be mandatory, and is and shall be optional, as a permissive alternative to compliance with any other law or laws with respect to the trade, business, or fictitious name or style, and the recording, registration, or publication thereof, under which business may be transacted by an unincorporated association, company, or group of persons; but no foreign association, as defined hereinafter, shall enjoy or exercise the powers conferred by this chapter unless it shall have qualified in compliance herewith.

**History.**—s. 1, ch. 23897, 1947.

**622.02 Definitions.**—

(1) The term "foreign association" as used in this chapter shall mean and include any unincorporated joint stock association for profit, created and existing under the laws of any state other than this state, or of the District of Columbia, or of any territory or possession of the United States, engaged in any business or businesses other than the banking, trust, or insurance business, and having written articles of association, capital stock divided into shares, and a name including the word "company" or "association" or "society"; but shall not mean nor include any unincorporated association, company or group of persons engaged in the banking, trust, or insurance business.

(2) The term "association" as used in this chapter shall mean and include any foreign association that shall have qualified, in the manner permitted by this chapter, to transact business and acquire, hold, and dispose of property, and sue and be sued in this state.

**History.**—s. 2, ch. 23897, 1947.

**622.03 Qualification.**—Any foreign association may qualify to transact business and acquire, hold, and dispose of property, and sue and be sued in this state, by complying with all requirements of law, including but not limited to the paying of all fees, taxes, and other charges, now or hereafter prescribed for qualification by foreign corporations for profit to transact business in this state, and all laws heretofore or hereafter enacted prescribing requirements to be observed by foreign corporations for profit in so qualifying shall apply to and govern and control such qualification by foreign associations, except that in lieu of filing an authenticated copy of any charter, or certificate of incorporation, or articles of incorporation, the foreign association shall

file a duly authenticated copy of its written articles of association.

**History.**—s. 3, ch. 23897, 1947.

**622.04 Process.**—Every association shall comply with all requirements of law, including but not limited to the paying of all fees and charges, now or hereafter prescribed for the designation and maintenance of an office for the service of process, the appointment of a resident agent upon whom process may be served, and the acceptance of such appointment, by foreign corporations for profit qualified to transact business in this state, and all laws heretofore or hereafter enacted with respect to such offices and agents shall apply to and govern and control all associations.

**History.**—s. 4, ch. 23897, 1947; s. 11, ch. 25035, 1949.  
cf.—Ch. 48 Process and service of process.

**622.05 Annual reports.**—Every association shall comply with all requirements of law, including but not limited to the paying of all fees, taxes, and other charges, now or hereafter prescribed for the filing of annual reports by foreign corporations for profit qualified to transact business in this state, except railroad, pullman, telephone, telegraph, and insurance companies, and all laws heretofore or hereafter enacted with respect to such reports shall apply to and govern and control all associations.

**History.**—s. 5, ch. 23897, 1947.

**622.06 Name.**—Every association may transact business in this state in its name, without including as a part thereof, or displaying or publishing in connection or conjunction therewith, the words "not incorporated," or any similar words, and without making any other showing or display of the fact that it is unincorporated, and without recording, registering, or publishing its name as a trade, business, or fictitious name. Any other law or laws heretofore or hereafter enacted with respect to an unincorporated association, company, or group of persons doing business under any trade, business, or fictitious name or style including the word "company" or "association" or "society," or with respect to the recording, registration, or publication of any trade, business, or fictitious name or style, shall not apply to nor govern nor control an association, and every association is and shall be exempted from the provisions and requirements thereof.

**History.**—s. 6, ch. 23897, 1947.

**622.07 Powers.**—Every association shall have power and authority to transact business and acquire, hold, and dispose of property and sue and be sued in this state; provided that such association shall file with the Department of State a sworn statement setting forth the name under which such association is authorized to transact business and acquire, hold, and dispose of property, and the style by which it is prescribed that such association shall sue and be sued, under the law or laws under which it shall have been created and shall be existing.

**History.**—s. 7, ch. 23897, 1947; ss. 10, 35, ch. 69-106.

## CHAPTER 623

## PRIVATE SCHOOL CORPORATIONS

- 623.01 Short title.
- 623.02 Private school corporation; charter.
- 623.03 Charter; submission to and approval by circuit court; recordation.
- 623.04 Charter; amendment.
- 623.05 Evidence in court proceedings.
- 623.06 Dissolution of corporation.
- 623.07 Consolidation or merger of corporations.
- 623.08 Operation of separate schools in same county.
- 623.09 Taxation exemption.
- 623.10 Powers and duties.
- 623.11 Corporation membership.
- 623.12 Board of directors.
- 623.13 Administration, supervision, and operation by private persons or entities.
- 623.14 Construction.

**623.01 Short title.**—This law may be cited as the "Private School Corporation Law of 1959," and shall be assigned an individual chapter number.

History.—s. 1, ch. 59-113.

**623.02 Private school corporation; charter.**—Any 25 or more adult persons, who are legal residents of Florida and of the county in which any corporation may be formed hereunder, may form a private school corporation, under the provisions of this act and such private school shall be incorporated in the following manner: There shall be presented to one of the judges of the circuit court for the county in which such corporation will operate, a proposed charter subscribed by the intended incorporators, which shall set forth:

- (1) The name of the corporation which name shall include the words "private school."
- (2) A designation of the geographic area in which such corporation will operate its school or schools.
- (3) The object and purpose of the corporation.
- (4) The qualifications of the members and the manner of their designation.
- (5) The term for which the corporation will exist, which term may be perpetual.
- (6) The names and addresses of the charter members.
- (7) The names of the officers who shall manage the affairs of the corporation until the first election of officers.
- (8) The procedure by which the bylaws of the corporation shall be made, altered, or rescinded.

History.—s. 2, ch. 59-113.

**623.03 Charter; submission to and approval by circuit court; recordation.**—

- (1) The proposed charter shall be acknowledged by one of the subscribing incorporators before an officer authorized to take acknowledgments of deeds, which said subscribing incorporator shall also take and subscribe to an oath, to be endorsed on the proposed charter, that it is intended in good faith to carry out the purposes and objectives set forth therein and as provided in this act.

- (2) The circuit judge to whom the proposed char-

ter is presented, finding the same to be in proper form and for the objective and purpose authorized by this act, and in accordance with the provisions and limitations of this act shall approve the charter and endorse his approval thereon. The charter shall then be recorded in the office of the clerk of such circuit court and from thenceforth the subscribers and their associates and successors shall be a nonprofit eleemosynary corporation by the name given.

History.—s. 3, ch. 59-113.

**623.04 Charter; amendment.**—The charter of any corporation incorporated under this act may be amended as follows: When the members of the corporation at a regular or special meeting held in accordance with its bylaws shall approve a resolution providing an amendment to the charter, a copy of such resolution certified by the president and secretary shall be presented to the judge of the circuit court of the county and if he finds the amendment to be proper in form and substance he shall endorse his approval thereon and it shall be recorded by the clerk of the circuit court and the amendment shall be effective from the date of record.

History.—s. 4, ch. 59-113.

**623.05 Evidence in court proceedings.**—The original charter, with the clerk's certificate of recording thereon, or a duly certified copy thereof, shall be evidence of the contents of the charter in all actions and proceedings, and shall be conclusive evidence of the existence of such corporation in all actions and proceedings where the question of its existence is only collaterally involved and prima facie evidence in all other actions and proceedings.

History.—s. 5, ch. 59-113.

**623.06 Dissolution of corporation.**—Any such corporation may be dissolved upon its petition to the circuit judge who shall order notice thereof to be published for such period of time as he may deem expedient and upon proof of such publication he may decree dissolution and make all necessary orders and decrees for the settlement of the affairs of such corporation, taking care that the claims of creditors be satisfied to the extent of the assets of the corporation.

History.—s. 6, ch. 59-113.

**623.07 Consolidation or merger of corporations.**—

- (1) Any two or more corporations existing under the provisions of this act and operating within the same county may consolidate into a new corporation or merge into any one of the constituent corporations, as shall be specified in the consolidation or merger agreement. The board of directors of such corporation or a majority of the members of such corporation at a meeting however duly called or held, as desire to consolidate or merge may enter into an agreement signed by a majority of the members of the several boards of directors or, as the case may be, by a majority of such corporation members

at such meeting prescribing the terms and conditions of consolidation or merger, the mode of carrying the same into effect, and stating such other facts as are necessary to be set out in the charter with such other details and provisions as are necessary or desirable.

(2) The agreement shall be submitted to a meeting of the members of record of each corporation. Notice of the time, place, and purpose of the meeting shall be given to every member of such corporations. Upon adoption of the agreement by the majority of the corporate members of each corporation the secretary of each corporation shall certify the fact of that approval on said agreement. The agreement so adopted and certified shall for each corporation be signed and acknowledged by the president or vice president. The agreement so certified and acknowledged by each corporation shall be filed with the clerk of the circuit court in the county where such corporations exist and when approved by a circuit judge of such county the consolidation or merger shall be effective.

History.—s. 7, ch. 59-113.

**623.08 Operation of separate schools in same county.**—A corporation incorporated under the provisions of this act to operate in an entire county, or major area thereof may operate separate schools in such area and in such locations as it may deem necessary or advisable and under such rules and regulations as specified in the bylaws.

History.—s. 8, ch. 59-113.

**623.09 Taxation exemption.**—The property of any private school corporation incorporated under the provisions of this act shall be exempt from taxation as provided by law.

History.—s. 9, ch. 59-113.

cf.—s. 212.08 Sales, rental, storage, use tax, specified exemptions.

**623.10 Powers and duties.**—Any corporation existing under the provisions of this act, unless otherwise limited by its charter or bylaws shall have the following powers:

(1) To purchase, own, lease, hold, sell, convey, assign, transfer, mortgage, pledge, or otherwise dispose of real and personal property, tangible and intangible.

(2) To borrow money and contract debts whenever necessary for the transaction of its business or for the exercise of its corporate powers, rights, and privileges, or for any other lawful purpose; to issue bonds, promissory notes, bills of exchange, debentures, and other obligations and evidences of indebtedness, payable at a specified time, or payable upon the happening of a specified event, whether secured by mortgages, pledge or otherwise, or unsecured for money borrowed or in payment of property purchased or acquired, or for any other lawful object.

(3) To accept gifts from members and nonmembers and other legitimate sources.

(4) To do all things necessary and proper for the accomplishment of the objectives and purposes of the corporation as enumerated in its charter, its by-

laws, or any amendment thereof, or necessary or incidental to the attainment of the objectives and purposes of the corporation.

(5) To sue and be sued.

History.—s. 10, ch. 59-113.

**623.11 Corporation membership.**—The membership of a corporation existing under the provisions of this act shall be composed of persons who have been approved for membership, as provided by the charter and bylaws of the corporation.

History.—s. 11, ch. 59-113.

#### **623.12 Board of directors.**—

(1) The control of such corporation shall be vested in a board consisting of not fewer than five directors. The number of directors, whether five or more, shall be specified by the charter or bylaws of the corporation. The term of service of the directors shall be established by the charter or bylaws, and the directors shall be elected by a majority vote of the members present at a meeting of the membership, whether annual, special, or otherwise. The board of directors, from and by its membership and by majority vote thereof, shall elect, for a term of office as established by the charter or bylaws, the following officers, whose duties shall include the following:

(a) A president who shall be the chief executive officer of the corporation, who shall preside at all meetings of the members and of the board of directors, and who shall perform such other duties as may be prescribed by the bylaws or directed by the board of directors.

(b) A vice president who in the absence or inability of the president to perform his duties shall act as president for the duration of such absence or inability and who shall perform such other duties as may be prescribed by the bylaws or directed by the board of directors.

(c) A secretary who shall keep the minutes of all meetings of the corporation and other records of the corporation and who shall perform such additional duties as may be prescribed by the bylaws or directed by the board of directors.

(d) A treasurer who shall receive and keep all corporate funds and securities; keep all accounts and records of the corporation; examine, audit, adjust, and settle all accounts of the corporation; and perform such other duties as may be prescribed by the bylaws or directed by the board of directors.

(e) Such other officers as may be prescribed by the bylaws or directed by the board of directors.

(2) Only the treasurer, when authorized by the board of directors, shall receive any monetary reward for services rendered, except that all officers may receive actual and reasonable expenses while performing services for the corporation.

(3) Actions by corporations formed under this chapter that were made by a board consisting of not fewer than five members are hereby ratified, confirmed, and approved, as are actions that were made by a board consisting of one or more members having served as directors for a period exceeding 1 year.

(4) This section shall be supplemental to those



provided elsewhere in this chapter and shall be construed liberally in order to effectuate the legislative intent that adequate provisions be made for the management of private school corporations.

*History.*—s. 12, ch. 59-113; s. 1, ch. 79-153.

**623.13 Administration, supervision, and operation by private persons or entities.**—Any corporation organized and existing under this act shall be administered, supervised, operated, financed, and controlled exclusively by private persons and private entities and their funds. All persons while acting in any public official capacity are hereby specifi-

cally prohibited from engaging in any manner in such administration, supervision, operation, financing, and control of the affairs of such corporation.

*History.*—s. 13, ch. 59-113.

**623.14 Construction.**—The provisions of this act shall be deemed to be accumulative and supplemental to any other powers and authority for the creation of corporations not for profit as set out in chapter 617.

*History.*—s. 15, ch. 59-113.

# TITLE XXXVI

## INSURANCE

### CHAPTER 624

#### INSURANCE CODE: ADMINISTRATION AND GENERAL PROVISIONS

##### PART I SCOPE OF CODE (ss. 624.01-624.20)

##### PART II DEPARTMENT OF INSURANCE (ss. 624.302-624.324)

##### PART III AUTHORIZATION OF INSURERS AND GENERAL REQUIREMENTS (ss. 624.401-624.435)

##### PART IV FEES, TAXES, AND FUNDS (ss. 624.501-624.523)

##### PART V KINDS OF INSURANCE; LIMITS OF RISK; REINSURANCE (ss. 624.601-624.610)

#### PART I

#### SCOPE OF CODE

- 624.01 Short title.
- 624.02 "Insurance" defined.
- 624.03 "Insurer" defined.
- 624.04 "Person" defined.
- 624.05 "Department" defined.
- 624.06 "Domestic," "foreign," "alien" insurer defined.
- 624.07 "Domicile" defined.
- 624.08 "State" defined.
- 624.09 "Authorized," "unauthorized" insurer defined.
- 624.10 Transacting insurance.
- 624.11 Compliance required.
- 624.12 Application of code as to particular types of insurers.
- 624.13 Particular provisions prevail.
- 624.14 Captions not to affect meaning.
- 624.15 General penalty.
- 624.16 Existing certificates of authority.
- 624.17 Existing licenses, permits.
- 624.19 Existing forms and filings.
- 624.20 Saving clause.

**624.01 Short title.**—Chapters 624 through 632 constitute the "Florida Insurance Code."

**History.**—s. 1, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**624.02 "Insurance" defined.**—"Insurance" is a

contract whereby one undertakes to indemnify another or pay or allow a specified amount or a determinable benefit upon determinable contingencies.

**History.**—s. 2, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**624.03 "Insurer" defined.**—"Insurer" includes every person engaged as indemnitor, surety, or contractor in the business of entering into contracts of insurance or of annuity.

**History.**—s. 3, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**624.04 "Person" defined.**—"Person" includes an individual, insurer, company, association, organization, Lloyds, society, reciprocal insurer or interinsurance exchange, partnership, syndicate, business trust, corporation, agent, general agent, broker, solicitor, service representative, adjuster, and every legal entity.

**History.**—s. 4, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**624.05 "Department" defined.**—"Department" means the Department of Insurance of this state, unless context otherwise requires.

**History.**—s. 5, ch. 59-205; ss. 13, 35, ch. 69-106; s. 262, ch. 71-377; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior

to that date.

**1624.06 "Domestic," "foreign," "alien" insurer defined.—**

(1) A "domestic" insurer is one formed under the laws of this state.

(2) A "foreign" insurer is one formed under the laws of any jurisdiction other than this state.

(3) An "alien" insurer is one formed under the laws of any country other than the United States, its states, district, territories, and commonwealths.

(4) Except where distinguished by context, "foreign" insurers includes also "alien" insurers.

**History.**—s. 6, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1624.07 "Domicile" defined.—**Except as provided in s. 631.011, the "domicile" of an insurer means:

(1) As to Canadian insurers, Canada and the province under the laws of which the insurer was formed.

(2) As to other alien insurers authorized to transact insurance in one or more states, as provided in s. 624.429(6).

(3) As to alien insurers not authorized to transact insurance in one or more states, the country under the laws of which the insurer was formed.

(4) As to all other insurers, the state under the laws of which the insurer was formed.

**History.**—s. 7, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1624.08 "State" defined.—**When used in context signifying a jurisdiction other than the State of Florida, "state" means any state, district, territory, or commonwealth of the United States and the Panama Canal Zone.

**History.**—s. 8, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1624.09 "Authorized," "unauthorized" insurer defined.—**

(1) An "authorized" insurer is one duly authorized by a subsisting certificate of authority issued by the department to transact insurance in this state.

(2) An "unauthorized" insurer is one not so authorized.

**History.**—s. 9, ch. 59-205; s. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1624.10 Transacting insurance.—**"Transact" with respect to insurance includes any of the following, in addition to other applicable provisions of this code:

(1) Solicitation or inducement.

(2) Preliminary negotiations.

(3) Effectuation of a contract of insurance.

(4) Transaction of matters subsequent to effectuation of a contract of insurance and arising out of it.

**History.**—s. 10, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior

to that date.

**1624.11 Compliance required.—**No person shall transact insurance in Florida, or relative to a subject of insurance resident, located or to be performed in Florida, without complying with the applicable provisions of this code.

**History.**—s. 11, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1624.12 Application of code as to particular types of insurers.—**No provision of this code shall apply with respect to fraternal benefit societies (as identified in chapter 632), except as stated in chapter 632 (Fraternal Benefit Societies).

**History.**—s. 12, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1624.13 Particular provisions prevail.—**Provisions of this code relative to a particular kind of insurance or a particular type of insurer or to a particular matter shall prevail over provisions relating to insurance in general or insurers in general or to such matter in general.

**History.**—s. 13, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1624.14 Captions not to affect meaning.—**The scope and meaning of any provision shall not be limited or otherwise affected by the caption or heading of any chapter, part, section, subsection or paragraph.

**History.**—s. 14, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1624.15 General penalty.—**Each willful violation of this code as to which a greater penalty is not provided by another provision of this code or by other applicable laws of this state shall be a misdemeanor of the second degree and is, in addition to any prescribed applicable denial, suspension, or revocation of certificate of authority, license, or permit, punishable as provided in s. 775.082 or s. 775.083. Each instance of such violation shall be considered a separate offense.

**History.**—s. 15, ch. 59-205; s. 641, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1624.16 Existing certificates of authority.—**

(1) Every certificate of authority of an insurer which was in force immediately prior to the effective date of this code and existing under any law herein repealed is valid until its original expiration date, unless earlier terminated in accordance with this code.

(2) Upon first renewal under this code any such certificate of authority shall be replaced by a certificate of authority in form as provided by this code, and shall thereafter be subject to continuation, sus-



pension, revocation or termination as though originally issued under this code.

**History.**—s. 808, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **1624.17 Existing licenses, permits.—**

(1) Every license and permit in force immediately prior to the effective date of this code and existing under any law herein repealed is valid until its original expiration date, unless earlier terminated in accordance with this code.

(2) The respective such licenses or permits, upon first renewal (where renewability is applicable) under this code, shall be replaced by a license or permit in form as provided by this code, and shall thereafter be subject to continuation, renewal, suspension, revocation, or termination as though originally issued under this code.

**History.**—s. 809, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1624.19 Existing forms and filings.—**Every form of insurance document and every rate or other filing lawfully in use immediately prior to the effective date of this code may continue to be so used or be effective until the department otherwise prescribes pursuant to this code; except, that before expiration of 1 year from and after such effective date neither this code nor the department shall prohibit the use of any such document, rate, or filing because of any power, prohibition, or requirement contained in this code which did not exist under laws in force immediately prior to such effective date.

**History.**—s. 811, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1624.20 Saving clause.—**This code shall not impair or affect any act done, offense committed or right accruing, accrued, or acquired or liability, penalty, forfeiture or punishment incurred prior to the time it takes effect, but the same may be enjoyed, asserted, enforced, prosecuted or inflicted, as fully and to the same extent as if this code had not been passed.

**History.**—s. 813, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

## **PART II**

### **DEPARTMENT OF INSURANCE**

- 624.302 Offices.
- 624.303 Seal; certified copies as evidence.
- 624.304 Deputies and assistants.
- 624.305 Prohibited interests, rewards.
- 624.306 Delegation of powers.
- 624.307 General powers, duties.
- 624.308 Rules and regulations.
- 624.310 Enforcement.
- 624.311 Records; reproductions; destruction.
- 624.312 Reproductions and certified copies of records as evidence.

- 624.313 Publications.
- 624.314 Publications; Insurance Commissioner's Regulatory Trust Fund.
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**1624.302 Offices.—**The department shall establish and maintain offices at the State Capitol in Tallahassee, and in such other places throughout the state as it may from time to time designate.

**History.**—s. 17, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **1624.303 Seal; certified copies as evidence.—**

(1) The department shall have an official seal, as heretofore adopted by it, by which its proceedings are authenticated.

(2) All certificates executed by the department, other than licenses of agents, solicitors, adjusters, or similar licenses or permits, shall bear its seal.

(3) Any written instrument purporting to be a copy of any action, proceeding, or finding of fact by the department, or any record of the department or copy of any document on file in its office when authenticated under hand of the commissioner by the seal shall be accepted by all the courts of this state as prima facie evidence of the contents thereof.

**History.**—s. 18, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1624.304 Deputies and assistants.—**The department may appoint, employ, prescribe the duties of, and discharge such assistants, deputies, counsel, actuaries, examiners, and other employees as it deems necessary to the performance of its duties under this code. The department shall fix the compensation of all such personnel in such amount as other state employees receive for similar services.

**History.**—s. 19, ch. 59-205; s. 3, ch. 65-233; ss. 13, 35, ch. 69-106; s. 1, ch. 71-328; s. 160, ch. 71-355; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **1624.305 Prohibited interests, rewards.—**

(1) The Insurance Commissioner and Treasurer, or any deputy, examiner, counsel, actuary, assistant or employee of the department shall not be financially interested, directly or indirectly, in any insurer or insurance agency authorized to transact insurance in this state, or in any insurance transaction except as a policyholder or claimant under a policy; except that as to such matters wherein a conflict of interests does not exist on the part of any such individual,

the department may employ or retain from time to time insurance actuaries, accountants, or other professional personnel, who are independently practicing their professions even though similarly employed or retained by insurers or others.

(2) The Insurance Commissioner and Treasurer, or any deputy, examiner, counsel, actuary, assistant or employee of the department, shall not be given nor receive any fee, compensation, loan, gift, or other thing of value in addition to the compensation and expense allowance provided by law, for any service rendered or to be rendered as such commissioner and treasurer, deputy, examiner, counsel, actuary, assistant or employee or in connection therewith.

(3) This section shall not be deemed to prohibit an insurer from making, in regular course of business, a loan to the Insurance Commissioner and Treasurer, or any deputy, assistant, examiner, actuary, counsel, or other employee of the department, if such loan is adequately secured by a mortgage upon real estate or other collateral and qualifies as an eligible investment of the insurer under part II of chapter 625; or from acquiring or holding, in regular course of business, such a loan or investment originally made by others.

**History.**—s. 20, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **§624.306 Delegation of powers.—**

(1) The Insurance Commissioner and Treasurer may delegate to his assistant, deputy, counsel, actuary, examiner or employee, the exercise or discharge in the Commissioner's name of any power, duty, or function, whether ministerial, discretionary or of whatever character, vested by this code in the Insurance Commissioner and Treasurer.

(2) The Insurance Commissioner and Treasurer is responsible for the official acts of any such person so acting in his name and by his authority.

**History.**—s. 21, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **§624.307 General powers, duties.—**

(1) The department shall enforce the provisions of this code, and shall execute the duties imposed upon it by this code.

(2) The department shall have the powers and authority expressly conferred upon it by or reasonably implied from the provisions of this code.

(3) The department may conduct such examinations and investigations of insurance matters, in addition to examinations and investigations expressly authorized, as it may deem proper to determine whether any person has violated any provision of this code or to secure information useful in the lawful administration of any such provision. The cost of such additional examinations or investigations shall be borne by the state.

(4) The department shall have such additional powers and duties as may be provided by other laws of this state.

**History.**—s. 22, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective

July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **§624.308 Rules and regulations.—**

(1) The department may make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of this code as referred to therein. No such rule or regulation shall extend, modify, or conflict with any law of this state or the reasonable implications thereof.

(2) In addition to any other penalty provided, willful violation of any such rule or regulation shall subject the violator to such suspension or revocation of certificate of authority or license as may be applicable under this code as for violation of the provision as to which such rule or regulation relates.

**History.**—s. 23, ch. 59-205; ss. 10, 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§624.310 Enforcement.**—The department may institute such suits or other legal proceedings as may be required for enforcement of any provision of this code. If it appears to the department that any person has violated any provision of this code for which criminal prosecution is provided and would be in order, it shall give the information relative thereto to the state attorney having jurisdiction of any such violation. The state attorney shall promptly institute such action or proceedings against such person as the information may require or justify.

**History.**—s. 25, ch. 59-205; ss. 13, 35, ch. 69-106; s. 26, ch. 73-334; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **§624.311 Records; reproductions; destruction.—**

(1) Except as provided in subsection (4)(c), the department shall preserve in permanent form records of its proceedings, hearings, investigations, and examinations and shall file such records in its office.

(2) The records of the department and insurance filings in its office shall be open to public inspection, except as otherwise provided by this code.

(3) The department may photograph, microphotograph or reproduce on film, whereby each page will be reproduced in exact conformity with the original, all financial records, financial statements of domestic insurers, reports of business transacted in this state by foreign insurers, reports of examination of domestic insurers, and such other records and documents on file in its office as it may in its discretion select.

(4) To facilitate efficient use of floorspace and filing equipment in its offices, the department may destroy records and documents pursuant to chapter 267 as follows:

(a) General closed correspondence files over 3 years old;

(b) Agent, solicitor, adjuster, and similar license files, including license files of the Division of State Fire Marshal, over 2 years old, except that the department shall preserve by reproduction or otherwise a copy of the original records upon the basis of which each such licensee qualified for his initial license, except a competency examination, and of any

disciplinary proceeding affecting the licensee;

(c) All agent, solicitor, adjuster, and similar license files and records, including original license qualification records and records of disciplinary proceedings 5 years after a licensee has ceased to be qualified for a license;

(d) Insurer certificate of authority files over 2 years old, except that the department shall preserve by reproduction or otherwise a copy of the initial certificate of authority of each insurer;

(e) All documents and records which have been photographed or otherwise reproduced as provided in subsection (3), and such reproductions have been filed, and after audit of the department has been completed for the period embracing the dates of such documents and records; and

(f) All other records, documents, and files not expressly provided for in paragraphs (a) through (e).

**History.**—s. 26, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 1, ch. 79-52.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **624.312 Reproductions and certified copies of records as evidence.—**

(1) Photographs or microphotographs in the form of film or prints of documents and records made under s. 624.311(3) shall have the same force and effect as the originals thereof, and shall be treated as originals for the purpose of their admissibility in evidence. Duly certified or authenticated reproductions of such photographs or microphotographs shall be as admissible in evidence as the originals.

(2) Upon request of any person and payment of the applicable fee, the department shall give a certified copy of any record in its office which is then subject to public inspection.

(3) Copies of original records or documents in its office certified by the department shall be received in evidence in all courts as if they were originals.

**History.**—s. 27, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **624.313 Publications.—**

(1) The department shall annually not later than in the month of September have printed and make available to persons requesting a copy thereof a list of all insurers authorized to transact insurance in this state during the preceding calendar year, showing in tabular form the assets and liabilities of such insurers and other data and information deemed essential by the department and based upon the financial statements of the insurers as filed with it.

(2) The department may prepare and have printed and published in pamphlet or book form the following:

(a) A list annually of all persons licensed as insurance agents in this state;

(b) As needed, questions and answers for use of persons making application to be examined for licensing as agents or solicitors for property, casualty, surety, disability and miscellaneous insurers;

(c) As needed, questions and answers for use of persons making application to be examined for licensing as agents for life and disability insurers;

(d) As needed, questions and answers for use of persons making application to be examined for licensing as adjusters; and

(e) Annually after each regular session of the Florida Legislature, a compilation of the laws of Florida relating to insurance. Any such publication may be printed, revised, or reprinted upon the basis of the original low bid.

(3) The department shall sell the publications mentioned in subsection (2) to purchasers at a price fixed by it at not less than the cost of printing and binding such publications, plus packaging and postage costs for mailing; except that the department may deliver copies of such publications free of cost to state agencies and officers, insurance supervisory authorities of other states and jurisdictions, institutions of higher learning located in Florida, the Library of Congress, insurance officers of Naval, Military and Air Force bases located in Florida, and to persons serving as advisors to the department in preparation of the publications.

**History.**—s. 28, ch. 59-205; ss. 13, 35, ch. 69-106; s. 1, ch. 73-305; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **624.314 Publications; Insurance Commissioner's Regulatory Trust Fund.—**

The department shall deposit all moneys received from the sale of publications under s. 624.313 in the Insurance Commissioner's Regulatory Trust Fund for the purpose of paying costs for the preparation, printing and delivery to the department of the publications mentioned in s. 624.313(2), packaging and mailing costs and banking, accounting, and incidental expenses connected with the sale and delivery of such publications by the department. All moneys so deposited and all funds hereafter transferred to the Insurance Commissioner's Regulatory Trust Fund are appropriated for the uses and purposes above mentioned.

**History.**—s. 29, ch. 59-205; s. 2, ch. 61-119; ss. 13, 35, ch. 69-106; s. 1, ch. 74-298; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**624.315 Department; annual report.—**As early as reasonably possible the department shall annually prepare a report to the Legislature and the Governor showing, with respect to the preceding calendar year:

(1) Names of the authorized insurers transacting insurance in this state, with abstracts of their financial statements including such summary of their financial condition as it deems proper;

(2) Names of insurers whose business was closed during the year, the cause thereof, and amounts of assets and liabilities as ascertainable;

(3) Names of insurers against which delinquency or similar proceedings were instituted, and a concise statement of the circumstances and results of each such proceeding;

(4) The receipts and estimated expenses of the department for the year;

(5) The department's recommendations as to amendments or supplementation of laws affecting insurance, and as to matters affecting the department;



(6) Such other pertinent information and matters as the department deems to be in the public interest; and

(7) A summary of all information reported to the department as required by s. 627.331(5).

**History.**—s. 30, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 13, ch. 77-468.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **624.316 Examination of insurers.—**

(1) The department shall examine the affairs, transactions, accounts, records, and assets of each authorized insurer as often as it deems advisable, and of the attorney in fact of a reciprocal insurer as to its transactions affecting the insurer. It shall so examine each domestic insurer not less frequently than every 3 years. Examination of an alien insurer shall be limited to its insurance transactions and affairs in the United States, except as otherwise required by the department. Said examination shall be pursuant to a written order of the department. Such order shall expire or be terminated upon receipt by the department, located in Tallahassee, of the written report of the examination of said insurer, as set forth in s. 624.319, which was conducted by the department's examiners in charge.

(2) The department shall in like manner examine each insurer applying for an initial certificate of authority to transact insurance in this state.

(3) In lieu of making its own examination, the department may accept a full report of the last recent examination of a foreign insurer, certified to by the insurance supervisory official of another state.

(4) The department's examination of any domestic title insurer which is also lawfully engaged in the trust business under a charter heretofore granted, shall be limited to the title Insurance Department; and the department shall accept, in lieu of its own examination thereof, the report of examination of the trust department as made by the Department of Banking and Finance.

(5) The department shall, as a part of its examination procedure, examine each insurer regarding all of the information required by s. 627.331.

(6) The department shall examine each insurer according to the requirements contained in the latest edition of the National Association of Insurance Commissioners' Market Conduct Examination Handbook.

**History.**—s. 31, ch. 59-205; ss. 12, 13, 35, ch. 69-106; s. 1, ch. 70-324; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 14, ch. 77-468.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**624.317 Examination of agents, adjusters and others.**—If it has reason to believe that any such person has violated or is violating any provision of this code, or upon written complaint signed by any interested person indicating that any such violation may exist, the department shall conduct such examination as it deems necessary of the accounts, records, documents and transactions pertaining to or affecting the insurance affairs of any:

(1) General agent, surplus line agent, adjuster, or other person.

(2) Insurance agent or solicitor, subject to the requirements of s. 626.601.

(3) Person having a contract or power of attorney under which he enjoys in fact the exclusive or dominant right to manage or control an insurer.

(4) Person engaged in or proposing to be engaged in the promotion or formation of:

(a) A domestic insurer,

(b) An insurance holding corporation, or

(c) A corporation to finance a domestic insurer or in the production of the domestic insurer's business.

**History.**—s. 32, ch. 59-205; ss. 13, 35, ch. 69-106; s. 1, ch. 70-55; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **624.318 Conduct of examination; access to records; correction of accounts; appraisals.—**

(1) The examination may be conducted by the accredited examiners of the department at the offices wherever located of the person being examined and at such other places as may be required for determination of matters under examination. In the case of alien insurers the examination may be so conducted in the insurer's offices and places in the United States, except as otherwise required by the department.

(2) Every person being examined, its officers, attorneys, employees, agents and representatives shall make freely available to the department or its examiners the accounts, records, documents, files, information, assets and matters in his possession or control relating to the subject of the examination.

(3) If the department finds any accounts or records to be inadequate, or inadequately kept or posted, it may employ experts to reconstruct, rewrite, post or balance them at the expense of the person being examined if such person has failed to maintain, complete or correct such records or accounting after the department has given him notice and a reasonable opportunity to do so.

(4) If the department deems it necessary to value any asset involved in such an examination of an insurer it may make written request of the insurer to designate one or more competent appraisers acceptable to the department, and who shall promptly make an appraisal of the asset and furnish a copy thereof to the department. If the insurer fails to designate such an appraiser or appraisers within 20 days after the department's request, the department may designate the appraiser or appraisers. The reasonable expense of any such appraisal shall be a part of the expense of examination, to be borne by the insurer.

(5) Neither the department nor any examiner shall remove any record, account, document, file or other property of the person being examined from the offices of such person except with the written consent of such person given in advance of such removal, or pursuant to an order of court duly obtained.

(6) Any individual who willfully obstructs the department or its examiner in the examinations authorized by part II shall be guilty of a misdemeanor

and upon conviction shall be punished as provided in s. 624.15.

**History.**—s. 33, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **1624.319 Examination reports.—**

(1) The department or its examiner shall make a full and true written report of each examination. The report shall contain only information obtained from examination of the records, accounts, files, and documents of or relative to the person examined or from testimony of individuals under oath, together with relevant conclusions and recommendations of the examiner based thereon. The department shall furnish a copy of the report to the person examined not less than 30 days prior to filing the report in its office. If such person so requests in writing within such 30-day period, the department shall grant a hearing with respect to the report, and shall not so file the report until after the hearing and after such modifications have been made therein as the department deems proper.

(2) The report when so filed shall be admissible in evidence in any action or proceeding brought by the department against the person examined, or against its officers, employees, or agents. The department or its examiners may at any time testify and offer other proper evidence as to information secured or matters discovered during the course of an examination, whether or not a written report of the examination has been either made, furnished, or filed in the department.

(3) The department may withhold from public inspection any examination or investigation report for so long as it deems reasonably necessary to protect the person examined from unwarranted injury or to be in the public interest.

(4) After the examination report has been filed, as hereinabove provided, the department may publish the results of any such examination in one or more newspapers published in this state whenever it deems it to be in the public interest.

(5) After the examination report of a domestic insurer has been filed as hereinabove provided, an affidavit shall be filed with the department, not more than 30 days after the report has been filed, on a form furnished by the department and signed by the directors and principal officers of the company, stating that they have read the report and that the recommendations made in the report will be considered within a reasonable time.

**History.**—s. 34, ch. 59-205; ss. 13, 35, ch. 69-106; s. 1, ch. 71-46; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **1624.320 Examination expense.—**

(1) Each insurer so examined shall pay to the department the actual travel expenses, reasonable living expense allowance, and compensation of the examiner or other person making the examination at the rates adopted by the department. Such travel expense and living expense allowance shall be limited to those expenses necessarily incurred on account of the examination and shall be paid by the exam-

ined insurer together with compensation upon presentation by the department to such insurer of a detailed account of such charges and expenses after a detailed statement has been filed by the examiner and approved by the department.

(2) All moneys collected from insurers for examinations shall be deposited into the "Insurance Commissioner's Regulatory Trust Fund," and the department is authorized to make deposits from time to time into such fund from moneys appropriated for the operation of the department.

(3) Notwithstanding the provisions of s. 112.061, the department is authorized to pay to the examiner or person making the examination out of said "trust fund" the actual travel expenses, reasonable living expense allowance, and compensation in accordance with the statement filed with the department by the examiner or other person, as provided in subsection (1) upon approval by the department.

(4) When not examining an insurer the traveling expenses, per diem and compensation for the examiners and other persons employed to make examinations, if approved, shall be paid out of moneys budgeted for such purpose as regular employees, reimbursements for such traveling expenses and per diem to be at rates no more than as provided in s. 112.061.

(5) No person shall pay and no examiner or other person making an examination shall accept any additional emolument on account of any examination.

(6) The department is authorized to pay to regular insurance examiners, not a resident of Leon County, Florida, per diem for periods not exceeding 30 days for each such examiner while at the office of the department in Tallahassee, Florida, for the purpose of auditing insurer's annual statements, such expenses to be paid out of moneys budgeted for such purpose, as regular employees at rates provided in s. 112.061.

(7) The provisions of this section shall apply to rate analysts and rate examiners in the discharge of their duties under s. 627.321.

**History.**—s. 35, ch. 59-205; s. 1, ch. 61-208; s. 1, ch. 63-125; ss. 13, 35, ch. 69-106; ss. 2, 3, ch. 71-46; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **1624.321 Witnesses and evidence.—**

(1) As to the subject of any examination, investigation, or hearing being conducted by him any examiner appointed by the department may administer oaths, examine and cross-examine witnesses, receive oral and documentary evidence, and shall have the power to subpoena witnesses, compel their attendance and testimony, and require by subpoena the production of books, papers, records, files, correspondence, documents or other evidence which he deems relevant to the inquiry.

(2) If any person refuses to comply with any such subpoena or to testify as to any matter concerning which he may be lawfully interrogated, the circuit court of Leon County or of the county wherein such examination, investigation, or hearing is being conducted, or of the county wherein such person resides, on the department's application may issue an order requiring such person to comply with the subpoena and to testify; and any failure to obey such an order

of the court may be punished by the court as a contempt thereof.

(3) Subpoenas shall be served, and proof of such service made, in the same manner as if issued by a circuit court. Witness fees and mileage, if claimed, shall be allowed the same as for testimony in a circuit court.

(4) Any person willfully testifying falsely under oath as to any matter material to any such examination, investigation, or hearing shall upon conviction thereof be guilty of perjury and shall be punished accordingly.

**History.**—s. 36, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **624.322 Testimony compelled; immunity from prosecution.—**

(1) If any person asks to be excused from attending or testifying or from producing any books, papers, records, contracts, documents, or other evidence in connection with any examination, hearing, or investigation being conducted by the department or its examiner, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture, and shall notwithstanding be directed to give such testimony or produce such evidence, he must, if so directed by the department and the Department of Legal Affairs, nonetheless comply with such direction, but he shall not thereafter be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may have so testified or produced evidence, and no testimony so given or evidence produced shall be received against him upon any criminal action, investigation or proceeding; except, however, that no such person so testifying shall be exempt from prosecution or punishment for any perjury committed by him in such testimony, and the testimony or evidence so given or produced shall be admissible against him upon any criminal action, investigation, or proceeding concerning such perjury; nor shall he be exempt from the refusal, suspension, or revocation of any license, permission, or authority conferred, or to be conferred, pursuant to this code.

(2) Any such individual may execute, acknowledge and file in the office of the Department of Insurance a statement expressly waiving such immunity or privilege in respect to any transaction, matter or thing specified in such statement, and thereupon the testimony of such individual or such evidence in relation to such transaction, matter, or thing may be received or produced before any judge or justice, court, tribunal, grand jury or otherwise, and if so received or produced such individual shall not be entitled to any immunity or privileges on account of any testimony he may so give or evidence so produced.

**History.**—s. 37, ch. 59-205; ss. 11, 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior

to that date.

**624.323 Same; penalty for refusal to testify.—** Any person who refuses or fails, without lawful cause, to testify relative to the affairs of any insurer or other person when subpoenaed and requested by the department to so testify as provided in s. 624.321 (Witnesses and evidence) shall, in addition to the penalty provided in s. 624.321, be guilty of a misdemeanor and upon conviction shall be subject to the penalties provided under s. 624.15.

**History.**—s. 38, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **624.324 Hearings.—**

(1) The department may hold hearings for any purpose within the scope of this code deemed by it to be necessary subject to the requirements of chapter 120.

(2) The department shall hold a hearing if required by any provision of this code subject to the requirements of chapter 120.

**History.**—s. 39, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

### **PART III**

#### **AUTHORIZATION OF INSURERS AND GENERAL REQUIREMENTS**

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- 624.402 Exceptions, certificate of authority required.
- 624.403 Authorization for investment purposes only.
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- 624.405 Name of insurer.
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**624.401 Certificate of authority required.—**

(1) No person shall act as an insurer and no insurer or its agents, attorneys, subscribers, or representatives, shall directly or indirectly transact insurance in this state except as authorized by a subsisting certificate of authority issued to the insurer by the department, except as to such transactions as are expressly otherwise provided for in this code.

(2) No insurer shall from offices or by personnel or facilities located in this state solicit insurance applications or otherwise transact insurance in another state or country unless it holds a subsisting certificate of authority issued to it by the department authorizing it to transact the same kind or kinds of insurance in this state.

(3) This state hereby preempts the field of regulating insurers and their agents and representatives, and no county, city, municipality, district, school district, or political subdivision shall require of any insurer, agent, or representative regulated under this code any authorization, permit, or registration of any kind for conducting transactions lawful under the authority granted by the state under this code.

**History.**—s. 45, ch. 59-205; s. 1, ch. 61-75; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**624.402 Exceptions, certificate of authority required.—**A certificate of authority shall not be required of an insurer with respect to the following:

(1) Investigation, settlement, or litigation of claims under its policies lawfully written in this state, or liquidation of assets and liabilities of the

insurer (other than collection of new premiums), all as resulting from its former authorized operations in this state.

(2) Transactions involving a policy, subsequent to issuance thereof, covering only subjects of insurance not resident, located, or expressly to be performed in this state at time of issuance, and lawfully solicited, written, or delivered outside this state.

(3) Transactions pursuant to surplus lines coverages lawfully written under part VI of chapter 626.

(4) Reinsurance, when transacted as authorized under s. 624.610.

(5) The continuation and servicing of life insurance or disability insurance policies or annuity contracts remaining in force as to residents of this state where the insurer has withdrawn from the state and is not transacting new insurance therein.

**History.**—s. 46, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**624.403 Authorization for investment purposes only.—**A foreign insurer may transact business in this state without certificate of authority, for the purpose and to the extent only of investing its funds in Florida real estate or in securities secured thereby, by complying with the laws of this state relating to foreign business corporations in general. Such an insurer shall not be subject to any other provisions of this code.

**History.**—s. 47, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**624.404 General eligibility of insurers for certificate of authority.—**To qualify for and hold authority to transact insurance in this state an insurer must be otherwise in compliance with this code and with its charter powers, and must be an incorporated stock insurer, or an incorporated mutual insurer, or a reciprocal insurer, of the same general type as may be formed as a domestic insurer under this code; except that:

(1) No insurer shall be authorized to transact insurance in this state which does not maintain reserves as required by part I of chapter 625 (Assets and Liabilities) applicable to the kind or kinds of insurance transacted by such insurer, wherever transacted in the United States; or which transacts insurance in the United States on the assessment premium plan, stipulated premium plan, cooperative plan, or any similar plan.

(2) No foreign insurer shall be authorized to transact insurance in this state unless it is otherwise qualified therefor under this code and has operated satisfactorily for at least 3 years in its state or country of domicile or is the wholly owned subsidiary of an insurer which is an authorized insurer in this state, or is the successor in interest through merger or consolidation of an authorized insurer.

(3) The department shall not grant or continue authority to transact insurance in this state as to any insurer the management of which is found by it to be incompetent or untrustworthy, or so lacking in insurance company managerial experience as to make the proposed operation hazardous to the insurance-buying public; or which it has good reason to

believe is affiliated directly or indirectly through ownership, control, reinsurance transactions or other insurance or business relations, with any person or persons whose business operations are or have been marked, to the detriment of policyholders or stockholders or investors or creditors or of the public, by manipulation of assets, or of accounts, or of reinsurance, or by bad faith.

(4) No insurer, the voting control or ownership of which is held in whole or substantial part by any government or governmental agency, or which is operated for or by any such government or agency, shall be authorized to transact insurance in this state. Membership in a mutual insurer, or subscription in a reciprocal insurer, or ownership of stock of an insurer by the alien property custodian or similar official of the United States, or supervision of an insurer by public insurance supervisory authority shall not be deemed to be an ownership, control, or operation of the insurer for the purposes of this subsection.

(5) No authorized insurer shall act as a fronting company for any unauthorized insurer. A "fronting company" is an authorized insurer which by reinsurance or otherwise generally transfers to one or more unauthorized insurers substantially the entire risk of loss under substantially all of the insurance written by it in this state, on one or more lines of insurance, on all of the business produced through one or more agents or agencies, or on all of the business from a designated geographical territory. This provision shall not apply as to any policies which are in force on the effective date of this code.

(6) No insurer shall be authorized to transact insurance in this state which during the 3 years immediately preceding its application for a certificate of authority has violated any of the insurance laws of this state and after being informed of such violation has failed to correct the same, except, that if all other requirements are met the department may nevertheless issue a certificate of authority to such an insurer upon the filing by the insurer of a sworn statement of all such insurance so written in violation of law, and upon payment to the department of a sum of money as additional filing fee equivalent to all premium taxes and other state taxes and fees as would have been payable by the insurer if such insurance had been lawfully written by an authorized insurer under the laws of this state. This fee when collected shall be deposited to the credit of the Insurance Commissioner's Regulatory Trust Fund.

(7) Nothing in this code shall be deemed to prohibit the granting and continuance of a certificate of authority to a domestic title insurer organized as a business trust, if the declaration of trust of such insurer was filed in the office of the Secretary of State prior to January 1, 1959, and if the insurer otherwise meets the applicable requirements of this code. Such an insurer may hereinafter in this code be referred to as a "business trust insurer."

(8) For the purpose of satisfying the requirements of ss. 624.407 and 624.408, the investment portfolio of an insurer applying for an initial certificate of authority to do business in this state shall

value its bonds and stocks at the then current market value.

**History.**—s. 48, ch. 59-205; s. 3, ch. 65-269; ss. 13, 35, ch. 69-106; s. 1, ch. 74-44; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 15, ch. 77-468.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **624.405 Name of insurer.—**

(1) No insurer shall be formed or authorized to transact insurance in this state under a name which is the same as that of any other authorized insurer or is so nearly similar thereto as to cause or tend to cause confusion, or which would tend to mislead as to the type of organization of the insurer. Before incorporating under or using any name the insurer or proposed insurer shall submit its name or proposed name to the department for its approval consistent with this provision, and such approval shall be endorsed upon any proposed charter or application for authority which may be submitted to any officer authorized to grant such proposed charter or authority.

(2) Before approving or disapproving the name or proposed name of an insurer the department shall notify all other authorized insurers whose name might be adversely affected, allowing them 30 days after the date of the notice within which to file their objections with it. If a name is so objected to, the department shall disapprove the name unless it is of the opinion that the objections are not well-founded.

(3) No charter or authority shall be granted to any person by any court, office, department, or officer authorized to grant authority or permission to organize or act as an insurer unless the application therefor or proposed charter bears the endorsed approval of the name by the department.

(4) No life insurer shall be so authorized which has or uses a name deceptively similar to that of another insurer authorized to transact insurance in this state within the preceding 5 years if life insurance policies originally issued by such other insurer are still outstanding in this state.

**History.**—s. 49, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**624.406 Combinations of insuring powers, one insurer.—**An insurer which otherwise qualifies therefor may be authorized to transact any one kind or combination of kinds of insurance as defined in part V except:

(1) A life insurer may also grant annuities, but shall not be authorized to transact any other kind of insurance other than disability; except, that the department shall, if the insurer is otherwise qualified therefor, continue to so authorize any life insurer which, immediately prior to the effective date of this code, was lawfully authorized to transact in this state a kind or kinds of insurance in addition to life and disability.

(2) A reciprocal insurer shall not transact life insurance.

(3) Except as to domestic mutual title insurers,

or domestic business trust title insurers as referred to in s. 624.404(7), so authorized prior to the effective date of this code, a title insurer shall be a stock insurer.

**History.**—s. 50, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **1624.407 Capital funds required; new insurers.—**

(1) To qualify for authority to transact any one kind of insurance, as defined in part V of this chapter, or combination of kinds of insurance as shown below, an insurer hereafter applying for its original certificate of authority in this state shall possess, and thereafter maintain unimpaired, paid-in capital stock (if a stock insurer) or unimpaired surplus (if a foreign mutual or foreign reciprocal insurer) or a net trust fund (if a business trust insurer) in amount not less than as applicable under the schedule below, and shall possess when first so authorized such additional surplus as is required under s. 624.408.

Kind or kinds of insurance:	Minimum capital, surplus or net trust fund required to be maintained:
Life	\$500,000.00
Disability	500,000.00
Life and disability	500,000.00
Property	500,000.00
Casualty	500,000.00
Surety	500,000.00
Marine	500,000.00
Title	100,000.00
Multiple lines (Any two or more: property, marine, casualty, surety, and all kinds of insurance other than life)	500,000.00

(2) Capital, surplus and net trust fund requirements shall be based upon all the kinds of insurance actually transacted or to be transacted by the insurer in any and all areas in which it operates, whether or not only a portion of such kinds are to be transacted in this state.

(3) As to surplus required for qualification to transact one or more kinds of insurance and thereafter to be maintained, new domestic mutual insurers are governed by chapter 628 of this code, and domestic reciprocal insurers are governed by chapter 629.

**History.**—s. 51, ch. 59-205; s. 1, ch. 63-29; s. 1, ch. 67-235; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **1624.408 Special surplus requirements; new insurers.—**

(1) In addition to the minimum paid-in capital stock (stock insurers), minimum surplus (mutual and reciprocal insurers), or net trust fund (business trust insurers) required by s. 624.407, an insurer hereafter applying for an initial certificate of authority in this state shall possess, when first author-

ized in this state, surplus or additional surplus or additional net trust fund equal to the larger of \$1,000,000 (stock, mutual, reciprocal and business trust insurers) or 50 percent of its paid-in capital stock (stock insurers).

(2) If within 3 years after date of its initial certificate of authority to transact insurance in this state such an insurer requests authority to transact an additional kind or kinds of insurance, it shall not be so authorized unless it then possesses surplus or additional surplus in such an amount as would be required under this section as for an original certificate of authority covering all the kinds of insurance the insurer then proposes to transact.

(3)(a) After issuance of its initial certificate of authority, the insurer shall maintain a surplus or net trust fund such as required under this section of not less than \$100,000, except that a title insurer must at all times have the surplus as to policyholders as provided for in s. 624.409(2).

(b) After issuance of its initial certificate of authority, any insurer which is issued a certificate of authority on or after May 22, 1979, shall maintain a surplus or net trust fund such as required under this section of not less than \$250,000, except that a title insurer must at all times have the surplus as to policyholders as provided in s. 624.409(2).

**History.**—s. 52, ch. 59-205; s. 2, ch. 63-29; s. 2, ch. 67-235; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 1, 2, ch. 79-72.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **1624.409 Capital and surplus funds required; old insurers.—**

(1) Any insurer possessing a subsisting certificate of authority in this state, or which has filed an application thereof, together with all necessary and pertinent documents, immediately prior to January 1, 1968, may continue to be so authorized to transact the same kind or kinds of insurance while otherwise qualified for such authority and while possessing and maintaining the amount of paid-in capital stock and surplus (if a stock insurer), surplus (if a mutual or reciprocal insurer), or net trust fund (if a business trust insurer), together with any escalated increases thereof, as required as if the applicable laws in force immediately prior to January 1, 1968, had continued in force.

(2) A title insurer must at all times have and maintain surplus as to policyholders in the amount of not less than \$400,000; and if the insurer is a stock insurer not less than \$100,000 of such surplus as to policyholders must be represented by paid-in capital stock; provided also that a minimum surplus of \$200,000 shall be maintained at all times by a title insurer.

(3) Except, that any such insurer which after the effective date of this code requests authority to transact any kind or kinds of insurance in addition to those it was authorized to transact prior thereto shall possess and maintain unimpaired the same amount of paid-in capital stock (if a stock insurer) or surplus (if a mutual or reciprocal insurer) or net trust fund (if a business trust insurer) as would be required of a new insurer under s. 624.407 for authority to transact all the kinds of insurance the insurer then proposes to transact.



(4) Surety insurers having unimpaired paid-in capital stock (if a stock insurer) or unimpaired surplus (if a mutual or reciprocal insurer) of less than \$250,000 are not acceptable as surety upon the bonds of the city, county and state officers, under s. 627.754.

**History.**—s. 53, ch. 59-205; s. 3, ch. 63-29; s. 1, ch. 65-359; s. 3, ch. 67-235; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **624.410 Permissible insuring combinations without additional capital funds.—**

(1) A life insurer may also grant annuities without additional capital or additional surplus.

(2) A casualty insurer may be authorized to transact also disability insurance without additional capital or additional surplus.

(3) A property insurer may without additional capital or additional surplus include such amount and kind of insurance against legal liability for injury, damage, or loss to the person or property of others, and for medical, hospital, and surgical expense related to such injury, as the department deems to be reasonably incidental to insurance of real property against fire and other perils under policies covering residential properties involving not more than four families, with or without incidental office, professional, private school or studio occupancy by an insured, whether or not the premium or rate charged for certain perils so covered is specified in the policy. Any provision of s. 624.609 (Limits of risk) to the contrary notwithstanding, no insurer authorized as to property insurance only shall, pursuant to this subsection, retain risk as to any one subject of insurance as to hazards other than property insurance hazards, in an amount exceeding 5 percent of its surplus to policyholders.

**History.**—s. 54, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **624.411 Deposit requirement, domestic and foreign insurers.—**

(1) The department shall not issue or permit to exist a certificate of authority as to any domestic insurer unless it has deposited and maintains deposited in trust for the protection of the insurer's policyholders or its policyholders and creditors with the department securities eligible for such deposit under s. 625.52, having at all times a value of not less than as follows:

- (a) To transact property insurance, \$50,000.
- (b) To transact casualty insurance, \$50,000.
- (c) To transact title insurance, \$100,000.
- (d) To transact surety insurance, \$75,000.

(2) As to foreign insurers, the department shall not issue or permit to exist a certificate of authority unless such insurer has deposited and maintains deposited in trust with the department securities eligible for such deposit under s. 625.52, having at all times a value of not less than as follows:

- (a) To transact property insurance, \$50,000.
- (b) To transact casualty insurance, \$50,000.
- (c) To transact title insurance, \$75,000.
- (d) To transact surety insurance, \$75,000.

provided that if a foreign insurer writes more than one kind of insurance in this state listed from (a) through (d) of this subsection, it shall not be required to deposit more than \$75,000. Such deposits shall be for the protection of the insurer's policyholders or its policyholders and creditors; and provided further that if a foreign insurer has a surplus to policyholders of not less than \$1 million of which not less than \$500,000 is unassigned surplus, according to the latest annual statement, such foreign insurer shall not be required to make such deposit.

(3) In addition to the deposits otherwise required pursuant to this section, the department may, after notice and hearing, require any insurer, for good cause shown, to deposit and maintain deposited in trust for the protection of the insurer's policyholders or its policyholders and creditors, for such time as the department deems necessary, securities eligible for such deposit under s. 625.52, having a value of not less than the amount which the department shall determine is necessary, which amount shall be not less than \$75,000, or more than \$1 million, depending on the insurer's obligations in this state.

(4) All such deposits in this state are subject to the applicable provisions of part III of chapter 625 (Administration of Deposits).

**History.**—s. 55, ch. 59-205; s. 1, ch. 61-166; s. 1, ch. 63-19; ss. 13, 35, ch. 69-106; s. 1, ch. 71-89; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 16, ch. 77-468.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **624.412 Deposit of alien insurers.—**

(1) An alien insurer shall not have authority to transact insurance in this state unless it has and maintains within the United States as trust deposits with public officials having supervision over insurers, or with trustees, public depositaries, or trust institutions approved by the department, assets available for discharge of its United States insurance obligations, which assets shall be in amount not less than the outstanding reserves and other liabilities of the insurer arising out of its insurance transactions in the United States together with the greater of the following sums:

(a) The largest amount of paid-in capital stock required by s. 624.407 of a domestic stock insurer transacting like kinds of insurance, or

(b) \$300,000.

(2) The amount so held on deposit under subsection (1)(a) or (b) is, for the purposes of this code, deemed to be the paid-in capital stock (if a stock insurer) or minimum surplus (if a mutual insurer) of the insurer required to be maintained.

(3) Any such deposit made in this state shall be held for the protection of the insurer's policyholders or policyholders and creditors in the United States and shall be subject to the applicable provisions of part III of chapter 625 (Administration of Deposits) and chapter 630 (Alien Insurers).

**History.**—s. 56, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **624.413 Application for certificate of authority.—**

(1) To apply for a certificate of authority an in-

surer shall file its application therefor with the department, upon a form furnished by it, showing its name; location of its home office or (if an alien insurer) principal office in the United States; kinds of insurance to be transacted; state or country of domicile; and such additional information as the department may reasonably require, together with the following documents as applicable:

(a) Two copies of its corporate charter, articles of incorporation, declaration of trust or other charter documents, with all amendments thereto, certified by the public official with whom the originals are on file in the state or country of domicile.

(b) If a mutual insurer, a copy of its bylaws, as amended, certified by its secretary or other officer having custody thereof.

(c) If a foreign reciprocal insurer, a copy of the power of attorney of its attorney in fact and of its subscribers' agreement, if any, certified by the attorney in fact; and if a domestic reciprocal insurer, the declaration provided for in s. 629.081.

(d) A copy of its financial statement as of December 31 next preceding on the form approved for current use by the National Association of Insurance Commissioners or its successor, sworn to by at least two executive officers of the insurer, or certified by the public official having supervision of insurance in the insurer's state of domicile or of entry into the United States.

(e) A supplemental financial statement in condensed form, if requested by the department, covering the period from the first of the year to the end of the calendar quarter next preceding the date of its application for the certificate of authority, sworn to by at least two of its executive officers.

(f) If a foreign insurer, a copy of report of most recent examination of the insurer prior to date of application for certificate of authority, certified by the public official having supervision of insurance in its state of domicile or of entry into the United States.

(g) If a foreign insurer, a certificate of compliance from the public official having supervision of insurance in its state or country of domicile showing that it is duly organized and authorized to transact insurance therein, and the kinds of insurance it is so authorized to transact.

(h) If a foreign insurer, certificate of the public official having custody of any deposit maintained by the insurer in another state in lieu of a deposit or part thereof required in this state under s. 624.411 or s. 624.412, showing the amount of such deposit and the assets or securities of which comprised.

(i) Appointment of the Insurance Commissioner and Treasurer pursuant to s. 624.422 as its attorney to receive service of legal process, accompanied by a copy (certified by its corporate secretary or other officer having custody of its records) of the resolution of its board of directors or similar directive body authorizing such appointment.

(j) If a life insurer:

1. Certificate of valuation;
2. Copies of policy forms, standard riders and standard endorsements, and application forms proposed to be issued in this state, and duplicate listings of such forms.

(k) If a disability insurer, copies of policy forms proposed to be issued in this state, with duplicate listings thereof, together with rate book and a copy of each application form.

(l) If an alien insurer, a copy of the appointment and authority of its United States manager, certified by its officer having custody of its records.

(2) The application shall be accompanied by the applicable fees and license tax as specified in s. 624.501 (Filing, license and miscellaneous fees).

**History.**—s. 57, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **624.414 Issuance or refusal of authority.—**

(1) The fee for filing application for a certificate of authority shall not be subject to refund.

(2) The department shall issue to the applicant insurer a proper certificate of authority if it finds that:

(a) The insurer has met the other requirements of this code; and

(b) With reference to a domestic company, the issuance of such certificate of authority would not have a substantial adverse effect on the stability of the insurance industry of this state and would be in the best interest of the public. In making its finding, the department shall take into consideration the number of outstanding certificates of authority and the number of new certificates issued within the immediately preceding 3 years.

(3) If it does not so find, the department shall issue its order refusing the certificate.

(4) The certificate, if issued, shall specify the kind or kinds of insurance the insurer is authorized to transact in this state. At the insurer's request, the department may issue a certificate of authority limited to particular types of insurance or insurance coverages within the scope of a kind of insurance as defined in part V.

**History.**—s. 58, ch. 59-205; s. 1, ch. 65-242; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**624.415 Ownership of certificate of authority; return.**—Although issued to the insurer, the certificate of authority is at all times the property of this state. Upon any expiration, suspension, or termination thereof the insurer shall promptly deliver the certificate of authority to the department.

**History.**—s. 59, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **624.416 Continuance, expiration, reinstatement and amendment of certificate of authority.—**

(1) Certificates of authority issued or renewed under this code shall continue in force as long as the insurer is entitled thereto under this code and until suspended, revoked, or terminated at the request of the insurer; subject, however, to continuance of the certificate by the insurer each year by:

(a) Payment prior to June 1 of the annual license tax provided for in s. 624.501(3).

(b) Due filing by the insurer of its annual statement for the calendar year preceding as required under s. 624.424;

(c) Payment by the insurer of applicable taxes with respect to the preceding calendar year as required under this code; and

(d) Filing of the affidavit as to transaction of business through resident agents as required by s. 624.427.

(2) If not so continued by the insurer, its certificate of authority shall expire at midnight on the May 31 next following such failure of the insurer so to continue it in force. The department shall promptly notify the insurer of the occurrence of any failure resulting in impending expiration of its certificate of authority.

(3) The department may, in its discretion, reinstate a certificate of authority which the insurer has inadvertently permitted to expire, after the insurer has fully cured all its failures which resulted in the expiration, and upon payment by the insurer of the fee for reinstatement, in the amount provided in s. 624.501(1)(b). Otherwise, the insurer shall be granted another certificate of authority only after filing application therefor and meeting all other requirements as for an original certificate of authority in this state.

(4) The department may amend a certificate of authority at any time to accord with changes in the insurer's charter or insuring powers.

**History.**—s. 60, ch. 59-205; s. 1, ch. 63-149; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **§624.417 Mandatory revocation, suspension of certificate of authority.—**

(1) The department shall suspend or revoke an insurer's certificate of authority:

(a) If such action is required by any provision of this code; or

(b) If the insurer no longer meets the requirements for the authority originally granted, on account of deficiency of assets or otherwise; or

(c) If the insurer's authority to transact insurance is suspended or revoked by its state of domicile, or state of entry into the United States if an alien insurer.

(2) In cases of insolvency or impairment of required capital or surplus, or suspension or revocation by another state as referred to in paragraph (c) of subsection (1), the department may suspend or revoke the insurer's certificate of authority.

**History.**—s. 61, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **§624.418 Suspension, revocation of certificate of authority for violations and special grounds.—**

(1) The department may, in its discretion, suspend or revoke an insurer's certificate of authority if it finds that the insurer has violated any lawful order of the department, or any provision of this code other than those for which suspension or revocation is mandatory.

(2) The department shall suspend or revoke an insurer's certificate of authority if it finds that the insurer:

(a) Is in unsound condition, or in such condition, or using such methods and practices in the conduct of its business, as to render its further transaction of insurance in this state hazardous or injurious to its policyholders or to the public.

(b) Has refused to be examined or to produce its accounts, records, and files for examination, or if any of its officers have refused to give information with respect to its affairs or to perform any other legal obligation as to such examination, when required by the department.

(c) Has failed to pay any final judgment rendered against it in this state within 60 days after the judgment became final.

(d) With such frequency as to indicate its general business practice in this state, has without just cause refused to pay proper claims arising under its policies, whether any such claim is in favor of an insured or is in favor of a third person with respect to the liability of an insured to such third person, or without just cause compels such insureds or claimants to accept less than the amount due them or to employ attorneys or to bring suit against the insurer or such an insured to secure full payment or settlement of such claims.

(e) Is affiliated with and under the same general management or interlocking directorate or ownership as another insurer which transacts direct insurance in this state without having a certificate of authority therefor, except as permitted as to surplus line insurers under part VI of chapter 626.

(3) The department may, in its discretion, immediately suspend the certificate of authority of any insurer as to which proceedings for receivership, conservatorship, rehabilitation, or other delinquency proceedings have been commenced in any state by the public insurance supervisory official of such state.

(4) The department may, in its discretion, suspend or revoke an insurer's certificate of authority if it finds that the ratio of net premiums written to surplus as to policyholders exceeds four to one and the insurer has less than \$50 million surplus as to policyholders. However, the provisions of this subsection shall not apply to life and disability insurers.

**History.**—s. 62, ch. 59-205; ss. 13, 35, ch. 69-106; s. 1, ch. 71-320; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 17, ch. 77-468; s. 21, ch. 78-95.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **§624.420 Order, notice of suspension or revocation of certificate of authority; effect; publication.—**

(1) Suspension or revocation of an insurer's certificate of authority shall be by the department's order. The department shall promptly also give notice of such suspension or revocation to the insurer's agents in this state of record in the department's office. The insurer shall not solicit or write any new coverages in this state during the period of any such suspension or revocation, nor after such revocation renew any business previously written.

(2) In its discretion the department may cause notice of any such suspension or revocation to be



published in one or more newspapers of general circulation published in this state.

**History.**—s. 64, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§624.421 Duration of suspension; insurer's obligations during suspension period; reinstatement.**—

(1) Suspension of an insurer's certificate of authority shall be for such period, not to exceed 1 year, as is fixed by the department in the order of suspension, unless the department shortens or rescinds such suspension or the order upon which the suspension is modified, rescinded or reversed.

(2) During the period of suspension the insurer shall file its annual statement, pay license fees and taxes as required under this code as if the certificate had continued in full force.

(3) Upon expiration of the suspension period (if within such period the certificate of authority has not otherwise terminated) the insurer's certificate of authority shall automatically reinstate unless the department finds that the causes of the suspension have not been removed or that the insurer is otherwise not in compliance with the requirements of this code. If not so automatically reinstated, the certificate of authority shall be deemed to have expired as of the end of the suspension period or upon failure of the insurer to continue the certificate during the suspension period, whichever event first occurs.

(4) Upon reinstatement of the insurer's certificate of authority, the authority of its agents in this state to represent the insurer shall likewise reinstate. The department shall promptly notify the insurer and its agents in this state of record in its office, of such reinstatement.

**History.**—s. 65, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§624.4211 Administrative fine in lieu of suspension or revocation.**—If the department finds that one or more grounds exist for the discretionary revocation or suspension of a certificate of authority issued under this chapter, the department may, in lieu of such revocation or suspension, impose a fine upon the insurer in an amount not to exceed \$1,000 per violation. If it is found that the insurer has knowingly and willfully violated a lawful order of the department or a provision of this code, the department may impose a fine upon the insurer in an amount not to exceed \$10,000 for each such violation.

**History.**—s. 1, ch. 72-248; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§624.422 Service of process; appointment of Insurance Commissioner and Treasurer as process agent.**—

(1) Each insurer applying for authority to transact insurance in this state, whether domestic, foreign or alien, shall file with the department its appointment of the Insurance Commissioner and Treas-

urer and his successors in office, on a form as furnished by the department, as its attorney to receive service of all legal process issued against it in any civil action or proceeding in this state, and agreeing that process so served shall be valid and binding upon the insurer. The appointment shall be irrevocable, shall bind the insurer and any successor in interest as to the assets or liabilities of the insurer, and shall remain in effect as long as there is outstanding in this state any obligation or liability of the insurer resulting from its insurance transactions therein.

(2) At the time of such appointment of the Insurance Commissioner and Treasurer as its process agent the insurer shall file with the department designation of the name and address of the person to whom process against it served upon the Insurance Commissioner and Treasurer is to be forwarded. The insurer may change the designation at any time by a new filing.

(3) Service of process upon the Insurance Commissioner and Treasurer as the insurer's attorney pursuant to such an appointment shall be the sole method of service of process upon an authorized domestic, foreign or alien insurer in this state.

**History.**—s. 66, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§624.423 Serving process.**—

(1) Service of process upon the Insurance Commissioner and Treasurer as process agent of the insurer (under s. 624.422) shall be made by serving copies in triplicate of the process upon the Insurance Commissioner and Treasurer or upon his assistant, deputy, or other person in charge of his office. Upon receiving such service the Insurance Commissioner and Treasurer shall file one copy in his office, return one copy with his admission of service, and promptly forward one copy of the process by registered or certified mail to the person last designated by the insurer to receive the same, as provided under s. 624.422(2).

(2) Where process is served upon the Insurance Commissioner and Treasurer as an insurer's process agent, the insurer shall not be required to answer or plead except within 20 days after the date upon which the Insurance Commissioner and Treasurer mailed a copy of the process served upon him as required by subsection (1).

(3) Process served upon the Insurance Commissioner and Treasurer and copy thereof forwarded as in this section provided shall for all purposes constitute valid and binding service thereof upon the insurer.

**History.**—s. 67, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§624.424 Annual statement and other information.**—

(1) Each authorized insurer shall annually on or before March 1, or within such extension of time therefor as the department, for good cause, may have granted, file with the department a full and

true statement of its financial condition, transactions, and affairs as of the December 31 preceding. The statement shall be in such general form and context as approved or adopted for current use by the National Association of Insurance Commissioners or its successor organization, for use as to the type of insurer and kinds of insurance to be reported upon, and as supplemented for additional information required by the department. The statement shall be verified by the oath of two executive officers of the insurer; or if a reciprocal insurer, by the oath of the attorney in fact or its like officers if a corporation.

(2) The statement of an alien insurer shall be verified by the insurer's United States manager or other officer duly authorized. It shall be a separate statement, to be known as its general statement, of its transactions, assets, and affairs within the United States unless the department requires otherwise. If the department requires a statement as to the insurer's affairs elsewhere, the insurer shall file such statement with the department as soon as reasonably possible.

(3) Each insurer having a deposit as required under s. 624.411 (Deposit requirement, domestic and foreign insurers) shall file with the department annually with its annual statement a certificate to the effect that the assets so deposited have a market value equal to or in excess of the amount of deposit so required.

(4) At time of filing, the insurer shall pay the fee for filing its annual statement in the amount specified in s. 624.501 (Filing, license, and miscellaneous fees).

(5) The department may refuse to continue, or may suspend or revoke, the certificate of authority of an insurer failing to file its annual statement and accompanying certificates when due.

(6) In addition to information called for and furnished in connection with its annual statement, an insurer shall furnish to the department as soon as reasonably possible such information as to its transactions or affairs as the department may from time to time request in writing. All such information furnished pursuant to the department's request shall be verified by the oath of two executive officers of the insurer, or, if a reciprocal insurer, by the oath of the attorney in fact or its like officers if a corporation.

(7) The signatures of all such persons when written on annual statements or other reports required by this section shall be presumed to have been so written by authority of the person whose signature is affixed thereon. The affixing of any signature by anyone other than the purported signer shall constitute a violation of this section and be punishable as provided in s. 626.957.

(8) The department may require an insurer to furnish an annual certified financial report which shall reflect the audited financial condition of the insurer as of the end of the calendar year and its operations, changes in financial position, and changes in capital and surplus for the year then ended, in conformity with statutory accounting prac-

tices prescribed, or otherwise permitted, by the Department of Insurance.

**History.**—s. 68, ch. 59-205; ss. 13, 35, ch. 69-106; ss. 1, 2, ch. 70-56; s. 1, ch. 70-439; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 18, ch. 77-468.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§624.4245 Change in controlling interest of foreign insurer; report required.**—In the event of a change in the controlling capital stock or a change of 50 percent or more of the assets of a foreign insurer, such insurer shall report such change in writing to the department within 30 days of the effective date thereof. The report shall contain the name and address of the new owner or owners of the controlling stock or assets, the nature and value of the new assets, and such other relevant information as the department may reasonably require. For the purposes of this section, the term "controlling capital stock" means a sufficient number of shares of the issued and outstanding capital stock of such insurer or person so as to give the owner thereof power to exercise a controlling influence over the management or policies of such insurer or person.

**History.**—s. 1, ch. 70-323; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§624.425 Resident agent and countersignature required, property, casualty, surety insurance.**—

(1) Except as stated in s. 624.426, no authorized property, casualty, or surety insurer shall assume direct liability as to a subject of insurance resident, located, or to be performed in this state unless the policy or contract of insurance is issued by or through, and is countersigned by, a local producing agent who is a resident of this state, regularly commissioned and licensed currently as an agent of the insurer under this code. If two or more authorized insurers issue a single policy of insurance against legal liability for loss or damage to person or property caused by the nuclear energy hazard, or a single policy insuring against loss or damage to property by radioactive contamination, whether or not also insuring against one or more other perils proper to insure against in this state, such policy if otherwise lawful may be countersigned on behalf of all of the insurers by a licensed resident agent of any insurer appearing thereon. Such agent shall receive on each policy or contract the full and usual commission allowed and paid by the insurer to its agents on business written or transacted by them for the insurer.

(2) If any subject of insurance referred to in subsection (1) is insured under a policy, or contract, or certificate of renewal or continuation thereof, issued in another state and covering also property and risks outside this state, a certificate evidencing such insurance as to subjects located, resident, or to be performed in this state, shall be issued by or through and shall be countersigned by the insurer's commissioned and licensed local producing agent resident in this state in the same manner and subject to the same conditions as is provided in subsection (1) as to policies and contracts; except that the compensation to be paid to the agent may relate only to the Florida

portion of the insurance risks represented by such policy or contract.

(3) An agent shall not sign or countersign in blank any policy to be issued outside of his office, or countersign in blank any countersignature endorsement therefor, or certificate issued thereunder. An agent may give a power of attorney to, or otherwise authorize, the issuing insurance company to countersign such documents by imprinting his name thereon in lieu of manually countersigning said document; but an agent shall not give a power of attorney to, or otherwise authorize, any other person to countersign any such document in his name unless the person so authorized is directly employed by the agent and by no other person, and is so employed in the office of the agent.

(4) This section shall not be deemed to prohibit mutual and reciprocal insurers from using salaried local resident licensed agents for the production and servicing of business in this state and the issuance and countersignature by such agents of insurance policies or contracts, where required under subsection (1), and without payment of commission therefor.

**History.**—s. 69, ch. 59-205; s. 1, ch. 74-64; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§624.426 Exceptions to resident agent and countersignature law.**—Section 624.425 shall not apply to:

(1) Contracts of reinsurance.

(2) Policies of insurance on the rolling stock of railroad companies doing a general freight and passenger business.

**History.**—s. 70, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§624.427 Compliance with resident agent law; renewal of certificate of authority.**—Continuation of a certificate of authority of an insurer to transact property, marine, casualty or surety insurance in this state shall be permitted only if the insurer is otherwise entitled thereto and after the secretary and manager of the insurer has made oath that, to the best of his knowledge and belief, no policy or contract of insurance covering property or risk located in this state, and to which s. 624.425 is applicable, has been issued, written or placed during the preceding calendar year, except by resident producing agents of such insurer in Florida duly commissioned and licensed; and that local agents have received the full, entire and usual commission due and allowed its agents; and that none of its agents or representatives in this state had divided or offered to divide, unlawfully, his commission or other profits with other persons.

**History.**—s. 71, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§624.428 Licensed agent law, life and disability insurances.**—

(1) No life insurer shall deliver or issue for delivery in this state any policy of life insurance, master group life insurance contract, master credit life poli-

cy or agreement, annuity contract or contract or policy of disability insurance, unless the application for such policy or contract is taken by, and the delivery of such policy or contract is made through, an insurance agent of the insurer duly licensed under the law of Florida, who shall receive the usual commission due to an agent from such insurer.

(2) Each such insurer shall maintain a licensed insurance agent at all times for the purpose of and through whom policies or contracts issued or delivered in this state shall be serviced.

(3) This section shall not apply to policies of insurance or annuity contracts on nonresidents which are applied for outside of and delivered in the state.

**History.**—s. 72, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§624.429 Retaliatory provision, insurers.**—

(1) When by or pursuant to the laws of any other state or foreign country any taxes, licenses and other fees, in the aggregate, and any fines, penalties, deposit requirements or other material obligations, prohibitions or restrictions are or would be imposed upon Florida insurers or upon the agents or representatives of such insurers, which are in excess of such taxes, licenses and other fees, in the aggregate, or which are in excess of the fines, penalties, deposit requirements or other obligations, prohibitions, or restrictions directly imposed upon similar insurers, or upon the agents or representatives of such insurers, of such other state or country under the statutes of this state, so long as such laws of such other state or country continue in force or are so applied, the same taxes, licenses and other fees, in the aggregate, or fines, penalties, deposit requirements or other material obligations, prohibitions, or restrictions of whatever kind shall be imposed by the department upon the insurers, or upon the agents or representatives of such insurers, of such other state or country doing business or seeking to do business in Florida.

(2) Any tax, license or other obligation imposed by any city, county, or other political subdivision or agency of a state, jurisdiction or foreign country on Florida insurers or their agents or representatives shall be deemed to be imposed by such state, jurisdiction, or foreign country within the meaning of subsection (1).

(3) In the application of subsection (1), any foreign insurer which maintains a regional home office in this state as defined in s. 624.514:

(a) Shall be permitted as credits and deductions from the aggregate of penalties, fees, charges and taxes imposed pursuant to this section, the same amount of credits and deductions which would otherwise be permitted such insurer under s. 624.514.

(b) Shall not be subject to retaliation as it relates to premium tax.

(4) This section shall not apply as to personal income taxes, nor as to ad valorem taxes on real or personal property, nor as to special purpose obligations or assessments imposed by another state in connection with particular kinds of insurance other than property insurance, except that deductions, from premium taxes or other taxes otherwise payable, allowed on account of real estate or personal property taxes paid shall be taken into consideration



by the department in determining the propriety and extent of retaliatory action under this section.

(5) This section shall not apply as to an insurer of any other state doing business in Florida if 15 percent or more of the capital stock of such insurer is owned by a corporation organized under the Florida laws and domiciled in Florida.

(6) For the purposes of this section the domicile of an alien insurer, other than an insurer formed under the laws of Canada or a province thereof, shall be that state designated by the insurer in writing filed with the department at time of admission to this state or within 6 months after the effective date of this code, whichever date is the later, and may be any of the following states:

(a) That in which the insurer was first authorized to transact insurance;

(b) That in which is located the insurer's principal place of business in the United States;

(c) That in which is held the larger deposit of trust assets of the insurer for the protection of its policy holders and creditors in the United States.

If the insurer makes no such designation, its domicile shall be deemed to be that state in which is located its principal place of business in the United States. In the case of an insurer formed under the laws of Canada or a province thereof, its domicile shall be deemed to be that province in which is located its head office.

(7) The excess amount of all fees, licenses and taxes collected by the department under this section over the amount of similar fees, licenses and taxes provided for in part IV, together with all fines, penalties or other monetary obligations collected under this section and ss. 626.711 and 626.743 exclusive of such fees, licenses and taxes, shall be deposited by the department to the credit of the Insurance Commissioner's Regulatory Trust Fund.

**History.**—s. 73, ch. 59-205; s. 1, ch. 65-233; s. 4, ch. 65-269; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **624.430 Withdrawal of insurer or discontinuance of writing certain classes of insurance.—**

(1) Any insurer desiring to surrender its certificate of authority, withdraw from this state, or discontinue the writing of certain classes of insurance in this state shall give 45 days' notice in writing to the department setting forth its reasons for such action.

(2) Any insurer withdrawing from the state or discontinuing the writing of all classes of insurance in this state shall be required to surrender its certificate of authority.

(3) This section shall not apply to life insurance.

**History.**—s. 2, ch. 63-149; s. 1, ch. 67-10; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **624.432 Report by insurers of professional liability claims and actions required.—**

(1) Every insurer providing professional liability insurance to a practitioner of medicine, licensed pursuant to the provisions of chapter 458, to a practi-

tioner of osteopathic medicine, licensed pursuant to the provisions of chapter 459, or to a member of The Florida Bar, shall report periodically, but in no event less than once each year, to the Department of Insurance any claim or action for damages for personal injuries claimed to have been caused by error, omission, or negligence in the performance of such insured's professional services or based on a claimed performance of professional services without consent, if the claim resulted in:

(a) A final judgment in any amount.

(b) A settlement in any amount.

(c) A final disposition not resulting in payment on behalf of the insured.

Reports shall be filed with the Department of Insurance no later than March 15 of the year following the occurrence of one of the events listed in paragraphs (a), (b), or (c).

(2) The reports required by subsection (1) shall contain:

(a) The name, address, and specialty coverage of the insured.

(b) The insured's policy number.

(c) The date of the occurrence which created the claim.

(d) The date of suit, if filed.

(e) The date and amount of judgment or settlement, if any.

(f) The date and reason for final disposition, if no judgment or settlement.

(g) A summary of the occurrence which created the claim.

(3) The Department of Insurance shall maintain the reports filed in accordance with this section as confidential records. The reports shall be released only for bona fide research or educational purposes.

(4) There shall be no liability on the part of, and no cause of action of any nature shall arise against, any insurer reporting hereunder or its agents or employees or the Department of Insurance or its employees for any action taken by them pursuant to this section.

**History.**—s. 1, ch. 74-219; s. 3, ch. 76-168; s. 1, ch. 77-174; s. 1, ch. 77-297, s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**Note.**—Former s. 624.431, s. 768.55 (1976 Supp.).

#### **624.433 Reports of information by products liability insurers required.—**

(1) Any insurer authorized to write a policy of products liability insurance in the state shall transmit the following information, based on its nationwide products liability insurance writings, to the department each year in the annual report of such insurer:

(a) Premiums written;

(b) Premiums earned;

(c) Unearned premiums;

(d) The dollar amount of claims paid;

(e) Incurred claims, not including claims incurred but not reported;

(f) Claims closed without payment, and the amount reserved for such claims;

(g) Loss reserves for all claims except claims incurred but not reported;

(h) Reserves for claims incurred but not reported;

(i) Losses paid as a percentage of the amount reserved for such losses;

(j) Net investment gain or loss and other income gain or loss allocated to products liability lines according to the allocation formula used in The Annual Insurance Expense Exhibit;

(k) Underwriting income or loss;

(l) Actual expenses in detail, including, but not limited to, loss adjustment expense, commissions, general expense, and advertising, home office, and defense costs;

(m) Claims settled after a suit was filed;

(n) Claims paid based on a judgment; and

(o) Judgments appealed by the insurer, together with the total results of such appeals.

(2) The department shall provide a summary of information provided pursuant to subsection (1) in its annual report.

(3) In the first year that an insurer makes a report pursuant to subsection (1), the insurer shall provide only the information required by paragraphs (a) through (l) of subsection (1), and shall provide such information for the current year and the 3 previous years.

History.—s. 1, ch. 78-224.

#### 624.435 Reports of information by workers' compensation insurers required.—

(1) Any insurer authorized to write a policy of workers' compensation insurance or self-insurer shall transmit the following information to the department each year with the annual report of such insurer, and such information shall be reported on a net basis with respect to reinsurance for nationwide experience and on a direct basis with respect to reinsurance for Florida experience:

(a) Premiums written;

(b) Premiums earned;

(c) Dividends paid or credited to policyholders;

(d) Losses paid;

(e) Allocated loss adjustment expenses;

(f) The ratio of allocated loss adjustment expenses to losses paid;

(g) Unallocated loss adjustment expenses;

(h) The ratio of unallocated loss adjustment expenses to losses paid;

(i) The total of losses paid and unallocated and allocated loss adjustment expenses;

(j) The ratio of losses paid and unallocated and allocated loss adjustment expenses to premiums earned;

(k) The number of claims outstanding as of December 31 of each year;

(l) The total amount of losses unpaid as of December 31 of each year;

(m) The total amount of allocated and unallocated loss adjustment expenses unpaid as of December 31 of each year; and

(n) The total of losses paid and allocated loss adjustment expenses and unallocated loss adjustment expenses, plus the total of losses unpaid as of December 31 of each year and loss adjustment expenses unpaid as of December 31 of each year.

(2) The department shall provide a summary of

information provided pursuant to subsection (1) in its annual report.

(3)(a) The first report of this information shall include the information for the year ending December 31, 1978, and shall be filed no later than August 1, 1979. Reports for subsequent years shall be due by April 1 of the following year. All reports shall be on a calendar accident year basis and such that each calendar accident year shall be reported at eight stages of development.

(b) Within 30 days after March 1, 1980, the Department of Insurance shall commence a review of the rates of all workers' compensation insurers in effect at the time. If, after the review, the department finds on a preliminary basis that the rate may be excessive, inadequate, or unfairly discriminatory, the department shall so notify the insurer. Upon being so notified, the insurer shall within 60 days file with the department all information which the insurer believes proves the reasonableness, adequacy, and fairness of the rate. In such instances, the insurer shall carry the burden of proof. In the event the department finds that a rate is excessive, inadequate, or unfairly discriminatory, the department may order that a new rate schedule be thereafter filed by the insurer and may further specify the manner in which noncompliance shall be corrected.

History.—s. 19, ch. 78-300; s. 81, ch. 79-40.

#### PART IV

#### FEES, TAXES, AND FUNDS

624.501	Filing, license and miscellaneous fees.
624.502	Service of process fee.
624.503	Reduced license tax for partial year.
624.504	Liability for state, county license tax.
624.505	County license tax; determination; additional offices; nonresident agents.
624.506	County license tax; deposit and remittance.
624.507	Municipal license tax.
624.508	Insurer's license tax; when payable.
624.509	Premium tax; rate and computation.
624.510	Tax on wet marine and transportation insurance.
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624.512	Domestic insurers exempt.
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624.515	State Fire Marshal regulatory assessment; levy and amount.
624.516	State Fire Marshal regulatory assessment; deposit and use of funds.
624.517	State Fire Marshal regulatory assessment; reduction of assessment.
624.518	State Fire Marshal regulatory assessment; tax return, overpayment.
624.519	Nonpayment of premium tax or fire marshal assessment; penalty.
624.520	Preemption by state.
624.521	Deposit of certain tax receipts; refund of improper payments.
624.522	Insurance Commissioner's Clearing Account.
624.523	Insurance Commissioner's Regulatory

## Trust Fund.

**624.501 Filing, license and miscellaneous fees.**—The Department of Insurance shall collect in advance, and persons so served shall pay to it in advance, fees, licenses, and miscellaneous charges as follows:

(1) Certificate of authority of insurer.	
(a) Filing application for original certificate of authority, including all documents required to be filed therewith, filing fee	\$ 25.00
(b) Reinstatement fee	50.00
(2) Charter documents of insurer.	
(a) For filing articles of incorporation or other charter documents, other than at time of application for original certificate of authority, filing fee	10.00
(b) For filing amendment to articles of incorporation or charter, other than at time of application for original certificate of authority, filing fee	5.00
(c) For filing bylaws, where required, or amendments thereof, filing fee	5.00
(3) Annual license tax of insurer, each domestic, foreign and alien insurer (provided, however, as to fraternal benefit societies insuring less than two hundred members in this state and whose members as a prerequisite to membership possess a physical handicap or disability, such license tax shall be twenty-five dollars).	\$200.00
(4) Annual statement of insurer, filing (except when filed as part of application for original certificate of authority), filing fee	\$ 60.00
(5) Insurance representatives, property, marine, casualty and surety insurance.	
(a) Agents.	
1. Agent's original license, each insurer:	
Appointment fee	\$11.00
State license tax	6.00
County license tax	3.00
Total	\$20.00
2. Annual continuation or renewal of license, each insurer:	
Appointment fee	\$11.00
State license tax	6.00
County license tax	3.00
Total	\$20.00
(b) Solicitors.	
1. Solicitor's original license:	
Appointment fee	\$11.00
State license tax	6.00
County license tax	3.00
Total	\$20.00
2. Annual continuation of license:	

Appointment fee	\$11.00
State license tax	6.00
County license tax	3.00
Total	\$20.00
(c) Nonresident agents.	
Original issuance of license, license fee	\$ 25.00
Annual renewal or continuation of license, license fee	\$ 25.00
(d) Servicerepresentatives; supervising or managing general agents.	
Original permit, appointment fee	\$ 20.00
Annual renewal or continuation of permit, appointment fee	\$ 20.00
(6) Life insurance agents.	
(a) Agent's license, each insurer:	
1. Original license:	
Appointment fee	\$11.00
State license tax	6.00
County license tax	3.00
Total	\$20.00
2. Annual renewal or continuation of license:	
Appointment fee	\$11.00
State license tax	6.00
County license tax	3.00
Total	\$20.00
(b) Nonresident agent license:	
Original issuance of license, license fee, each insurer	\$ 10.00
Annual renewal or continuation of license, each insurer, license fee	\$ 10.00
(7) Disability insurance agents.	
(a) Agent's license, each insurer:	
1. Original license:	
Appointment fee	\$11.00
State license tax	6.00
County license tax	3.00
Total	\$20.00
2. Annual renewal or continuation of license:	
Appointment fee	\$11.00
State license tax	6.00
County license tax	3.00
Total	\$20.00
(b) Nonresident agent license:	
Original issuance of license, license fee, each insurer	\$ 10.00
Annual renewal or continuation of license, each insurer, license fee	\$ 10.00
(8) All limited licenses as agent, as provided for in §626.321, or for license as limited surety agent as defined in §648.25, each agent and each insurer represented:	
(a) Original license:	
Appointment fee	\$11.00
State license tax	6.00
County license tax	3.00
Total	\$20.00
(b) Annual renewal or continuation of license:	



Appointment fee .....	\$11.00
State license tax .....	6.00
County license tax .....	3.00
Total .....	\$20.00
(9) Fraternal benefit society agents. Agent's license, each agent and each insurer:	
(a) Original license:	
Appointment fee .....	\$11.00
State license tax .....	6.00
County license tax .....	3.00
Total .....	\$20.00
(b) Annual renewal or continuation of license:	
Appointment fee .....	\$11.00
State license tax .....	6.00
County license tax .....	3.00
Total .....	\$20.00
(10) Vending machines, as authorized under §626.531:	
Original license, each machine, permit fee .....	\$ 50.00
Annual renewal or continuation of license, each machine, permit fee .....	\$ 50.00
(11) Surplus lines agent.	
Original license, license fee .....	\$ 75.00
Annual renewal or continuation of license, license fee .....	\$ 75.00
(12) Adjusters' licenses and permits.	
(a) Adjuster's license:	
Original issuance of license, license fee .....	\$ 20.00
Annual renewal or continuation of license, license fee .....	\$ 20.00
(b) Nonresident adjuster's license:	
Original issuance of license, license fee .....	\$ 20.00
Annual renewal or continuation of license, license fee .....	\$ 20.00
(c) Emergency adjuster's permit, appointment fee .....	
(d) Claim investigator's permit, appointment fee .....	
(e) Fee to cover cost of credit report, where such report must be secured by department .....	
(13) Examination for license as agent, solicitor or adjuster: Filing application for examination, each examination:	
For license as life insurance agent, filing fee .....	\$ 10.00
For license as fraternal benefit society agent, filing fee .....	\$ 10.00
For any other license, filing fee .....	\$ 10.00
(14) Temporary license as agent or adjuster, where expressly provided for, rate of fee for each month of the period for which the license is originally issued, and for which the license is renewed or extended .....	
(15) Reissuance, reinstatement, modification or duplicate	

copy of any insurance representative license or permit .....	\$ 5.00
(16) Changing of address only of licensee holding any insurance representative license or permit. ....	\$ 2.00
(17) Additional license continuation fees as prescribed in §§626.371, 626.381, 626.391, 626.401, 626.411, and 626.421 .....	\$ 5.00
(18) Filing application for permit to form insurer as referred to in chapter 628, filing fee .....	\$ 25.00
(19) Annual license fee of rating organization, each domestic or foreign organization .....	\$ 25.00
(20) Miscellaneous services:	
(a) For copies of documents or records on file with the department, per page .....	\$ .50
(b) For each certificate of the department under its seal, authenticating any document or other instrument (other than licenses, permits, or certificates of authority) .....	\$ 1.00
(c) For preparing lists of agents, solicitors, adjusters and other insurance representatives, and for other miscellaneous services. Such reasonable charge as may be fixed by the department.	

**History.**—s. 74, ch. 59-205; s. 1, ch. 63-491; s. 5, ch. 65-269; ss. 1-5, ch. 67-278; s. 1, ch. 69-196; s. 1, ch. 69-197; ss. 13, 35, ch. 69-106; s. 1, ch. 70-208; s. 1, ch. 70-439; s. 23, ch. 71-86; s. 3, ch. 76-168; s. 1, ch. 77-237; s. 1, ch. 77-457.

**624.502 Service of process fee.**—In all instances as provided in ss. 624.423, 626.742, 626.836, 626.906, 626.937, 629.151, 632.501, and 638.161 and in any section of the insurance code in which service of process is authorized to be made upon the insurance commissioner and treasurer, the plaintiff shall pay to the department a fee of \$5 for such service of process, which fee shall be deposited in the "Insurance Commissioner's Regulatory Trust Fund."

**History.**—s. 1, ch. 67-260; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-237; s. 1, ch. 77-457.

**624.503 Reduced license tax for partial year.**—If any certificate of authority, license or appointment for which a "license tax" is provided and designated as such a "license tax" is required after expiration of the first 6 months of the applicable certificate of authority or license year, the amount of "license tax" payable therefor or in connection therewith shall be half of the license tax designated as such and otherwise payable under s. 624.501 or s. 624.505(3). No other "fee," "permit," "registration," or other charge not designated in s. 624.501 or s. 624.505(3) as a "license tax" is affected by this section.

**History.**—s. 75, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-237; s. 1, ch. 77-457.

**624.504 Liability for state, county license tax.**—

(1) Each authorized insurer that uses insurance agents in this state shall be liable for and shall pay the state and county license taxes required therefor under s. 624.501 or s. 624.505.

(2) Each insurance agent in this state that uses solicitors shall be liable for and shall pay the state and county license taxes required therefor under s. 624.501.

**History.**—s. 76, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-237; s. 1, ch. 77-457.

**624.505 County license tax; determination; additional offices; nonresident agents.—**

(1) The county license tax provided for under s. 624.501 as to an agent shall be paid by each insurer for each agent only for the county where the agent resides, or if such agent's place of business is located in a county other than that of his residence, then for the county wherein is located such place of business. If an agent maintains an office or place of business in more than one county, the license tax shall be paid for him by each such insurer for each county wherein the agent represents such insurer and has a place of business. When under this subsection an insurer is required to pay county license tax for an agent for a county or counties other than the agent's county of residence, the insurer shall in the list provided for in s. 626.501 designate the county or counties for which the license taxes are paid.

(2) The county license tax provided for under s. 624.501 as to a solicitor shall be paid only for the county wherein is located the office or place of business of the agent by whom the solicitor is employed and out of which he works as his permanent place of business. When under this subsection an agent is required to pay a county license tax for a solicitor for a county other than the solicitor's county of residence, the agent shall, in the list provided for in s. 626.501 designate the county for which the license tax is paid.

(3) A county license tax of \$3 per year shall be paid by each insurer for each county in this state in which an agent who resides outside of this state represents and engages in person in the activities of an agent for the insurer. This provision shall not be deemed to authorize any activities by an agent which are otherwise prohibited under this code.

**History.**—s. 77, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-237; s. 1, ch. 77-457.

**624.506 County license tax; deposit and remittance.—**

(1) The insurance commissioner and treasurer shall deposit in the Agents and Solicitors County License Tax Trust Fund, all moneys accepted as county license tax under this part. He shall keep a separate account for all moneys so collected for each county, and after deducting therefrom the service charge provided for in s. 215.20 shall remit the balance to the counties.

(2) The payment and collection of county license tax under this chapter shall be in lieu of collection thereof by the respective county tax collectors.

(3) The Comptroller shall annually, as of January 1 following the date of collection, and thereafter at such other times as the Insurance Commissioner and Treasurer may elect, draw his warrants on the State Treasury payable to the respective counties entitled to receive the same, for the full net amount

of such license taxes to each county. The warrants shall be countersigned by the Governor.

**History.**—s. 78, ch. 59-205; s. 2, ch. 61-119; s. 6, ch. 65-269; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-237; s. 1, ch. 77-457.

**624.507 Municipal license tax.—**Municipal corporations may require a license tax of insurance agents and solicitors not to exceed 50 percent of the state license tax specified as to such agents and solicitors under this part chapter, and unless otherwise authorized by law. Such a tax may be required only by a municipal corporation within the boundaries of which is located the agent's business office, or if no such office is required under this code, by the municipal corporation of the agent's place of residence.

**History.**—s. 79, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-237; s. 1, ch. 77-457.

**624.508 Insurer's license tax; when payable.—**

(1) The insurer's license tax provided for in s. 624.501(3) shall be paid, by an insurer newly applying for certificate of authority to transact insurance in this state, prior to and contingent upon the issuance of its original certificate of authority. If the certificate of authority is not issued, the license tax payment shall be refunded to the insurer. The license tax so paid by a newly authorized insurer shall cover the period expiring on the June 1 next following the date of its original certificate of authority.

(2) Each authorized insurer shall pay the license tax annually on or before June 1.

(3) The license tax is subject to reduction for a partial initial certificate of authority year as provided in s. 624.503.

**History.**—s. 80, ch. 59-205; s. 3, ch. 63-149; s. 3, ch. 76-168; s. 1, ch. 77-237; s. 1, ch. 77-457.

**624.509 Premium tax; rate and computation.—**

(1) In addition to the license taxes provided for in this chapter, each insurer shall also annually, and on or before March 1 in each year, except as to wet marine and transportation insurance taxed under s. 624.510, pay to the Department of Revenue a tax on insurance premiums or assessments, including membership fees and policy fees and gross deposits received from subscribers to reciprocal or interinsurance agreements, and on annuity premiums or considerations, received during the preceding calendar year, the amounts thereof to be determined as hereinafter set forth in this section to wit:

(a) An amount equal to 2 percent of the gross amount of such receipts on account of life and disability insurance policies covering persons resident in this state and on account of all other types of policies and contracts (except annuity policies or contracts taxable under paragraph (b) hereof) covering property, subjects or risks located, resident or to be performed in this state, omitting premiums on reinsurance accepted, and less return premiums or assessments, but without deductions for reinsurance ceded to other insurers, and without deductions for moneys paid upon surrender of policies or certificates for cash surrender value, and without deductions for discounts or refunds for direct or prompt payment of premiums or assessments, and without deductions on account of dividends of any nature or amount

paid and credited or allowed to holders of insurance policies, certificates, or surety, indemnity, or reciprocal or interinsurance contracts or agreements; and

(b) An amount equal to 1 percent of the gross receipts on annuity policies or contracts paid by holders thereof in this state.

(2) Payment by the insurer of the license taxes and premium receipts taxes provided for in part IV of this chapter is a condition precedent to doing business within this state.

(3)(a) Installments of the tax levied under this section shall be due and payable on April 15, July 15, and October 15 in each year, based upon the estimated gross amount of receipts of insurance premiums or assessments received during the immediately preceding calendar quarter. A final payment of tax due for the year shall be made at the time the taxpayer files his return for such year. On or before March 1 in each year, an annual return shall be filed showing, by quarters, the gross amount of receipts taxable for the preceding year and the installment payments made during that year.

(b) Any taxpayer who fails to report and pay any installment of tax, or who estimates any installment of tax to be less than 80 percent of the amount finally shown to be due in any quarter, shall be deemed to be in violation of this section and be subject to a penalty of 10 percent on any underpayment of taxes due and payable for that quarter. Any taxpayer paying, for each installment required herein, 27 percent of the amount of the annual tax reported on his return for the preceding year shall not be subject to the penalty provided by this section.

(c) When any taxpayer fails to pay any amount due hereunder, or any portion thereof, on or before the day when such tax or installment of tax shall be required by law to be paid, there shall be added to the amount due interest at the rate of 6 percent per annum from the date due until paid.

(d) All penalties and interest imposed by this chapter shall be payable to and collectible by the Department of Revenue in the same manner as if they were a part of the tax imposed.

(e) The Department of Revenue, for good cause shown by written request, may eliminate or compromise penalties after its investigation reveals that the penalty would be too severe or unjust, but interest shall be collected.

(f) Notwithstanding other provisions of law, the distribution of the premiums tax and any penalties or interest collected thereunder shall be made to the General Revenue Fund and the cities in accordance with rules and regulations adopted by the Department of Insurance and approved by the Administration Commission.

(4) The income tax imposed under chapter 220 which is paid by any insurer shall be credited against, and to the extent thereof discharge, the liability for tax imposed by this section for the annual period in which said income tax payment is made. As to a foreign insurer issuing policies insuring against loss or damage from the risks of fire, tornado, and certain casualty lines, the tax imposed by this section, as intended and contemplated by this subsection, shall be construed to mean the net amount of said tax remaining after there has been credited

thereon such gross premium receipts tax as may be payable by such insurer in pursuance of the imposition of such tax by any incorporated cities or towns in the state for firemen's relief and pension funds and policemen's retirement funds maintained in such cities or towns, as provided in and by relevant provisions of Florida Statutes. For purposes of this subsection, payments of estimated income tax under chapter 220 shall be deemed "paid" either at the time the insurer actually files its annual return under chapter 220 or at the time said return is required to be filed, whichever first occurs, and not at such earlier time as such payments of estimated tax are actually made.

<sup>1</sup>(5) From and after July 1, 1980, the premium tax authorized by this section shall not be imposed upon receipts of annuity premiums or considerations paid by holders in this state if the tax savings derived are credited to the holders in this state. Upon request by the Department of Insurance, any insurer availing itself of this provision shall submit to the department evidence which establishes that the tax savings derived have been credited to holders in this state. As used in this subsection, the term "holders" shall be deemed to include employers contributing to an employee's pension, annuity, or profit-sharing plan.

**History.**—s. 81, ch. 59-205; ss. 21, 35, ch. 69-106; ss. 1, 3, ch. 71-9(B); s. 3, ch. 71-984; s. 3, ch. 76-168; s. 1, ch. 77-237; s. 1, ch. 77-457; s. 1, ch. 79-247.

<sup>1</sup>**Note.**—Effective July 1, 1980.

cf.—s. 631.719 Credit for assessments paid by insurers.

#### 624.510 Tax on wet marine and transportation insurance.—

(1) On or before March 1 of each year each foreign and alien insurer shall file with the Department of Revenue, on forms as prescribed in s. 624.511, a report of its gross underwriting profit on "wet marine and transportation insurance," as defined in s. 624.607(2), written in this state during the calendar year next preceding and shall at the same time pay to the Department of Revenue a tax of three-quarters of 1 percent of such gross underwriting profit.

(2) Such gross underwriting profit shall be ascertained by deducting from the net premiums (i.e., gross premiums less all return premiums and premiums for reinsurance) on such wet marine and transportation insurance contracts the net losses paid (i.e., gross losses paid less salvage and recoveries on reinsurance ceded) during such calendar year under such contracts.

(3) The income tax imposed under chapter 220 which is paid by any insurer shall be credited against, and to the extent thereof discharge, the liability for tax imposed by this section for the annual period in which said income tax payment is made. The aggregate income tax credit for any insurer under this subsection and subsection 624.509(4) shall not exceed the amount of tax paid under chapter 220 in any calendar year. As to a foreign insurer issuing policies insuring against loss or damage from the risks of fire, tornado, and certain casualty lines, the tax imposed by this section, as intended and contemplated by this subsection, shall be construed to mean the net amount of said tax remaining after there has been credited thereon such gross premium receipts tax as may be payable by such insurer in pursuance



of the imposition of such tax by any incorporated cities or towns in the state for firemen's relief and pension funds and policemen's retirement funds maintained in such cities or towns, as provided in and by relevant provisions of Florida Statutes. For purposes of this subsection, payments of estimated income tax under chapter 220 shall be deemed "paid" either at the time the insurer actually files its annual return under chapter 220 or at the time said return is required to be filed, whichever first occurs, and not at such earlier time as such payments of estimated tax are actually made.

**History.**—s. 82, ch. 59-205; ss. 21, 35, ch. 69-106; s. 4, ch. 71-984; s. 3, ch. 76-168; s. 1, ch. 77-237; s. 1, ch. 77-457.

**624.511 Tax statement; overpayments.—**

(1) Tax returns as to taxes mentioned in ss. 624.509 and 624.510 shall be made by insurers on forms to be prescribed by the Department of Revenue, and shall be sworn to by one or more of the executive officers or attorney (if a reciprocal insurer) of the insurer making the returns.

(2) If any insurer makes an overpayment on account of taxes due under ss. 624.509 and 624.510, a refund of the overpayment of taxes may be made from the Department of Revenue Premium Tax Clearing Trust Fund, as provided under s. 624.522.

**History.**—s. 83, ch. 59-205; ss. 21, 35, ch. 69-106; s. 2, ch. 71-9(B); s. 264, ch. 71-377; s. 3, ch. 76-168; s. 1, ch. 77-237; s. 1, ch. 77-457.

**624.512 Domestic insurers exempt.—**Insurers organized and existing under the laws of this state, and which insurers maintain their home offices in this state, shall not be required to pay the tax on insurance and annuity premiums, assessments or considerations as imposed under ss. 624.509 and 624.510, except as provided in s. 624.513.

**History.**—s. 84, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-237; s. 1, ch. 77-457.

**624.513 Tax liability of certain domestic insurers.—**A domestic insurer succeeding to the business and assets of a United States branch of an alien insurer, as provided in chapter 630, is hereby determined to be susceptible to a distinct and separate classification for premium and other license tax purposes. As to its business so acquired, such a domestic insurer shall be liable for the payment of the tax on insurance and annuity premiums, assessments, fees, deposits and considerations as imposed by ss. 624.509 and 624.510, as such laws now exist or are hereafter modified.

**History.**—s. 85, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-237; s. 1, ch. 77-457.

**624.514 Regional home offices of foreign insurers; credits on premium tax liability.—**

(1) A foreign insurer formed by or under the laws of any other state or foreign country, which is subject to the taxes imposed by ss. 624.509 and 624.510, and which owns and substantially occupies any building in this state as a regional home office, as hereinafter defined, shall be entitled to a credit against such tax in an amount equal to 50 percent of the amount of the tax as determined under said sections. As to a foreign insurer issuing policies insuring against loss or damage from the risks of fire, tornado, and certain casualty lines, the tax imposed by ss. 624.509 and 624.510, as intended and contemplated by the above provisions of this subsection,

shall be construed to mean the net amount of said tax remaining after there has been credited thereon such gross premium receipts tax as may be payable by such insurer in pursuance of the imposition of such tax by any incorporated cities or towns in the state for firemen's relief and pension funds and policemen's retirement funds maintained in such cities or towns, as provided in and by relevant provisions of Florida Statutes.

(2) A "regional home office," for the purposes of this section, shall mean an office performing, for an area covering three or more states, or two states and one or more foreign countries, the selling, underwriting, issuing and servicing of insurance, including the following functions relating thereto: Actuarial; medical, where required; law; approval or rejection of applications for insurance and issuance of policies thereon; approval of payment of all types of claims; maintenance of records to provide policyholder information and service; advertising and publications; public relations; and supervision and training of sales and service forces.

(3) Such a foreign insurer shall, on or before March 1 of each year, on forms to be prescribed by the Department of Revenue, furnish proof which shall satisfy the Department of Revenue that such foreign insurer owned and substantially occupied during the preceding calendar year a regional home office, as contemplated by subsection (2). Upon receipt of such proof, the Department of Revenue shall issue to the State Treasurer a certificate that the foreign insurer owned and substantially occupied during the preceding calendar year a building in this state as such a regional home office, with the location thereof, and is entitled to the credits and deductions provided for in subsection (1) with respect to the taxes imposed by ss. 624.509 and 624.510 which accrued during such calendar year and which are payable on or before the following March 1. Provided, that with respect only to the calendar year in which a foreign insurer shall first establish such a regional home office in this state, if the proof filed with the Department of Revenue on or before March 1 of the succeeding year, as above provided in this subsection, shall evidence to the satisfaction of the Department of Revenue that said foreign insurer established such a regional home office in this state on or prior to August 1 of such calendar year and substantially occupied and maintained same during the remainder of such calendar year, then the foreign insurer shall be entitled to the rights, credits and deductions provided in this section as fully as though it had owned and substantially occupied said regional home office during the entire period of such calendar year; and in such event the certificate to be issued by the Department of Revenue to the State Treasurer, as above provided in this subsection, shall be so worded as to accomplish the intent and purpose of this proviso.

(4) Where two or more such foreign insurers, each of which is subject to the taxes imposed by ss. 624.509 and 624.510, are under common ownership or management and control, and which insurers jointly own with equal interest and in the aggregate substantially occupy any building in Florida as a regional home office, as such a regional home office

is otherwise described and defined in subsections (1) and (2), and each of which insurers otherwise meets the full requirements of the provisions of subsections (1), (2) and (3), shall be granted the rights, benefits and privileges and charged with the duties as set forth in, and included within the provisions of, said subsections (1), (2) and (3) as fully as though each of said insurers substantially owns and occupies such a building in Florida as its said regional home office. In relation to such insurers, the certificate required to be executed and delivered by the Department of Revenue to the State Treasurer as required by subsection (3) shall be conformed to meet the requirements of this subsection. "Common ownership or management and control" in relation to any such two or more foreign corporations shall be construed to mean actual common control of such corporations consequent upon stock ownership or agreements and as a result of the ultimate control of such corporations being vested in one corporate board of directors, or as a result of the persons who are members of the controlling faction of the board of directors of one of such corporations being members of the controlling faction for the board or boards of directors of such other corporation or corporations.

**History.**—s. 86, ch. 59-205; s. 1, ch. 67-147; ss. 21, 35, ch. 69-106; s. 1, ch. 71-988; s. 3, ch. 76-168; s. 1, ch. 77-237; s. 1, ch. 77-457.

**624.515 State Fire Marshal regulatory assessment; levy and amount.—**

(1) In addition to any other license or excise tax now or hereafter imposed, and such taxes as may be imposed under other statutes, there is hereby assessed and imposed upon every domestic, foreign and alien insurer authorized to engage in this state in the business of issuing policies of fire insurance, a regulatory assessment in an amount equal to five-eighths of 1 percent of the gross amount of premiums collected by each such insurer on policies of fire insurance issued by it and insuring property in this state. The assessment shall be payable annually on or before March 1 to the Department of Revenue by the insurer on such premiums collected by it during the preceding calendar year.

(2) As used in this section, "fire insurance" means the insurance of structures or other property at fixed locations against loss or damage to such structures or other described properties from the risks of fire and lightning; and the terms "policies" and "premiums" respectively mean and include those policies or other contracts or agreements effecting and evidencing insurance, and premiums and other considerations for such policies, of the same character as described in and contemplated by the provisions of ss. 624.509 and 624.510. The amount of such premiums upon which the regulatory assessment shall be computed by each such insurer shall be the amount thereof remaining after deducting therefrom those items described in and permitted by s. 624.509(1) relating to the premium receipts tax thereby imposed.

**History.**—s. 87, ch. 59-205; ss. 21, 35, ch. 69-106; s. 1, ch. 70-207; s. 1, ch. 70-439; s. 3, ch. 76-168; s. 1, ch. 77-237; s. 1, ch. 77-457.

**624.516 State Fire Marshal regulatory assessment; deposit and use of funds.—**

(1) The regulatory assessment imposed under s.

624.515 shall be deposited by the Department of Revenue, when received and audited, into the Insurance Commissioner's Regulatory Trust Fund.

(2) The moneys so received and deposited in the fund are hereby appropriated for use by the State Treasurer as ex officio State Fire Marshal, hereinafter referred to as "State Fire Marshal," to defray the expenses of the State Fire Marshal in the discharge of his administrative and regulatory powers and duties as prescribed by law, including the maintaining of offices and necessary supplies therefor, essential equipment and other materials, salaries and expenses of required personnel, and all other legitimate expenses relating to the discharge of the administrative and regulatory powers and duties imposed in and charged to him under such laws.

(3) If at the end of any fiscal year a balance of funds remains in the Insurance Commissioner's Regulatory Trust Fund, such balance shall not revert to the general fund of the state, but shall be retained in the Insurance Commissioner's Regulatory Trust Fund to be used for the purposes for which the same is appropriated as set forth above.

**History.**—s. 88, ch. 59-205; s. 2, ch. 61-119; ss. 21, 35, ch. 69-106; s. 265, ch. 71-377; s. 1, ch. 73-305; s. 1, ch. 74-295; s. 3, ch. 76-168; s. 1, ch. 77-237; s. 1, ch. 77-457.

**624.517 State Fire Marshal regulatory assessment; reduction of assessment.—**

(1) The Department of Insurance shall ascertain on or before December 1 of each year whether the amounts estimated to be received from the regulatory assessment imposed under s. 624.515 for that calendar year, payable on or before the following March 1, as herein prescribed, shall result in an accumulation of funds in excess of the just requirements for which the assessment is imposed as set forth in s. 624.516; and if it determines that the imposition of the full amount of the assessment would result in such excess, it may reduce the percentage amount of the assessment for that calendar year to such percentage as may be necessary to meet the just requirements for which the assessment is imposed.

(2) When a determination is made so reducing the amount of the assessment, the department shall make and issue its order setting forth such determination and fixing the amount of assessment for that calendar year, payable on or before March 1 of the following year, and shall mail a copy of such order to each insurer who, according to the records of the department, is subject to the assessment.

**History.**—s. 89, ch. 59-205; s. 2, ch. 61-119; ss. 13, 35, ch. 69-106; s. 2, ch. 74-295; s. 3, ch. 76-168; s. 1, ch. 77-237; s. 1, ch. 77-457.

**624.518 State Fire Marshal regulatory assessment; tax return, overpayment.—**

(1) Tax returns with respect to the regulatory assessment prescribed by s. 624.515 shall be made by each insurer liable for payment of such tax on forms to be prescribed by the Department of Revenue and sworn to by one or more of the executive officers or other persons charged under the law with the management of the insurer.

(2) In the event an insurer makes an overpayment on account of the assessment, a refund of the overpayment may be made to the remitter from the

Department of Revenue Premium Tax Clearing Trust Fund as provided under s. 624.522.

**History.**—s. 90, ch. 59-205; ss. 21, 35, ch. 69-106; s. 266, ch. 71-377; s. 3, ch. 76-168; s. 1, ch. 77-237; s. 1, ch. 77-457.

**624.519 Nonpayment of premium tax or fire marshal assessment; penalty.**—If any insurer fails to pay to the Department of Revenue on or before March 1 in each and every year any premium taxes required of it under s. 624.509 or s. 624.510, or any state fire marshal regulatory assessment required of it under s. 624.515 or s. 624.517, the Department of Insurance may revoke its certificate of authority.

**History.**—s. 91, ch. 59-205; ss. 13, 21, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-237; s. 1, ch. 77-457.

**624.520 Preemption by state.**—

(1) This state hereby preempts the field of imposing excise, privilege, franchise, income, license, permit, registration and similar taxes and fees, measured by premiums, income, or volume of transactions, upon insurers and their agents and other representatives, and no county, city, municipality, district, school district, or other political subdivision or agency in this state shall impose, levy, charge or require the same, subject however to the provisions of subsection (2).

(2) This section shall not be construed to limit or modify the power of any incorporated city or town to levy the taxes authorized by ss. 175.101 and 185.08.

**History.**—s. 92, ch. 59-205; s. 2, ch. 61-75; s. 2, ch. 65-233; s. 3, ch. 76-168; s. 1, ch. 77-237; s. 1, ch. 77-457.

**624.521 Deposit of certain tax receipts; refund of improper payments.**—

(1) The Department of Insurance, pursuant to s. 624.522, shall promptly deposit in the State Treasury to the credit of the General Fund all "state license tax" portions of agents' and solicitors' licenses collected under ss. 624.501 and 624.503. All moneys received by the Department of Insurance not in accordance with the provisions of this code or not in the exact amount as specified by the applicable provisions of this code shall be returned to the remitter. The records of the department shall show the date and reason for such return.

(2) The Department of Revenue shall promptly deposit in the Department of Revenue Premium Tax Clearing Trust Fund all premium taxes collected according to ss. 624.509, 624.510, 624.513 and 624.514. Such taxes shall be distributed pursuant to an audit by the Department of Insurance.

**History.**—s. 93, ch. 59-205; s. 267, ch. 71-377; s. 3, ch. 76-168; s. 1, ch. 77-237; s. 1, ch. 77-457.

**624.522 Insurance Commissioner's Clearing Account.**—

(1) There is created a clearing account designated "Insurance Commissioner's Clearing Account," under the custody of the state treasurer, into which account the commissioner shall promptly deposit all acceptable moneys received by him, and for the return to the remitter of any moneys received in error or overpayment under the provisions of this code.

(2) After proper audit and clearance the moneys shall immediately be deposited in the state treasury by means of an abstract of deposit issued by the commissioner or his authorized representative, and

credited to the appropriate fund.

(3) Return of moneys to the remitter shall be made by treasury check signed by the state treasurer or his authorized representative upon receipt of a voucher issued by the commissioner or his authorized representative.

(4) Abstracts of deposits and return remittance vouchers shall be issued at least once each calendar week or at any other time the commissioner may elect.

(5) Deposits so made in the state treasury shall be credited to funds as follows:

(a) General Revenue Fund: All state license taxes.

(b) Trust funds:

1. Agents and Solicitors County License Tax Trust Fund.

2. Insurance Commissioner's Regulatory Trust Fund.

3. Insurer Examination Revolving Trust Fund.

4. Liquefied Petroleum Gas Administrative Trust Fund.

5. Municipal Firemen's Pension Trust Fund.

6. Municipal Police Officers' Retirement Trust Fund.

7. State Fire Marshal Trust Fund.

(6) The commissioner shall follow the procedure in this section for the handling of moneys received within the scope of this code, any other laws of this state notwithstanding.

**History.**—s. 94, ch. 59-205; s. 2, ch. 61-119; s. 2, ch. 61-208; s. 7, ch. 65-269; s. 267, ch. 71-377; s. 1, ch. 73-136; s. 1, ch. 74-299; s. 3, ch. 76-168; s. 1, ch. 77-237; s. 1, ch. 77-457.

**Note.**—See s. 3, ch. 79-380, which changed the name of the "Municipal Firemen's Pension Trust Fund" to the "Municipal Firefighters' Pension Trust Fund."

**624.523 Insurance Commissioner's Regulatory Trust Fund.**—

(1) There is created in the State Treasury a trust fund designated "Insurance Commissioner's Regulatory Trust Fund" to which shall be credited all payments received on account of the following items:

(a) All fines, monetary penalties, and costs imposed upon persons by the department as authorized by law for violation of the laws of this state.

(b) Any sums received for copies of the stenographic record of hearings, as authorized by law.

(c) Any sums received pursuant to s. 624.309(4) (copies of notices).

(d) All sums received under s. 624.404(6) (additional filing fee, previously unauthorized insurers).

(e) All sums received under s. 624.429, as provided in subsection (7) thereof.

(f) All payments received on account of items provided for under respective provisions of s. 624.501, as follows:

1. Subsection (1) (certificate of authority of insurer);

2. Subsection (2) (charter documents of insurer);

3. Subsection (4) (annual statement of insurer);

4. The "appointment fee" portion of any license or permit provided for under subsection (5)(a) and (b) (insurance representatives, property, marine, casualty and surety insurance, agents, and solicitors);

5. Subsection (5)(c) (nonresident agents);

6. Subsection (5)(d) (service representatives);

7. The "appointment fee" portion of any license



or permit provided for under subsection (6)(a) (life insurance agents, original license, and renewal or continuation of license);

8. Subsection (6)(b) (nonresident agent license);

9. The "appointment fee" portion of any license or permit provided for under subsection (7)(a) (disability insurance agents, agent's license, and renewal or continuation fee);

10. Subsection (7)(b) (nonresident agent license);

11. The "appointment fee" portion of any license or permit provided for under subsections (8) and (9) (limited licenses) and (fraternal benefit society agents);

12. Subsection (10) (vending machines);

13. Subsection (11) (surplus lines agent);

14. Subsection (12) (adjusters' licenses and permits);

15. Subsection (13) (examination for license as agent, solicitor or adjuster);

16. Subsection (14) (temporary license as agent or adjuster);

17. Subsection (15) (reissuance, reinstatement, etc.);

18. Subsection (16) (changing of address);

19. Subsection (17) (additional license continuation fees);

20. Subsection (18) (filing application for permit to form insurer);

21. Subsection (19) (license fee of rating organization);

22. Subsection (20) (miscellaneous services).

(g) All payments received on account of actuarial and other services in the valuation or computation of the reserves of life insurers pursuant to s. 625.121(2) (standard valuation law).

(h) All sums received under ss. 626.711 and 626.743 (retaliatory provisions).

(i) All sums received under s. 626.932 (surplus lines tax) as provided in subsection (5) thereof.

(j) All sums received under s. 626.938 (taxes and interest on independently procured coverages) as provided in subsection (7) thereof.

(k) All sums received under s. 627.828 (premium finance companies).

(l) All sums received from automobile inspection and warranty associations under s. 634.221.

(m) All sums received from ambulance service associations under s. 638.231.

(n) All sums received under s. 639.10(4) (burial insurance and contracts).

(o) All sums received under s. 641.14 (hospital and medical service agents).

(p) All sums received under s. 649.031 (automobile clubs).

(q) All sums received under s. 651.05(7) (life care contracts).

(r) All sums received under s. 648.27(6) (bail bondsman, limited surety agent or runner, continuation fee), the "appointment fee" portion of any license or permit provided for under s. 648.31, the application fees provided for under ss. 648.34(3), 648.37(2) and 648.38(4).

(s) All sums received by the Insurance Commissioner and Treasurer as fees for his services as service of process agent.

(t) All sums received by the department as rein-

statement fees of any operator or owner's license or registration that has been suspended pursuant to s. 324.051(2).

(2) The moneys so received and deposited in this regulatory trust fund are hereby appropriated for use by the department to defray the expenses of the department in the discharge of its administrative and regulatory powers and duties as prescribed by law.

**History.**—s. 98, ch. 59-205; s. 2, ch. 61-119; s. 8, ch. 65-269; s. 2, ch. 67-260; s. 2, ch. 67-279; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-237; s. 1, ch. 77-457.

## PART V

### KINDS OF INSURANCE; LIMITS OF RISK; REINSURANCE

624.601 Definitions not mutually exclusive.

624.602 "Life insurance," "life insurer" defined.

624.603 "Disability insurance" defined.

624.604 "Property insurance" defined.

624.605 "Casualty insurance" defined.

624.606 "Surety insurance" defined.

624.607 "Marine," "wet marine" and "transportation" insurance defined.

624.608 "Title insurance" defined.

624.609 Limit of risk.

624.610 Reinsurance.

#### **624.601 Definitions not mutually exclusive.—**

It is intended that certain insurance coverages may come within the definitions of two or more kinds of insurance as defined in part V of this chapter, and the inclusion of such coverage within one definition shall not exclude it as to any other kind of insurance within the definition of which such coverage is likewise reasonably includable.

**History.**—s. 99, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **624.602 "Life insurance," "life insurer" defined.—**

(1) "Life insurance" is insurance of human lives. The transaction of life insurance includes also the granting of annuity contracts, the granting of endowment benefits, additional benefits in event of death or dismemberment by accident or accidental means, additional benefits in event of the insured's disability, and optional modes of settlement of proceeds of life insurance. Life insurance does not include workers' compensation coverages.

(2) Every insurer, including sick and funeral benefit associations, engaged in the business of issuing life insurance or annuity contracts, including contracts of combined life, health and accident insurance, the reserve funds of which for the fulfillment of such contracts comprises more than 50 percent of its total reserve funds, or such other reserves as may be required under any law or regulation of the United States, now or hereafter in force, is a "life insurer" or "life insurance company."

**History.**—s. 100, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-295; s. 1, ch. 77-457; s. 82, ch. 79-40.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective

July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1624.603 "Disability insurance" defined.**—"Disability insurance," also known as "health insurance," is insurance of human beings against bodily injury, disablement, or death by accident or accidental means, or the expense thereof, or against disablement or expense resulting from sickness, and every insurance appertaining thereto. Disability insurance does not include workers' compensation coverages.

**History.**—s. 101, ch. 59-205; s. 1, ch. 65-10; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 83, ch. 79-40.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1624.604 "Property insurance" defined.**—"Property insurance" is insurance on real or personal property of every kind and of every interest therein, whether on land, water or in the air, against loss or damage from any and all hazard or cause, and against loss consequential upon such loss or damage, other than noncontractual legal liability for any such loss or damage. Property insurance does not include title insurance, as defined in s. 624.608.

**History.**—s. 102, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1624.605 "Casualty insurance" defined.**—

(1) "Casualty insurance" includes:

(a) *Vehicle insurance.*—Insurance against loss of or damage to any land vehicle or aircraft or any draft or riding animal or to property while contained therein or thereon or being loaded or unloaded therein or therefrom, from any hazard or cause, and against any loss, liability or expense resulting from or incidental to ownership, maintenance or use of any such vehicle, aircraft or animal; and as to land vehicles, insurance providing for medical, hospital, surgical, and disability benefits to injured persons, and funeral and death benefits to dependents, beneficiaries, or personal representatives of persons killed, irrespective of legal liability of the insured, while in, entering, alighting from, adjusting, repairing, cranking, or caused by being struck by a vehicle, if such insurance is issued as a part of a liability insurance contract.

(b) *Liability insurance.*—Insurance against legal liability for the death, injury, or disability of any human being, or for damage to property; with provision for medical, hospital and surgical benefits to the injured persons, irrespective of legal liability of the insured, when issued as a part of a liability insurance contract.

(c) *Workers' compensation and employer's liability.*—Insurance of the obligations accepted by, imposed upon, or assumed by employers under law for death, disablement, or injury of employees.

(d) *Burglary and theft.*—Insurance against loss or damage by burglary, theft, larceny, robbery, forgery, fraud, vandalism, malicious mischief, confiscation, or wrongful conversion, disposal, or concealment, or from any attempt at any of the foregoing; including supplemental coverage for medical, hospital, surgical, and funeral expense incurred by the named insured or any other person as a result of

bodily injury during the commission of a burglary, robbery or theft by another; also insurance against loss of or damage to moneys, coins, bullion, securities, notes, drafts, acceptances or any other valuable papers and documents, resulting from any cause.

(e) *Personal property floater.*—Insurance upon personal effects against loss or damage from any cause under a personal property floater.

(f) *Glass.*—Insurance against loss or damage to glass, including its lettering, ornamentation, and fittings.

(g) *Boiler and machinery.*—Insurance against any liability and loss or damage to property or interest resulting from accidents to or explosions of boilers, pipes, pressure containers, machinery or apparatus, and to make inspection of and issue certificates of inspection upon boilers, machinery, and apparatus of any kind, whether or not insured; together with provision for medical, hospital and surgical benefits to the injured persons, irrespective of legal liability of insured, when issued as an incidental coverage which is part of a liability insurance contract.

(h) *Leakage and fire extinguishing equipment.*—Insurance against loss or damage to any property or interest caused by the breakage or leakage of sprinklers, hose, pumps, and other fire extinguishing equipment or apparatus, water pipes or containers, or by water entering through leaks or openings in buildings, and insurance against such loss or damage to such sprinklers, hose, pumps, and other fire extinguishing equipment or apparatus.

(i) *Credit.*—Insurance against loss or damage resulting from failure of debtors to pay their obligations to the creditor, except insurance against loss or damage resulting from death or disability of the debtor.

<sup>2</sup>(j) *Credit property insurance.*—Credit property insurance is a limited line of insurance providing coverage on personal property used as collateral for securing a loan or on personal property purchased under an installment sales agreement. The coverage shall be issued on an inland marine policy form, and coverage limits shall be restricted to the initial amount of the loan or the amount of the installment sale.

(k) *Malpractice.*—Insurance against legal liability of the insured, and against loss, damage or expense incidental to a claim of such liability, arising out of the death, injury, or disablement of any person, or arising out of damage to the economic interest of any person, as the result of negligence in rendering expert, fiduciary, or professional service.

(l) *Animal.*—Insurance against loss or damage to animals, and services of a veterinary for such animals.

(m) *Elevator.*—Insurance against loss of or damage to any property of the insured, resulting from the ownership, maintenance or use of elevators, except loss or damage by fire, and to make inspections of and issue certificates of inspection upon, elevators; together with provision for medical, hospital and surgical benefits to the injured persons, irrespective of legal liability of the insured, when issued as an incidental coverage which is part of a liability insurance contract.

(n) *Entertainments.*—Insurance indemnifying

the producer of any motion picture, television, radio, theatrical, sport, spectacle, entertainment, or similar production, event, or exhibition against loss from interruption, postponement, or cancellation thereof due to death, accidental injury, or sickness of performers, participants, directors, or other principals.

(o) *Failure of certain institutions to record documents.*—Insurance indemnifying banks, bankers, trust companies, and credit unions against loss from failure or omission to record as public records chattel mortgages and liens of every kind upon personal property, given, held, delivered, or possessed as security or collateral for loans, advances, debts, or obligations of all kinds, provided that such insurance shall not indemnify intentional omission to comply with the law relating to the recording of liens upon motor vehicles, nor to the intentional omission to record mortgages upon real property.

(p) *Failure to file certain personal property instruments.*—With respect to persons and institutions other than those referred to in paragraph (o), insurance against loss resulting from failure to file or record written instruments affecting the title of or creating a lien upon personal property.

(q) *Miscellaneous.*—When first approved by the department as not being contrary to law or public policy nor covered by any other kind of insurance as defined in the code, insurance against liability for any other kind of loss or damage to person or property, properly a subject of insurance and not within any other kind of insurance as defined in this code.

(2) Provision of medical, hospital, surgical, and funeral benefits, and of coverage against accidental death or injury, as part of other insurance as stated under paragraphs (a) (vehicle), (b) (liability), (d) (burglary and theft), (g) (boiler and machinery), or (m) (elevator) of subsection (1) shall for all purposes be deemed to be the same kind of insurance to which it is so incidental, and shall not be subject to provisions of this code applicable to life or disability insurances.

*History.*—s. 103, ch. 59-205; ss. 13, 35, ch. 69-106; s. 1, ch. 69-200; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 84, ch. 79-40; ss. 1, 3, ch. 79-156.

*Note.*—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

*Note.*—Section 3, ch. 79-156, provides that, if part V of chapter 624 is repealed in accordance with the intent expressed in the Regulatory Reform Act of 1976, as amended by chapter 77-457, or as subsequently amended, it is the intent of the Legislature that paragraph (j) shall also be repealed on the same date as is therein provided.

**1624.606 "Surety insurance" defined.**—"Surety insurance" includes:

(1) Fidelity insurance, which is insurance guaranteeing the fidelity of persons holding positions of public or private trust.

(2) Insurance guaranteeing the performance of contracts, other than insurance policies, and guaranteeing and executing bonds, undertakings, and contracts of suretyship.

(3) Insurance indemnifying banks, bankers, brokers, financial or moneyed corporations or associations against check alteration and forgery, and against loss, resulting from any cause, of bills of exchange, notes, bonds, securities, evidences of debt, deeds, mortgages, warehouse receipts or other valuable papers, documents, money, precious metals and articles made therefrom, jewelry, watches, necklaces, bracelets, gems, precious and semiprecious stones, including any loss while the same are being

transported in armored motor vehicles, or by messenger, but not including any other risks of transportation or navigation; also insurance against loss or damage to such an insured's premises or to his furniture, furnishings, fixtures, equipment, safes, and vaults therein, caused by burglary, robbery, theft, vandalism or malicious mischief, or any attempt thereat.

*History.*—s. 104, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

*Note.*—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1624.607 "Marine," "wet marine" and "transportation" insurance defined.**—

(1) "Marine insurance" includes:

(a) Insurance against any kinds of loss or damage to:

1. Vessels, craft, aircraft, cars, automobiles and vehicles of every kind, as well as all goods, freights, cargoes, merchandise, effects, disbursements, profits, moneys, bullion, precious stones, securities, choses in action, evidences of debt, valuable papers, bottomry and respondentia interests and all other kinds of property and interests therein, in respect to, appertaining to or in connection with any and all risks or perils of navigation, transit, or transportation, including war risks, on or under any seas or other waters, on land or in the air, or while being assembled, packed, crated, baled, compressed or similarly prepared for shipment or while awaiting the same or during any delays, storage, transshipment, or reshipment incident thereto, including marine builder's risks and all personal property floater risks, and

2. Person or to property in connection with or appertaining to a marine, inland marine, transit or transportation insurance, including liability for loss of or damage to either, arising out of or in connection with the construction, repair, operation, maintenance or use of the subject matter of such insurance (but not including life insurance or surety bonds nor insurance against loss by reason of bodily injury to the person arising out of the ownership, maintenance or use of automobiles), and

3. Precious stones, jewels, jewelry, gold, silver and other precious metals, whether used in business or trade or otherwise and whether the same be in course of transportation or otherwise, and

4. Bridges, tunnels and other instrumentalities of transportation and communication (excluding buildings, their furniture and furnishings, fixed contents and supplies held in storage) unless fire, tornado, sprinkler leakage, hail, explosion, earthquake, riot, and/or civil commotion are the only hazards to be covered; piers, wharves, docks and slips, excluding the risks of fire, tornado, sprinkler leakage, hail, explosion, earthquake, riot, and/or civil commotion; other aids to navigation and transportation, including dry docks and marine railways, against all risks.

(b) "Marine protection and indemnity insurance," meaning insurance against, or against legal liability of the insured for, loss, damage or expense arising out of, or incident to, the ownership, operation, chartering, maintenance, use, repair or construction of any vessel, craft or instrumentality in use in ocean or inland waterways, including liability of the insured for personal injury, illness or death or



for loss of or damage to the property of another person.

(2) For the purposes of this code, "wet marine and transportation" insurance is that part of "marine" insurance which includes only:

(a) Insurance upon vessels, crafts, hulls and of interests therein or with relation thereto;

(b) Insurance of marine builders' risks, marine war risks and contracts of marine protection and indemnity insurance;

(c) Insurance of freights and disbursements pertaining to a subject of insurance coming within this definition; and

(d) Insurance of personal property and interests therein, in course of exportation from or importation into any country, or in course of transportation coastwise or on inland waters, including transportation by land, water or air from point of origin to final destination, in respect to, appertaining to or in connection with, any and all risks or perils of navigation, transit or transportation, and while being prepared for and while awaiting shipment, and during any delays, storage, transshipment or reshipment incident thereto.

**History.**—s. 105, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**624.608 "Title insurance" defined.**—"Title insurance" is insurance of owners of property or others having an interest therein, or liens or encumbrances thereon, against loss by encumbrance, or defective titles, or invalidity, or adverse claim to title.

**History.**—s. 106, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **624.609 Limit of risk.**

(1) No insurer shall retain any risk on any one subject of insurance, either as the direct insurer or the reinsurer, whether located or to be performed in this state or elsewhere, in an amount exceeding 10 percent of its surplus to policyholders, except as provided in subsection (5) of this section.

(2) A "subject of insurance" for the purposes of this section, as to insurance against fire and hazards other than windstorm, earthquake, or other catastrophic hazards, includes all properties insured by the same insurer which are customarily considered by underwriters to be subject to loss or damage from the same fire or the same occurrence of such other hazard insured against.

(3) Reinsurance ceded as authorized by s. 624.610 shall be deducted in determining risk retained. As to surety risks, deduction shall also be made of the amount assumed by any established incorporated co-surety and the value of any security deposited, pledged, or held subject to the surety's consent and for the surety's protection.

(4) As to alien insurers, other than insurers domiciled in Canada, this section shall relate only to risks and surplus to policyholders of the insurer's United States branch.

(5) As to fire insurance covering risks adequately protected by automatic sprinklers or risks principally of noncombustible construction and occupancy, the insurer may retain risk as to any one such sub-

ject of insurance in an amount not exceeding 25 percent of the sum of its unearned premium reserve applicable to property insurance policies, and its surplus to policyholders.

(6) "Surplus to policyholders" for the purposes of this section, in addition to the insurer's capital and surplus, shall be deemed to include any voluntary reserves which are not required pursuant to law, and shall be determined from the last sworn statement of the insurer on file with the department, or by the last report of examination of the insurer, whichever is the more recent at time of assumption of risk.

(7) This section shall not apply to life insurance, disability insurance, annuity contracts, title insurance, insurance of wet marine and transportation insurance risks, workers' compensation insurance, employers' liability coverages, or to any policy or type of coverage as to which the maximum possible loss to the insurer is not readily ascertainable on issuance of the policy.

(8) Limits of risk as to newly formed domestic mutual insurers are provided in s. 628.161.

**History.**—s. 107, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 85, ch. 79-40.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **624.610 Reinsurance.**

(1) An insurer may accept reinsurance only of such risks, and retain risk thereon within such limits, as it is otherwise authorized to insure. No insurer shall cede or retrocede credit life, credit disability, or both credit life and credit disability, insurance covering a risk located or written in this state to any insurer not authorized to transact insurance in this state or approved or accepted by the department for the purpose of such reinsurance.

(2)(a) An insurer may reinsure all or any part of any particular risk with an insurer authorized to transact insurance in this state or approved or accepted by the department for the purpose of such reinsurance. The department shall not so approve any proposed reinsurance which it finds would be contrary to the proper interests of the policyholders or stockholders of a ceding domestic insurer, or which is in violation of s. 624.404(5) ("fronting company").

(b) This subsection shall not apply as to retrocessions of insurance by an assuming insurer which handles a substantial volume of reinsurance, unless such retrocessions are found by the department, after hearing, to be for the purpose of evasion of other requirements or prohibitions of this code.

(3) No credit shall be allowed, as an asset or as a deduction from liability, to any ceding insurer for reinsurance unless the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding insurer under the contracts reinsured without diminution because of the insolvency of the ceding insurer.

(4) Upon request of the department, a ceding insurer shall promptly inform the department in writing of the cancellation or any other material change of any of its reinsurance treaties or arrangements.

(5) No authorized insurer shall knowingly accept as assuming reinsurer any risk covering a subject of insurance resident, located or to be performed in

Florida and written direct by any insurer not then authorized to transact such insurance in this state, other than as to surplus line insurance lawfully written under part VI of chapter 626.

(6) This section does not apply to title insurance

or to wet marine and transportation insurance.

**History.**—s. 108, ch. 59-205; ss. 13, 35, ch. 69-106; s. 1, ch. 74-203; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

## CHAPTER 625

## INSURANCE CODE: ACCOUNTING, INVESTMENTS, AND DEPOSITS

## PART I ASSETS AND LIABILITIES (ss. 625.012-625.172)

## PART II INVESTMENTS (ss. 625.301-625.340)

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## PART I

## ASSETS AND LIABILITIES

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- 625.141 Valuation of bonds.
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- 625.172 Replacing certain assets; reporting certain liabilities.

**625.012 "Assets" defined.**—In any determination of the financial condition of an insurer, there shall be allowed as "assets" only such "assets" as are owned by the insurer and which consist of:

(1) Cash in the possession of the insurer, or in transit under its control, and including the true balance of any deposit in a solvent bank or trust company.

(2) Investments, securities, properties and loans acquired or held in accordance with this code, and in connection therewith the following items:

(a) Interest due or accrued on any bond or evidence of indebtedness which is not in default and which is not valued on a basis including accrued interest.

(b) Declared and unpaid dividends on stock and shares, unless such amount has otherwise been allowed as an asset.

(c) Interest due or accrued upon a collateral loan in an amount not to exceed 1 year's interest thereon.

(d) Interest due or accrued on deposits in solvent banks and trust companies, and interest due or accrued on other assets, if such interest is in the judgment of the department a collectible asset.

(e) Interest due or accrued on a mortgage loan, in an amount not exceeding in any event the amount, if any, of the excess of the value of the property less delinquent taxes thereon over the unpaid principal; but in no event shall interest accrued for a period in excess of 18 months be allowed as an asset.

(f) Rent due or accrued on real property if such rent is not in arrears for more than 3 months, and rent more than 3 months in arrears if the payment of such rent be adequately secured by property held in the name of the tenant and conveyed to the insurer as collateral.

(g) The unaccrued portion of taxes paid prior to the due date on real property.

(3) Premium notes, policy loans, and other policy assets and liens on policies and certificates of life insurance and annuity contracts and accrued interest thereon, in an amount not exceeding the legal reserve and other policy liabilities carried on each individual policy.

(4) The net amount of uncollected and deferred premiums and annuity considerations in the case of a life insurer.

(5) Premiums in the course of collection, other than for life insurance, not more than 3 months past due, less commissions payable thereon. The foregoing limitation shall not apply to premiums payable directly or indirectly by the United States Government or by any of its instrumentalities.

(6) Installment premiums other than life insurance premiums to the extent of the unearned premium reserve carried on the policy to which such premiums apply.

(7) Notes and like written obligations not past due, taken for premiums other than life insurance premiums, on policies permitted to be issued on such basis, to the extent of the unearned premium reserves carried thereon.

(8) The full amount of reinsurance recoverable by a ceding insurer from a solvent reinsurer and which reinsurance is authorized under s. 624.610.

(9) Amounts receivable by an assuming insurer representing funds withheld by a solvent ceding insurer under a reinsurance treaty.

(10) Deposits or equities recoverable from underwriting associations, syndicates and reinsurance funds, or from any suspended banking institution, to the extent deemed by the department available for the payment of losses and claims and at values to be determined by it.

(11) Electronic and mechanical machines consti-



tuting a data processing and accounting system if the cost of such system is at least \$25,000, which cost shall be amortized in full over a period not to exceed 10 calendar years.

(12) All assets, whether or not consistent with the provisions of this section, as may be allowed pursuant to the annual statement form approved by the National Association of Insurance Commissioners or its successor organization for the kinds of insurance to be reported upon therein.

(13) Other assets, not inconsistent with the provisions of this section, deemed by the department to be available for the payment of losses and claims, at values to be determined by it.

**History.**—s. 109, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **625.021 Assets as deductions from liabilities.**

—Assets may be allowed as deductions from corresponding liabilities, and liabilities may be charged as deductions from assets, and deductions from assets may be charged as liabilities, in accordance with the form of annual statement applicable to the insurer as prescribed by the department, or otherwise in its discretion.

**History.**—s. 110, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**625.031 Assets not allowed.**—In addition to assets impliedly excluded by the provisions of s. 625.012, the following expressly shall not be allowed as assets in any determination of the financial condition of an insurer:

(1) Good will, trade names and other like intangible assets.

(2) Advances (other than policy loans) to officers, directors, and controlling stockholders, whether secured or not, and advances to employees, agents and other persons on personal security only.

(3) Stock of such insurer, owned by it, or any material equity therein or loans secured thereby, or any material proportionate interest in such stock acquired or held through the ownership by such insurer of an interest in another firm, corporation or business unit.

(4) Furniture, fixtures, furnishings, safes, vehicles, libraries, stationery, literature and supplies, other than data processing and accounting systems authorized under s. 625.012 (11), except in the case of title insurers such materials and plants as the insurer is expressly authorized to invest in under s. 625.330 and except, in the case of any insurer, such personal property as the insurer is permitted to hold pursuant to part II of this chapter, or which is acquired through foreclosure of chattel mortgages acquired pursuant to s. 625.329, or which is reasonably necessary for the maintenance and operation of real estate lawfully acquired and held by the insurer other than real estate used by it for home office, branch office and similar purposes.

(5) The amount, if any, by which the aggregate book value of investments as carried in the ledger assets of the insurer exceeds the aggregate value thereof as determined under this code.

**History.**—s. 111, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**625.041 Liabilities, in general.**—In any determination of the financial condition of an insurer, capital stock and liabilities to be charged against its assets shall include:

(1) The amount of its capital stock outstanding, if any.

(2) The amount, estimated consistent with the provisions of this code, necessary to pay all of its unpaid losses and claims incurred on or prior to the date of statement, whether reported or unreported, together with the expenses of adjustment or settlement thereof.

(3) With reference to life and disability insurance and annuity contracts:

(a) The amount of reserves on life insurance policies and annuity contracts in force, valued according to the tables of mortality, rates of interest, and methods adopted pursuant to this code which are applicable thereto.

(b) Reserves for disability benefits, for both active and disabled lives.

(c) Reserves for accidental death benefits.

(d) Any additional reserves which may be required by the department consistent with practice formulated or approved by the National Association of Insurance Commissioners or its successor organization, on account of such insurance.

(4) With reference to insurance other than specified in subsection (3), and other than title insurance, the amount of reserves equal to the unearned portions of the gross premiums charged on policies in force, computed in accordance with this part.

(5) Taxes, expenses and other obligations due or accrued at the date of the statement.

**History.**—s. 112, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **625.051 Unearned premium reserve.**

(1) As to insurance against loss or damage to property, except as provided in s. 625.061, and as to all general casualty insurance and surety insurance, every insurer shall maintain an unearned premium reserve on all policies in force.

(2) The department may require that such reserves shall be equal to the unearned portions of the gross premiums in force after deducting applicable reinsurance in solvent insurers as computed on each respective risk from the policy's date of issue. If the department does not so require, the portions of the gross premium in force, less applicable reinsurance in solvent insurers, to be held as an unearned premium reserve, shall be computed according to the following table:

Term for which policy was written	Reserve for unearned premium
1 year or less	1/2
2 years	1st year 3/4 2nd year 1/4

3 years	1st year 5/6
	2nd year 1/2
	3rd year 1/6
4 years	1st year 7/8
	2nd year 5/8
	3rd year 3/8
	4th year 1/8
5 years	1st year 9/10
	2nd year 7/10
	3rd year 1/2
	4th year 3/10
	5th year 1/10
Over 5 years	pro rata

(3) In lieu of computation according to the foregoing table, the insurer at its option may compute all of such reserves on a monthly or more frequent pro rata basis.

(4) After adopting a method for computing such reserve, an insurer shall not change methods without approval of the public insurance supervisory official of the state of domicile.

(5) This section does not apply to title insurance.

**History.**—s. 113, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**625.061 Unearned premium reserve for marine and transportation insurance.**—As to marine and transportation insurance, the entire amount of premiums on trip risks not terminated shall be deemed unearned; and the department may require the insurer to carry a reserve equal to 100 percent of premiums on trip risks written during the month ended as of the date of statement.

**History.**—s. 114, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168, s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**625.071 Special reserve for bail and judicial bonds.**—In lieu of the unearned premium reserve required on surety bonds under s. 625.051, the department may require any surety insurer or limited surety insurer to set up and maintain a reserve on all bail bonds or other single premium bonds without definite expiration date, furnished in judicial proceedings, equal to 25 percent of the total consideration charged for such bonds as are outstanding as of the date of any current financial statement of the insurer.

**History.**—s. 115, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**625.081 Reserve for disability insurance.**—For all disability insurance policies the insurer shall maintain an active life reserve which shall place a sound value on its liabilities under such policies and be not less than the reserve according to appropriate standards set forth in regulations issued by the department and, in no event, less in the aggregate than

the pro rata gross unearned premiums for such policies.

**History.**—s. 116, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**625.091 Loss reserves, liability insurance and workers' compensation.**—Where called for by the form of annual statement required of the insurer, the reserve for outstanding losses under insurance against loss or damage from accident to or injuries suffered by an employee or other person and for which the insured is liable shall be computed as follows:

(1) For all liability suits being defended under policies written more than:

(a) Ten years prior to the date as of which the statement is made, \$1500 for each suit.

(b) Five or more and less than 10 years prior to the date as of which the statement is made, \$1,000 for each suit.

(c) Three or more and less than 5 years prior to the date as of which the statement is made, \$850 for each suit.

(2) For all liability policies written during the 3 years immediately preceding the date as of which the statement is made, the reserve shall be 60 percent of the earned liability premiums of each of such 3 years less all losses and expense payments made under liability policies written in the corresponding years; but in any event, such reserve shall for the first of such 3 years be not less than \$750 for each outstanding liability suit on such year's policies.

(3) For all workers' compensation claims under policies written more than 3 years prior to the date as of which the statement is made, the reserve shall be the present value at 4 percent interest of the determined and the estimated future payments.

(4) For all workers' compensation claims under policies written in the 3 years immediately preceding the date as of which the statement is made, such reserve shall be 65 percent of the earned compensation premiums of each of such 3 years, less all loss and loss expense payments made in connection with such claims under policies written in the corresponding years. But in any event in the case of the first year of any such 3-year period, such reserve shall be not less than the present value at 4 percent interest of the determined and the estimated unpaid compensation claims under policies written during such year.

**History.**—s. 117, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 86, ch. 79-40.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**625.101 Increase of inadequate loss reserves.**—If loss experience shows that an insurer's loss reserves, however computed or estimated, are inadequate, the department shall require the insurer to maintain loss reserves in such additional amount as is needed to make them adequate. This section does not apply as to life insurance.

**History.**—s. 118, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective

July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§625.111 Title insurance reserve.**—In addition to an adequate reserve as to outstanding losses, as required under s. 625.041, a title insurer shall establish, segregate, and maintain a guaranty fund or unearned premium reserve as hereinafter provided. The sums hereinafter required to be reserved for unearned premiums on title guarantees and policies at all times and for all purposes shall be considered and constitute unearned portions of the original premiums and shall be charged as a reserve liability of such insurer in determining its financial condition. While said sums are so reserved they shall be withdrawn from the use of the insurer for its general purposes, impressed with a trust in favor of the holders of title guarantees and policies, and held available for reinsurance of the title guarantees and policies in the event of the insolvency of the insurer. Nothing herein contained shall preclude such insurer from investing said reserve in investments authorized by law for such an insurer, and the income from such invested reserve shall be included in the general income of the insurer to be used by such insurer for any lawful purpose. This unearned premium reserve shall consist of not less than an amount computed as follows:

(1) Ten percent of the total amount of risk premiums written in the calendar year for title insurance contracts shall be assigned originally to the reserve.

(2) During each of the 20 years next following the year in which the title insurance contract was issued, the reserve applicable to the contract shall be reduced by 5 percent of the original amount of such reserve. In the event that any title insurer has not reduced the amount of any unearned premium reserve heretofore established pursuant to any prior law by 5 percent of the amount originally assigned to the reserve for each year subsequent to the issuance of the title insurance contract, then said title insurer shall, in this calendar year, reduce the amount of its reserve applicable to the contract by 5 percent of the amount originally assigned to the reserve for each year in which no reduction was made, and thereafter shall continue to reduce its reserve as required by this subsection.

(3) Except, that if the title insurer is a business trust, in lieu of the reserves required under subsections (1) and (2), the insurer shall maintain at all times a reserve of not less than 30 cents per \$1,000 of the face amount of all title guarantees and policies issued during the last preceding 10 years. Said sums, herein required to be reserved for unearned premiums on title guarantees and policies, shall at all times and for all purposes be considered and constitute unearned portions of the original premiums and shall be charged as a reserve liability of such insurer in determining its financial condition. While said sums are so reserved they shall be:

(a) Withdrawn from the use of the insurer for its general purposes,

(b) Impressed with a trust in favor of the holders of title guarantees and policies, and

(c) Held available for reinsurance of the title guarantees and policies in the event of insolvency of the insurer.

That portion of the unearned premium reserve established in respect of a title guarantee or policy issued more than 10 years previously shall be released and shall no longer constitute part of the unearned premium reserve and may be used for any purpose by the insurer.

(4) And except, that if the title insurer is a trust company incorporated under the laws of Florida, the reserves required under subsections (1) and (2) shall be reduced by the amount required by the Florida Banking Code to be transferred to surplus by such company.

**History.**—s. 119, ch. 59-205; s. 2, ch. 65-359; s. 1, ch. 72-363; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§625.121 Standard Valuation Law; life insurance.**—

(1) This section shall be known as the "Standard Valuation Law."

(2) **ANNUAL VALUATION.**—The department shall annually value, or cause to be valued, the reserve liabilities, hereinafter called "reserves," for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurer doing business in this state, and may certify the amount of any such reserves, specifying the mortality table or tables, rate or rates of interest and methods, net level premium method or others, used in the calculation of such reserves. In the case of an alien insurer, such valuation shall be limited to its insurance transactions in the United States. In calculating such reserves, the department may use group methods and approximate averages for fractions of a year or otherwise. It may accept in its discretion the insurer's calculation of such reserves. In lieu of the valuation of the reserves herein required of any foreign or alien insurer, it may accept any valuation made or caused to be made by the insurance supervisory official of any state or other jurisdiction when such valuation complies with the minimum standard herein provided, and if the official of such state or jurisdiction accepts as sufficient and valid for all legal purposes the certificate of valuation of the department when such certificate states the valuation to have been made in a specified manner according to which the aggregate reserves would be at least as large as if they had been computed in the manner prescribed by the law of that state or jurisdiction. Where any such valuation is made by the department, it may use the actuary of the department or employ an actuary for the purpose, and the reasonable compensation of the actuary, at a rate approved by the department, and reimbursement of traveling expenses pursuant to s. 624.320 upon demand by the department supported by an itemized statement of such compensation and expenses, shall be paid by the insurer. When a domestic insurer furnishes the department with a valuation of its outstanding policies as computed by its own actuary or by an actuary deemed satisfactory for the purpose by the department, the valuation shall be verified by the actuary of the department without cost to the insurer.

(3) The minimum standard for the valuation of all such policies and contracts issued prior to the operative date of s. 627.476 (Standard Nonforfeiture



Law) shall be any basis satisfactory to the commissioner. Any basis satisfactory to the commissioner on the effective date of this code shall be deemed to meet such minimum standards.

<sup>2</sup>(4) Except as otherwise provided in paragraph (h), the minimum standard for the valuation of all such policies and contracts issued on or after the operative date of s. 627.476 (Standard Nonforfeiture Law) shall be the commissioners' reserve valuation method defined in subsection (5); 5 percent interest for group annuity and pure endowment contracts and 3.5 percent interest for all other such policies and contracts, or in the case of policies and contracts, other than annuity and pure endowment contracts, issued on or after July 1, 1973, 4 percent interest for such policies issued prior to October 1, 1979, and 4.5 percent interest for such policies issued on or after October 1, 1979; and the following tables:

(a) For all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies, the commissioners' 1958 Standard Ordinary Mortality Table; except, that for any category of such policies issued on female risks modified net premiums and present values, referred to in subsection (5), may be calculated according to an age not more than 6 years younger than the actual age of the insured.

(b) For all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies, the 1941 Standard Industrial Mortality Table, unless the commissioners' 1961 Standard Industrial Mortality Table is applicable according to s. 627.476.

(c) For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies, the 1937 Standard Annuity Mortality Table or, at the option of the insurer, the Annuity Mortality Table for 1949, ultimate, or any modification of either of these tables approved by the department.

(d) For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies, the Group Annuity Mortality Table for 1951, any modification of such table approved by the department, or, at the option of the insurer, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts.

(e) For total and permanent disability benefits in or supplementary to ordinary policies or contracts, for policies or contracts issued on or after January 1, 1966, the tables of period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 disability study of the Society of Actuaries, with due regard to the type of benefit; for policies or contracts issued on or after January 1, 1961, and prior to January 1, 1966, either such tables or, at the option of the insurer, the class three disability table (1926); and for policies issued prior to January 1, 1961, the class three disability table (1926). Any such table for active lives shall be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(f) For accidental death benefits in or supplementary to policies, for policies issued on or after January 1, 1966, the 1959 Accidental Death Benefits

Table; for policies issued on or after January 1, 1961, and prior to January 1, 1966, either such table or, at the option of the insurer, the Intercompany Double Indemnity Mortality Table; and for policies issued prior to January 1, 1961, the Intercompany Double Indemnity Mortality Table. Either table shall be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(g) For group life insurance, life insurance issued on the substandard basis and other special benefits, such tables as may be approved by the department as being sufficient with relation to the benefits provided by such policies.

(h) The minimum standard for the valuation of all individual annuity and pure endowment contracts issued on or after the operative date of this paragraph and for all annuities and pure endowments purchased on or after such operative date under group annuity and pure endowment contracts shall be the commissioners' reserve valuation method defined in subsection (5) and the following tables and interest rates:

1. For individual annuity and pure endowment contracts issued prior to October 1, 1979, excluding any disability and accidental death benefits in such contracts, the 1971 Individual Annuity Mortality Table, or any modification of this table approved by the department, and 6 percent interest for single premium immediate annuity contracts and 4 percent interest for all other individual annuity and pure endowment contracts.

2. For individual single premium immediate annuity contracts issued on or after October 1, 1979, excluding any disability and accidental death benefits in such contracts, the 1971 Individual Annuity Mortality Table, or any modification of this table approved by the department, and 7.5 percent interest.

3. For individual annuity and pure endowment contracts issued on or after October 1, 1979, other than single premium immediate annuity contracts, excluding any disability and accidental death benefits in such contracts, the 1971 Individual Annuity Mortality Table, or any modification of this table approved by the department, and 5.5 percent interest for single premium deferred annuity and pure endowment contracts and 4.5 percent interest for all other such individual annuity and pure endowment contracts.

4. For all annuities and pure endowments purchased prior to October 1, 1979, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, the 1971 Group Annuity Mortality Table, or any modification of this table approved by the department, and 6 percent interest.

5. For all annuities and pure endowments purchased on or after October 1, 1979, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, the 1971 Group Annuity Mortality Table, or any modification of this table approved by the department, and 7.5 percent interest.

After July 1, 1973, any insurer may file with the department a written notice of its election to comply with the provisions of this paragraph after a specified date before January 1, 1979, which shall be the operative date of this paragraph for such insurer. However, an insurer may elect a different operative date for individual annuity and pure endowment contracts from that elected for group annuity and pure endowment contracts. If an insurer makes no such election, the operative date of this paragraph for such insurer shall be January 1, 1979.

**<sup>2</sup>(5) COMMISSIONERS' RESERVE VALUATION METHOD.—**

(a) Except as otherwise provided in this subsection, reserves according to the commissioners' reserve valuation method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums, shall be the excess, if any, of the present value, at the date of valuation, of such future guaranteed benefits provided for by such policies, over the then present value of any future modified net premiums therefor. The modified net premiums for any such policy shall be such uniform percentage of the respective contract premiums for such benefits that the present value, at the date of issue of the policy, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the policy and the excess of 1. over 2. as follows:

1. A net level annual premium equal to the present value, at the date of issue, of such benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per annum payable on the first and each subsequent anniversary of such policy on which a premium falls due; provided, however, that such net level annual premium shall not exceed the net level annual premium on the 19-year premium whole life plan for insurance of the same amount at an age 1 year higher than the age at issue of such policy.

2. A net 1-year term premium for such benefits provided for in the first policy year.

(b) Reserves according to the commissioners' reserve valuation method for:

1. Life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums,

2. Group annuity and pure endowment contracts, purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer, including a partnership or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under s. 408 of the Internal Revenue Code, as now or hereafter amended,

3. Disability and accidental death benefits in all policies and contracts, and

4. All other benefits, except life insurance and endowment benefits in life insurance policies, and benefits provided by all other annuity and pure en-

dowment contracts,

shall be calculated by a method which is consistent with and yields results consistent with the principles of subsection (5)(a), except that any extra premiums charged because of impairments, nonrecurring expense factors, or special hazards shall be disregarded in the determination of modified net premiums.

(c) This subsection shall apply to all annuity and pure endowment contracts other than group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer, including a partnership or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under s. 408 of the Internal Revenue Code, as now or hereafter amended. Reserves according to the commissioners' annuity reserve method for benefits under annuity or pure endowment contracts, excluding any disability and accidental death benefits in such contracts, shall be the greatest of the respective excesses of the present values, at the date of valuation, of the future guaranteed benefits, including guaranteed nonforfeiture benefits, provided for by such contracts at the end of each respective contract year, over the present value, at the date of valuation, of any future valuation considerations derived from future gross considerations, required by the terms of such contract, that become payable prior to the end of such respective contract year. The future guaranteed benefits shall be determined by using the mortality table, if any, and the interest rate or rates specified in such contracts for determining guaranteed benefits. The valuation considerations are the portions of the respective gross considerations applied under the terms of such contracts to determine nonforfeiture values.

**<sup>2</sup>(6) MINIMUM AGGREGATE RESERVES.—**In no event shall an insurer's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, issued on or after the operative date of s. 627.476, be less than the aggregate reserves calculated in accordance with the method set forth in subsection (5) and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for such policies.

**(7) OPTIONAL RESERVE BASIS.—**

(a) Reserves for all policies and contracts issued prior to the operative date of s. 627.476 may be calculated, at the option of the insurer, according to any standards which produce greater aggregate reserves for all such policies and contracts than the minimum reserves required by the laws in effect immediately prior to such date.

<sup>2</sup>(b) For any category of policies, contracts, or benefits specified in subsection (4), issued on or after the operative date of s. 627.476 (the Standard Nonforfeiture Law), reserves may be calculated, at the option of the insurer, according to any standard or standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard herein provided, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, shall not be higher than the corresponding rate or rates of

interest used in calculating any nonforfeiture benefits provided for therein.

(8) **LOWER VALUATIONS.**—An insurer which at any time had adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard herein provided may, with the approval of the department, adopt any lower standard of valuation, but not lower than the minimum herein provided.

<sup>2</sup>(9) **DEFICIENCY RESERVE.**—If in any contract year the gross premium charged by any life insurer on any policy or contract is less than the valuation net premium for the policy or contract calculated by the method used in calculating the reserve thereon but using the minimum valuation standards of mortality and rate of interest, there shall be maintained on such policy or contract a deficiency reserve in addition to the reserve defined by subsection (5). For each such policy or contract the deficiency reserve shall be the present value, according to the minimum valuation standards of mortality and rate of interest, of the differences between all such valuation net premiums and the corresponding premiums charged for such policy or contract during the remainder of the premium-paying period. As regards renewable term life insurance the policy reserve and foregoing deficiency reserve shall be calculated using the current term period only. For any category of policies, contracts, or benefits specified in subsection (4), issued on or after the operative date of s. 627.476 (the Standard Nonforfeiture Law), the aggregate deficiency reserves may be reduced by the amount, if any, by which the aggregate reserves actually calculated in accordance with subsection (7) exceed the minimum aggregate reserves prescribed by subsection (6).

(10) This section does not apply as to those credit life insurance policies for which reserves are computed and maintained as required under s. 625.131.

**History.**—s. 120, ch. 59-205; ss. 1, 2, ch. 61-106; s. 17, ch. 63-400; s. 1, ch. 65-11; ss. 13, 35, ch. 69-106; ss. 1, 2, ch. 73-324; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 1, 3, ch. 79-356.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**Note.**—Section 3, ch. 79-356, provides that, if chs. 625 and 627 are repealed in accordance with the intent expressed in the Regulatory Reform Act of 1976, as amended by ch. 77-457, or as subsequently amended, it is the intent of the Legislature that ch. 79-356 shall also be repealed on the same date as is therein provided.

#### **625.131 Credit life and disability policies, special reserve bases.—**

(1) The minimum reserve for single premium credit disability insurance, monthly premium credit life insurance and monthly premium credit disability insurance shall be the unearned gross premium.

(2) As to single premium credit life insurance policies, the insurer shall establish and maintain reserves which are not less than the value, at the valuation date, of the risk for the unexpired portion of the period for which the premium has been paid as computed on the basis of 130 percent of the commissioners' 1958 Standard Ordinary Mortality Table and 3.5 percent interest. At the department's discretion, the insurer may make a reasonable assumption as to the ages at which net premiums are to be determined. In lieu of the foregoing basis, reserves based

upon unearned gross premiums may be used at the option of the insurer.

**History.**—s. 121, ch. 59-205; ss. 13, 35, ch. 69-106; s. 1, ch. 75-58; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **625.141 Valuation of bonds.—**

(1) All bonds or other evidences of debt having a fixed term and rate of interest held by an insurer may, if amply secured and not in default as to principal or interest, be valued as follows:

(a) If purchased at par, at the par value.

(b) If purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield in the meantime the effective rate of interest at which the purchase was made, or in lieu of such method, according to such accepted method of valuation as is approved by the department.

(c) Purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase, plus actual brokerage, transfer, postage or express charges paid in the acquisition of such securities.

(2) The department shall have full discretion in determining the method of calculating values according to the rules set forth in this section, but no such method or valuation shall be inconsistent with any applicable valuation or method used by insurers in general, or any such method then currently formulated or approved by the National Association of Insurance Commissioners or its successor organization.

**History.**—s. 122, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **625.151 Valuation of other securities.—**

(1) Securities, other than those referred to in s. 625.141, held by an insurer shall be valued, in the discretion of the department, at their market value, or at their appraised value, or at prices determined by it as representing their fair market value.

(2) Preferred or guaranteed stocks or shares while paying full dividends may be carried at a fixed value in lieu of market value, at the discretion of the department and in accordance with such method of valuation as it may approve.

(3) Stock of a subsidiary corporation of an insurer shall not be valued at an amount in excess of the net value thereof as based upon those assets only of the subsidiary which would be eligible under part II for investment of the funds of the insurer direct.

(4) No valuations under this section shall be inconsistent with any applicable valuation or method then currently formulated or approved by the National Association of Insurance Commissioners or its successor organization.

**History.**—s. 123, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior



to that date.

### **625.161 Valuation of property.—**

(1) Real property acquired pursuant to a mortgage loan or contract for sale, in the absence of a recent appraisal deemed by the department to be reliable, shall not be valued at an amount greater than the unpaid principal and accrued interest of the defaulted loan or contract at the date of such acquisition, together with any taxes and expenses paid or incurred in connection with such acquisition, and the cost of improvements thereafter made by the insurer and any amounts thereafter paid by the insurer on assessments levied for improvements in connection with the property.

(2) Other real property held by an insurer shall not be valued at an amount in excess of fair value as determined by recent appraisal. If valuation is based on an appraisal more than 3 years old, the department may, at its discretion, call for and require a new appraisal in order to determine fair value.

(3) Personal property acquired pursuant to chattel mortgages made in accordance with s. 625.329 shall not be valued at an amount greater than the unpaid balance of principal and accrued interest on the defaulted loan at the date of acquisition, together with taxes and expenses incurred in connection with such acquisition, or the fair value of such property, whichever amount is the lesser.

**History.**—s. 124, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**625.171 Valuation of purchase money mortgages.**—Purchase money mortgages on real property referred to in s. 625.161(1) shall be valued in an amount not exceeding the acquisition cost to the insurer of real property covered thereby or 90 percent of the fair value of such real property, whichever is less.

**History.**—s. 125, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

### **625.172 Replacing certain assets; reporting certain liabilities.—**

(1) The department, upon determining that an insurer's asset has not been evaluated according to applicable law or that it does not qualify as an asset, shall require the insurer to replace the asset with an asset suitable to the department within 90 days if the removal of said asset from the insurer's assets would place the insurer in financial impairment.

(2) The department, upon determining that an insurer has failed to report certain liabilities that should have been reported, shall require that the insurer report such liabilities to the department within 90 days.

**History.**—s. 1, ch. 70-122; s. 1, ch. 70-439; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

## **PART II**

### **INVESTMENTS**

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- 625.340 Investments of foreign insurers.

**625.301 Scope of part II.**—Except as to s. 625.340, part II of this chapter shall apply to domestic insurers only.

**History.**—s. 126, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

### **625.302 Eligible investments.—**

(1) Insurers shall invest in or lend their funds on the security of, and shall hold as invested assets, only eligible investments as prescribed in part II of this chapter.

(2) Any particular investment held by an insurer on the effective date of this code, and which was a legal investment at the time it was made, and which the insurer was legally entitled to possess immedi-

ately prior to such effective date, shall be deemed to be an eligible investment.

(3) Eligibility of an investment shall be determined as of the date of its making or acquisition, except as stated in subsection (2).

(4) Any investment limitation based upon the amount of the insurer's assets or particular funds shall relate to such assets or funds as shown by the insurer's annual statement as of December 31 next preceding date of acquisition of the investment by the insurer, or as shown by a current financial statement of the insurer.

**History.**—s. 127, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **625.303 General qualifications.—**

(1) No security or investment (other than real and personal property acquired under s. 625.333 or s. 625.335) shall be eligible for acquisition unless it is interest-bearing or interest-accruing, is entitled to receive dividends if and when declared and paid or is otherwise income-producing, is not then in default in any respect, and the insurer is entitled to receive for its exclusive account and benefit the interest or income accruing thereon.

(2) No security or investment shall be eligible for purchase at a price above its market value.

(3) No provision of part II of this chapter shall prohibit the acquisition by an insurer of other or additional securities or property if received as a dividend or as a lawful distribution of assets, or under a lawful and bona fide agreement of bulk reinsurance, merger, or consolidation. Any investment so acquired which is not otherwise eligible under part II of this chapter shall be disposed of pursuant to s. 625.337 if real property or pursuant to s. 625.338 if personal property or securities.

**History.**—s. 128, ch. 59-205; s. 1, ch. 70-188; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**625.304 Authorization of investment.**—An insurer shall not make any investment or loan (other than policy loans or annuity contract loans of a life insurer) unless the same is authorized or approved by the insurer's board of directors or by a committee authorized by such board and charged with the supervision or making of such investment or loan. The minutes of any such committee shall be recorded and regular reports of such committee shall be submitted to the board of directors.

**History.**—s. 129, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **625.305 Diversification.—**

(1) Every domestic insurer must have and keep to the extent of an amount equal to its entire reserve, as required under part I of chapter 625, and entire capital (if a stock insurer) or surplus (if a mutual or reciprocal insurer), equal to the minimum surplus required to be maintained by the insurer under this code invested in coin or currency of the United States, on hand or on deposit in any national or state bank or trust company, and in investments as authorized under part II of this chapter, including in-

vestments under s. 625.333(1)(a), other than the investments authorized under any of the following sections:

- (a) Section 625.331 (special consent investments);
- (b) Section 625.333 (real estate, in general, except as to subsection (1)(a));
- (c) Section 625.334 (real estate for leasing);
- (d) Section 625.335 (real estate for employee facilities).

(2) Except, that particular categories of investments eligible under subsection (1), are subject to the following limitations (except as to investments acquired pursuant to s. 625.331 (special consent investments)):

(a) The cost of investments made by life insurers in stock authorized by s. 625.324 (corporate stocks) shall not exceed 15 percent of the insurer's admitted assets, the cost of such investment in common stocks shall not exceed 10 percent of the insurer's admitted assets, and the cost of such investment in stock of any one corporation shall not exceed 3 percent of the insurer's admitted assets. Notwithstanding any other provision in this chapter, the cost basis or market value, if lower, of all stock investment made pursuant to s. 625.324 (corporate stocks) shall be used for the purpose of determining the asset value against which such percentage limitations are to be applied.

(b) To such other limitations, if any, as may be expressly provided for in the section under which the investment is authorized.

(3) The cost of investments made by insurers in a mortgage loan authorized by s. 625.327 shall not exceed the lesser of 5 percent of the insurer's admitted assets or 10 percent of the insurer's capital or surplus.

**History.**—s. 130, ch. 59-205; s. 2, ch. 70-188; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 1, 2, ch. 79-245.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**625.306 Cash and deposits.**—An insurer may have funds in coin or currency of the United States, on hand or on deposit in any solvent national or state bank or trust company.

**History.**—s. 131, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**625.307 United States Government obligations.**—An insurer may invest in bonds, notes, warrants and other evidences of indebtedness which are direct obligations of the Government of the United States or for which the full faith and credit of the Government of the United States is pledged for the payment of principal and interest.

**History.**—s. 132, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **625.308 Loans guaranteed by the United States.—**

(1) An insurer may invest in loans insured or guaranteed as to principal and interest by the Government of the United States, or by any agency or instrumentality of the Government of the United States, to the extent of such insurance or guaranty.

(2) An insurer may invest in student loans in-

sured or guaranteed as to principal by the Government of the United States, or by any agency or instrumentality of the Government of the United States, to the extent of such insurance or guaranty.

**History.**—s. 133, ch. 59-205; s. 1, ch. 74-43; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**625.309 State and Canadian public obligations.**—An insurer may invest in bonds, notes, warrants and other securities not in default which are the direct obligations of any state of the United States or of the District of Columbia, or of the Government of Canada or any province thereof, or for which the full faith and credit of such state, district, government or province has been pledged for the payment of principal and interest.

**History.**—s. 134, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**625.310 County, municipal and district obligations.**—An insurer may invest in bonds, notes, warrants and other securities not in default of any county, district, incorporated city, or school district in any state of the United States, or the District of Columbia, or in any Province of Canada, which are the direct obligations of such county, district, city, or school district and for payment of the principal and interest of which the county, district, city, or school district has lawful authority to levy taxes or make assessments.

**History.**—s. 135, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**625.311 Public improvement bonds.**—An insurer may invest in bonds, notes, certificates of indebtedness, warrants, or other evidence of indebtedness, which are payable from revenues or earnings specifically pledged therefor of any public toll bridge, structure or improvement owned by any state, incorporated city, or legally constituted public corporation or commission, all within the United States, for the payment of the principal and interest of which a lawful sinking fund has been established and is being maintained, and if no default on the part of the issuer in payment of principal or interest has occurred on any of its bonds, notes, warrants or other securities, within 5 years prior to the date of investment therein.

**History.**—s. 136, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**625.312 Public utility obligations.**—An insurer may invest in the bonds, notes, certificates of indebtedness, warrants or other evidence of indebtedness which are valid obligations issued, assumed or guaranteed by the United States or any state thereof or by any county, municipal corporation, district, or political subdivision, or civil division or public instrumentality of any such government or unit thereof, if by statute or other legal requirements such obligations are payable as to both principal and interest from revenues or earnings from the whole or any part of any utility supplying water, gas, sewage

disposal facility or electricity or any other public service, including but not limited to toll roads and toll bridges.

**History.**—s. 137, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**625.313 Securities of certain federal agencies.**—An insurer may invest in bonds, debentures or other securities of the following agencies of the Government of the United States, whether or not such obligations are guaranteed by such government:

(1) Commodity Credit Corporation.

(2) Federal National Mortgage Association, and stock thereof when acquired in connection with sale of mortgage loans to such association.

(3) Federal land banks, issued under provisions of the Act of Congress entitled the "Federal Farm Loan Act" and approved July 17, 1916, and any acts amendatory or supplementary to that act.

(4) Any Federal home loan bank, issued under provisions of the Act of Congress entitled "Federal Home Loan Bank Act" and approved July 22, 1932.

(5) The Home Owners' Loan Corporation, created by the Act of Congress entitled "Home Owners' Loan Act of 1933," and approved June 13, 1933.

(6) Federal intermediate credit banks, created by the Act of Congress entitled "Agricultural Credits Act of March 4, 1923."

(7) Central bank for cooperatives and regional banks for cooperatives organized under the Farm Credit Act of 1933, or by any of such banks; and any notes, bonds, debentures, or other similar obligations, consolidated or otherwise, issued by farm credit institutions pursuant to the Farm Credit Act of 1971, Public Law 92-181.

(8) Any other similar agency of the Government of the United States and of similar financial quality.

**History.**—s. 138, ch. 59-205; s. 3, ch. 74-92; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

cf.—s. 518.01 Investment of funds received from Veterans' Administration.

**625.314 Public housing obligations.**—An insurer may invest in the bonds, debentures or other securities of Public Housing Authorities, issued under the provisions of the Act of Congress entitled the "Housing Act of 1949" and approved July, 1949; the "Municipal Housing Commission Act" or the "Rural Housing Commission Act," and any additional amendments, or issued by any public housing authority or agency in the United States, if such bonds, debentures, or other securities are secured by a pledge of annual contributions to be paid by the United States or any agency thereof.

**History.**—s. 139, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**625.315 Obligations of State Board of Education.**—An insurer may invest in bonds or motor vehicle anticipation certificates issued by the State Board of Education of Florida under authority of s. 18, Art. XII of the State Constitution of 1885 as



adopted by s. 9(d) of Art. XII, 1968 Revised Constitution, and the additional provisions of s. 9(d).

**History.**—s. 140, ch. 59-205; s. 31, ch. 69-216; s. 3, ch. 76-168; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**625.316 International bank.**—An insurer may invest in obligations issued, assumed or guaranteed by the International Bank for Reconstruction and Development.

**History.**—s. 141, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**625.317 Corporate bonds and debentures.**—An insurer may invest in bonds, notes, or other interest-bearing or interest-accruing obligations of any solvent corporation organized under the laws of the United States or Canada or under the laws of any state, the District of Columbia, any territory or possession of the United States, or any Province of Canada, or in bonds or notes issued by the Florida Windstorm Underwriting Association, or a private nonprofit corporation, a private nonprofit unincorporated association, or a nonprofit mutual company organized by that association, all as authorized in subsection 627.351(4), or any subsidiary or affiliate thereof authorized by the Department of Insurance to issue such bonds or notes.

**History.**—s. 142, ch. 59-205; s. 2, ch. 76-96; s. 3, ch. 76-168; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**625.318 Religious institution obligations.**—An insurer may invest in secured or unsecured obligations of duly constituted churches and of church holding companies.

**History.**—s. 143, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**625.319 Equipment trust certificates.**—An insurer may invest in equipment trust obligations or certificates adequately secured and evidencing an interest in transportation equipment, wholly or in part within the United States, and the right to receive determined portions of rental, purchase, or other fixed obligatory payments for the use or purchase of such transportation equipment.

**History.**—s. 144, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**625.320 Building and loan, savings and loan.**—An insurer may invest in share or saving accounts of savings and loan associations or building and loan associations.

**History.**—s. 145, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 1, ch. 78-64.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**625.321 Policy loans.**—A life insurer may lend to its policyholder upon pledge of the policy as collateral security, any sum not exceeding the cash loan value of the policy; or may lend against pledge or assignment of any of its supplementary contracts or other contracts or obligations, so long as the loan is

adequately secured by such pledge or assignment. Loans so made are eligible investments of the insurer.

**History.**—s. 146, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**625.322 Collateral loans.**—An insurer may invest in loans with a maturity not in excess of 12 years from the date thereof which are secured by pledge of securities eligible for investment under this chapter, or by the pledge or assignment of life insurance policies issued by other insurers authorized to transact insurance in this state. On the date made, no such loan shall exceed in amount 80 percent of the market value of the collateral pledged, except that loans upon pledge of United States Government bonds and loans upon the pledge or assignment of life insurance policies shall not exceed 95 percent of the market value of the bonds or the cash surrender value of the policies pledged. Loans made pursuant to this section shall not be renewable beyond a period of 12 years from the date of the loan.

**History.**—s. 147, ch. 59-205; s. 3, ch. 70-188; s. 3, ch. 76-168; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**625.323 Ship loans.**—An insurer may invest in:

(1) Bonds, notes or other evidences of indebtedness which are secured by mortgages on barges, tugboats, ships or other shipping vessels if payment of such indebtedness or part thereof is insured by the Secretary of Commerce under the terms of the Federal Ship Mortgage Insurance Act, as amended.

(2) Bonds, notes or other evidences of indebtedness which are secured by mortgages on barges, tugboats, ships or other shipping vessels which are under lease or charter party to a solvent institution whose fixed interest obligations, if any, would be eligible investments under s. 625.317 (corporate obligations), and if such lease or charter party is assigned as additional security for such bonds, notes or other evidences of indebtedness.

**History.**—s. 148, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**625.324 Corporate stocks.**—An insurer may invest in stocks, common or preferred, of any corporation created or existing under the laws of the United States or of any state of the United States. An insurer may invest in stocks, common or preferred, of any corporation created or existing under the laws of any foreign country if such stocks are listed and traded on a national securities exchange in the United States or, in the alternative, if such investment in stocks of any corporation created or existing under the laws of any foreign country are first approved by the department. Nothing in this section shall apply to qualifying investments made by an insurer in a foreign country under authority of s. 625.326.

**History.**—s. 149, ch. 59-205; s. 4, ch. 70-188; s. 1, ch. 70-439; s. 3, ch. 76-168; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior

to that date.

**<sup>1</sup>625.325 Investments in subsidiaries and related corporations.—**

(1) **AUTHORIZATION.**—Any domestic insurer, either by itself or in cooperation with one or more persons, may organize or acquire one or more subsidiaries, subject to the limitation of subsection (2). Such subsidiaries may conduct any kind of business, and their authority to do so shall not be limited by reason of the fact that they are subsidiaries of a domestic insurer.

(2) **ADDITIONAL INVESTMENT AUTHORITY.**—In addition to investments in common stock, preferred stock, debt obligations, and other securities permitted under all other sections of this chapter, a domestic insurer may also invest in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries or related corporations an amount which in the aggregate in all such corporations is not in excess of the lesser of:

(a) Ten percent of the insurer's admitted assets, or

(b) Fifty percent of the sum of the insurer's:

1. Entire capital, and

2. Surplus in excess of the minimum surplus required to be maintained by the insurer under this code.

(3) **DEFINITIONS.**—For purposes of this section:

(a) "Subsidiary" means a corporation in which the insurer holds, directly or indirectly through an intermediary, sufficient stock to give the insurer a controlling interest.

(b) "Related corporation" means a corporation in which the insurer's parent corporation holds, directly or indirectly through an intermediary, sufficient stock to give the insurer's parent corporation a controlling interest.

(4) **DEBT OBLIGATIONS.**—Debt obligations, other than mortgage loans, made under the authority of this section must meet amortization requirements currently formulated or approved by the National Association of Insurance Commissioners or its successor organization.

(5) **INVESTMENT INCLUDES LOANS.**—For purposes of this section, an insurer's investment in a subsidiary or related corporation shall be deemed to include all sums loaned to such subsidiary or related corporation.

(6) **CONSTRUCTION.**—Nothing in this section shall be construed to expand, extend, or otherwise enlarge the provisions of chapter 687.

**History.**—s. 150, ch. 59-205; s. 1, ch. 65-17; ss. 13, 35, ch. 69-106; s. 5, ch. 70-188; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**<sup>1</sup>625.326 Foreign investments.**—An insurer authorized to transact insurance in a foreign country may have funds invested in such securities as may be required for such authority and for the transaction of such business. Canadian securities eligible for investment under other provisions of part II of this chapter are not subject to this section.

**History.**—s. 151, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

to that date.

**625.3262 State of Israel obligations.**—An insurer may invest in bonds, notes, warrants, and other evidences of indebtedness which are direct obligations of the State of Israel or for which the full faith and credit of the State of Israel is pledged for the payment of principal and interest.

**History.**—s. 1, ch. 78-114.

**<sup>1</sup>625.327 Mortgage loans.—**

(1) An insurer may invest any of its funds in bonds, notes or other evidences of indebtedness which are secured by first mortgages or deeds of trust upon improved real property located in the United States or Canada, or which are secured by first mortgages or deeds of trust upon leasehold estates having an unexpired term of not less than 40 years (inclusive of the term or terms which may be provided by enforceable options of renewal) in improved real property located in the United States or Canada. In all cases the security for the loan must be a first lien upon such real property, and there must not be any condition or right of reentry or forfeiture not insured against, under which, in the case of real property other than leaseholds, such lien can be cut off or subordinated or otherwise disturbed or under which, in the case of leaseholds, the insurer is unable to continue the lease in force for the duration of the loan. Nothing herein shall prohibit any investment by reason of the existence of any prior lien for ground rents, taxes, assessments or other similar charges not yet delinquent. This section shall not be deemed to prohibit investment in mortgages or similar obligations when made under s. 625.326 (foreign investments).

(2) "Improved real estate" means all farmlands used for tillage, crop or pasture, timberlands, and all real estate on which permanent improvements, and improvements under construction or in process of construction, suitable for residence, institutional, commercial or industrial use are situated.

(3) No such mortgage loan or loans made or acquired by an insurer on any one property shall, at the time of investment by the insurer, exceed the larger of the following amounts as applicable:

(a) Eighty percent of the value of the real property or leasehold securing the same in the case of mortgages on dwellings primarily intended for occupancy by not more than two families, or 75 percent of such value in the case of other real estate mortgages; or

(b) The amount of any insurance or guaranty of such loan by the United States or by any agency or instrumentality thereof; or

(c) The percentage of value limit to amount of the loan as applicable under paragraph (a), plus the amount by which the excess of such loan over such percentage of value limit is insured or guaranteed by the United States or by any agency or instrumentality thereof.

(4) Except, that in the case of a purchase money mortgage given to secure the purchase price of real estate sold by the insurer, the amount so loaned or

invested shall not exceed the unpaid portion of the purchase price.

**History.**—s. 152, ch. 59-205; s. 2, ch. 65-17; s. 3, ch. 76-168; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**'625.328 Same; renewal or extension.**—Nothing in s. 625.327 or in part II of this chapter shall be deemed to prohibit an insurer from renewing or extending a loan for the original or a lesser amount where a shrinkage in value of the real estate securing the loan would cause its value to be less than the amount otherwise required in relation to the amount of the loan.

**History.**—s. 153, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**'625.329 Chattel mortgages.**—

(1) In connection with a mortgage loan on the security of real estate designed and used primarily for residential purposes only, which mortgage loan was acquired pursuant to s. 625.327, an insurer may lend or invest an amount not exceeding 20 percent of the amount loaned on or invested in such real estate mortgage on the security of a chattel mortgage to be amortized by regular periodic payments within a term of not more than 5 years, and representing a first and prior lien, except for taxes not then delinquent, on personal property constituting durable equipment owned by the mortgagor and kept and used in the mortgaged premises.

(2) For the purposes of this section, the term "durable equipment" shall include only mechanical refrigerators, air-conditioning equipment, mechanical laundering machines, heating and cooking stoves and ranges, and, in addition, in the case of apartment houses and hotels, room furniture and furnishings.

(3) Prior to the acquisition of a chattel mortgage hereunder, items of property to be included therein shall be separately appraised by a qualified appraiser and the fair market value thereof determined. No such chattel mortgage loan shall exceed in amount the same ratio of loan to the value of the property as is applicable to the companion loan on the real property.

(4) This section shall not prohibit an insurer from taking liens on personal property as additional security for any investment otherwise eligible under this part.

**History.**—s. 154, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**'625.330 Special investments by title insurer.**—

(1) In addition to other investments eligible under part II of this chapter, a title insurer may invest and have invested an amount not exceeding 50 percent of that part of its surplus as to policyholders which exceeds the minimum surplus required by s. 624.409(2) in its abstract plant and equipment, loans secured by mortgages on abstract plants and equipment, and, with the department's consent, in stocks of abstract companies. If the insurer transacts kinds of insurance in addition to title insurance, for the

purposes of this section its paid-in capital stock shall be prorated between title insurance and such other insurances upon the basis of the reserves maintained by the insurer for the various kinds of insurance; but the capital so assigned to title insurance shall in no event be less than \$100,000.

(2) Subsection (1) of this section, shall not apply to a business trust insurer. Such an insurer may invest and have invested, not exceeding 50 percent of its net trust fund in excess of the reserve provided for under s. 625.111 in abstract plants, stock in abstract companies or corporations controlled by the business trust and created for developing and servicing abstract plants.

(3) Investments authorized by this section shall not be credited against the insurer's required unearned premium or guaranty fund reserve provided for under s. 625.111.

**History.**—s. 155, ch. 59-205; ss. 13, 35, ch. 69-106; s. 1, ch. 70-436; s. 1, ch. 70-439; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**'625.331 Special consent investments.**—After satisfying requirements of part II of this chapter any funds of any domestic insurer in excess of its reserves and capital (if a stock insurer) or surplus required to be maintained (if a mutual or reciprocal insurer) may be invested without limitation in any investments otherwise authorized by this code, and, in addition, in such other investments as may be approved by the department.

**History.**—s. 156, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**'625.332 Prohibited investments and investment underwriting.**—

(1) In addition to investments excluded pursuant to other provisions of this code, an insurer shall not directly or indirectly invest in or lend its funds upon the security of:

(a) Issued shares of its own capital stock, except for the purpose of mutualization under s. 628.431, or in connection with a plan approved by the department for purchase of such shares by the insurer's officers, employees or agents. No such stock shall, however, constitute an asset of the insurer in any determination of its financial condition.

(b) Except with the consent of the department, securities issued by any corporation or enterprise the controlling interest of which is, or will after such acquisition by the insurer be, held directly or indirectly by the insurer or any combination of the insurer and the insurer's directors, officers, parent corporation, subsidiaries, or controlling stockholders. Investments in subsidiaries under s. 625.325 shall not be subject to this provision.

(c) Any note or other evidence of indebtedness of any director, officer, or controlling stockholder of the insurer, except as to policy loans authorized under s. 625.321.

(2) No insurer shall underwrite or participate in



the underwriting of an offering of securities or property by any other person.

**History.**—s. 157, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **625.333 Real estate, in general.—**

(1) An insurer shall not directly or indirectly acquire or hold real estate except as authorized in this section and in ss. 625.334-625.336. An insurer may acquire and hold:

(a) Such land and buildings thereon used or acquired for use as its principal home office and branch offices for the convenient transaction of its own business.

(b) Real property acquired in satisfaction in whole or in part of loans, mortgages, liens, judgments, decrees or debts previously owing to the insurer, in the course of its business.

(c) Real property acquired in part payment of the consideration on the sale of other real property owned by it, if such transaction effects a net reduction in the insurer's investment in real estate.

(d) Real property acquired by gift or devise, or through merger, consolidation, or bulk reinsurance of another insurer under this code.

(e) Additional real property and equipment incident to real property, if necessary or convenient for the enhancement of the marketability or sale value of real property previously acquired or held by it under paragraphs (b)-(d), but subject to the prior written approval of the department.

(2) The amount invested by an insurer in home office and branch office property under subsection (1)(a), shall not exceed 10 percent of the insurer's admitted assets, but the department may grant permission to the insurer to invest in real property for such purpose in such increased amount as it may deem proper upon a hearing held by it thereon.

**History.**—s. 158, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **625.334 Real estate for leasing.—**

(1) An insurer may acquire and hold real property for the purpose of leasing the same to any person, firm or corporation, or real property already leased, under the following conditions:

(a) There has already been erected on the property a building or other improvements satisfactory to the purchaser; or

(b) The lessee shall at its own cost erect thereon, free of liens, a building or other improvements satisfactory to the lessor; or

(c) The lessor under the terms and conditions of a lease for a period of not less than 25 years from date of lease executed and entered into simultaneously with the purchase of the property agrees to erect a building or other improvements on the property;

(d) The improvements shall remain on the property during the period of the lease, and in cases where the improvements are put upon the property at the cost of the lessee title to the improvements at the termination of the lease shall vest, free of liens,

in the owner of the real estate;

(e) During the term of the lease the tenant shall keep and maintain the improvements in good repair.

(2) Real property acquired pursuant to this section shall not be treated as an admitted asset unless and until the improvements herein required shall have been constructed and the lease agreement entered into in accordance with the terms of subsection (1); nor shall real estate acquired pursuant to this section be treated as an admitted asset in an amount exceeding the amount actually invested reduced each year by equal decrements sufficient to write off at least 75 percent of the value of the buildings or other improvements on the property at the normal termination of the lease or at the end of 30 years should the term of the lease be for a longer period.

**History.**—s. 159, ch. 59-205; s. 3, ch. 65-17; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **625.335 Real estate for employee facilities.—**

Subject to prior approval of the department, an insurer may acquire and hold real property for recreation, hospitalization, convalescence and retirement purposes of its employees. All investments under this section shall not exceed 5 percent of the insurer's surplus; or if a mutual or reciprocal insurer, all such investments shall not exceed 5 percent of the insurer's surplus in excess of the surplus required to be maintained under this code for its authority to transact insurance.

**History.**—s. 160, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **625.336 Real estate; limits of investments.—**

No investment in real property shall be made by any insurer pursuant to s. 625.334, (real estate for leasing) or s. 625.335, (real estate for employee facilities) which will cause the insurer's investment in all real property owned or held by it directly or indirectly to exceed 10 percent of its assets, except as may be authorized under the provisions of s. 625.333(2).

**History.**—s. 161, ch. 59-205; s. 4, ch. 65-17; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **625.337 Time limit for disposal of real estate.—**

(1) Except as provided in subsection (4), an insurer shall dispose of real property within time limits as follows:

(a) If acquired under s. 625.333(1)(a) (home office and branch office property) or s. 625.335 (real estate for employee facilities), the insurer shall sell the property within 5 years after it ceased to be used or to be necessary for the purposes stated therein.

(b) If acquired under paragraphs (b) (in satisfaction of debts, etc.), (c) (in part payment on other real estate sold), or (d) (by gift, devise, merger, etc.) of s. 625.333(1), the insurer shall sell the property within 5 years after the insurer acquired title thereto.

(c) If acquired under s. 625.333(1)(e) (for enhancement of other property), the insurer shall sell the property within 5 years after the date of acquisition by the insurer of the real property the marketability

or sales price of which was so enhanced.

(d) If acquired under s. 625.334 (for leasing), the insurer shall within 5 years after the termination or expiration of the lease, sell the property or re-lease the property for an additional term under the same conditions provided for in s. 625.334 as for an original leasing.

(2) Any real property otherwise subject to disposal under paragraphs (b)-(d), of subsection (1), may be retained by the insurer for home office or branch office purposes for so long as so used, and subject to provisions otherwise applicable to such home office and branch office property.

(3) Any real property otherwise subject to disposal under paragraphs (a), (b), or (c) of subsection (1) may be retained by the insurer for leasing under s. 625.334 for so long as so used, and subject to provisions otherwise applicable to such real property for leasing.

(4) Upon proof satisfactory to him that the interests of the insurer will suffer materially by the forced sale thereof, the department may by certificate grant a reasonable additional period, as specified in the certificate, within which the insurer shall dispose of any particular parcel of real property.

(5) Nothing contained in this section shall prevent any insurer from improving or conveying its real property, notwithstanding the lapse of 5 years without having procured such certificate from the department.

**History.**—s. 162, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**625.338 Time limit for disposal of other ineligible property and securities.**—Any personal property or securities lawfully acquired by an insurer which it could not otherwise have invested in or loaned its funds upon at the time of such acquisition, shall be disposed of within 3 years from date of acquisition unless within such period the security has attained to the standard of eligibility; except, that any security or personal property acquired under any agreement of bulk reinsurance, merger or consolidation, may be retained for a longer period if so provided in the plan for such reinsurance, merger, or consolidation as approved by the department under chapter 628 of this code. Upon application by the insurer and proof that forced sale of any such property or security would materially injure the interests of the insurer, the department may extend the disposal period for an additional reasonable time.

**History.**—s. 163, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**625.339 Failure to dispose of real estate, property, or securities; effect, penalty.**—Any real estate, personal property, or securities lawfully acquired and held by an insurer after expiration of the period for disposal thereof or any extension of such period granted by the department, as provided in s.

625.337 or s. 625.338, shall not be allowed as an asset of the insurer.

**History.**—s. 164, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**625.340 Investments of foreign insurers.**—The investment portfolio of a foreign or alien insurer shall be as permitted by the laws of its domicile if of a quality substantially as high as that required under this chapter for similar funds of like domestic insurers.

**History.**—s. 165, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

### PART III

#### ADMINISTRATION OF DEPOSITS

625.50	Authorized deposits of insurers.
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625.62	Duration and release of deposit.
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**625.50 Authorized deposits of insurers.**—The following deposits of insurers when made through the department shall be accepted and held, and shall be subject to the provisions of this chapter:

(1) Deposits required under this code for authority to transact insurance in this state.

(2) Deposits of domestic insurers when made pursuant to the laws of other states, provinces and countries as requirement for authority to transact insurance in such state, province or country.

(3) Deposits of reserves made by domestic life insurers under s. 627.477 (registered policies).

(4) Deposits in such additional amounts as are permitted to be made under s. 625.58.

**History.**—s. 166, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**625.51 Purpose of deposit.**—Such deposits shall be held for purposes as follows:

(1) Deposits made in this state under ss. 624.411 (deposit requirement, domestic and foreign insurers) and 624.412 (deposit of alien insurers) shall be held for the purposes stated in the respective sections.

(2) A deposit made in this state by a domestic insurer transacting insurance in another state, province or country, and as required by the laws of such state, province or country, shall be held for the pro-

tection of the insurer's policyholder or policyholders and creditors.

(3) Deposits of reserves made by domestic life insurers under s. 627.477 (registered policies) shall be held for the common benefit of all the holders of its life insurance policies or annuity contracts.

(4) Deposits required pursuant to the retaliatory provision, s. 624.429, shall be held for such purposes as are required by such law, and as specified by the department's order by which the deposit is required.

**History.**—s. 167, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **1625.52 Securities eligible for deposit.**—

(1) All such deposits required under ss. 624.411 and 624.412 for authority to transact insurance in this state shall consist of certificates of deposit issued by solvent banks, or any combination of securities the market value of which is readily ascertainable and, if negotiable by delivery or assignment, of the kinds described in the following sections of this code:

- (a) Section 625.307 (United States Government obligations);
- (b) Section 625.309 (state and Canadian public obligations);
- (c) Section 625.310 (county, municipal and district obligations);
- (d) Section 625.311 (public improvement bonds);
- (e) Section 625.312 (public utility obligations);
- (f) Section 625.313 (securities of certain federal agencies);
- (g) Section 625.314 (public housing obligations);
- (h) Section 625.316 (international bank);
- (i) Section 625.317 (corporate bonds and debentures);
- (j) Section 625.319 (equipment trust certificates); and
- (k) Section 625.320 (building and loan, savings and loan).

(2) All such deposits required of a domestic insurer pursuant to the laws of another state, province or country shall be comprised of securities, if negotiable by delivery or assignment, of the kind or kinds required or permitted by the laws of such state, province or country, except common stocks, mortgages of any kind and real estate.

(3) Deposits of the reserves of a domestic life insurer under s. 627.477 (registered policies) shall consist of securities, if negotiable by delivery or assignment, and assets eligible for investment of the insurer's reserves under part II of chapter 625, as stated in s. 625.305.

(4) Deposits of foreign insurers made in this state under the retaliatory provision, s. 624.429, shall consist of such securities or assets as are required by the department pursuant to such provision.

**History.**—s. 168, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior

to that date.

#### **1625.53 Depositary.**—

(1) Except as provided in s. 625.54 or s. 625.55 all deposits made in this state under this code shall be made with the department. The department shall take, receipt for, and hold in trust, deposits made under this code for the purpose or purposes for which the respective deposits were so made, subject to the provisions of part III of this chapter.

(2) The department shall hold all such deposits in safekeeping in the vaults located in the offices of the State Treasurer.

(3) Securities or other assets deposited with or through the department under part III of this chapter by foreign or alien insurer shall not, on account of such securities or assets thus being in this state, be subject to taxation.

(4) The state shall be responsible for the safekeeping of all securities or other assets deposited with the department under this code.

**History.**—s. 169, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **1625.54 Outside deposit by surety insurer.**—

(1) In lieu of a deposit of securities with the department as required under s. 624.411, a surety insurer may deposit a like amount in cash with the trust department of a national or state bank of Florida, to be approved for that purpose by the department, in the name of the department and for the same purposes as required for the deposit, and for which the department shall give the insurer a receipt.

(2) During the insurer's solvency it shall be entitled to receive the interest on the deposit, and the deposit shall be otherwise subject to withdrawal and to other conditions and requirements as apply to deposits of securities with the department under part III of this chapter.

**History.**—s. 170, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **1625.55 Custodial arrangements.**—

(1) In lieu of a deposit being made with it in fact, the department in its discretion may, upon written request of the insurer and where of greater convenience to the insurer, permit such deposit to be made with and held by the trust department of a national or state bank of Florida approved by the department for the purpose, and under custodial arrangements likewise approved by it.

(2) All such custodial arrangements shall comply in substance with the requirements of this code as to like deposits with the department of other insurers, as to the amount, purposes, maintenance, replenishment, release, and withdrawal of such deposit or part thereof, as to the rights of the insurer therein, and in all other respects except as to actual custody.

(3) Where of convenience to the insurer in the buying, selling, and exchange of securities comprising the deposit of its reserves by a domestic life insurer under s. 627.477 (registered policies), and in the collection of interest and other income currently



accruing thereon, the insurer may, with the department's written approval in advance, deposit certain of such securities under custodial arrangements with an established bank or trust company located outside this state.

(4) The form and terms of all such custodial agreements shall be as prescribed or approved by the department consistent with the applicable provisions of this code.

(5) The compensation and expenses of any such custodian shall be borne by the insurer.

(6) The department may at any time, in its discretion, terminate any such custodial arrangement and require the deposit represented thereby to be made with it direct as otherwise provided for under this code.

**History.**—s. 171, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **§625.56 Assignment, conveyance of assets or securities.—**

(1) The insurer shall duly assign to the department in trust all securities being deposited with it under this code which are not negotiable by delivery; or, in lieu of such assignment, the insurer may give the department an irrevocable power of attorney authorizing it to transfer the securities or any part thereof for any purpose within the scope of part III of this chapter.

(2) In the case of securities or assets held under custodial arrangements pursuant to s. 625.55, the custodian's receipt therefor shall be delivered to the department in trust if negotiable, or assigned to it so that legal title to such securities or assets is vested in the department.

(3) The insurer shall convey to the department in trust any real estate being deposited with it under part III of this chapter in connection with deposit of the reserves of a domestic life insurer.

(4) Upon release to the insurer, or other person entitled thereto, of any such security or asset the department shall reassign or transfer or reconvey the same to such insurer or person; or, in the case of power of attorney given pursuant to subsection (1), it shall deliver the power of attorney, together with the securities covered thereby, to the insurer or person entitled thereto.

**History.**—s. 172, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§625.57 Appraisal.**—The department may, in its discretion, prior to acceptance for deposit of any particular asset or security, or at any time thereafter while so deposited, have the same appraised or valued by competent appraisers. The reasonable costs of any such appraisal or valuation shall be borne by the insurer.

**History.**—s. 173, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

to that date.

#### **§625.58 Excess deposits.—**

(1) If securities or assets deposited by an insurer under part III of this chapter are subject to material fluctuations in market value, the department may, in its discretion, require the insurer to deposit and maintain on deposit additional securities or assets in such amount as may be reasonably necessary to assure that the deposit will at all times have a market value of not less than the amount specified under or pursuant to the law by which the deposit is required.

(2) If not so required by the department, an insurer may at its option so deposit assets or securities in an amount exceeding its deposit required or otherwise permitted under this code by not more than 20 percent of such required or permitted deposit, or \$20,000, whichever is the larger amount, for the purpose of absorbing fluctuations in the value of securities and assets deposited, and to facilitate the exchange and substitution of such securities and assets. During the solvency of the insurer any such excess shall be released to the insurer upon its request. During the insolvency of the insurer, such excess deposit shall be released only as provided in s. 625.62.

**History.**—s. 174, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§625.59 Rights of insurer during solvency.**—So long as the insurer remains solvent and is in compliance with this code it may:

(1) Demand, receive, sue for, and recover the income from the securities or assets deposited;

(2) Exchange and substitute for the deposited securities or assets, or any part thereof, other eligible securities and assets of equivalent or greater value; and

(3) At any reasonable time inspect any such deposit.

**History.**—s. 175, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§625.60 Levy upon deposit.**—No judgment creditor or other claimant of an insurer shall have the right to levy upon any of the assets or securities held in this state as a deposit for the protection of the insurer's policyholders or policyholders and creditors. As to deposits made pursuant to the retaliatory provision, s. 624.429, levy thereupon shall be permitted if so provided in the department's order under which the deposit is required.

**History.**—s. 176, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **§625.61 Deficiency of deposit.—**

(1) If for any reason the market value of assets and securities of an insurer held on deposit in this state under this code falls below the amount so required, the insurer shall promptly deposit other or additional assets or securities eligible for deposit sufficient to cure such deficiency. If the insurer has failed to cure the deficiency within 30 days after

receipt of notice thereof by registered or certified mail from the department, the department shall revoke the insurer's certificate of authority.

(2) If for any reason the market value of assets and securities of a domestic life insurer, representing deposit of the reserves of outstanding registered life insurance policies and registered annuity contracts under s. 627.477 and laws heretofore in force, falls below the amount so required and as determined from the insurer's most recent annual statement or most recent examination of the insurer by the department, the insurer shall promptly deposit other or additional assets or securities eligible for deposit sufficient to cure such deficiency. If the insurer has failed to cure the deficiency, after the department has given the insurer notice thereof by registered mail, within such reasonable time, not exceeding 90 days, as may be allowed therefor by the department and so specified in its notice, the insurer shall be deemed to be insolvent and the department shall revoke its certificate of authority and institute delinquency proceedings against the insurer under chapter 631 of this code.

**History.**—s. 177, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **§625.62 Duration and release of deposit.—**

(1) Every certificate of deposit filed and every deposit made in this state by an insurer, prior to or pursuant to this code, made voluntarily or pursuant to specific requirements, including assets and securities held in another state under custodial arrangements permitted under s. 625.55(3) shall be subject to the applicable provisions of this code as amended from time to time. If the deposit is required under the retaliatory provision, s. 624.429, the deposit shall be held for so long as the basis of such retaliation exists.

(2) Any such deposit, whether in the form of a certificate of deposit or otherwise, shall be released and returned:

(a) To the insurer during solvency to the extent such deposit is in excess of the amount required;

(b) To the insurer, during solvency, upon its written request, to the extent such deposit is in excess of the amount then required under this code; or

(c) To the insurer, during solvency, upon its written request, when such insurer has met all requirements and the department is satisfied the deposit is no longer necessary.

(d) Upon proper order of a court of competent jurisdiction, to the receiver, conservator, rehabilitator, liquidator of the insurer, or to any other properly designated official or officials who succeed to the management and control of the insurer's assets.

(3) Deposits of assets representing the reserves of a domestic life insurer as to its registered life insurance policies and registered annuity contracts shall not be subject to release by reinsurance, but shall be held and maintained for the account of the assuming insurer to the extent of the required reserves under such policies and contracts.

**History.**—s. 178, ch. 59-205; s. 2, ch. 61-166; s. 2, ch. 63-19; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective

July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **§625.63 Proofs for release of deposit.—**

(1) Before authorizing the release of any deposit or excess portion thereof to the insurer, as provided in s. 625.62, the department shall require the insurer to file with the department a written statement in such form and with such verification as the department deems advisable setting forth the facts upon which it bases its entitlement to such release.

(2) If release of the deposit is claimed by the insurer upon the ground that its liabilities in this state, as to which the deposit was originally made and is held, have been assumed by another insurer authorized to transact insurance in this state, the insurer shall file with the department a duly attested copy of the contract or agreement of such reinsurance.

(3) Upon being satisfied by such statement and such other information and evidence as the department may reasonably require, and by such examination, if any, of the affairs of the insurer as it deems advisable to make, that the insurer is entitled to the release of its deposits or excess portions thereof as provided in s. 625.62, the department shall release, or authorize the custodian bank or trust company in the case of deposits made under s. 625.54 or s. 625.55 to release, the deposit or excess portion thereof to the insurer or its authorized representative. The department shall have no liability as to any such release so made or authorized by it in good faith.

(4) Upon the failure of the department to release any deposit whether in the form of a certificate of deposit or otherwise or any excess portion thereof, requested as provided in s. 625.62 upon compliance by the insurer with the requirements of this section or within 90 days after receipt of the insurer's written request, whichever is later, the department shall, upon petition by the insurer, post or cause to be posted a notice of pendency of the insurer's request, at the place customarily used for the posting of public notices, at the courthouse of each county, and shall make a copy of such notice available to the established news agencies having offices at Tallahassee, Florida. The department may prescribe the general form of such notice, shall specify the insurer's name, or may list such names where more than one request is pending at the same time. Such notice shall state therein that such insurer or insurers has petitioned for the release and return of deposits pursuant to and in compliance with ss. 625.62 and 625.63, that the department has no information upon which to base a finding that the insurer or insurers named in the notice is not lawfully entitled to obtain the release and return of such deposits, and that unless such information is presented to it within 90 days from the date specified in the notice such deposits must be returned to the insurer or insurers. In the event that no such information is presented to the department within such 90-day period, it shall thereupon release and return the deposit or deposits as requested by the insurer or insurers whose request was not challenged. In the event that such information is presented to the department within said period, it shall refuse to release or return the deposit of the insurer or insurers concerned and

shall hold a hearing with respect thereto upon the request of such insurer or insurers.

**History.**—s. 179, ch. 59-205; s. 3, ch. 63-19; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### PART IV

##### DOMESTIC STOCK INSURERS; EQUITY SECURITIES

- 625.75 Certain persons, director or officers of domestic stock insurer to file statement.
- 625.76 Preventing unfair use of information; insurer to recover profit by suit.
- 625.77 Unlawful to sell equity security not owned; delayed delivery.
- 625.78 Certain sale and purchase exempted; investment account.
- 625.79 Certain foreign or domestic arbitrage transactions exempted.
- 625.80 "Equity security" defined.
- 625.81 Equity securities of certain domestic stock insurer exempted.
- 625.82 Rules and regulations.
- 625.83 Failure to file reporting forms.

**625.75 Certain persons, director or officers of domestic stock insurer to file statement.**—Every person who is directly or indirectly the beneficial owner of more than 10 percent of any class of any equity security of a domestic stock insurer, or who is a director or an officer of such insurer, shall file in the office of the department on or before January 10, 1966, or within 10 days after he becomes such beneficial owner, director or officer a statement, in such form as the department may prescribe, of the amount of all equity securities of such insurer of which he is the beneficial owner, and within 10 days after the close of each calendar month thereafter, if there has been a change in such ownership during such month, shall file in the office of the department a statement, in such form as the department may prescribe, indicating his ownership at the close of the calendar month and such changes in his ownership as have occurred during such calendar month.

**History.**—s. 1, ch. 65-18; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**625.76 Preventing unfair use of information; insurer to recover profit by suit.**—For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director or officer by reason of his relationship to such insurer, any profit realized by him from any purchase and sale, or any sale and purchase, of any equity security of such insurer within any period of less than 6 months, unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the insurer, irrespective of any intention on the part of such beneficial owner, director or officer in entering into such transaction of holding the security purchased or of not repurchasing the security sold for a period exceeding 6 months. Suit to recover such

profit may be instituted at law or in equity in any court of competent jurisdiction by the insurer, or by the owner of any security of the insurer in the name and in behalf of the insurer if the insurer shall fail or refuse to bring such suit within 60 days after request or shall fail diligently to prosecute the same thereafter; but no such suit shall be brought more than 2 years after the date such profit was realized. This section shall not be construed to cover any transaction where such beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the security involved, or any transaction or transactions which the department by rules and regulations may exempt as not comprehended within the purpose of this section.

**History.**—s. 1, ch. 65-18; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**625.77 Unlawful to sell equity security not owned; delayed delivery.**—

(1) It shall be unlawful for any such beneficial owner, director or officer, directly or indirectly, to sell any equity security of such company if the person selling the security or his principal:

- (a) Does not own the security sold, or
- (b) If owning the security, does not deliver it against such sale within 20 days thereafter, or
- (c) Does not within 5 days after such sale deposit it in the mails or other usual channels of transportation;

(2) No person shall be deemed to have violated this section if he proves that notwithstanding the exercise of good faith he was unable to make such delivery or deposit within such time, or that to do so would cause undue inconvenience or expense.

**History.**—s. 1, ch. 65-18; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**625.78 Certain sale and purchase exempted; investment account.**—The provisions of s. 625.76 shall not apply to any purchase and sale, or sale and purchase, and the provisions of s. 625.77 shall not apply to any sale, or an equity security of a domestic stock insurer not then or theretofore held by him in an investment account, by a dealer in the ordinary course of his business and incident to the establishment or maintenance by him of a primary or secondary market (otherwise than on an exchange as defined in the Securities Exchange Act of 1934) for such security. The department may, by such rules and regulations as it deems necessary or appropriate in the public interest, define and prescribe terms and conditions with respect to securities held in an investment account and transactions made in the ordinary course of business and incident to the establishment or maintenance of a primary or secondary market.

**History.**—s. 1, ch. 65-18; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**625.79 Certain foreign or domestic arbitrage transactions exempted.**—The provisions of ss. 625.75-625.77 shall not apply to foreign or domestic arbitrage transactions unless made in contravention



of such rules and regulations as the department may adopt.

**History.**—s. 1, ch. 65-18; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**625.80 "Equity security" defined.**—The term "equity security" when used in part IV of this chapter means any stock or similar security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any other security which the department shall deem to be of similar nature and consider necessary or appropriate, by such rules and regulations as it may prescribe in the public interest or for the protection of investors, to treat as an equity security.

**History.**—s. 1, ch. 65-18; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**625.81 Equity securities of certain domestic stock insurer exempted.**—The provisions of ss. 625.75-625.77 shall not apply to equity securities of a domestic stock insurer if:

(1) Such securities shall be registered, or shall be required to be registered, pursuant to s. 12 of the Securities Exchange Act of 1934, as amended, or if,

(2) Such domestic stock insurer shall not have any class of its equity securities held of record by 100 or more persons on the last business day of the year next preceding the year in which equity securities of the insurer would be subject to the provisions of ss. 625.75-625.77 except for the provisions of this subsection.

**History.**—s. 1, ch. 65-18; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**625.82 Rules and regulations.**—The department shall have the power to make such rules and regulations as may be necessary for the execution of the functions vested in it by ss. 625.75-625.81 and may for such purpose classify domestic stock insurers, securities, and other persons or matters within its jurisdiction. No provision of ss. 625.75-625.77 imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule or regulations of the department, notwithstanding that such rule or regulations may, after such act or omission, be amended or rescinded or determined by judicial or other authority to be invalid for any reason.

**History.**—s. 1, ch. 65-18; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**625.83 Failure to file reporting forms.**—Any insurer who knowingly fails to file information, documents, or reports required to be filed under s. 625.75 or any rule or regulation thereunder shall forfeit to the state the sum of \$100 for each and every day such failure to file shall continue. Such forfeiture shall be payable to the Treasurer of the state to be deposited in the Insurance Commissioner's Regulatory Trust Fund and shall be recoverable in a civil suit in the name of the state. However, the times for filing may be extended for a reasonable period by the department.

**History.**—s. 1, ch. 71-87; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

## CHAPTER 626

## INSURANCE CODE: FIELD REPRESENTATIVES AND OPERATIONS

PART I INSURANCE REPRESENTATIVES; LICENSING PROCEDURES  
AND GENERAL REQUIREMENTS (ss. 626.011-626.711)PART II GENERAL LINES AGENTS AND SOLICITORS; QUALIFICATIONS  
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## PART III LIFE INSURANCE AGENTS (ss. 626.776-626.797)

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## PART I

INSURANCE REPRESENTATIVES;  
LICENSING PROCEDURES AND  
GENERAL REQUIREMENTS

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**626.011 Short title.**—This part may be referred to as the "Licensing Procedures Law."

*History.*—s. 181, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

*Note.*—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**626.022 Scope of chapter.**—

(1) This part applies as to insurance agents, solicitors, service representatives, and adjusters, as to any and all kinds of insurance, and as to stock, mutual, reciprocal and all other types of insurers, except that:

- (a) It does not apply as to:
  - 1. Title insurance.
  - 2. Reinsurance.

(b) The applicability of this chapter as to fraternal benefits societies shall be as provided in chapter 632.

(c) It does not apply to a bail bondsman, as defined in s. 648.25, except as provided in chapter 648 or chapter 903.

(2) For the purposes of this part "insurance" includes also annuity contracts.

*History.*—s. 180, ch. 59-205; s. 1, ch. 71-86; s. 3, ch. 76-168; s. 1, ch. 77-457.

*Note.*—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**626.031 "Agent" defined, in general.**—As used in part I of this chapter "agent" or "insurance agent" means a general lines agent, life agent, or disability agent as defined in this chapter or related chapters, or all such agents, as indicated by context.

*History.*—s. 182, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

*Note.*—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**626.041 "General lines agent" defined.**—

(1) For the purposes of this code a "general lines agent" is one so transacting any one or more of the following kinds of insurance:

- (a) Property insurance.
- (b) Casualty insurance.
- (c) Surety insurance.
- (d) Disability insurance, when transacted by an insurer also represented by the same agent as to

property or casualty or surety insurance.

(e) Marine insurance.

(2) With respect to any such insurances no person shall, unless licensed therefor as an agent:

(a) Solicit insurance or procure applications therefor; or

(b) In this state receive or receipt for any money on account of or for any insurer, or receive or receipt for money from other persons to be transmitted to any insurer for a policy, contract, or certificate of insurance or any renewal thereof, although such policy, certificate, or contract is not signed by him as agent or representative of the insurer; or

(c) Directly or indirectly represent himself or herself to be an agent of any insurer or as an agent, to collect or forward any insurance premium, or to solicit, negotiate, effect, procure, receive, deliver, or forward, directly or indirectly, any insurance contract or renewal thereof, or any endorsement relating to an insurance contract, or attempt to effect the same, of property or insurable business activities or interests, located in this state; or

(d) In this state engage or hold himself out as engaging in the business of analyzing or abstracting insurance policies or of counseling or advising or giving opinions (other than as a licensed attorney at law) relative to insurance or insurance contracts, for fee, commission, or other compensation, other than as a salaried bona fide full-time employee so counseling and advising his employer relative to the insurance interests of the employer and of the subsidiaries or business affiliates of the employer; or

(e) In anywise directly or indirectly make or cause to be made, or attempt to make or cause to be made, any contract of insurance for or on account of any insurer; or

(f) If a member of a partnership or association, or a stockholder, officer or agent of a corporation which holds an agency appointment from any insurer, solicit, negotiate, or in any way directly or indirectly effect insurance contracts; or

(g) Receive or transmit applications for suretyship, or receive for delivery bonds founded on applications forwarded from this state, or otherwise procure suretyship to be effected by a surety insurer upon the bonds of persons in this state, or upon bonds given to persons in this state.

(3) A salaried employee who performs clerical or administrative services only in the office is not deemed thereby to be an agent within the intent of this section.

(4) A salaried employee of a general lines agent who performs clerical or administrative services only for such agent in the office of the agent is not deemed thereby to be an agent within the intent of this section.

(5) As used in this part I, property insurance also includes marine insurance, unless context requires otherwise.

*History.*—s. 183, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

*Note.*—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**626.051 "Life agent" defined.**—

(1) For the purposes of part I of this chapter a "life agent" is one so representing an insurer as to life insurance and annuity contracts. The term shall



also include an agent appointed as such as to life insurance, fixed dollar annuity contracts, variable contracts and disability contracts by the same insurer.

(2) Except as provided in s. 626.112(4), with respect to any such insurances or contracts no person shall, unless licensed therefor as an agent:

(a) Solicit insurance or annuities or procure applications therefor; or

(b) In this state engage or hold himself out as engaging in the business of analyzing or abstracting insurance policies or of counseling or advising or giving opinions to persons relative to insurance or insurance contracts other than

1. As a consulting actuary advising insurer; or

2. As to the counseling and advising of labor unions, associations, trustees, employers or other business entities, the subsidiaries and affiliates of each, relative to their interests and those of their members or employees under insurance benefit plans.

**History.**—s. 184, ch. 59-205; s. 6, ch. 61-441; s. 1, ch. 73-31; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **626.062 "Disability agent" defined.—**

(1) For the purposes of this part I, a "disability agent" is one so representing, as to disability insurance only, an insurer transacting disability insurance.

(2) Except as provided in s. 626.112(4), with respect to such insurance no person shall, unless licensed therefor as an agent:

(a) Solicit insurance or procure applications therefor; or

(b) In this state engage or hold himself out as engaging in the business of analyzing or abstracting insurance policies or of counseling or advising or giving opinions to persons relative to insurance or insurance contracts other than

1. As a consulting actuary advising insurers; or

2. As to the counseling and advising of labor unions, associations, trustees, employers or other business entities, the subsidiaries and affiliates of each, relative to their interests and those of their members or employees under insurance benefit plans.

**History.**—s. 185, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **626.071 "Solicitor" defined.—**

(1) For the purposes of this code a "solicitor" is an individual appointed by a general lines agent to solicit applications for insurance as a representative of such agent. An individual employed on salary only by an agent, and devoting full time to clerical work with incidental taking of insurance applications and receiving premiums in the office of the agent, is not deemed to be a solicitor if his compensation neither includes any commissions on such business nor is related to the volume of such applications, insurance or premiums.

(2) No person without being duly licensed therefor and conforming to this code shall directly or indirectly represent himself or herself to be the solicitor for any agent, or as solicitor, to collect or forward any insurance premium, or to solicit, negotiate, ef-

fect, procure, receive, deliver or forward, directly or indirectly, any insurance contract or renewal thereof, or any endorsement relating to an insurance contract, or attempt to effect the same, of property or insurable business activities or interests, located in this state.

**History.**—s. 186, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **626.081 "Service representative" defined.—**

(1) For the purposes of this code "service representatives" are individuals employed by insurers, or general agents, including traveling salaried representatives of reciprocal or interinsurance exchanges or of mutual insurers operating on the premium deposit plan; for the purpose of assisting general lines agents and solicitors in negotiating and effecting insurance contracts. No such person shall be licensed as an agent or solicitor in this state.

(2) This section does not apply as to life or disability insurance.

**History.**—s. 187, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **626.091 "Supervising" or "managing general agent" defined.—**

(1) A "supervising" or "managing" general agent is an individual, firm or corporation appointed or employed by an insurer to supervise or manage the business written by the general lines agents appointed by the insurer in this state. No such person shall be licensed as a general lines agent or solicitor in this state.

(2) This section does not apply as to life or disability insurance.

**History.**—s. 188, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **626.101 "Adjuster," "claims investigator" defined.—**

For the purposes of part I of this chapter:

(1) An "adjuster" means a public adjuster, independent adjuster, or company employee adjuster, as respectively defined in part V.

(2) A "claims investigator" is as defined in s. 626.857.

**History.**—s. 189, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **626.112 License required; agents, solicitors, adjusters.—**

(1) No person shall in this state be, act as, or advertise or hold himself out to be, an insurance agent or solicitor or adjuster unless he is then licensed as such agent or solicitor or adjuster under a currently effective license issued to such person by the department pursuant to this code.

(2) No agent or solicitor shall solicit or otherwise transact as agent or solicitor, or represent or hold himself out to be an agent or solicitor as to, any kind or kinds of insurance as to which he is not then licensed as such agent or solicitor under a currently effective license issued to such person by the department pursuant to this code.

(3) No person shall act as an adjuster, or represent or hold himself out to be, or perform any of the functions of, an adjuster, as to any class of business for which he is not then licensed as an adjuster under a currently effective license issued to such person by the department pursuant to this code, and then only to the extent authorized by such license.

(4) An individual employed by a life or disability insurer as an officer or other salaried representative, may solicit and effect contracts of life insurance or annuities, or of disability insurance, without being licensed as an agent, when and only when he is accompanied by and solicits for and on the behalf of an agent duly licensed as the agent of such insurer as to the kind of insurance so solicited or effected.

(5) Violation of this section is subject to the penalties provided for in s. 626.131.

**History.**—s. 190, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**626.121 Permit required; service representatives, supervising or managing general agents, claims investigators.—**

(1) No person shall in this state be, act as, or represent or hold himself out to be a service representative unless he then holds a currently effective service representative permit issued to such person by the department pursuant to this code. This provision does not apply as to similar representatives or employees of casualty insurers whose duties are restricted to disability insurance.

(2) No person shall in this state be, act as, or represent or hold himself out to be, a supervising or managing general agent unless he then holds a currently effective supervising or managing general agent permit issued to such person by the department pursuant to this code.

(3) No person shall in this state be, act as, or represent or hold himself out to be a claims investigator, or perform any of the functions of a claims investigator, unless he then holds a currently effective claims investigator permit issued to such person by the department pursuant to this code, and then only to the extent authorized by such permit.

(4) Violations of this section shall be subject to the penalties provided for by s. 626.131.

**History.**—s. 191, ch. 59-205; ss. 13, 35, ch. 69-106; s. 2, ch. 71-86; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**626.131 Penalty for violation of licensing requirement.—**

(1) Any person, other than an insurer, who violates any provision of s. 626.112 or s. 626.121 shall, in addition to denial, suspension, revocation or refusal of license or other administrative penalties available under this code, upon conviction be subject to the penalties of fine and imprisonment as provided by s. 626.671.

(2) The department may, in its discretion, suspend or revoke the certificate of authority of any insurer that violates any provision of s. 626.112 or s. 626.121. If such violation is inadvertent, the department may require the insurer to pay a penalty of \$5

as to each individual concerned in such violation, in addition to the fees and taxes otherwise payable; and if the violation is willful the insurer shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 192, ch. 59-205; ss. 13, 35, ch. 69-106; s. 648, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**626.141 Violation not to affect validity of insurance.—**An insurance contract which is otherwise valid and binding as between the parties thereto, shall not be rendered invalid by reason of having been solicited, handled, or procured by or through an unlicensed agent or solicitor.

**History.**—s. 193, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**626.151 License, permit to be issued only on compliance, eligibility to hold same.—**

(1) For the protection of the people of this state, the department shall not issue or continue or renew or permit to exist any license as agent or solicitor or adjuster, or any permit as service representative, supervising or managing general agent, or claims investigator, except in compliance with the applicable provisions of this code.

(2) The department shall not issue, or continue or renew or permit to exist any such license or permit as to any individual who has not established to the department's satisfaction that he is qualified therefor in accordance with the applicable provisions of this code.

(3) For the protection of the people of this state, an applicant for, or holder of, a license or permit shall meet all requirements of applicable provisions of this code, and, in addition thereto, the eligibility of such applicant to hold or obtain such license or permit shall not have been revoked or suspended by the department.

**History.**—s. 194, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 71-86; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**626.161 Licensing forms.—**The department shall prescribe, consistent with the applicable requirements of this code, and furnish all printed forms required under this code in connection with the application for and issuance of licenses, permits, examinations for licenses, and for appointment and termination of appointment of agents and solicitors.

**History.**—s. 195, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**626.171 Application for license or permit.—**

(1) The department shall not issue a license as agent or solicitor or adjuster, or a permit as service representative, supervising or managing general agent, or claims investigator, to any person except upon written application therefor filed with it, qualification therefor as provided in this code, and payment in advance of all applicable license taxes and fees required under s. 624.501 (filing, license and

miscellaneous fees). Any such application for license shall be made under the oath of the applicant.

(2) Application for license as a general lines agent shall be signed by the applicant.

(3) Application for license as a life agent or disability agent shall be signed by the applicant, shall be filed with the department by the insurer proposed to be so represented, and shall be accompanied by an appointment of the applicant by the insurer as its agent, subject to issuance of the license. When the application is for license as a life agent, the insurer shall indicate whether the appointment is for a primary license or an additional license.

(4) Application for license as a solicitor shall be signed by the applicant.

(5) Application for license as an adjuster shall be signed by the applicant and filed by him (if to be a self-employed public or independent adjuster) or by his proposed employer.

(6) Application for a service representative's permit shall be made by the insurer, its manager, general agent, supervising or managing general agent, or representative of such insurer, by whom the individual proposing to be a service representative is to be so employed.

(7) Application for a supervising or managing general agent's permit shall be made by the insurer, its manager, or representative of such insurer, by whom the individual proposing to be a supervising or managing general agent is to be so employed.

(8) Application for a claim investigator's permit shall be signed by the applicant, and shall be endorsed and filed by the adjuster or insurer by whom the individual proposing to be a claims investigator is to be so employed.

(9) Each such application shall call for information concerning the applicant and application as required by the department and under the following respective sections of this code:

- (a) If for general lines agent's license, s. 626.731;
- (b) If for life agent's license, s. 626.786;
- (c) If for disability agent's license, s. 626.832;
- (d) If for solicitor's license, s. 626.735;
- (e) If for adjuster's license, s. 626.870;
- (f) If for service representative's permit, s. 626.744; and
- (g) If for claim investigator's permit, s. 626.868.
- (h) If for a supervising or managing general agent's permit, s. 626.744.

(10) Each such application shall be accompanied by payment of the taxes and fees, and fees for filing application for examination of the applicant, where applicable as specified therefor under s. 624.501 (filing, license, and miscellaneous fees), and under s. 626.271 (examination application fee; determination, refund).

**History.**—s. 196, ch. 59-205; ss. 13, 35, ch. 69-106; s. 4, ch. 71-86; s. 1, ch. 72-34; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**626.181 Number of applications required.**—After a license as agent, solicitor, or adjuster has been issued to an individual upon the basis, in part, of personal and other data contained in an original application for the license, the same individual shall not be required to file another application for a simi-

lar license (regardless, in the case of an agent, of the number of insurers to be represented by him as agent or the number of subsequent requests for similar license made by or on his behalf) unless specifically ordered by the department to complete a new application; or unless during any period of 24 months since the filing of the original application such individual was not licensed as such agent, solicitor or adjuster, unless the failure to be so licensed was due to military service, in which event the period within which a new application is not required may, in the department's discretion, be extended to 12 months following the date of discharge from military service if the military service does not exceed 3 years, but in no event to extend under this clause for a period of more than 4 years from the date of filing of the original application.

**History.**—s. 197, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**626.191 Repeated applications.**—The failure of an applicant to secure a license or permit upon an application shall not preclude him from applying again as many times as he may desire, but the department shall not give consideration to or accept any further application by the same individual for a similar license or permit dated or filed within 60 days subsequent to the date the department denied the last application, except as provided in s. 626.281.

**History.**—s. 198, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**626.201 Investigation.**—The department may propound any reasonable interrogatories in addition to those contained in the application, to any applicant for license or permit, or on any renewal or continuation thereof, relating to his qualifications, residence, prospective place of business, and any other matter which, in the department's opinion, is deemed necessary or advisable for the protection of the public and to ascertain the applicant's qualifications. The department may, upon completion of the application, make such further investigation as it may deem advisable of the applicant's character, experience, background, and fitness for the license or permit. The department shall in all cases interview each first time applicant for license as a general lines agent. Such an inquiry or investigation shall be in addition to any examination required to be taken by the applicant as hereinafter in this chapter provided.

**History.**—s. 199, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**626.211 Approval, disapproval of application.**—

(1) If upon the basis of the completed application for license or permit and such further inquiry or investigation as the department may make concerning the applicant the department is satisfied that, subject to any examination required to be taken and passed by the applicant for a license, the applicant



is qualified for the license or permit applied for and that all pertinent taxes and fees have been paid, it shall approve the application.

(2) Upon such approval in the case of applicants for license as agent, solicitor, or adjuster who are subject to written examination under s. 626.221, the department shall notify the applicant when and where he may take the required examination as provided in s. 626.251, but subject to any applicable waiting period provided in s. 626.231 as to applicants for license as general lines agent or solicitor.

(3) Upon such approval in the case of applicants for license or permit who are not so subject to examination, the department shall promptly issue the license (as provided in s. 626.291) or permit applied for (as provided in s. 626.351).

(4) If upon the basis of the completed application and such further inquiry or investigation the department deems the applicant to be lacking in any one or more of the required qualifications for the license or permit applied for as specified in s. 626.731 as to general lines agents, s. 626.785 as to life agents, s. 626.831 as to disability agents, s. 626.735 as to solicitors, and part V of this chapter as to adjusters and claims investigators, the department shall disapprove the application and notify the applicant thereof, stating the grounds of disapproval. At the same time the department shall return to the applicant or other person entitled thereto any state license tax and county license tax received by the department in connection with the application for license, as provided in s. 626.291(5).

**History.**—s. 200, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **§626.221 Examination required; exemptions.**

(1) The department shall not issue any license as agent, solicitor, or adjuster to any individual who has not personally qualified for, taken, and passed to the department's satisfaction, a written examination of the scope prescribed in s. 626.241.

(2) An individual already licensed as a solicitor shall not be licensed as a general lines agent without application and examination for such license, unless exempted as to the examination under subsection (3)(i).

(3) Except, that no such examination shall be necessary in the following cases:

(a) An applicant for license as life agent or disability agent who is currently licensed as such an agent of another insurer as to the same class or classes of business as that proposed to be transacted under the new license.

(b) An applicant for a renewal license as a life agent or disability agent, unless the department determines that an examination is necessary to establish the competence or trustworthiness of such individual.

(c) Applicants for limited license as agent for sale of accident insurance as provided under s. 626.321(1)(c).

(d) Applicants for limited license as agent for sale of baggage insurance as provided under s. 626.321(1)(d).

(e) Applicants for limited license for the sale of credit life or disability insurance as provided for under s. 626.321(1)(e); or for limited license as credit insurance agent as provided for under s. 626.321(1)(f).

(f) In the department's discretion, an applicant for license as an agent whose similar license has expired or been suspended within 2 years prior to the date of application.

(g) An applicant who within 30 days prior to application for license as agent, solicitor or adjuster was a full-time salaried employee of the Department of Insurance and had continuously been such an employee with responsible insurance duties for not less than 2 years, and who had been a licensee prior to employment by the department with the same type and class of license as that being applied for.

(h) An applicant for license as a solicitor, who is currently licensed as a general lines agent or held such a license or had successfully passed the examination for such an agent's license within 24 months prior to the date application for a solicitor's license is filed with the department. This provision or paragraph (i) shall not be deemed to permit an individual to be licensed both as such an agent and as a solicitor at the same time.

(i) An individual who qualified as a solicitor, supervising or managing general agent, service representative, or an all lines adjuster by taking and successfully passing an agent's examination and who subsequently was licensed as such licensee and actively engaged in all lines of fire and casualty insurance may, upon filing an application therefor, be licensed as a general lines agent as to the same kinds of business and without taking another examination if the applicant holds any such currently effective license, referred to in this paragraph, or held such a license within 24 months prior to the date of filing the application with the department.

(j) A person who has been licensed by the department as a public adjuster or independent adjuster, or licensed either as an agent or company adjuster as to all property, casualty, and surety insurances, may be licensed as a company adjuster as to any of such insurances, or as an independent adjuster or public adjuster, without additional written examination if his application for license is filed with the department within 24 months next following date of cancellation or expiration of the prior license.

(k) A person who has been licensed by the department as a company employee adjuster for automobile physical damage, fire, and allied lines including marine, casualty, workers' compensation, boiler and machinery, or any combination thereof, may be licensed as a company employee adjuster without additional written examination, if his application for license is filed with the department within 24 months next following date of cancellation or expiration of the prior license.

(l) Applicants for temporary license, except as provided in the respective sections of this code applicable thereto.

(m) Applicants for license as a nonresident agent, if so provided in sections of this code applicable to such licensees.

(n) A person who has received the designation of

chartered life underwriter (C.L.U.) from the American College of Life Underwriters, except that such a person may be examined on pertinent provisions of the Insurance Code as determined by the department.

(4) No fee for filing application for examination shall be payable as to any applicant for license exempted from examination under this section.

**History.**—s. 201, ch. 59-205; s. 1, ch. 67-91; ss. 13, 35, ch. 69-106; s. 5, ch. 71-86; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 87, ch. 79-40.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§626.231 Eligibility for examination; waiting period, general lines agents and solicitors.—**

(1) No person shall be permitted to take an examination for license until his application for the license has been approved by the department as provided in s. 626.211, and then only if the fee required under s. 624.501 for filing application for the examination has been received by the department in advance of the applicant's appearance for the examination.

(2) An applicant for license as a general lines agent or solicitor whose application has been approved by the department, shall become eligible to take the examination only upon expiration of 60 days after the date his application for license was filed in the offices of the department at Tallahassee; except that if the applicant for license as a general lines agent is currently licensed as a solicitor, he shall be eligible for the examination for an agent's license upon approval of his application therefor by the department and shall not be subject to the 60-day waiting period.

(3) The 60-day waiting period provided for in subsection (2) shall run concurrently with any special schooling or experience required under s. 626.732 of the applicant as part of the qualifications for the license, or with the completion of the residence requirement provided for under s. 626.731(2) as to general lines agents or under s. 626.735(2) as to solicitors, and the applicant may for the purpose file his application for license while such schooling or experience is in progress, as provided in s. 626.732(3), or while such residence requirement is being completed, as the case may be.

**History.**—s. 202, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§626.241 Scope of examination.—**

(1) Each examination for a license as agent, solicitor, or adjuster shall be of such scope as is deemed by the department to be reasonably necessary to test the applicant's ability and competence, and knowledge of the kinds of insurance and transactions to be handled under the license applied for, of the duties and responsibilities of such a licensee, and of the pertinent provisions of the laws of this state.

(2) Examinations given applicants for license as general lines agent or solicitor shall cover as to all property, casualty, and surety insurances; except as provided in subsection (5), as to limited licenses.

(3) Examinations given applicants for life agent's license shall cover as to the class of life insurance to

be written under the license as defined in part III of this chapter, and, if to be licensed as to the "ordinary" class, including fixed dollar annuities or an "ordinary-variable contract" class. The department may provide different examinations, in its discretion, for applicants appointed by different types of insurers.

(4) Examinations given applicants for disability agent's license shall cover as to disability insurance.

(5) Examinations given applicants for a limited license as agent, where applicable, shall be limited in scope to the kind of business to be transacted under such license as provided in s. 626.321.

(6) Examinations given applicants for a license as an independent adjuster or as a public adjuster shall cover adjusting in all lines of insurance other than life and annuity.

(7) Examinations given applicants for license as a company employee adjuster shall cover adjusting in all lines of insurance, other than life, annuity, and disability; or, in accordance with the application for the license, the examination may be limited to adjusting in:

- (a) Automobile physical damage,
- (b) Fire and allied lines including marine,
- (c) Casualty,
- (d) Workers' compensation,
- (e) Boiler and machinery, or
- (f) Any combination of the aforementioned categories.

**History.**—s. 203, ch. 59-205; s. 7, ch. 61-441; s. 1, ch. 65-16; ss. 13, 35, ch. 69-106; s. 2, ch. 73-31; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 88, ch. 79-40.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§626.251 Time and place of examination; notice.—**

(1) The department shall mail written notice of the time and place of the examination to each applicant for license required to take an examination under s. 626.221 and who will be eligible under s. 626.231 to take the examination as of the examination date. The notice shall be so mailed, postage prepaid, and addressed to the applicant at his address shown on his application for license (or at such other address as requested by the applicant in writing filed with the department at Tallahassee prior to the mailing of the notice), not less than 15 days in advance of the examination date. Notice shall be deemed given when so mailed.

(2) The examination shall be held in an adequate and designated examination room in that one of the department's offices in this state which is located nearest to the applicant's place of residence; except that an examination may be taken at any other office of the department if mutually convenient to the department and the applicant.

(3) The department shall make an examination available to the applicant, to be taken as soon as reasonably possible after the applicant is eligible therefor. Any examination required under part I of this chapter shall be available in the department's office at Tallahassee or elsewhere in Florida on at least 1 designated business day of each week.

**History.**—s. 204, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective

July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1626.261 Conduct of examination.—**

(1) The applicant for license shall appear in person and personally take the written examination for license, at the time and place specified in the department's notice thereof.

(2) The examination shall be conducted by an employee of the department for the purpose.

(3) The questions propounded shall be as prepared by the department, consistent with the applicable provisions of this code.

(4) The applicant shall be entitled to take at the same place and date examinations covering all licenses for which his application or applications have been currently approved and for which he is eligible under s. 626.231.

(5) All examinations shall be given and graded in a fair and impartial manner, and without unfair discrimination in favor of or against any particular applicant.

**History.**—s. 205, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1626.271 Examination application fee; determination, refund.—**

(1) At the time of filing his application for license each applicant who is subject to written examination as provided under s. 626.221 shall pay to the department a fee for filing application for the examination in the amount prescribed in s. 624.501 (filing, license and miscellaneous fees). A separate and additional application for examination filing fee shall be so payable for each separate type or class of license applied for, notwithstanding that all such examinations are taken on the same date and at the same place.

(2) The fee for filing application for examination shall not be subject to refund.

**History.**—s. 206, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1626.281 Reexamination.—**

(1) Any applicant for license who has either:

(a) Taken an examination and failed to make a passing grade, or

(b) Failed to appear for the examination or to take or complete the examination at the time and place specified in the department's notice provided for in s. 626.251,

may, after expiration of 60 days from the date of the previous such examination either taken or scheduled, upon payment of an additional examination application filing fee for such second examination take a second examination based upon the same application for license. If the applicant fails to pass such second examination he shall not be eligible for or be permitted to take another examination for the same type or class of license except pursuant to a new application for license and payment of new license taxes and fees and examination application filing fees as required for an initial application for license; and no such application for license shall be

received on file or considered by the department until after expiration of 60 days after the date of denial of the license as provided for in s. 626.291. Except, that as to disability insurance an applicant failing the first examination shall be allowed to take a second examination upon payment of an additional examination application filing fee, and if such applicant fails the second examination he shall be required to wait for a period of 60 days before again applying for license.

(2) The department may, in its discretion, require any individual whose license as an agent, solicitor, or adjuster has expired or has been suspended, to take and successfully pass such a written examination prior to reinstating or relicensing such individual, as to any type or class of license. The regular examination application filing fee shall be paid as to each such examination.

(3) The department may, in its discretion, require any individual licensed as an agent, solicitor, or adjuster whose license was originally to be issued after examination as required by s. 626.221 or under laws heretofore in force, to take and successfully pass an examination as for original issuance of license as a condition precedent to the renewal or continuation of the licensee's current license. The regular examination application filing fee shall be paid as to each such examination.

**History.**—s. 207, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1626.291 Denial, issuance of license.—**

(1) As soon as reasonably possible after the applicant has completed any examination required under s. 626.221, the department shall grade his examination paper. If it finds that the applicant has received a passing grade, the department shall promptly notify the applicant thereof and in due course issue and transmit the license to which such examination related. If it finds that the applicant did not make a passing grade on the examination for a particular license, the department shall promptly mail notice to the applicant and the insurer or proposed employer to that effect and of its denial of the license so applied for.

(2) As to applicants for license for which no examination is required, the department shall promptly issue the license applied for as soon as it has approved the application therefor as provided in s. 626.211.

(3) The department shall transmit the original and a copy of each such license as follows:

(a) Agents' licenses, original to the insurer and copy to the licensee;

(b) Solicitors' licenses, original to the appointing agent and copy to the licensee;

(c) Adjusters' licenses, original to the licensee if to be a self-employed public adjuster or independent adjuster; otherwise the original license shall be transmitted to the employer and a copy to the licensee.

(4) While the license is in force the original thereof shall be retained by the appointing insurer or (in the case of solicitor's license) the appointing agent.



(5) Upon denial of a license the department shall refund to the applicant or payor entitled thereto any state license tax and county license tax received by it in connection with the application for the license. No such refund shall be made under any circumstances after issuance of a license if the applicable license year has commenced before receipt by the department of the request for cancellation of license and refund at its office at Tallahassee.

**History.**—s. 208, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **§626.301 Form and contents of licenses, in general.—**

(1) Each license as agent, solicitor, or adjuster issued by the department shall be in such form as the department may designate and show the type and serial number of license, date of issuance, name and address of the licensee, general conditions pertaining to expiration, continuation or renewal, and further matters as hereinbelow specified, all consistent with the applicable provisions of this code.

(2) The license of a general lines agent shall show the kinds of insurance the licensee is authorized to transact as such agent, and the name and address of the insurer represented by the licensee as agent.

(3) The license of a solicitor shall show the name and address of the agent by whom he is appointed as solicitor, and the kinds of insurance the licensee is authorized to transact as solicitor under the license.

(4) The license of a life agent shall show the type and class of life insurance business the licensee is authorized to transact as agent and the name and address of the insurer so represented.

(5) The license of a disability agent, as to an insurer not represented by the licensee under a general lines agent's license as provided in s. 626.311(1), shall show the name and address of the insurer so represented.

(6) The license of an adjuster shall show the types and classes of coverage as to which the licensee is authorized to act as adjuster under the license.

(7) Any such license shall contain such other matters, consistent with the applicable provisions of this code, as the department deems advisable.

**History.**—s. 209, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **§626.311 Scope of license.—**

(1) Except as to limited licenses authorized under s. 626.321, the applicant for license as a general lines agent or solicitor shall qualify for all property, marine, casualty, and surety lines. The license of a general lines agent may also cover disability insurance, without additional license, fees or taxes, if disability insurance is included in the agent's appointment by an insurer as to which the licensee is also appointed as agent for property or casualty or surety insurance. The license of a solicitor shall provide, in substance, that it covers all of such kinds of insurance that his appointing general lines agent is currently so authorized to transact under the general lines agent's license. No such license shall be issued limit-

ed to particular classes or subdivisions of such kinds of insurance or any of them.

(2) The license of a life agent shall cover such types and classes of life insurance business (as defined in part III of this chapter) as is designated for the purpose by the insurer in the insurer's appointment filed with the department. The licensee shall be limited to selling the class of insurance specified for the insurer named in the license.

(3) Except as to limited license as accident insurance agent authorized under s. 626.321, the license of a disability agent shall cover all kinds of disability insurance, and no such license shall be issued limited to particular classes or subdivisions of disability insurance.

(4) No agent licensee shall transact or attempt to transact under his license any kind of insurance or class thereof for which he does not have currently in force of record with the department an agency appointment by an authorized insurer.

(5) The scope of adjuster licenses shall be as provided in part V of this chapter.

**History.**—s. 210, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **§626.321 Limited licenses.—**

(1) The department shall issue a license as to an individual qualified therefor, as agent authorized to transact as such thereunder a limited class of business, in any of the following categories:

(a) *Motor vehicle physical damage insurance.*—License covering insurance against only the loss of or damage to any motor vehicle which is designed for use upon a highway, or as such vehicles may be defined by law in Florida from time to time, including trailers and semitrailers designed for use with such vehicles (except traction engines, road rollers, tractor cranes, power shovels, and well-drillers) and every vehicle which is propelled by electric power obtained from overhead wires but not operated upon rails. The applicant for such a license shall take and pass to the department's satisfaction, as provided for examinations generally, a written examination covering motor vehicle physical damage insurance. No individual while so licensed shall hold a license as an agent or solicitor as to any other or additional kind or class of insurance coverage, except a limited license as to credit life and disability insurances as provided in paragraph (e).

(b) *Industrial fire insurance.*—License covering only industrial fire insurance as defined in s. 626.729. The applicant for such a license shall take and pass to the department's satisfaction, as provided for examinations for license generally, a written examination covering such insurance. No individual while so licensed shall hold a license as an agent or solicitor as to any other or additional kind or class of insurance coverage except as to life and disability insurances.

(c) *Personal accident insurance.*—License covering only policies of personal accident insurance, covering the risks of travel, the license to be issued only to a full-time salaried employee of a common carrier or a full-time salaried employee or owner of a transportation ticket agency, which person is engaged in

the sale of transportation tickets, for his employer, and authorizing sale of such ticket policies only in connection with the sale of transportation tickets; or to the full-time salaried employee of an agent licensed as to such kind of insurance. No such policy shall be for a duration of more than 48 hours or for the duration of a specified one-way trip or round trip, as applicable.

(d) *Baggage insurance.*—License covering only insurance of personal effects, the license to be issued only to a full-time salaried employee of a common carrier or a full-time salaried employee or owner of a transportation ticket agency, which person is engaged in the sale, or handling of, transportation of baggage and personal effects of travelers, and authorizing sale of such insurance only in connection with such transportation; or issued to the full-time salaried employee of a licensed general lines agent.

(e) *Credit life or disability insurance.*—License covering only credit life or disability insurance as defined in part VIII of chapter 627, the license to be issued only to an individual employed by a life or disability insurer as an officer or other salaried or commissioned representative, or an individual employed by or associated with a lending or financing institution or creditor, and authorizing sale of such insurance only with respect to borrowers or debtors of such lending or financing institution or creditor. No individual while so licensed shall hold a license as an agent or solicitor as to any other or additional kind or class of life or disability insurance coverage.

(f) *Credit insurance.*—License covering only credit insurance, as such insurance is defined in s. 624.605(1)(i) ("casualty insurance" defined), and no individual so licensed shall during the same period hold a license as an agent or solicitor as to any other or additional kind of insurance.

<sup>2</sup>(g) *Credit property insurance.*—A license covering only credit property insurance as defined in s. 624.605(1) may be issued to any individual except an individual employed by or associated with a lending or financial institution defined in s. 626.988 and authorized to sell such insurance only with respect to borrowers or debtors, not to exceed the amount of the loan.

(2) The name of the insurer represented and the limitations of any license issued under this section shall be expressed therein. The licensee shall have a separate and additional license as to each such insurer.

<sup>2</sup>(3) Except as otherwise expressly provided, individuals applying for or holding a limited license shall be subject to the same applicable requirements and responsibilities as apply under parts I and II of this chapter (general lines agents and solicitors qualifications and requirements) to general lines agents in general, if licensed as to motor vehicle physical damage insurance, credit property insurance, industrial fire insurance, baggage insurance, or credit insurance; or as apply under parts I and III of this chapter (life insurance agents) or part IV of this chapter (disability insurance agents) to life agents or disability agents in general, as the case may be, if

licensed as to personal accident insurance or credit life or credit disability insurance.

*History.*—s. 211, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 2, 4, ch. 79-156.

*Note.*—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

*Note.*—Section 4, ch. 79-156, provides that, if part I of chapter 626 is repealed in accordance with the intent expressed in the Regulatory Reform Act of 1976, as amended by chapter 77-457, or as subsequently amended, it is the intent of the Legislature that s. 2, ch. 79-156, shall also be repealed on the same date as is therein provided.

**626.322 Registration certificate, certain military installations.**—A natural person, not a resident of this state, may be registered to represent an authorized life insurer domiciled in this state or an authorized foreign life insurer which maintains a regional home office in this state, provided such person represents such insurer exclusively at a United States Military Installation located in a foreign country. The department may, upon request of such insurer on application forms furnished by the department and upon payment of an annual fee of \$10, issue a certificate of registration to such person. The insurer shall certify to the department that the applicant has the necessary training to hold himself out as a life insurance representative and, the insurer shall further certify that it is willing to be bound by the acts of such applicant within the scope of his employment. Such certificate shall expire as of March 31 succeeding date of issuance, unless sooner terminated. Such fees received shall be credited to the Insurance Commissioner's Regulatory Trust Fund as provided for in s. 624.523 of this code.

*History.*—s. 1, ch. 65-545; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

*Note.*—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**626.331 Number of licenses permitted or required.**—

(1) Except as otherwise expressly provided in this code, the same individual may at any one time hold any and all categories of license as to which he has qualified and been licensed under this code.

(2) A general lines agent shall be required to have a separate license as to each insurer by whom he is appointed as an agent as to property, casualty and surety insurances or any of them, and including disability insurance where transacted by an insurer also represented by the agent as to property, casualty or surety insurance.

(3) A life agent shall have a separate license, known as a primary license, which shall be issued upon his initial qualification as life agent and for the first insurer he is licensed to represent. In the event the original primary license is terminated under circumstances not affecting the agent's eligibility to be licensed, another primary license may be issued to him upon appointment for that purpose by another insurer. Additional licenses will be issued to represent additional companies provided the applicant holds a valid primary license.

(4) A disability agent shall have a separate license as to each disability insurer so represented, except as provided in subsection (2).

(5) The department may issue a single agent's

license covering both life and disability insurances to an individual qualified as to both such kinds of insurance and appointed as agent as to both such kinds by the same insurer.

**History.**—s. 212, ch. 59-205; s. 1, ch. 63-17; ss. 13, 35, ch. 69-106; s. 1, ch. 71-57; s. 2, ch. 72-34; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§626.341 Additional licenses; life and disability agents.**—At any time while his license is in force a disability agent or a life agent while his primary license is in force may apply to the department for an additional license or licenses as life or disability agent for an additional insurer or insurers. The application shall set forth each insurer the applicant is then licensed to represent, and such other information as the department may require. The application shall include, or be accompanied by, appointment of the applicant as agent by each additional insurer as to which license is applied for. Upon receipt of the application and appointment and payment of the applicable license taxes and fees, the department may issue such additional license without, in its discretion, further investigation concerning the applicant.

**History.**—s. 213, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 72-34; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§626.351 Issuance; contents of permits.**—

(1) The department shall promptly issue as to an applicant therefor, whose application it has approved as provided in s. 626.211, a permit as service representative, supervising or managing general agent, or claims investigator, as the case may be.

(2) Each such permit shall be in such form as the department may prescribe consistent with the applicable provisions of this code. The permit shall set forth its serial number, date of issuance, name and address of the permittee, name and address of his employer, general conditions as to expiration, continuation or renewal, and such other pertinent matter as the department deems advisable.

(3) A claims investigator's permit shall also set forth the type and class of coverage the permittee is authorized to handle as a claims investigator, as referred to in s. 626.869.

(4) A service representative shall have a separate permit as to each employer represented by him, except that he may so represent under one permit all insurers represented by his employer general agent or comprising an affiliated group of insurers.

(5) Upon issuance the department shall transmit the original of the permit to the employer and a copy of the permit to the permittee. While in force, the original of the permit shall be retained by the employer.

(6) The department shall not make refund of any fees paid as to any permit after issuance of the permit if the applicable permit year or term has commenced before receipt by the department at its offices at Tallahassee of request for cancellation of the permit and refund.

**History.**—s. 214, ch. 59-205; ss. 13, 35, ch. 69-106; s. 6, ch. 71-86; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective

July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§626.361 Effective date and initial period of license.**—

(1) All licenses as to which all requisite applications, payment of fees and taxes, passing of examinations, and waiting periods have been completed and evidence thereof in the customary form received by the department at its office in Tallahassee within 1 calendar month prior to the expiration of the applicable license year then current or within 1 calendar month after the commencement of the next following new license year, shall be dated and be effective as of the first day of such new license year and shall be as for the entire such license year (subject to suspension, revocation, renewal, continuation, or termination as otherwise provided for in this chapter); but such a license, if issued pursuant to qualification therefor during the last calendar month of the preceding license year as hereinabove provided, shall be deemed to relate back in effectiveness to the date within such calendar month on which the last of such qualifying requirements was received by the department at its offices in Tallahassee.

(2) All other licenses shall be dated and become effective as of the date of issue.

**History.**—s. 215, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§626.371 Payment of fees, taxes for unlicensed period.**—If upon application and qualification for a license and such investigation thereof as the department may make it appears to the department that a

formerly licensed applicant has been actively engaged or is currently actively engaged as such a licensee, but without being licensed as in part I of this chapter required, the department may, in its discretion, if it finds that such failure to be licensed was in inadvertent error on the part of the insurer so represented, nevertheless issue the license as applied for but subject to the condition that the applicant shall, before the license is issued, pay to the department all fees and license taxes which would have been due had the applicant been so licensed during such current and prior periods, together with a license continuation fee as provided in s. 624.501 for each such current and prior years.

**History.**—s. 216, ch. 59-205; s. 9, ch. 65-269; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§626.381 Continuation, expiration of license; general lines agents.**—

(1) The license of a general lines agent, and all limited licenses as to motor vehicle physical damage insurance or industrial fire insurance or baggage insurance issued pursuant to s. 626.321, shall continue in force until suspended, revoked or otherwise terminated, but subject to annual continuation by the insurer named therein on or before September 1 by payment of the fee and license taxes for renewal or continuation of the license as prescribed in s. 624.501 (filing, license and miscellaneous fees), ac-



accompanied by the insurer's written request for such renewal or continuation.

(2) Annually on or before September 1, each insurer shall file with the department the alphabetical lists, statements and information as to licenses being renewed or continued, or being terminated, accompanied by payment of the applicable renewal or continuation fee and license taxes, as required under s. 626.501.

(3) Any such license as to which request for renewal or continuation is not received by the department at its offices at Tallahassee as required by subsection (1) shall be deemed to have expired as at midnight on the September 30 next following such failure. Request for renewal or continuation of any such license or payment of fee and license taxes therefor which is received by the department after such September 1, but on or before the next following October 15, may be accepted and effectuated by the department, in its discretion; and any such request and payment received by the department after such October 15, and on or before the next following November 15, may be accepted and effectuated by the department, in its discretion, only if accompanied by an additional license continuation fee as provided in s. 624.501.

(4) The original license certificate issued to any such licensee shall remain outstanding and in effect for so long as the license represented thereby continues in force as hereinabove provided.

(5) This section does not apply as to temporary licenses.

**History.**—s. 217, ch. 59-205; s. 10, ch. 65-269; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **§626.391 Same; life, disability, and limited agents.—**

(1) Except as otherwise provided in s. 626.789 as to life agents and s. 626.834 as to disability agents (military service), each life agent license, disability agent license, together with limited license issued as to personal accident insurance or credit life or credit disability insurance under s. 626.321, shall continue in force until expired, suspended, revoked or otherwise terminated, but subject to annual continuation by the insurer named therein on or before March 1 by payment of the fee and license taxes for renewal or continuation of the license as prescribed in s. 624.501 (filing, license and miscellaneous fees), accompanied by the insurer's written request for such renewal or continuation.

(2) Annually, prior to March 1, each insurer shall file with the department the alphabetical lists, statements and information as to agency appointments and licenses being renewed or continued, or being terminated, accompanied by payment of the applicable renewal or continuation fees and license taxes, as required under s. 626.501.

(3) Any such license as to which request for renewal or continuation is not received by the department at its offices at Tallahassee as required by subsection (1) shall be deemed to have expired as at midnight on the March 31 next following such failure. Request for renewal or continuation of any such license or payment of fee and license taxes therefor

which is received by the department after such March 1 but on or before the next following April 15 may be accepted and effectuated by the department, in its discretion; any such request and payment received by the department after such April 15 and on or before the next following May 15, may be accepted and effectuated by the department, in its discretion, only if accompanied by an additional license continuation fee as provided in s. 624.501.

(4) The original license certificate issued to any such licensee shall remain outstanding and in effect for so long as the license represented thereby continues in force as hereinabove provided; except that if an insurer or a life agent fails or refuses to renew or continue the primary license of the agent, or if the primary license of a life agent is expired, suspended, revoked, or otherwise terminated for any reason under the provisions of this code, all licenses which were issued subsequent or in addition to such primary license shall terminate 60 days after date that the primary license is terminated, expired, suspended, or revoked, unless during such period another primary license has been issued to such licensee.

(5) This section does not apply as to temporary licenses.

**History.**—s. 218, ch. 59-205; s. 11, ch. 65-269; ss. 13, 35, ch. 69-106; s. 4, ch. 72-34; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **§626.401 Same; solicitors.—**

(1) The license of a solicitor shall continue in force until expired, suspended, revoked or otherwise terminated, but subject to annual continuation by the appointing general lines agent named therein on or before September 1 by payment of the fee and license taxes for annual continuation of license as provided in s. 624.501 (filing, license and miscellaneous fees), accompanied by the appointing agent's written request for such continuation.

(2) The appointing agent shall on or before September 1 of each year furnish to the department at its office at Tallahassee the alphabetical lists, statements, and information as to solicitors whose appointments and licenses are being renewed or continued, or terminated, accompanied by payment of the applicable fees and license taxes, as required under s. 626.501.

(3) Any such license as to which request for renewal or continuation is not received by the department at its offices at Tallahassee as required by subsection (1) shall be deemed to have expired as at midnight on the September 30 next following such failure. Request for renewal or continuation of any such license or payment of fee and license taxes therefor which is received by the department after such September 1 but on or before the next following October 15 may be accepted and effectuated by the department, in its discretion; and any such request and payment received by the department after such October 15 and on or before the next following November 15, may be accepted and effectuated by the department, in its discretion, only if accompanied by an additional license continuation fee as provided in s. 624.501.

(4) Any such license shall terminate forthwith upon written request filed with the department ei-

ther by the appointing agent or the licensee, accompanied by proof satisfactory to the department that written notice of such termination has been given to the appointing agent or licensee, as the case may be. Notice addressed to such other party at his address last of record with the notifying party, postage prepaid and placed in a United States mail depository shall be deemed to have been given when so mailed, for the purposes of this section. If not so mailed, notice shall be given by delivery thereof to the licensee.

**History.**—s. 219, ch. 59-205; s. 12, ch. 65-269; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **626.411 Same; adjusters.—**

(1) The license of an adjuster shall continue in force until expired, suspended, revoked or otherwise terminated, but subject to annual continuation by the employer, in the case of a company employee adjuster, or by the licensee, in the case of public adjusters and independent adjusters, on or before September 1 by payment of the license tax provided in s. 624.501 (filing, license and miscellaneous fees) accompanied by written request for such continuation.

(2) Any such license as to which request for renewal or continuation is not received by the department at its offices at Tallahassee as required by subsection (1) shall be deemed to have expired at midnight on the September 30 next following such failure. Request for renewal or continuation of any such license or payment of fee and license taxes therefor which is received by the department after such September 1 but on or before the next following October 15 may be accepted and effectuated by the department, in its discretion; and any such request and payment received by the department after such October 15 and on or before the next following November 15, may be accepted and effectuated by the department, in its discretion, only if accompanied by an additional license continuation fee as provided in s. 624.501.

(3) As to any adjuster licensee whose employment or license is being terminated by his employer, information as to the reasons for such termination shall be filed as required under s. 626.511.

(4) This section does not apply as to temporary licenses.

**History.**—s. 220, ch. 59-205; s. 13, ch. 65-269; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **626.421 Continuance, expiration of permit; service representatives, claims investigators, supervising or managing general agents.—**

(1) The permit issued to a claims investigator, unless earlier suspended, revoked or otherwise terminated, shall expire as provided in s. 626.868.

(2) The permit issued to a service representative or a supervising or managing general agent shall continue in force until expired, suspended, revoked or otherwise terminated but subject to annual continuation by the licensee's employer on or before September 1 by payment of the fee provided in s.

624.501 (Filing, license and miscellaneous fees) accompanied by the employer's written request for the continuation. Any such permit as to which request for renewal or continuation is not received by the department at its office at Tallahassee as required above, shall be deemed to have expired at midnight on the September 30 next following such failure. Request for renewal or continuation of any such permit or payment of fee therefor which is received by the department after such September 1 but on or before the next following October 15 may be accepted and effectuated by the department, in its discretion; and any such request and payment received by the department after such October 15 and on or before the next following November 15, may be accepted and effectuated by the department, in its discretion, only if accompanied by an additional permit continuation fee as provided in s. 624.501.

(3) As to any service representative, supervising or managing general agent, or claims investigator whose employment or permit is being terminated by his employer, information as to the reasons for such termination shall be filed as required under s. 626.511.

**History.**—s. 221, ch. 59-205; s. 14, ch. 65-269; ss. 13, 35, ch. 69-106; s. 7, ch. 71-86; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **626.431 Effect of expiration of license or permit.—**

(1) Upon expiration of any license or permit, as provided in ss. 626.381-626.421, the individual formerly so licensed or permitted shall be completely without any of the authority or rights theretofore conferred by the license or permit, and shall not thereafter, while without the required license or permit, engage or attempt to engage in any transaction or business for which such a license or permit is required under this code.

(2) No such individual shall again be granted such a license or permit unless and until he applies and fully qualifies therefor as provided in this code, including the taking and passing of any written examination which may be required under applicable provisions. However, no such examination shall be required for the renewal or continuance of any additional or subsequent license if the expiration or termination thereof was solely the result of termination, expiration, or nonrenewal of a primary license of a life agent. Such an examination shall be required in all cases in which application for any new license or permit is made after expiration of 2 years from the date of expiration or termination of the prior similar license or permit.

**History.**—s. 222, ch. 59-205; s. 5, ch. 72-34; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **626.441 License or permit not transferable.—**

A license or permit issued under this part is valid only as to the individual named therein as licensee or permittee; and is not transferable to another individual.

**History.**—s. 223, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

to that date.

#### **§626.451 Appointment of agents.—**

(1) Each insurer appointing an agent in this state shall file the appointment with the department, and at the same time pay the fee and license taxes as prescribed in s. 624.501 (Filing, license and miscellaneous fees). Every such appointment shall be subject to the issuance of the appropriate agent's license.

(2) As a part of each appointment there shall be a certified statement or affidavit of an appropriate officer or official of the appointing insurer or of its general agent stating what investigation, if any, the insurer or general agent has made concerning the proposed agent and his background, and the insurer's or general agent's opinion to the best of its knowledge and belief as to the moral character, fitness and reputation of the proposed appointee.

(3) In the appointment of a life agent the insurer shall also certify therein, if true, that the applicant has the necessary training or that the insurer will guarantee that he will have the necessary training to hold himself out as a life agent; and the insurer shall further certify that it is willing to be bound by the acts of such life agent, within the scope of his employment.

**History.**—s. 224, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§626.461 Continuation of appointment of agent.**—Subject to annual renewal or continuation by the insurer as provided in s. 626.391, in the case of life agents, disability agents, and agents holding limited licenses under s. 626.321, and as provided in s. 626.381 in the case of general lines agents, the insurer's appointment of the agent shall continue in effect until the agent's license is revoked or otherwise terminated, unless written notice of earlier termination of the appointment is filed with the department by either the insurer or the agent.

**History.**—s. 225, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **§626.471 Termination of appointment of agent.—**

(1) Subject to the agent's contract rights, an insurer may terminate its appointment of any general lines agent, life agent, disability agent, or limited license agent at any time. Except when termination is upon a ground which would subject the agent to suspension or revocation of his license under s. 626.611 or s. 626.621, the insurer shall give at least 60 days' advance written notice of its intention to terminate such appointment to the agent, except such 60 days' advance notice of its intention to terminate such appointment shall not apply to a life or disability agent, either by delivery thereof to the agent in person or by mailing it, postage prepaid, and addressed to the agent at his address last of record with the insurer or the insurer's general agent. Notice so mailed shall be deemed to have been given when deposited in a United States Post Office mail depository. As soon as possible and at all events within 30 days after terminating the appointment of

an agent (other than as to an appointment terminated by the insurer's failure to continue or renew it) the insurer shall file written notice thereof with the department, together with a statement that it has given the agent notice thereof as hereinabove provided.

(2) If the termination is by an insurer or a life agent of a primary license, the department shall terminate the same and, after lapse of 60 days, send a termination notice to all other insurers represented by the agent, provided no other primary license has been issued.

(3) Upon termination of the appointment of an agent, whether by failure to renew or continue the appointment or license or otherwise, the insurer shall:

(a) File with the department the information required under s. 626.511.

(b) Subject to the exceptions provided under subsection (1), continue the outstanding contracts transacted by a general lines agent until the expiration date or anniversary date when the policy is a continuous policy with no expiration date. This paragraph shall not be construed to prohibit the cancellation of such contracts when not otherwise prohibited by law.

(4) An agent may terminate his appointment by an insurer at any time, by giving written notice thereof to the insurer and filing a copy of the notice with the department. Such termination shall be subject to the insurer's contract rights.

(5) Upon receipt of notice of termination of the agency appointment of an agent, the department shall forthwith terminate the pertinent license of the licensee.

**History.**—s. 226, ch. 59-205; ss. 13, 35, ch. 69-106; s. 1, ch. 71-327; s. 6, ch. 72-34; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **§626.481 Termination of appointment of solicitor.—**

(1) An agent terminating the appointment of a solicitor (other than by failure to renew or continue the appointment as provided in s. 626.401) shall immediately file written notice thereof with the department, together with a statement that it has given or mailed notice thereof to the solicitor. Notice mailed to the solicitor addressed to him at his address last of record with the agent, postage prepaid, shall be deemed to be given when placed in a United States Post Office mail depository.

(2) As to each such termination the appointing agent shall file with the department the information relative thereto as required under s. 626.511.

(3) Upon receipt of the notice of termination of the appointment, the department shall forthwith terminate the solicitor's license.

**History.**—s. 227, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **§626.491 Termination of appointment of adjuster, service representative, supervising or managing general agent, or claims investigator.—**



(1) The employer of any adjuster, service representative, supervising or managing general agent, or claims investigator shall promptly file with the department written notice of any termination of the appointment and employment of the licensee or permittee, together with a statement as to the reasons for such termination.

(2) Information, documents, records, and statements furnished or disclosed to the department pursuant to subsection (1) shall be privileged and shall not be basis for or admissible as evidence in any action against the employer.

(3) Upon receiving any such notice of termination, the department shall forthwith terminate the license or permit affected thereby.

**History.**—s. 228, ch. 59-205; ss. 13, 35, ch. 69-106; s. 8, ch. 71-86; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **§626.501 Alphabetical lists of licenses continued or terminated.—**

(1) The insurer in the case of agents, and the appointing general lines agent in the case of solicitors, shall annually, prior to:

(a) March 1, in the case of appointments and licenses of life agents, disability agents, and of agents holding limited licenses issued under s. 626.321, or

(b) September 1, in the case of appointments and licenses of general lines agents or solicitors,

file with the department an alphabetical list for each such license type and class, of the names and addresses of each licensee whose appointment and license in this state is being renewed or is to continue in effect, accompanied by payment of the applicable renewal or continuation fees and license taxes.

(2) At the same time the insurer or general lines agent, as the case may be, shall also file with the department an alphabetical list for each such license type and class of the names and addresses of each licensee whose appointment and license in this state is being terminated and is not to remain in effect, accompanied by a statement of the appointing insurer or its general agent or by the appointing general lines agent, as the case may be, and such other reasonable proof as the department may prescribe or accept, that written notice of intention so to terminate his appointment and license has been given to each such licensee. Such notice of intention to terminate may be given, for the purposes of this provision, either by delivery thereof to the licensee or by mailing it postage prepaid and addressed to the licensee at his address last of record with the appointing insurer or appointing general lines agent, as the case may be; notice so mailed shall be deemed to have been given when placed in a mail depository of the United States Post Office.

(3) As to each such appointment and license being terminated, as referred to in subsection (2), the appointing insurer or general lines agent shall also file with the department the information as to the reasons and facts involved in such termination as required under s. 626.511.

**History.**—s. 229, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective

July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **§626.511 Reasons for termination; privileged information.—**

(1) Any insurer terminating the appointment and license of an agent, any general lines agent terminating the appointment and license of a solicitor, and any employer terminating the employment, license, or permit of an adjuster, service representative, supervising or managing general agent, or claims investigator, whether such termination is by direct action of the appointing insurer, agent, or employer, or by failure to renew or continue the appointment and license as in part I of this chapter provided, shall file with the department a statement of the reasons, if any, for, and facts relative to, such termination, unless the termination is for a license other than a primary license of a life agent and such termination is for the sole reason that the life agent's primary license was terminated by the appointing insurer or the agent to whom it was issued. In the case of termination of the appointment of agents, such information may be filed by the insurer or by the insurer's general agent.

(2) In the case of terminations by failure to renew or continue the appointment or license, the information required under subsection (1), shall be filed with the department as soon as possible, and at all events within 30 days, after the date notice of intention not to so renew or continue was filed with the department as required in this chapter. In all other cases the information required under subsection (1) shall be filed with the department at the time of, or at all events within 10 days after, notice of the termination was filed with the department as required in part I of this chapter.

(3) Any information, document, record, or statement so furnished or disclosed to the department shall be absolutely privileged and shall not be admissible as evidence in or as basis for any action against the appointing insurer or general lines agent, or employer, or against any representative of any of the foregoing.

**History.**—s. 230, ch. 59-205; ss. 13, 35, ch. 69-106; s. 9, ch. 71-86; s. 7, ch. 72-34; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **§626.521 Character, credit reports.—**

(1) As to each applicant who for the first time in this state is applying and qualifying for a license as agent, solicitor, or adjuster, or for a permit as service representative, supervising or managing general agent, or claims investigator, the appointing insurer or its manager or general agent in this state (in the case of agents), or the appointing general lines agent (in the case of solicitors), or the employer (in the case of service representatives, claims investigators, and of adjusters who are not to be self-employed) shall coincidentally with such appointment or employment secure and thereafter keep on file a full detailed credit or character report, made by an established and reputable independent credit reporting service, relative to the individual so appointed or employed; except that a life insurer may use its own reporting service for the making of such a report,

unless otherwise expressly requested by the department.

(2) Within 60 days after such appointment or employment has been made or commenced, the insurer, manager, general agent, general lines agent, or employer, as the case may be, shall furnish to the department on a form furnished by the department, such information as it may reasonably require relative to such individual and investigation; except, that in the case of a life insurer such information shall be so furnished to the department upon its request.

(3) As to such applicants for adjuster license who are to be self-employed the department shall secure, at the cost of the applicant, a full detailed credit or character report, made by an established and reputable independent credit reporting service relative to the applicant.

(4) Any information so furnished shall be absolutely privileged and shall not be admissible or used as evidence in any action against the insurer, manager, general agent, general lines agent, employer, reporting service, or other persons furnishing the same.

**History.**—s. 231, ch. 59-205; ss. 13, 35, ch. 69-106; s. 10, ch. 71-86; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **§626.531 Insurance vending machines.—**

(1) A licensed resident agent appointed by the insurer and licensed as to disability insurance (whether under a general lines agent license or otherwise) may solicit applications for and issue policies of personal travel accident insurance by means of mechanical vending machines or other coin-operated devices supervised by him and placed at airports, railroad stations, or bus stations, where transportation tickets for common carriers are sold and of convenience to the traveling public, upon the following conditions only:

(a) That the policy to be so sold provides reasonable coverage and benefits, is reasonably suited for sale and issuance through vending machines, and that use of such a machine therefor in a particular proposed location would be of material convenience to the public;

(b) That the type of vending machine proposed to be used is reasonably suitable and practical for the purpose;

(c) That reasonable means, as determined by the department, are provided for informing the prospective purchaser of any such policy of the coverage and restrictions of the policy;

(d) That prompt refund is provided to the applicant or prospective applicant of money inserted in defective machines and for which no insurance, or a less amount than paid for, is actually received;

(e) Such vending machine shall be so constructed and operated that it shall retain a copy of the application, showing the date, name and address of applicant and beneficiary and the amount of insurance;

(f) No policy of insurance vended through such machine shall be for a period of time longer than 48 hours, or for the duration of a specified one-way trip or round trip, as applicable;

(g) Each such machine shall have provided on it

or immediately adjacent thereto, in a prominent location, adequate envelopes for the use of patrons of such machines in mailing the policies vended through such machines, or that the policy itself (if designed to permit such procedure) may be mailed without an envelope; and

(h) Such licensed agent shall cause to be inspected and tested each such vending machine with reasonable frequency, and at least once each day on 5 out of each 7 days; and should same not be in good working condition shall cause a notice to be prominently displayed thereon that the same is out of order. Such notice shall be maintained so long as such condition exists.

(2) As to each such vending machine to be so used, the department shall issue to the agent a special vending machine license. The license shall apply to a specific machine or to any machine of identical type which is substituted for it, and shall specify the name and address of the insurer and agent, the name of the policy to be so sold, the serial number of the machine, and the place where the machine is to be in operation. The license shall be subject to termination, suspension, or revocation coincidentally with that of the agent. The department shall also revoke the license as to any machine as to which it finds that any of the conditions upon which the machine was licensed as referred to in subsection (1), have been violated, or no longer exist. Proof of the existence of a subsisting license shall be displayed on or about each such vending machine in use in such manner as the department may reasonably require.

**History.**—s. 232, ch. 59-205; s. 1, ch. 63-20; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **§626.532 Continuation, expiration of insurance vending machine license.—**

(1) The license of a vending machine shall continue in force until expired, suspended, revoked, or otherwise terminated, but subject to annual continuation by the agent named therein on or before September 1 by payment of the fee as provided in s. 624.501, for each license year or part thereof for each respective vending machine.

(2) The agent shall on or before September 1 of each year furnish to the department at its office at Tallahassee a list and information as to the vending machine licenses being renewed or continued or terminated, accompanied by payment of the applicable fees. Such list shall give the name and address of the insurer and agent, name of the policy to be sold, serial number of the vending machine, and the place where the machine is to be in operation.

(3) Any such license as to which request for renewal or continuation is not received by the department at its office at Tallahassee, as required by subsection (1) shall be deemed to have expired as at midnight on the September 30 next following such failure. Request for renewal or continuation of any such license or payment of fees therefor which is received by the department after such September 1 but on or before the next following October 15 may be accepted and effectuated by the department, in its discretion; and any such request and payment received by the department after such October 15 and

on or before the next following November 15, may be accepted and effectuated by the department, in its discretion, only if accompanied by an additional license continuation fee of \$15.

**History.**—s. 2, ch. 63-20; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**626.541 Corporation and business names; officers; associates; notice of changes.—**

(1) Any individually licensed agent or agents, or adjuster or adjusters, doing business under a firm or corporation name or under any business name other than their own individual name or names shall annually on or before September 1 file with the department, on forms furnished by it a written statement of the firm, corporation or business name being so used, the address of any office or offices or places of business making use of such name, and the name and residence address of each director and each officer of the corporation and of each individual associated in such firm or corporation as to the insurance transactions thereof or in the use of such business name.

(2) In the event of any change of such name, or directors or officers, or of any of such addresses, or in the personnel so associated, written notice of such change shall promptly be filed with the department by or on behalf of those licensees terminating any such firm, corporation, or business name or continuing to operate thereunder.

**History.**—s. 233, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**626.551 Notice of change of address.—**Every licensed agent or adjuster shall promptly notify the department in writing of a change of his principal business address.

**History.**—s. 234, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**626.561 Reporting and accounting for funds.—**

(1) All premiums, return premiums or other funds belonging to insurers or others received by an agent, solicitor or adjuster in transactions under his license shall be trust funds so received by the licensee in a fiduciary capacity, and the licensee in the applicable regular course of business shall account for and pay the same to the insurer, insured or other person entitled thereto.

(2) Any agent, solicitor or adjuster who, not being lawfully entitled thereto, diverts or appropriates such funds or any portion thereof to his own use, shall upon conviction be guilty of larceny by embezzlement and shall be punished as provided by law.

**History.**—s. 235, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**626.571 Delinquent agencies; notice of trusteeship.—**If any agent or agency becomes delinquent in payment of accounts owing to the insurer or insurers represented by the agent or agency, and

a trusteeship or similar arrangement for the administration of the affairs of the agent or agency is instituted, the insurer or insurers involved therein shall immediately give written notice thereof to the department. The notice shall state the name and address of each such agent, the circumstances and estimated amount of delinquency, and such other information as the insurer deems pertinent or as the department may reasonably require.

**History.**—s. 236, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**626.581 Commissions contingent upon adjustment savings prohibited.—**

(1) It shall be unlawful for any insurer to enter into any agreement or understanding with its general or state agent or for any insurer, either directly or through its general or state agent, to enter into any agreement or understanding with any local resident agent of such insurer in this state, the effect of which is to make the net amount of any such agent's commissions on policies of insurance negotiated and issued by such insurer in this state contingent upon savings effected in the adjustment, settlement and payment of losses covered by such insurer's policies, and in pursuance of which agreement or understanding the agent acts as adjuster for claims under such policies and pays claims incurred by such insurer under the policies from a stated percentage of the premiums collected or remitted to the agent thereon and retained by him; and any such agreements and understandings now existing are declared unlawful and shall be terminated immediately.

(2) Nothing in this section shall be construed to apply to or affect any contingent commissions agreement under which the general or state agent or local resident agent does not pay claims arising under policies of the insurer he represents from a stated percentage of premiums collected by him or remitted to such agent and retained by him.

**History.**—s. 237, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**626.591 Same; penalty for violation.—**If any insurer or agent is found by the department to be in violation of s. 626.581 the department may, in its discretion, suspend or revoke the insurer's certificate of authority and the agent's license. Any such suspension or revocation shall be for a period of not less than 6 months, and the insurer or agent shall not subsequently be authorized or licensed to transact insurance unless the department is satisfied that the insurer or agent will not again violate any of the provisions of s. 626.581.

**History.**—s. 238, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**626.601 Improper conduct; inquiry.—**

(1) The department may, upon its own motion, and shall, upon a written complaint signed by any interested person and filed with the department, inquire into any alleged improper conduct of any li-



censed agent, solicitor or adjuster in this state, or of any person holding a permit as service representative, supervising or managing general agent, or claims investigator under this code.

(2) In the prosecution of such inquiries the agent, solicitor or adjuster shall, whenever so required by the department, cause his books and records to be open for inspection for the purpose of such inquiries.

(3) As a prerequisite to exercising the right or authority to investigate the books and records of such a licensee, the department shall serve upon the licensee a copy of the general charges against him, so as to apprise the licensee of the general purpose, nature, and scope of the investigation or inquiry, and including the name and identity of the person, if any, who may have filed a complaint with the department as referred to in subsection (1) if the investigation is in any way related to such complaint.

(4) Such general charges are not required to allege any facts constituting any alleged improper conduct of the licensee, for such inquiry or investigation is authorized as a factfinding inquiry or investigation for the purpose of determining the existence or nonexistence of facts constituting such improper conduct as would justify the department in instituting proceedings to suspend or revoke the license of any such licensee as hereinafter in this chapter provided.

(5) Service of such copy of general charges may be made by delivering copy to the licensee or mailing same by registered or certified mail with return receipt requested addressed to him at his business or residence address. If so mailed, notice shall be deemed to have been given when deposited in a mail depository of the United States Post Office.

(6) The charges or complaints against any agent, solicitor or adjuster may be informally alleged and need not be in any such language as is necessary to charge a crime on an indictment or information.

(7) The expense for any hearings or investigations under this law, as well as the fees and mileage of witnesses, may be paid out of the appropriate fund.

**History.**—s. 239, ch. 59-205; ss. 13, 35, ch. 69-106; s. 11, ch. 71-86; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§626.611 Grounds for compulsory refusal, suspension, revocation of license or permit.**—The department shall deny, suspend, revoke, or refuse to renew or continue the license of any agent, solicitor, or adjuster, or the permit of any service representative, supervising or managing general agent, or claims investigator, and it shall suspend or revoke the eligibility to hold a license or permit of any such persons if it finds that as to the applicant, licensee, or permittee any one or more of the following applicable grounds exist:

(1) Lack of one or more of the qualifications for the license or permit as specified in this code.

(2) Material misstatement, misrepresentation, or fraud in obtaining the license or permit, or in attempting to obtain the same.

(3) Failure to pass to the department's satisfaction any examination required under this code.

(4) If the license or permit is willfully used, or to

be used, to circumvent any of the requirements or prohibitions of this code.

(5) Willful misrepresentation of any insurance policy or annuity contract or willful deception with regard to any such policy or contract, done either in person or by any form of dissemination of information or advertising.

(6) If, as an adjuster or claims investigator or agent permitted to adjust claims under this code, he has materially misrepresented to an insured or other interested party the terms and coverage of an insurance contract with intent and for the purpose of effecting settlement of claim for loss or damage or benefit under such contract on less favorable terms than those provided in and contemplated by the contract.

(7) For demonstrated lack of fitness or trustworthiness to engage in the business of insurance.

(8) For demonstrated lack of reasonably adequate knowledge and technical competence to engage in the transactions authorized by the license or permit.

(9) Fraudulent or dishonest practices in the conduct of business under the license or permit.

(10) Misappropriation, conversion, or unlawful withholding of moneys belonging to insurers or insureds or beneficiaries or to others and received in conduct of business under the license.

(11) For rebating, or attempt thereat, or for unlawfully dividing or offering to divide his commission with another.

(12) Has obtained or attempted to obtain or has used or is using a license as agent or solicitor for the purpose of soliciting or handling "controlled business" as such controlled business is defined in an applicable provision of this code.

(13) Willful failure to comply with, or willful violation of, any proper order, rule, or regulation of the department or willful violation of any provision of this code.

(14) Has been found guilty of, or has pleaded guilty or nolo contendere to, a felony in this state or any other state which involves moral turpitude, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of such cases.

**History.**—s. 240, ch. 59-205; ss. 13, 35, ch. 69-106; s. 12, ch. 71-86; s. 160, ch. 73-333; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

cf.—s. 112.011 Felons; removal of disqualifications for employment, exceptions.

**§626.621 Grounds for discretionary refusal, suspension, or revocation of license or permit.**—

The department may, in its discretion, deny, suspend, revoke, or refuse to renew or continue the license of any agent, solicitor, or adjuster, or the permit of any service representative, supervising or managing general agent, or claims investigator, and it may suspend or revoke the eligibility to hold a license or permit of any such persons if it finds that as to the applicant, licensee, or permittee any one or more of the following applicable grounds exist under circumstances for which such denial, suspension, revocation, or refusal is not mandatory under s. 626.611:

(1) For any cause for which issuance of the li-

cense or permit could have been refused had it then existed and been known to the department.

(2) Violation of any provision of this code or of any other law applicable to the business of insurance in the course of dealing under the license or permit.

(3) Violation of any lawful order or rule or regulation of the department.

(4) Failure or refusal, upon demand, to pay over to any insurer he represents or has represented any money coming into his hands belonging to the insurer.

(5) Violation of the provision against "twisting," as defined in s. 626.955.

(6) If in the conduct of business under the license or permit he has engaged in unfair methods of competition or in unfair or deceptive acts or practices, as prohibited under part VII of this chapter, or has otherwise shown himself to be a source of injury or loss to the public or detrimental to the public interest.

(7) Willful overinsurance of any property insurance risk.

(8) If such person has been found guilty of, or has pleaded guilty or nolo contendere to, a felony in this state or any other state, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of such cases.

(9) If a life agent, he has violated the code of ethics.

**History.**—s. 241, ch. 59-205; ss. 13, 35, ch. 69-106; s. 13, ch. 71-86; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

cf.—s. 112.011 Felons; removal of disqualifications for employment, exceptions.

#### **626.631 Procedure for refusal, suspension, or revocation of license or permit.—**

(1) If any licensee or permittee is convicted by a court of a violation of this code or a felony, the license or permit of such individual shall thereby be deemed to be immediately revoked without any further procedure relative thereto by the department.

(2) The department's papers, documents, reports, or evidence relative to a hearing for revocation or suspension of a license pursuant to the provisions of this chapter and chapter 120 shall not be subject to subpoena without the department's consent, except for subpoenas issued pursuant to the hearing for revocation or suspension, until after the same shall have been published at the hearing, unless after notice to the department and hearing the court determines that the department would not be unnecessarily hindered or embarrassed by such subpoenas.

**History.**—s. 242, ch. 59-205; ss. 13, 35, ch. 69-106; s. 14, ch. 71-86; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **626.641 Duration of suspension or revocation.—**

(1) The department shall, in its order suspending a license or permit or in its order suspending the eligibility of a person to hold or apply for such license or permit, specify the period during which the suspension is to be in effect, but such period shall not exceed 1 year. The license, permit, or eligibility shall remain suspended during the period so specified,

subject, however, to any rescission or modification of the order by the department, or modification or reversal thereof by the court, prior to expiration of the suspension period. A license, permit, or eligibility which has been suspended shall not be reinstated except upon request for such reinstatement, but the department shall not grant such reinstatement if it finds that the circumstance or circumstances for which the license, permit, or eligibility was suspended still exist or are likely to recur.

(2) No individual licensed or the permittee under any license or permit revoked by the department, or any individual who has had his eligibility to hold same revoked by the department, shall have the right to apply for another license or permit under this code within 2 years from the effective date of such revocation or, if judicial review of such revocation is sought, within 2 years from the date of final court order or decree affirming the revocation. The department shall not, however, grant a new license or permit or reinstate eligibility to hold such license or permit if it finds that the circumstance or circumstances for which the eligibility was revoked or for which the previous license or permit was revoked still exist or are likely to recur; if an individual's license as agent or solicitor or eligibility to hold same has been revoked upon the ground specified in s. 626.611(12) (controlled business), the department shall refuse to grant or issue any new license so applied for.

(3) If licenses as agent or solicitor, or the eligibility to hold same, as to the same individual have been revoked at two separate times, the department shall not thereafter grant or issue any license or permit under this code as to such individual.

(4) During the period of suspension, or after revocation of the license or permit, the former licensee or permittee shall not engage in or attempt to profess to engage in any transaction or business for which a license or permit is required under this code.

**History.**—s. 243, ch. 59-205; ss. 13, 35, ch. 69-106; s. 15, ch. 71-86; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **626.651 Effect of suspension, revocation upon associated licenses and licensees.—**

(1) Upon suspension, revocation, or refusal to renew or continue any one license of an agent or solicitor, or upon suspension or revocation of eligibility to hold a license or permit, the department may at the same time likewise suspend or revoke all other licenses or status of eligibility held by the licensee under this code.

(2) In case of the suspension or revocation of license of any general lines agent, or in case of suspension or revocation of eligibility, the license of any and all other agents who are members of such agency, whether incorporated or unincorporated, and any and all solicitors employed by such agency, who knowingly are parties to the act which formed the ground for the suspension or revocation may likewise be suspended or revoked for the same period as that of the offending agent; but this shall not prevent any agent or solicitor, except the one whose license was first suspended or revoked, from being licensed as a member of or a solicitor for some other agency.

The provisions of this subsection shall not apply to life agents.

**History.**—s. 244, ch. 59-205; ss. 13, 35, ch. 69-106; s. 16, ch. 71-86; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1626.661 Surrender of license or permit.—**

(1) Though issued to a licensee or permittee, all certificates of licenses and permits issued under this chapter are at all times the property of the State of Florida, and upon notice of any suspension, revocation, refusal to renew, failure to renew, expiration or other termination of the license, such license or permit shall no longer be in force and effect.

(2) This section shall not be deemed to require the surrender to the department of any certificate of license or permit, unless such surrender has been requested by the department.

**History.**—s. 245, ch. 59-205; s. 2, ch. 61-105; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1626.671 Penalty for violation.**—Any individual who knowingly makes a false or otherwise fraudulent application for any license or permit under part I of this chapter, or who knowingly violates any provision of part I of this chapter, shall upon conviction thereof and in addition to any applicable denial, suspension, revocation, or refusal to renew or continue any license or permit, be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Each instance of violation shall be considered a separate offense.

**History.**—s. 246, ch. 59-205; s. 649, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1626.681 Administrative fine in lieu of suspension, revocation, or refusal of license.—**

(1) If the department finds that one or more grounds exist for the suspension, revocation, or refusal to renew or continue any license or permit issued under this chapter, the department may, in its discretion, in lieu of such suspension, revocation, or refusal, and except on a second offense or where such suspension, revocation, or refusal is mandatory, impose upon the licensee or permittee an administrative penalty in the amount of \$100 or, if the department has found willful misconduct or willful violation on the part of the licensee or permittee, \$500. The administrative penalty may, in the department's discretion, be augmented in amount by an amount equal to any commissions received by or accruing to the credit of the licensee in connection with any transaction as to which the grounds for suspension, revocation, or refusal related.

(2) The department may allow the licensee or permittee a reasonable period, not to exceed 30 days, within which to pay to the department the amount of the penalty so imposed. If the licensee or permittee fails to pay the penalty in its entirety to the department at its office at Tallahassee within the

period so allowed, the licenses or permit of the licensee or permittee shall stand suspended or revoked or renewal or continuation shall be refused, as the case may be, upon expiration of such period.

**History.**—s. 247, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1626.691 Probation.—**

(1) If the department finds that one or more grounds exist for the suspension, revocation, or refusal to renew or continue any license or permit issued under this part, the department may, in its discretion, except where an administrative fine is not permissible under s. 626.681 or where such suspension, revocation, or refusal is mandatory, in lieu of such suspension, revocation, or refusal, or in connection with any administrative monetary penalty imposed under s. 626.681, place the offending licensee or permittee on probation for a period, not to exceed 2 years, as specified by the department in its order.

(2) As a condition to such probation or in connection therewith, the department may specify in its order reasonable terms and conditions to be fulfilled by the probationer during the probation period. If during the probation period the department has good cause to believe that the probationer has violated such terms and conditions or any of them, it shall suspend, revoke, or refuse to renew or continue the license or permit of the probationer, as upon the original ground or grounds referred to in subsection (1).

**History.**—s. 248, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1626.711 Retaliatory provision, agents.—**

(1) When under the laws of any other state any fine, tax, penalty, license fee, deposit of money, or security, or other obligation or prohibition is imposed upon resident insurance agents of Florida doing business in such other state, then so long as such laws continue in force or are so administered, the same requirements, obligations and prohibitions, of whatever kind, shall be imposed upon every insurance agent of such other state doing business in Florida.

(2) If any insurer permits its insurance contract to be issued in violation of this section, its certificate of authority to do business in Florida shall be suspended for a period of 3 months.

(3) If any resident agent of Florida shall knowingly countersign any insurance contract in violation of this section, or shall otherwise knowingly violate any of the provisions hereof, his license to write insurance in this state shall be suspended for a period of 3 months.

(4) This section does not apply as to life or disability insurance.

**History.**—s. 250, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior



to that date.

## PART II

### GENERAL LINES AGENTS AND SOLICITORS; QUALIFICATIONS AND REQUIREMENTS

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**626.726 Short title.**—This part may be referred to in any legal proceedings as the "General Lines Agents Law."

**History.**—s. 252, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**626.727 Scope of this part.**—This part applies only as to:

- (1) "General lines agents," as defined in s. 626.041;
- (2) "Solicitors," as defined in s. 626.071; and
- (3) "Service representatives," as defined in s.

626.081, or "supervising or managing general agents," as defined in s. 626.091.

**History.**—s. 251, ch. 59-205; s. 17, ch. 71-86; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**626.728 This part is supplementary to Licensing Law.**—This part is supplementary to part I of this chapter of the code, "the Licensing Procedures Law."

**History.**—s. 253, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**626.729 "Industrial fire insurance" defined.**—For the purposes of this code "industrial fire insurance" is insurance against loss by fire of either buildings and other structures or contents, which may include extended coverage and windstorm insurance, under which the premiums are collected monthly or more often and the face amount of the insurance provided by the policy on one risk is not more than \$10,000 including the contents of such buildings and other structures and the insurer issuing such policy is operating under a system of collecting a debit by its agents. A temporary license issued pursuant to s. 626.740 shall be solely for the purpose of collecting premiums and servicing in force policies, and such licensee shall not directly or indirectly solicit, negotiate, or effect contracts of insurance.

**History.**—s. 254, ch. 59-205; s. 1, ch. 67-327; s. 1, ch. 73-118; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**626.730 Purpose of license.**—

(1) The purpose of a license issued under this code to a general lines agent or solicitor is to authorize and enable the licensee actively and in good faith to engage in the insurance business as such an agent or solicitor with respect to the general public, and to facilitate the public supervision of such activities in the public interest; and not for the purpose of enabling the licensee to receive a rebate of premium in the form of "commission" or other compensation as an "agent" or "solicitor," or to enable the licensee to receive commissions or other compensation based upon insurance solicited or procured by or through him upon his own interests or those of other persons with whom he is closely associated in capacities other than that of insurance agent or solicitor.

(2) The department shall not grant, renew, continue, or permit to exist any license as such agent or solicitor as to any applicant therefor or licensee thereunder if it finds that the license has been or is being or will probably be used by the applicant or licensee for the purpose of securing rebates or commissions on "controlled business," that is, on insurance written on his own interests or those of his family or of any firm, corporation or association with which he is associated, directly or indirectly, or in which he has an interest other than as to the insurance thereof.

(3) A violation of this section shall be deemed to exist or be probable (as to an applicant for license) if the department finds that during any 12-month period aggregate commissions or other compensation ac-

cruing in favor of the applicant or licensee based upon the insurance procured or to be procured (in the case of an applicant for license) by or through the licensee with respect to insurance of his own interests or those of his family or of any firm, corporation or association with which he is associated or in which he is interested as above referred to in subsection (2), have exceeded or will exceed 35 percent of the aggregate amount of commissions and compensation accruing or to accrue in his favor during the same period as to all insurance coverages procured or to be procured by or through him. Except, any general lines agent who, on July 1, 1959, had aggregate commissions or other compensation on controlled business as defined in this section in excess of the aforesaid 35 percent, shall be permitted to continue writing such insurance for the same insured or insureds, so long as the agent continues to hold a general lines agent's license in good standing to transact the same kinds of insurance so written, until the termination of such license by failure to renew or continue, suspension or revocation.

(4) This section shall not be deemed to prohibit the licensing under a limited license as to motor vehicle physical damage insurance, as provided for in s. 626.321, any person employed by or associated with a motor vehicle sales or financing agency, with respect to insurance of the interest of such agency in a motor vehicle sold or financed by it. This section shall not apply with respect to the interest of a real estate mortgagee in or as to insurance covering such interest, or in the real estate subject to such mortgage.

**History.**—s. 255, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **626.731 Qualifications for agent license.—**

The department shall not grant or issue a license as general lines agent to any individual found by it to be untrustworthy or incompetent or who does not meet each and all of the following qualifications, and unless from the application for license it affirmatively appears:

(1) That the applicant is a natural person of at least 18 years of age.

(2) That the applicant has been a bona fide resident of this state for at least 1 year last past, and will actually reside in this state at least 6 months out of each year. The 1-year residency requirement of this subsection shall not apply to an applicant for a limited license under paragraph 626.321(1)(b) who is a bona fide resident of this state.

(3) That his place of business will be located in this state and he will be actively engaged in the business of insurance, and will maintain a place of business accessible to the public.

(4) That the license is not being sought for the purpose of writing or handling controlled business, in violation of s. 626.730.

(5) That the applicant is qualified as to knowledge, experience, or instruction in the business of insurance and meets the requirements relative thereto as provided in s. 626.732.

(6) That the applicant is not a service representative, as defined in s. 626.081, nor a supervising or

managing general agent, as defined in s. 626.091, nor a special agent or similar service representative of a disability insurer which also transacts property, casualty, or surety insurance; except, that the president, vice president, secretary or treasurer, including a member of the board of directors, of a corporate insurer, if otherwise qualified under and meeting the requirements of this part, may be licensed as a local resident agent.

**History.**—s. 256, ch. 59-205; ss. 13, 35, ch. 69-106; s. 1, ch. 75-303; s. 3, ch. 76-168; s. 1, ch. 77-116; s. 52, ch. 77-121; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **626.732 Requirement as to knowledge, experience or instruction.—**

(1) Except as provided in subsection (3), no applicant for a license as a general lines agent (other than as to a limited license as to baggage insurance pursuant to s. 626.321 (1)(d)) shall be qualified therefor or be so licensed unless within the 2 years immediately preceding the date his application for license is filed with the department, he has:

(a) Successfully completed classroom courses in insurance satisfactory to the department at a school, college, or extension division thereof, approved by the department;

(b) Completed a correspondence course in insurance satisfactory to the department and regularly offered by accredited institutions of higher learning in this state and, except those applying for limited licenses under s. 626.321, has had at least 6 months of responsible insurance duties as a substantially full-time bona fide employee of an agent, an insurer, their managers, general agents, or representatives, in all lines of insurance set forth in s. 626.041(1); or

(c) Had at least 1 year in responsible insurance duties as a substantially full-time bona fide employee of an agent, an insurer, their managers, general agents, or representatives, in all lines of insurance (exclusive of aviation and wet marine and transportation insurances, but not exclusive of boats of less than 36 feet in length or aircraft not held out for hire) as set forth in s. 626.041(1), without the education requirement mentioned in paragraphs (a) or (b).

(2) Where applicant's qualifications as required in paragraphs (b) or (c) are based in part upon the periods of employment at responsible insurance duties prescribed therein, the applicant shall submit with his application for license, on a form prescribed by the department, the affidavit of his employer setting forth the period of such employment, that the same was substantially full-time, and giving a brief abstract of the nature of the duties performed by the applicant.

(3) In the case of applicants for license who are enrolled in and actively pursuing classroom courses as referred to in subsection (1)(a), or a correspondence course as specified in subsection (1)(b), the department may in its discretion permit the applicant to file his application for license not earlier than 60 days prior to the completion of such courses and of the 6 months of insurance employment and experience as referred to in subsection (1)(b), in order that the completion of the courses and of such insurance employment and experience may run concurrently

with the 60-day waiting period required under s. 626.231(2) for eligibility for examination. An individual who was qualified to sit for an agent's or adjuster's examination at the time he was employed by the department and who while so employed was employed in responsible insurance duties as a full-time bona fide employee shall be permitted to take an examination if application for such examination is made within 90 days after the date of termination of his employment with the department.

**History.**—s. 257, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**626.733 Agency firms and corporations; special requirements.**—If a partnership, corporation, or association holds an agency contract all members of the partnership or association who solicit, negotiate or effect insurance contracts, and all officers and stockholders of the corporation who solicit, negotiate or effect insurance contracts are required to qualify and be licensed individually as agents, and all of such agents shall be individually appointed by and licensed as to each property and casualty insurer entering into an agency contract with such agency. Each such appointing insurer as soon as known to it shall comply with this section and shall determine and require that each agent so associated in or so connected with such agency is likewise appointed and licensed as to the same such insurer and for the same type and class of license.

**History.**—s. 258, ch. 59-205; s. 18, ch. 71-86; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**626.734 Corporations, liability of agent.**—Any general lines insurance agent who is an officer, director, stockholder, or employee of an incorporated general lines insurance agency shall remain personally and fully liable and accountable for any wrongful acts, misconduct, or violations of any provisions of this code committed by such licensee or by any person under his direct supervision and control while acting on behalf of the corporation.

**History.**—s. 4, ch. 63-20; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**626.735 Qualifications for solicitor license.**—The department shall not grant or issue a license as solicitor as to any individual found by it to be untrustworthy or incompetent, or who does not meet each and all of the following qualifications, and unless from the application for the license it affirmatively appears:

- (1) That the applicant is a natural person.
- (2) That the applicant is a bona fide resident of this state and will actually reside in the state at least 6 months out of the year.
- (3) That within the 12 months next preceding the date the application for license was filed with the department, the applicant has completed a course in insurance approved by the department or has had at least 6-months experience in responsible insurance duties as the substantially full-time employee of an agent, or of an insurer, their managers, general

agents, or representatives.

(4) That the license is not being sought for the purpose of writing or handling controlled business, in violation of s. 626.730.

(5) That the applicant will be employed by only one agent or agency and the agency will appoint one agent within the agency who will supervise the work of the applicant and his conduct in the insurance business, and that the applicant will spend all of his business time in the employment of the agent or agency and will be domiciled in the office of the appointing agent as defined in s. 626.736.

(6) That as of upon issuance of the license applied for the applicant is not an agent, and is not a service representative, as defined in s. 626.081, nor a supervising or managing general agent, as defined in s. 626.091.

(7) That the appointing agent, if any, has endorsed the application, and has obligated himself thereby to supervise the solicitor's conduct and business.

**History.**—s. 259, ch. 59-205; ss. 13, 35, ch. 69-106; s. 19, ch. 71-86; s. 3, ch. 76-168; s. 1, ch. 77-116; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

cf.—s. 626.171 Application for license or permit.

**626.736 Solicitor's "office domicile" defined.**—"Domiciled in the office of the appointing agent" as used in s. 626.735(5) means that the solicitor shall be housed wholly and completely within the actual confines of the office of the agent whom he represents, together with any such furniture, books, records, equipment and paraphernalia necessary for the conduct of such insurance business. The solicitor shall not maintain any such office or furniture, books, records, equipment or paraphernalia at any other address or location, nor shall he maintain or make use of any other quarters, or space, or address, for the purpose of the conduct of such business. No advertising, letterhead, or telephone listing of the solicitor shall indicate any business address other than that of the agent by whom he is employed. No solicitor may be employed from any location except where an agent licensed to write such lines spends his full time in charge of such location.

**History.**—s. 260, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**626.737 Who may appoint solicitors; appointment exclusive.**—

(1) Every person duly licensed as a general lines agent, except those holding limited licenses provided for in s. 626.321, may appoint as solicitors any persons who hold or have qualified for a solicitor's license.

(2) The same individual shall not be licensed as solicitor as to more than one appointing agent or agency at any one time, as the name of such appointing agent or agency is designated in the solicitor's license.

(3) Appointment of a solicitor shall be made as part of the application for license, as provided in s. 626.171.

**History.**—s. 261, ch. 59-205; s. 20, ch. 71-86; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior



to that date.

**<sup>1</sup>626.738 Solicitor's powers; agent's or agency's responsibility.—**

(1) A solicitor's license shall not cover any kind of insurance for which the agent or agency by whom he is appointed is not then licensed.

(2) A solicitor, as such, shall not have power to bind an insurer upon or with reference to any risk or insurance contract, or to countersign his name to insurance contracts.

(3) All business transacted by a solicitor under his license shall be in the name of the agent or agency by whom he is appointed, and the agent or agency shall be responsible for all acts of the solicitor within the scope of such appointment.

**History.**—s. 262, ch. 59-205; s. 21, ch. 71-86; s. 3, ch. 76-168; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**<sup>1</sup>626.739 Temporary license; death, disability, absence of agent.—**

(1) The department may, in its discretion, issue a temporary license as agent to a licensed agent's employee, family member, business associate, or personal representative, or to the representative of a direct writing insurer of which the agent was the licensed agent in the area served by the agency, for the purpose of continuing or winding up the business affairs of the agent or agency, all subject to the following conditions:

(a) The agent so being replaced must have become deceased or unable to perform his duties as agent because of military service or illness or other physical or mental disability; or, in the case of a direct writing insurer, as above mentioned, have had his employment or agency appointment terminated by the insurer;

(b) There must be no other person connected with the agent's business who is licensed as a general lines agent.

(c) The proposed temporary licensee must be qualified as for a regular general lines agent's license under this code except as to residence, examination, education, or experience.

(d) Application for the temporary license must be made by the applicant upon statements and affidavit filed with the department on forms as prescribed and furnished by it.

(e) The temporary license shall be issued and be valid for a period of not over 6 months, and, except as to disabling or confining illness, shall not be renewed either to the then holder of the temporary license or to any other person for or on behalf of the agent, agency, or direct writing insurer.

(f) Under a temporary license the licensee shall not represent as agent any insurer not last represented by the agent so being replaced, nor be licensed as to any additional kind or classification of insurance than those covered by the last existing agency appointments of such replaced agent; except, that if during the temporary license period an insurer withdraws from such agency, the temporary licensee may be appointed and licensed as agent by another like insurer only for the period remaining under the temporary license originally issued as to such withdrawing insurer or during any renewal of

such original license as authorized under paragraph (e), and the agency contract between the licensee and such other insurer shall so provide. This provision shall not be deemed to prohibit termination of its appointment by any insurer.

(g) The holder of a temporary license may be granted a regular agent's license upon taking and successfully completing a classroom course or correspondence course in insurance or having the insurance employment experience as prescribed in s. 626.732, and passing an examination as required by s. 626.221; but the department may waive the requirements as to residence, and the time of taking such examination as prescribed in s. 626.231(2).

(2) Except in the case of renewal of a temporary license due to the continuing disability of the agent, as defined and provided for in paragraph (e), the department shall not grant to the same individual more than one temporary license during any 12-month period. There shall be not more than one renewal of the temporary license due to such disabling or confining illness of such licensed agent, and such renewal shall follow consecutively the expiration of the original temporary license, and in no event shall the total period covered by any original temporary license and the renewal thereof exceed 12 consecutive months.

(3) If a temporary licensee is used to replace an individual whose agency appointment or employment and license has been terminated by the insurer, such latter individual shall not again be appointed or licensed as an agent of the same insurer or affiliated insurers within a period of 24 months following the date of such termination.

(4) If an absent or disabled agent being replaced under a temporary license returns or becomes able to resume the active conduct of the agency, or if the disposition of the affairs of the agency of a deceased or mentally incompetent agent is completed, or the temporary licensee has qualified for a regular license, before expiration otherwise of the temporary license, the temporary license shall thereupon forthwith terminate, and the licensee shall promptly deliver the temporary license certificate to the department at Tallahassee for cancellation.

(5) The applicant for a temporary license shall pay to the department, prior to the issuance thereof, the applicable license fee as specified therefor in s. 624.501 (filing, license, and miscellaneous fees).

(6) Except as in this section expressly provided, the holder of a temporary license shall be subject to the same requirements and responsibilities as apply under this code to agents regularly licensed.

**History.**—s. 263, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**<sup>1</sup>626.740 Same; industrial fire agent; pending examination.—**

(1) The department may, in its discretion, issue a temporary limited license as industrial fire agent, as such a limited license is provided for in s. 626.321, for a temporary period not exceeding 90 days to an individual who is otherwise qualified, who is completing the educational or training requirements prescribed in s. 626.732, and who will, prior to termination of

such 90-day period, take the required examination.

(2) If the applicant fails to pass the first examination, his temporary license terminates, unless, in the department's discretion, the applicant is permitted to take a second examination. The department may issue a new temporary license for a period not to exceed 90 days to a person permitted to take a second examination. An applicant permitted to take the second examination shall file an application therefor and take the examination within the time set by the department. If he fails to pass the second examination, his temporary license shall be immediately terminated.

(3) The fee for such a temporary license shall be as specified in s. 624.501 (filing, license, and miscellaneous fees).

**History.**—s. 264, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-292; s. 1, ch. 77-457; s. 235, ch. 79-400.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **§626.741 Nonresident agents; licensing and restrictions.—**

(1) The department may, upon written application and the payment of a license fee as specified therefor in s. 624.501 (filing, license and miscellaneous fees), issue a license as a general lines agent to an individual who is otherwise qualified therefor under parts I and II (Licensing Procedures Law), but who is not a resident of this state, if by the laws of the state of his residence, residents of this state may be licensed in like manner as a nonresident agent of his state.

(2) The department shall not, however, issue any such license to any nonresident who has an office or place of business in this state, or who has any direct or indirect pecuniary interest in any insurance agent, insurance agency, or in any solicitor licensed as a resident of this state; nor to any individual who does not, at time of issuance and throughout the existence of the Florida license, hold a license as agent or broker issued by the state of his residence; nor to any individual who is employed by any insurer as a service representative or who is a supervising or managing general agent in any state, whether or not also licensed in another state as an agent or broker. The department shall have discretion to refuse to issue any such license to a nonresident when it has reason to believe that the applicant by ruse or subterfuge is attempting to avoid the intent and prohibitions contained in this subsection, or to believe that any of the grounds exist as for suspension or revocation of license as set forth in ss. 626.611 and 626.621.

(3) Such a nonresident shall not enter this state for the purpose of inspecting any risk or property without the written permission of the insured, or of a countersigning agent, resident in this state, on such risk. Nor shall he directly or indirectly solicit, negotiate or effect insurance contracts in this state unless accompanied by a countersigning agent, resident in this state, on such risk.

(4)(a) All insurance policies as defined in s. 627.402, written under the nonresident agent's license, including those written or issued pursuant to the Surplus Lines Law, part VI, on risks or property located in this state must be countersigned by a local

agent resident of this state; and it shall be the duty and responsibility of the nonresident agent, and, if called upon to do so by the countersigning agent, of the insurer likewise, to assure that such resident local agent receives the same commission as allowed by the state of residence of the nonresident agent, but in no event shall the resident local agent receive, accept, or retain less than 50 percent of the usual Florida local agent's commission, or 50 percent of the nonresident agent's commission, whichever is less, on policies of insurance covering property as defined in s. 624.604 and insurance covering in whole or in part real property and tangible personal property, including property floater policies. On all other policies of insurance, including insurance covering motor vehicles, plate glass, burglary, robbery, theft, larceny, boiler and machinery, workers' compensation, fidelity and surety, bodily injury liability, and property damage liability, in no event shall he receive, accept, or retain less than 25 percent of the usual Florida local agent's commission or 25 percent of the nonresident agent's commission, whichever is less.

(b) The provisions of this subsection, with respect to resident agent countersignature commission, shall not be applicable to any contracts of insurance purchased by a person whose premiums for insurance in the preceding year of such purchase exceeded \$250,000 in the aggregate. Nothing herein is intended to preclude the negotiation and payment of a commission to the countersigning agent to compensate him for services performed or to be performed.

(5) Except as in this section and s. 626.742 and s. 626.743 provided, nonresident agents shall be subject to the same requirements as apply to agents resident in this state.

**History.**—s. 265, ch. 59-205; ss. 13, 35, ch. 69-106; s. 1, ch. 74-148; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 89, ch. 79-40.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **§626.742 Same; service of process.—**

(1) Each licensed nonresident agent shall appoint the Insurance Commissioner and Treasurer as his attorney to receive service of legal process issued against the agent in this state, upon causes of action arising within this state out of transactions under his license. Service upon the Insurance Commissioner and Treasurer as attorney shall constitute effective legal service upon the agent.

(2) The appointment shall be irrevocable for as long as there could be any cause of action against the agent arising out of his insurance transactions in this state.

(3) Duplicate copies of such legal process against such agent shall be served upon the Insurance Commissioner and Treasurer by a person competent to serve a summons.

(4) Upon receiving such service, the Insurance Commissioner and Treasurer shall forthwith send one of the copies of the process, by registered mail with return receipt requested, to the defendant agent at his last address of record with the department.

(5) The Insurance Commissioner and Treasurer

shall keep a record of the day and hour of service upon him of all such legal process.

**History.**—s. 266, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§626.743 Same; retaliatory provision.**—When under the laws of any other state any fine, tax, penalty, license fee, deposit of money or security or other obligation, limitation or prohibition is imposed upon resident insurance agents of Florida in connection with the issuance of, and activities under, a nonresident agent's license under the laws of such state as to such Florida agent, including the sharing of commissions, then so long as such laws continue in force or are so administered, the same requirements, obligations, limitations and prohibitions, of whatever kind, shall be imposed upon every insurance agent of such other state doing business in Florida under a nonresident agent's license issued under s. 626.741.

**History.**—s. 267, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§626.744 Service representatives, supervising or managing general agents; application for permit.**—The application for a permit as service representative, as defined in s. 626.081, or the application for a permit as a supervising or managing general agent, as defined in s. 626.091, shall show the applicant's name, residence address, name of employer, position or title, type of work to be performed by the applicant in this state, and such additional information as the department may reasonably require.

**History.**—s. 268, ch. 59-205; ss. 13, 35, ch. 69-106; s. 22, ch. 71-86; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**cf.**—s. 626.171 Application for license or permit.

**§626.745 Same; managers; activities.**—Individuals employed by insurers, their managers, general agents or representatives as service representatives, and supervising or managing general agents (as defined in s. 626.091) employed for the purpose of or engaged in assisting agents and solicitors in negotiating and effecting contracts of insurance, shall engage in such activities when, and only when, accompanied by, or at the specific direction in writing of, an agent or solicitor duly licensed as a resident licensee under this code.

**History.**—s. 269, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§626.746 Furnishing supplies to unlicensed agent prohibited; civil liability and penalty.**—

(1) No insurer shall furnish to any agent, or prospective agent named or appointed by it, any blank forms, applications, stationery or other supplies to be used in soliciting, negotiating or effecting contracts of insurance, on its behalf until such agent shall have received from the department a license to act as an insurance agent and shall have duly qualified as such.

(2) Any insurer, or any officer, director or agent

thereof, violating the provisions of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(3) Any insurer, general agent, or agent that furnishes to any agent or prospective agent not named or appointed by the insurer represented or supplied with any of the supplies mentioned in subsection (1) and accepts from, or writes any insurance business for, such agent or agency shall be subject to civil liability to any insured of such insurer to the same extent and in the same manner as if such agent or prospective agent had been appointed, licensed, or authorized by the insurer or such agent to act in its or his behalf by the Department of Insurance. The provisions of this subsection shall not apply to insurance risk apportionment plans under s. 627.351.

**History.**—s. 270, ch. 59-205; ss. 13, 35, ch. 69-106; s. 1, ch. 71-58; s. 642, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§626.747 Branch agencies.**—

(1) Each branch place of business established by an agent or agency firm, corporation, or association, shall be in active full-time charge of a licensed general lines agent.

(2) If the agent or agency establishes places of business in more than one county, additional county license tax is payable as provided in s. 624.505.

**History.**—s. 271, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§626.748 Agent's records.**—Every agent issuing or countersigning any insurance policy, as defined in s. 627.402, must maintain in his office such records of policies written or countersigned by him to enable the insuring public to obtain all necessary information, including daily reports, concerning such policies at least until the expiration date thereof.

**History.**—s. 272, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§626.749 Place of business in residence.**—No requirement of this part that an agent shall maintain within this state a place of business which is accessible to the public shall be deemed to prohibit the maintenance of such a place of business in connection with the place of residence of either the agent or of other persons, if:

(1) A separate room is set aside by the agent for, and is actually used as, his office or place of business, and

(2) Such room is easily accessible to the public and is in fact in the usual course of his business used by the agent in his dealings with the public, and

(3) The existence of such place of business is suitably advertised, as determined by the department.

**History.**—s. 273, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§626.750 Compensation of agents; mutual insurers.**—A mutual insurer may compensate its



agents upon such basis as is fixed by agreements between the insurer and its respective agents.

**History.**—s. 274, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**626.751 Same; reciprocal insurers.**—Each agent of a reciprocal insurer shall be compensated either by commission or by salary, but not by both commission and salary. At the time its certificate of authority is issued, renewed or continued under this code each reciprocal insurer shall certify to the department whether each of its agents will be paid upon a commission basis or upon a salary basis.

**History.**—s. 275, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**626.752 Exchange of business.**—

(1)(a) "Excess business" is defined as risks requiring insurance above the limits of that which the agent's own insurer will accept.

(b) "Rejected business" is defined as risks which an agent's own insurer is authorized to write but rejects for underwriting reasons.

(2) Pursuant to rules and regulations adopted by the department, an agent may place only such excess or rejected business for which he is appointed and licensed, and which the insurer by which he is appointed is authorized to write, with an insurer for which he is not a licensed agent. However, an agent may place a class of business which his insurer is authorized to write with an insurer for which he is not a licensed agent when it is in the best interest of the insured to do so and whether or not it is "rejected business."

(3) The foregoing limitations and restrictions shall not be construed, and shall not apply, to the placing of surplus lines business under the provisions of part VI.

**History.**—s. 276, ch. 59-205; s. 1, ch. 71-326; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**626.753 Sharing commissions; penalty.**—

(1) No agent or solicitor shall divide with others or share in any commissions payable on account of insurance, except as follows:

(a) A resident agent may divide or share in commissions with his own employed solicitors, and with other resident agents appointed and licensed to write the same kind or kinds of insurance.

(b) A resident agent and a nonresident agent, subject to provisions of s. 626.741, may divide among themselves commissions as to kinds of insurance for which both are appointed and licensed.

(2) No such licensee shall share a commission with any corporation unless such corporation is an insurance agency.

(3) In addition to other penalties provided therefor, the license of any licensee violating or participating in the violation of this section shall be revoked.

**History.**—s. 277, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior

to that date.

**626.754 Rights of agent following termination of appointment.**—

(1) Following termination of his agency appointment and license as to an insurer, the agent may for the period herein provided continue to service, and receive from the insurer commissions or other compensation relative to, policies written by him for the insurer during the existence of the appointment and license. He may countersign all certificates or endorsements necessary to continue such policies to the expiration date thereof, including renewal option periods, and collect and remit premiums due thereon, but shall not otherwise, except with the consent of the insurer, change or modify the policy in any way nor increase the hazards insured against therein.

(2) This section does not apply as to agents of direct writing insurers or to agents and insurers between whom the relationship of employer and employee exists.

**History.**—s. 278, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

### PART III

#### LIFE INSURANCE AGENTS

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**626.776 Short title.**—This part may be referred to in any legal proceedings as the "Life Agent Law."

**History.**—s. 281, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior

to that date.

**§626.777 Scope of this part.**—This part applies only as to agents of life insurers, and to agents who are appointed by and licensed as to the same insurer as to both life and disability insurances.

**History.**—s. 280, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§626.778 This part is supplementary to Licensing Law.**—This part is supplementary to part I, the "Licensing Procedures Law."

**History.**—s. 282, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§626.779 "Life agent" defined.**—For the purposes of this part a "life agent" is as defined in s. 626.051.

**History.**—s. 283, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§626.780 "Life insurer" defined.**—For the purposes of this part a "life insurer" means an insurer writing life insurance, fixed dollar annuity contracts, variable contracts, or any of such types of contracts.

**History.**—s. 284, ch. 59-205; s. 8, ch. 61-441; s. 3, ch. 73-31; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§626.781 "Ordinary class" insurer and "ordinary-variable contract class" insurer defined.**—

(1) An "ordinary class" insurer is an insurer writing life insurance on the legal reserve plan, for amounts of \$1,000 or more, with premiums payable on the annual, semiannual, quarterly, monthly or weekly basis.

(2) An "ordinary-variable contract class" insurer is an insurer writing an ordinary class of insurance which issues life insurance or annuity contracts providing for payments or values which vary directly according to investment experience.

**History.**—s. 285, ch. 59-205; s. 18, ch. 61-441; s. 4, ch. 73-31; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§626.782 Industrial class insurer defined.**—An "industrial class insurer" is an insurer writing industrial life insurance, as defined in s. 627.502, and as to such insurance operates under a system of collecting a debit by its agent.

**History.**—s. 286, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§626.783 Ordinary-combination class insurer defined.**—An "ordinary-combination class insurer" is an insurer writing both ordinary class insurance and industrial class insurance, as defined in ss. 626.781 and 626.782, respectively.

**History.**—s. 287, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

to that date.

**§626.784 Purpose of license.**—

(1) The purpose of a license issued under this code to a life agent is to authorize and enable the licensee actively and in good faith to engage in the insurance business as such an agent with respect to the general public, and to facilitate the public supervision of such activities in the public interest; and not for the purpose of enabling the licensee to receive a rebate of premium in the form of commission or other compensation as an agent, or to enable the licensee to receive commissions or other compensation based upon insurance solicited or procured by or through him upon his own interests or upon those of other persons with whom he is closely associated in capacities other than as an insurance agent.

(2) The department shall not renew, continue, or permit to exist any license of a life agent if it finds that such licensee obtained, or attempted to obtain, such license not for the purpose of holding himself out to the general public as a life insurance agent but primarily for the purpose of soliciting, negotiating or procuring life insurance or annuity contracts covering himself or members of his family, or officers, directors, stockholders, partners, or employees of a business in which he, or a member of his family is engaged, or the debtors of a firm, association, or corporation of which he is an officer, director, stockholder, partner, or employee.

(3) This section shall not be deemed to prohibit the licensing of any person employed by or associated with a lending or financing institution or creditor, with respect to insurance only, under credit life or disability insurance policies which are subject to part VIII of chapter 627, of borrowers from such institution.

**History.**—s. 288, ch. 59-205; s. 1, ch. 61-360; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§626.785 Qualifications for license.**—

(1) The department shall not grant or issue a license as life agent as to any individual found by it to be untrustworthy or incompetent, or who does not meet the following qualifications:

(a) Must be a natural person of at least 18 years of age.

(b) Must be a bona fide resident of this state.

(c) Must not be an employee of the United States Veterans' Administration or state service office as referred to in s. 626.788, or be on active duty in the Armed Forces of the United States, as provided in s. 626.789.

(d) Must not be a funeral director or undertaker, or an employee or representative thereof, or have an office in, or in connection with, a funeral establishment.

(e) Must not intend or be likely to use the license primarily for the purpose of writing or handling "controlled business" as referred to in s. 626.784.

(f) Must take and pass any examination for license required under s. 626.221.

(2) An individual who is a bona fide resident of this state shall be deemed to meet the residence requirement of subsection (1)(b), notwithstanding the

existence, at time of application for license, of a license in his name on the records of another state as a resident agent of such other state, if the applicant furnishes or the department acquires proof satisfactory to the department that the applicant has made written request for the cancellation of such other license, either to the insurer represented thereunder or to the proper official of the other state.

**History.**—s. 289, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-116; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **626.786 Application for license.—**

(1) Application for a license as life agent shall be made and filed as provided under s. 626.171.

(2) In the application the applicant shall set forth:

(a) His full name, age, residence, place of business and occupation for the 5 years next prior to the date of application;

(b) His qualifications for the license, namely:

1. What efforts he has made or intends to make to familiarize himself with the life insurance laws of this state and with the provisions of the contracts to be negotiated;

2. What insurance experience he has had, if any;

3. What insurance instruction he has had or expects to receive;

(c) Whether he has been refused or has had suspended or revoked a license to solicit insurance by the insurance department or supervising officials of any state;

(d) Whether any insurer or any general agent claims the applicant is indebted under any agency contract or otherwise, and if so, the name of the claimant, the nature of the claim and the applicant's defense thereto, if any;

(e) Whether he has had an agency contract canceled, and if so, when, by what insurer or general agent, and the reason therefor;

(f) Whether the application is for a primary license or an additional license; and

(g) Such other or additional information as the department may deem proper to enable it to determine the character, experience, ability and other qualifications of the applicant to hold himself out to the public as a life agent.

**History.**—s. 290, ch. 59-205; ss. 13, 35, ch. 69-106; s. 8, ch. 72-34; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**Note.**—Former s. 626.0210.

**626.787 Application of qualification standards.**—In determining the competence and qualifications of applicants for license as life agents the department may take into consideration whether the agent will be appointed and licensed as to the ordinary class, or ordinary-variable annuity class, of life insurance, or as to the industrial class; and in the application of the standards of competence and qualification as provided in this chapter it may require greater degree thereof as to applicants for license as

to the ordinary class or ordinary-variable annuity class of insurance.

**History.**—s. 291, ch. 59-205; s. 9, ch. 61-441; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**626.788 Veterans' Administration employees disqualified.**—No person employed by the United States Veterans' Administration or state service office shall be licensed as a life agent. The license of any person who accepts such employment shall automatically terminate when the employment commences.

**History.**—s. 292, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **626.789 Military service; special provisions.—**

(1) The department shall not issue a license as life agent to any person on active duty in the Armed Forces of the United States; except, that the existing license of a person when called into active duty may be renewed or continued for a period not to extend beyond the time when the licensee's active continuous service in the Armed Forces reaches 6 months' duration.

(2) The license of any person who is called into such active duty shall automatically terminate at such time as his active continuous service reaches 6 months' duration.

(3) Any person whose license has terminated as provided in subsection (2), shall if otherwise qualified therefor be entitled to a similar license within 12 months after an honorable discharge if application therefor is made within 4 years after entry into such service, upon payment of applicable license tax and fees therefor, but without taking or passing an examination.

(4) Any provision of subsections (1), (2), or (3), to the contrary notwithstanding, any person on active duty in the Armed Forces who held a current and valid license as life agent on April 1, 1957, shall have the privilege of renewing or continuing the license annually.

(5) Any person who has successfully taken and passed an examination for a life agent license and who was entitled to the license but the same was not issued due to his entry into active service with the Armed Forces of the United States shall upon being honorably discharged be entitled to be licensed as provided in subsection (3), if such service began within 12 months after he took and successfully passed the examination.

**History.**—s. 293, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **626.790 Temporary license; pending examination.—**

(1) Each applicant for a life agent's license to represent an insurer of the industrial or ordinary-combination class, may at the insurer's request have issued to him a temporary license for a period not exceeding 90 days, within which 90-day period the



applicant must take a written examination as provided in s. 626.241 (scope of examination). The department shall not issue a temporary license as to an ordinary class agent, except as provided in s. 626.791.

(2) If the applicant fails to pass the first examination his temporary license terminates, unless, in the department's discretion, the applicant is permitted to take a second examination. An applicant permitted to take the second examination must file an application therefor and take the examination within the time set by the department. If he fails to pass the second examination his temporary license is then and there terminated.

(3) The department may, in its discretion, issue a new temporary license for a period not to exceed 90 days to a person whom it has permitted to take a second examination under subsection (2).

(4) After failing to pass the second examination, the applicant is not eligible for a reexamination until a 60-day waiting period has elapsed, at the end of which period he may, through an insurer, apply for another license just as any other first time applicant.

(5) The department may refuse to issue such a temporary license pending passage of the examination, as to applicants for a license as to any insurer whose applicants have repeatedly and without good cause failed to appear for the examination during the 90-day temporary license period.

(6) If within the 90-day period of such a temporary license, and not later than the expiration date of the license, the applicant holding such license takes and passes a personal written examination to the department's satisfaction, a regular license shall be issued to him to complete the license year then current.

(7) Application for the temporary license shall be accompanied by the applicable fee as prescribed in s. 624.501 (Filing, license, and miscellaneous fees). No refund of such a fee shall be made after a temporary license is issued.

**History.**—s. 294, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 2, ch. 77-292; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **§626.791 Same; executors, administrators.—**

The department, if it is satisfied with the honesty and trustworthiness of the applicant, upon the payment of the required license fee, may issue a temporary life agent's license without requiring the applicant to pass a written examination, as follows:

(1) To the executor or administrator of the estate of a deceased person who at the time of his death was a licensed life agent;

(2) To a surviving next of kin of such a deceased person, if no administrator or executor has been appointed and qualified, but any license issued under this subsection shall be revoked upon issuance of a license to an executor or administrator under subsection (1);

(3) No license issued under this section shall be effective for more than 90 days. The department, in

its discretion, may renew the license once upon proper application and for good cause.

**History.**—s. 295, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **§626.792 Nonresident agents.—**

(1) The department may issue a license as life agent to a person not resident of this state, upon compliance with the applicable provisions of this code, if the state or province of Canada of such person's residence will accord the same privilege to a resident of this state.

(2) The department may enter into reciprocal agreements with the appropriate official of any such other state or province waiving the written examination of any applicant resident in such other state or province, if:

(a) A written examination is required of applicants for a life insurance agent's license in such other state or province;

(b) The appropriate official of the other state or province certifies that the applicant holds a currently valid license as a life insurance agent in such other state or province and either passed such a written examination or was the holder of a life insurance agent's license prior to the time a written examination was required; and

(c) In such other state or province a resident of this state is privileged to procure a life insurance agent's license upon the foregoing conditions and without discrimination as to fees or otherwise in favor of the residents of such other state or province.

(3) No such applicant or licensee shall have a place of business in this state, nor be an officer, director, stockholder, or partner in any corporation or partnership doing business in this state as a life insurance agency.

(4) If the laws of another state or province of Canada require the sharing of commissions with resident agents of that state or province on applications for life insurance, or life insurance including disability insurance, written by nonresident agents, then the same provisions shall apply when resident agents of that state or province, licensed as nonresident agents of Florida, write applications for insurance on residents of this state.

**History.**—s. 296, ch. 59-205; s. 3, ch. 63-20; s. 2, ch. 67-91; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **§626.793 Excess or rejected business.—**

(1) A licensed life agent may place excess or rejected risks within the class of business for which he is licensed and which the insurer licensing him is authorized to transact, with any other authorized insurer without being required to secure a license as to such other insurer.

(2) "Excess business" is that portion of a risk which is in excess of the amount thereof that the agent's own insurer will accept.

(3) "Rejected business" is a risk that the agent's own insurer is authorized to write but rejects for underwriting reasons, or is willing to accept only on a substandard basis; but which business will be ac-

cepted and issued by another authorized insurer at a lower rate.

**History.**—s. 297, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **626.794 Unlawful payment or sharing of commissions.—**

(1) No life insurer or licensed life agent shall pay directly or indirectly any commission or other valuable consideration to any person for services as a life insurance agent within this state, unless such person holds a currently valid license to act as a life insurance agent as required by the laws of this state; except that a life insurer may pay such commission or other valuable consideration to and a licensed life insurance agent may share any commission or other valuable consideration with an incorporated insurance agency in which all employees, stockholders, directors or officers who solicit, negotiate or effectuate life insurance contracts are qualified life insurance agents holding a currently valid license as required by the laws of this state.

(2) No person other than a duly licensed life agent shall accept any such commission or other valuable consideration, except as provided in subsection (1).

(3) This section shall not prevent the payment or receipt of renewal or other deferred commissions or pensions to or by any person solely because such person has ceased to hold a license to act as a life insurance agent; and shall not prevent the payment of renewal or other deferred commissions to any incorporated insurance agency solely because any of its stockholders has ceased to hold a license to act as a life insurance agent.

**History.**—s. 298, ch. 59-205; s. 1, ch. 63-381; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **626.795 Corporations, liability of agent.—**

Any life insurance agent who is an officer, director, stockholder, or employee of an incorporated life insurance agency shall remain personally and fully liable and accountable for any wrongful acts, misconduct, or violations of any provisions of this code committed by such licensee or by any person under his direct supervision and control while acting on behalf of the corporation.

**History.**—s. 5, ch. 63-20; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **626.796 Representing another insurer in same industrial debit territory.—**

(1) No insurer shall employ or appoint to sell weekly premium or industrial insurance in a given debit territory any agent who has within the 6 months next preceding sold such insurance for another insurer in the same or any part of the same debit territory, unless prior to such employment the written approval of the previous insurer is obtained and filed with the department.

(2) This section shall not be construed as prevent-

ing such an individual from representing another insurer in a different debit territory.

**History.**—s. 299, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **626.797 Code of ethics.—**

(1) The department shall after consultation with the Florida Association Of Life Underwriters adopt a "code of ethics," or continue any such code heretofore so adopted, to govern the conduct of life agents in their relations with the public, other agents and the insurers.

(2) The code of ethics shall apply standards of conduct designed to avoid the commission of acts or the existence of circumstances which would constitute ground for suspension, revocation, or refusal of license under ss. 626.611 and 626.621, and to avoid the use of unfair trade practices and unfair methods of competition which would be in violation of any provision of part VII (Trade Practices and Frauds).

(3) All applicants for license as life agents shall subscribe to the code of ethics.

**History.**—s. 300, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

### **PART IV**

#### **DISABILITY INSURANCE AGENTS**

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**626.826 Short title.**—This part may be referred to in any legal proceedings as the "Disability Agent Law."

**History.**—s. 302, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **626.827 Scope of this part.—**

(1) This part applies only as to agents of disability insurers, which agents are not appointed or licensed as to the same insurer as to either life insurance, or as to property, casualty, or surety insurance.

(2) Agents appointed and licensed as to the same insurer as to both life insurance and disability insurance are deemed to be "life agents," are not subject to this chapter, but are subject to part I (Licensing

Procedures Law) and part III (Life Agents Law).

(3) Agents appointed and licensed as to the same insurer as to both disability insurance and property or casualty or surety insurance are deemed as to be "general lines agents," are not subject to this part, but are subject to part I (Licensing Procedures Law) part II (General Lines Agent Law).

(4) All agents subject to this chapter are "disability agents" as defined in s. 626.829.

**History.**—s. 301, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1626.828 This part is supplementary to Licensing Law.**—This part is supplementary to part I, the "Licensing Procedures Law."

**History.**—s. 303, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1626.829 "Disability agent" defined.**—

(1) A "disability agent" is any person appointed as agent by an insurer to solicit applications for or to negotiate and effectuate contracts of disability insurance, as such insurance is defined in s. 624.603.

(2) Any person who acts for an insurer, or on behalf of a licensed representative of an insurer, to solicit applications for or to negotiate and effectuate disability insurance contracts, whether or not he is appointed as an agent, subagent, solicitor, canvasser, or by any other title, shall be deemed to be a disability agent as defined in this section.

**History.**—s. 304, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1626.830 Purpose of license.**—

(1) The purpose of a license issued under this code to a disability agent is to authorize and enable the licensee actively and in good faith to engage in the insurance business as such an agent with respect to the general public, and to facilitate the public supervision of such activities in the public interest; and not for the purpose of enabling the licensee to receive a rebate of premium in the form of "commission" or other compensation as an "agent," or to enable the licensee to receive commissions or other compensation based upon insurance solicited or procured by or through him upon his own interests or upon those of other persons with whom he is closely associated in capacities other than as an insurance agent.

(2) The department shall not grant, renew, continue, or permit to exist any license as a disability agent as to any applicant therefor or licensee thereunder if it finds that the license has been or is being or will be used by the applicant or licensee, not for the purpose of holding himself out to the general public as a disability agent, but principally for the purpose of soliciting, negotiating, handling or procuring "controlled business,"—that is, disability insurance covering himself or member of his family, or the officers, directors, stockholders, partners, employees, or debtors of a partnership, association, or corporation, of which he or a member of his family is an officer, director, stockholder, partner or employee, or covering members of an association of

which he is a director, officer or employee.

(3) A violation of this section shall be deemed to exist, or be probable (as to applicant for license), if the department finds that during a 12-month period the premium writings represented by such "controlled business" insurance contracts signed, countersigned, issued or sold by the licensee have been, or in the case of applicant for license, probably will be under circumstances found by the department to exist, in excess of premium writings during the same period by the licensee or proposed licensee as represented by disability insurance contracts to the general public other than the classes of persons above classified as "controlled business."

(4) This section shall not be deemed to prohibit the licensing of any person employed by or associated with a lending or financing institution, with respect to insurance only, under credit life or disability insurance policies which are subject to part VIII of chapter 627, of borrowers from such institution or creditor.

**History.**—s. 305, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1626.831 Qualification for license.**—

(1) The department shall not grant or issue a license as disability agent as to any individual found by it to be untrustworthy or incompetent, or who does not meet the following qualifications:

(a) Must be a natural person of at least 18 years of age.

(b) Must be a bona fide resident of this state.

(c) Must not be an employee of the United States Veterans' Administration or state service office, as referred to in s. 626.833, or be on active duty in the Armed Forces of the United States, as provided in s. 626.834.

(d) Must not intend or be likely to use the license principally for the purpose of writing or handling "controlled business" as referred to in s. 626.830.

(e) Must take and pass any examination for license required under s. 626.221.

(2) An individual who is a bona fide resident of this state shall be deemed to meet the residence requirement of subsection (1)(b), notwithstanding the existence, at time of application for license, of a license in his name on the records of another state as a resident agent of such other state, if the applicant furnishes or the department acquires proof satisfactory to the department that the applicant has made written request for the cancellation of such other license, either to the insurer represented thereunder or to the proper official of the other state.

**History.**—s. 306, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-116; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1626.832 Application for license.**—

(1) Application for a license as disability agent shall be made and filed as provided under s. 626.171.

(2) In the application the applicant shall set forth:

(a) His full name; his residence, age, occupation



and place of business for 5 years next preceding the date of application;

(b) Whether he has ever held a license to solicit disability insurance or any other kind of insurance in any state;

(c) Whether he has been refused, or has had suspended or revoked a license to solicit disability insurance or any other kind of insurance in this or any other state;

(d) What insurance experience he has had;

(e) What instruction in disability insurance and in the insurance laws of this state he has had or expects to have;

(f) Whether any insurer or general agent claims that he is indebted under an agency contract or otherwise, and if so, the name of the claimant, the nature of the claim and the applicant's defense thereto;

(g) Whether he has had an agency contract canceled and if so when, by what insurer or general agent, and the reasons therefor;

(h) Whether he will devote all or part of his efforts to acting as a disability agent, and, if part only, how much time he will devote to such work, and in what other business or businesses he is engaged or employed;

(i) Whether, if applicant is married, his or her spouse has every applied for or held a license to solicit disability insurance or any other kind of insurance in any state and whether such license has been refused, suspended, or revoked; and

(j) Such other information as the department may deem proper to enable it to determine the character, experience, ability and other qualifications of the applicant to hold himself out to the public as a disability agent.

**History.**—s. 307, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§626.833 Veterans' Administration employees disqualified.**—No person employed by the United States Veterans' Administration or state service office shall be licensed as a disability agent. The license of any person who accepts such employment shall automatically terminate when the employment commences.

**History.**—s. 308, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§626.834 Military service; special provisions.**—

(1) The department shall not issue a license as disability agent to any person on active duty in the Armed Forces of the United States; except, that the existing license of a person when called into active duty may be renewed or continued for a period not to extend beyond the time when the licensee's active continuous service in the Armed Forces reaches 6 months' duration.

(2) The license of any person who is called into such active duty shall automatically terminate at such time as his active continuous services reaches 6 months' duration.

(3) Any person whose license has terminated as provided in subsection (2), shall if otherwise quali-

fied therefor be entitled to a similar license within 12 months after an honorable discharge if application therefor is made within 4 years after entry into such service, upon payment of applicable license tax and fees therefor, but without taking or passing an examination.

(4) Any provision of subsections (1), (2), or (3) to the contrary notwithstanding, any person on active duty in the Armed Forces who held a current and valid license as disability agent on April 1, 1957, shall have the privilege of renewing or continuing the license annually.

(5) Any person who has successfully taken and passed an examination for a disability agent license and who was entitled to the license but the same was not issued due to his entry into active service with the Armed Forces of the United States shall, upon being honorably discharged, be entitled to be licensed as provided in subsection (3), if such service began within 12 months after he took and successfully passed the examination.

**History.**—s. 309, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **§626.835 Nonresident agents.**—

(1) The department may issue a license as a disability agent to a person not a resident of this state, upon compliance with the applicable provisions of this code, if the state of such person's residence will accord the same privilege to a resident of this state.

(2) The department may enter into reciprocal agreements with the appropriate official of any such other state waiving the written examination of any applicant resident in such other state, provided:

(a) A written examination is required of applicants for disability insurance agent's license in such other state;

(b) The appropriate official of the other state certifies that the applicant holds a currently valid license as a disability insurance agent in such other state and either passed such a written examination or was the holder of a disability insurance agent's license prior to the time a written examination was required;

(c) That in such other state, a resident of this state is privileged to procure a disability insurance agent's license upon the foregoing conditions and without discrimination as to fees or otherwise in favor of the residents of such other state.

(3) No such applicant or licensee shall have a place of business in this state, nor be an officer, director, stockholder, or partner in any corporation or partnership doing business in this state as a disability insurance agent.

(4) If the laws of another state require the sharing of commissions with resident agents of that state on applications for disability insurance written by nonresident agents, then the same provisions shall apply when resident agents of that state, licensed as nonresident agents of Florida, write applications for insurance on residents of this state.

**History.**—s. 310, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective

July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1626.836 Same; service of process.**—The provisions of s. 626.742 (Nonresident agents; service of process) shall also apply as to nonresident disability insurance agents licensed by the department pursuant to s. 626.835.

**History.**—s. 311, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1626.837 Excess or rejected business.**—

(1) A licensed disability agent may place excess or rejected risks within the class of business for which he is licensed and which the insurer licensing him is authorized to transact, with any other authorized insurer without being required to secure a license as to such other insurer, but subject to the agent's agreement with the insurer licensing him.

(2) "Excess business" is that portion of a risk which is in excess of the amount thereof that the agent's own insurer will accept.

(3) "Rejected business" is a risk that the agent's own insurer is authorized to write but rejects for underwriting reasons, or is willing to accept only on a substandard basis; but which business will be accepted and issued by another authorized insurer at a lower rate.

(4) This section shall be construed to permit an agent properly licensed by the department to broker business with another licensed agent in this state, if both such agents are so licensed as to the class of business involved, and where such brokerage arrangement is desired and to the best interest of the insured.

**History.**—s. 312, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1626.838 Unlawful payment or sharing of commissions.**—

(1) No disability insurer or licensed disability agent shall pay directly or indirectly any commission or other valuable consideration to any person for services as a disability insurance agent within this state, unless such person holds a currently valid license to act as a disability insurance agent as required by the laws of this state; except that a disability insurer may pay such commission or other valuable consideration to and a licensed disability insurance agent may share any commission or other valuable consideration with an incorporated insurance agency in which all employees, stockholders, directors or officers who solicit, negotiate or effectuate disability insurance contracts are qualified disability insurance agents holding a currently valid license as required by the laws of this state.

(2) No person other than a duly licensed disability agent shall accept any such commission or other valuable consideration, except as provided in subsection (1).

(3) This section shall not prevent the payment or receipt of renewal or other deferred commissions or pensions to or by any person solely because such person has ceased to hold a license to act as a disability

insurance agent; and shall not prevent the payment of renewal or other deferred commissions to any incorporated insurance agency solely because any of its stockholders has ceased to hold a license to act as a disability insurance agent.

**History.**—s. 313, ch. 59-205; s. 2, ch. 63-381; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1626.839 Corporations, liability of agent.**—

Any disability insurance agent who is an officer, director, stockholder, or employee of an incorporated disability insurance agency shall remain personally and fully liable and accountable for any wrongful acts, misconduct, or violations of any provisions of this code committed by such licensee or by any person under his direct supervision and control while acting on behalf of the corporation.

**History.**—s. 6, ch. 63-20; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

## PART V

### INSURANCE ADJUSTERS

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- 626.875 Office and records.
- 626.876 Exclusive employment, public and independent adjusters.
- 626.877 Adjustments to comply with contract, law.
- 626.878 Rules and regulations; code of ethics.

**626.851 Short title.**—This part may be referred

to in any legal proceedings as the "Insurance Adjusters Law."

History.—s. 315, ch. 59-205.

**626.852 Scope of this part.—**

(1) This part applies only as to "insurance adjusters" and "claims investigators" as hereinafter in this part defined.

(2) Unless otherwise required by context, the term "adjusters" as used in this said part applies to all licensees and permittees defined herein as any type of adjuster or as a claims investigator.

(3) This part does not apply as to life insurance or annuity contracts.

History.—s. 314, ch. 59-205; s. 2, ch. 65-16.

**626.853 This part is supplementary to Licensing Law.**—This part is supplementary to part I, the "Licensing Procedures Law."

History.—s. 316, ch. 59-205.

**626.854 "Public adjuster" defined.**—A "public adjuster" is any person, except a duly licensed attorney at law as hereinafter in s. 626.860 provided, who, for money, commission, or any other thing of value, acts or aids in any manner on behalf of an insured in negotiating for, or effecting the settlement of, a claim or claims for loss or damage covered by an insurance contract, or who advertises for employment as an adjuster of such claims; and also includes any person who, for money, commission or any other thing of value, solicits, investigates, or adjusts such claims on behalf of any such public adjuster.

History.—s. 317, ch. 59-205.

**626.855 "Independent adjuster" defined.**—An "independent adjuster" is any person who is self-employed or is associated with or employed by an independent adjusting firm or other independent adjuster, and who undertakes on behalf of an insurer to ascertain and determine the amount of any claim, loss, or damage payable under an insurance contract or undertakes to effect settlement of such claim, loss or damage.

History.—s. 318, ch. 59-205.

**626.856 "Company employee adjuster" defined.**—A "company employee adjuster" is a person employed on an insurer's staff of adjusters, and who undertakes on behalf of such insurer or other insurers under common control or ownership to ascertain and determine the amount of any claim, loss or damage payable under a contract of insurance, or undertakes to effect settlement of such claim, loss or damage.

History.—s. 319, ch. 59-205.

**626.857 "Claims investigator" defined.**—A "claims investigator" is a person who is an employee of a currently licensed independent adjuster or adjusting firm or insurer and whose responsibilities shall be as defined in s. 626.855 or s. 626.856 as for an independent adjuster or company employee adjuster, and who will operate as a student or learner under the instruction and supervision of a licensed insurance adjuster, except that a claims investigator shall not be permitted by his employer to negotiate

settlements with the insured or claimant for amounts in excess of \$1,000.

History.—s. 320, ch. 59-205.

**626.858 "Nonresident adjuster" defined.**—A "nonresident adjuster" is a person who is not a resident of this state, and who is a currently licensed or authorized adjuster in his home state for the type or kinds of insurance he intends to adjust claims for in this state, and who is an employee of an insurer admitted to do business in this state, and who does not maintain an office in this state for the purpose of adjusting losses in this state.

History.—s. 321, ch. 59-205.

**626.859 "Emergency adjuster" defined.**—A "catastrophe" or "emergency" adjuster is a person who is not a licensed adjuster under this part, but who has been designated and certified to the department by insurers as qualified to adjust claims, losses, or damages under policies or contracts of insurance issued by such insurer, whom the department may permit, in the event of a catastrophe or emergency, for the purposes and under the conditions which the department shall fix and for the period of the emergency as the department shall determine, to adjust claims, losses, or damages under the policies of insurance issued by the insurers.

History.—s. 322, ch. 59-205; ss. 13, 35, ch. 69-106.

**626.860 Attorneys at law exempted.**—Attorneys at law duly licensed to practice law in the courts of this state, and in good standing with The Florida Bar, shall not be required to be licensed under the provisions of this code to authorize them to adjust or participate in the adjustment of any claim, loss or damage arising under policies or contracts of insurance.

History.—s. 323, ch. 59-205.

**626.861 Insurers' officers, employees, reciprocals' representatives may adjust.**—

(1) Nothing in this part shall be construed to prevent an executive officer of any insurer, or a regularly salaried employee of an insurer handling claims with respect to disability insurance, or the duly designated attorney or agent authorized and acting for subscribers to reciprocal insurers, from adjusting any claim loss or damage under any insurance contract of such insurer.

(2) If any such officer, employee, attorney or agent, in connection with the adjustment of any such claim, loss or damage engages in any of the misconduct described in or contemplated by s. 626.611(6), the department may suspend or revoke the insurer's certificate of authority.

History.—s. 324, ch. 59-205; s. 3, ch. 65-16; ss. 13, 35, ch. 69-106.

**626.862 Agents and solicitors; adjustments by.**—

(1) A licensed insurance agent may, without being licensed as an adjuster, adjust losses for the insurer represented by him as agent if so authorized by the insurer. The license of the agent may be suspend-



ed or revoked for violation of or misconduct prohibited by, s. 626.611(6).

(2) A licensed insurance solicitor shall not adjust losses unless licensed as an adjuster.

*History.*—s. 325, ch. 59-205.

**626.863 Licensed independent adjusters required; insurers' responsibility.—**

(1) An insurer shall not knowingly refer any claim or loss for adjustment in this state to any person purporting to be or acting as an independent adjuster unless such person is currently licensed as an independent adjuster under this code.

(2) Before referring any such claim or loss, the insurer shall ascertain from the department whether the proposed independent adjuster is currently licensed as such. Having once ascertained that a particular person is so licensed, the insurer may assume that he will continue to be so licensed until the insurer has knowledge, or receives information from the department, to the contrary.

(3) This section does not apply as to "catastrophe" or "emergency" adjusters as provided for in this part.

*History.*—s. 326, ch. 59-205; ss. 13, 35, ch. 69-106.

**626.864 Adjuster license types; combinations prohibited.—**

(1) An individual qualified as such under this code may be licensed as either a public adjuster, or independent adjuster, or company employee adjuster.

(2) The same individual shall not be concurrently licensed as to more than one of the adjuster types referred to in subsection (1).

*History.*—s. 327, ch. 59-205.

**626.865 Public adjuster's qualifications, bond.—**

(1) The department shall issue a license to an applicant for a public adjuster's license upon determining that the applicant has paid the license fee therefor specified in s. 624.501 (Filing, license and miscellaneous fees), and possesses the following qualifications:

(a) Is a natural person at least 18 years of age.

(b) Is a bona fide resident of Florida and has been such a resident for not less than 1 year immediately preceding the date of filing application for the license.

(c) Is trustworthy and has such business reputation as reasonably to assure that he will conduct his business as insurance adjuster fairly and in good faith and without detriment to the public.

(d) Has had sufficient experience, training or instruction concerning the adjusting of damages or losses under insurance contracts (other than life and annuity contracts), and is sufficiently informed as to the terms and effects of the provisions of those types of insurance contracts and possesses adequate knowledge of the laws of this state relating to such contracts as to enable and qualify him to engage in the business of insurance adjuster fairly and without injury to the public or any member thereof with whom he may have business as a public adjuster.

(e) Must have taken and passed any written examination required under s. 626.221 and related sections of this code.

amination required under s. 626.221 and related sections of this code.

(2) At the time of application for license as a public adjuster the applicant shall file with the department a bond executed and issued by a surety insurer authorized to transact such business in this state, in the penal sum of \$5,000, conditioned for the faithful performance of his duties as a public adjuster under the license applied for. The bond shall be in favor of the department and shall specifically authorize recovery by the department of the damages sustained in case the licensee is guilty of fraud or unfair practices in connection with his business as public adjuster. The aggregate liability of the surety for all such damages shall in no event exceed the penal sum of the bond.

*History.*—s. 328, ch. 59-205; s. 4, ch. 65-16; ss. 13, 35, ch. 69-106; s. 1, ch. 77-116; s. 53, ch. 77-121.

**626.866 Independent adjuster's qualifications.—**The department shall issue a license to an applicant for an independent adjuster's license upon determining that the license fee therefor specified in s. 624.501 (Filing, license and miscellaneous fees) has been paid, and that the applicant possesses the following qualifications:

(1) Is a natural person at least 18 years of age.

(2) Is a bona fide resident of Florida and has been such a resident for not less than 1 year immediately preceding the date of filing application for the license; except, that the department may, in its discretion, waive the requirement for 1 year residence in this state if the applicant is an employee of an adjuster licensed by the department or an employee of an adjusting firm or corporation supervised by a currently licensed adjuster.

(3) Is trustworthy and has such business reputation as reasonably to assure that he will conduct his business as insurance adjuster fairly and in good faith and without detriment to the public.

(4) Has had sufficient experience, training, or instruction concerning the adjusting of damage or loss under insurance contracts (other than life and annuity contracts), and is sufficiently informed as to the terms and the effects of the provisions of such types of contracts and possesses adequate knowledge of the insurance laws of this state relating to such contracts as to enable and qualify him to engage in the business of insurance adjuster fairly and without injury to the public or any member thereof with whom he may have relations as an insurance adjuster, and to adjust all claims in accordance with the policy or contract and the insurance laws of this state.

(5) Must have taken and passed any written examination required under s. 626.221 and related sections.

*History.*—s. 329, ch. 59-205; s. 5, ch. 65-16; ss. 13, 35, ch. 69-106; s. 1, ch. 77-116; s. 54, ch. 77-121.

**626.867 Company employee adjuster's qualifications.—**The department shall issue a license to an applicant for a company employee adjuster's license upon determining that the license fee therefor specified in s. 624.501 (Filing, license and miscellaneous fees) has been paid and that the applicant possesses the following qualifications:

- (1) Is a natural person at least 18 years of age.
- (2) Is a bona fide resident of Florida.
- (3) Is trustworthy and has such business reputation as reasonably to assure that he will conduct his business as insurance adjuster fairly and in good faith and without detriment to the public.

(4) Has had sufficient experience, training, or instruction concerning the adjusting of damage or loss of risks described in his application, and is sufficiently informed as to the terms and the effects of the provisions of insurance contracts covering such risks, and possesses adequate knowledge of the insurance laws of this state relating to such insurance contracts as to enable and qualify him to engage in such business as insurance adjuster fairly and without injury to the public or any member thereof with whom he may have relations as an insurance adjuster, and to adjust all claims in accordance with the policy or contract and the insurance laws of this state.

- (5) Has taken and passed any written examination as required under s. 626.221 and related sections of this code.

**History.**—s. 330, ch. 59-205; ss. 13, 35, ch. 69-106; s. 1, ch. 77-116; s. 55, ch. 77-121.

**626.868 Claims investigator permit; qualifications and conditions.**—Upon the filing of an application for a permit as claims investigator and the advance payment of the registration fee therefor as specified in s. 624.501, (Filing, license and miscellaneous fees), the department may issue such a permit, but subject to the following conditions:

(1) The applicant must be a natural person of at least 18 years of age; must be a bona fide resident of Florida; must be trustworthy, and must have such business reputation as reasonably to assure that he will conduct his business as claims investigator fairly and in good faith and without detriment to the public;

(2) The applicant's employer is responsible for the adjustment acts of the claims investigator during the 12-month learning period provided for in subsection (6);

(3) The applicant must have had sufficient instruction concerning the investigation of damage or loss of risks described in his application, and must be sufficiently informed as to the terms and the effect of the provisions of those types of insurance contracts covering such risks, and possess adequate knowledge of the insurance laws of this state relating to such contracts as to enable and qualify him to engage in such business of claims investigator, and to investigate all claims in accordance with the policy or contract and the insurance laws of this state;

(4) The application shall be accompanied by a certificate of employment and a report as to the applicant's integrity and moral character, on a form to be prescribed by the department and executed by the employer;

(5) The applicant must file application for and take an appropriate adjuster's examination as provided in s. 626.221, and related sections of this code, given by the department within 12 months from the date of the permit. The permit shall automatically be revoked if the applicant fails to take and pass such examination within the 12 months. If, during

the 12-month period, the applicant takes and passes the examination, the department shall, upon receipt of adjuster's license tax, issue to him a license as independent adjuster or company employee adjuster, as the case may be;

(6) Under the permit the permittee shall have authority to handle only such classes of business as his supervising licensed adjuster is licensed to handle;

(7) The permit shall be effective for a period of 12 months only from its date of issue; and

(8) The department shall not issue a claims investigator's permit to any individual who had ever theretofore held such a permit in this state.

**History.**—s. 331, ch. 59-205; s. 6, ch. 65-16; ss. 13, 35, ch. 69-106; s. 1, ch. 77-116; s. 56, ch. 77-121.

cf.—s. 626.171 Application for license or permit.

**626.869 License, permit classes; company employee adjusters, claims investigators.—**

(1) An applicant for license as a company employee adjuster or claims investigator licensed to represent such an adjuster may qualify as to, and his license or permit when issued may be limited to cover adjusting in, any one of the following classes of insurance or combinations thereof:

(a) Motor vehicle physical damage, as defined in s. 626.321(1)(a);

(b) Fire and allied lines including marine;

(c) Casualty;

(d) Workers' compensation;

(e) Boiler and machinery; or

(f) Any combination of the foregoing.

(2) The applicant's application for license or permit shall specify which of the foregoing classes of business the application and license or permit are to cover.

**History.**—s. 332, ch. 59-205; s. 90, ch. 79-40.

**626.870 Application for license or permit.—**

(1) Application for a license or permit under this part shall be made as provided in s. 626.171 and related sections of this code.

(2) The department shall so prepare the form of the application as to elicit and require from the applicant the information necessary to enable the department to determine whether the applicant possesses the qualifications prerequisite to issuance of the license or permit to the applicant as set forth in the applicable sections of this part.

(3) The department may, in its discretion, require that the application be supplemented by the certificate or affidavit of such person or persons as it deems necessary for its determination of the applicant's residence, business reputation, and reputation for trustworthiness. The department shall prescribe and may furnish the forms for such certificates and affidavits.

**History.**—s. 333, ch. 59-205; ss. 13, 35, ch. 69-106.

**626.871 Relicensing after military service.—**

The department may, without requiring a further written examination, issue a license as adjuster to a formerly licensed adjuster of this state who held a currently effective adjuster's license at the time of entering service in the Armed Forces of the United States, subject to the following conditions:

(1) The period of military service must not have been in excess of 3 years;

(2) The application for the license must be filed with the department and the license fee therefor paid, within 12 months following date of honorable discharge of the applicant from the military service; and

(3) The new license will be of the same type and class as that currently effective at the time the applicant entered military service; and if such type and class of license is not being currently issued under this code, the new license shall be of that type and class or classes most closely, in the department's opinion, resembling those of the former license.

**History.**—s. 334, ch. 59-205; ss. 13, 35, ch. 69-106.

**626.872 Temporary license.**—The department may, in its discretion, issue a temporary license as independent adjuster or as company employee adjuster, subject to the following conditions:

(1) The applicant must be an employee of an adjuster currently licensed by the department, or an employee of an authorized insurer, or an employee of an established adjusting firm or corporation which is supervised by a currently licensed independent adjuster;

(2) The application must be accompanied by a certificate of employment and a report as to applicant's integrity and moral character on a form prescribed by the department and executed by the employer;

(3) One or more of the following reasons or circumstances must exist, or such other reasons or circumstances as in the department's discretion may reasonably necessitate the issuance of the temporary license:

(a) Absence of licensed employee adjuster by reason of death, illness, or other disability, call to military service, vacation, insurance or adjusting schools;

(b) Opening of new offices or expansion of operation on temporary basis or unusual or seasonal influx of claims or losses requiring larger staff temporarily;

(c) Termination of license of an employee adjuster; or

(d) Losses or claims involving specialized policies or risks requiring the services of a specially trained adjuster.

(4) Existence of any of the reasons or circumstances referred to in subsection (3), shall be certified by the employer.

(5) The temporary license shall be effective for a period of 60 days, but subject to earlier termination at the request of the employer or if suspended or revoked by the department upon grounds applicable under this code as to adjusters.

(6) In no event shall an adjuster licensed under this section adjust losses in this state after expiration of the temporary license without having taken and passed the written examination as for a regular adjuster's license.

(7) If during the 60-day temporary license period the applicant takes and passes the examination as for a regular license the theretofore temporary license shall continue in effect as a regular license (but subject to expiration, renewal or continuation

as provided for adjuster licenses under this code) if the licensee remains continuously employed as referred to in subsection (1), under the supervision of a licensed adjuster or as an employee of an authorized insurer, and if the licensee resides continuously in this state for 1 year.

(8) The license fee specified therefor in s. 624.501 must be paid before issuance of the temporary license.

**History.**—s. 335, ch. 59-205; ss. 13, 35, ch. 69-106.

**626.873 Nonresident adjusters.**—The department shall, upon application therefor, issue a license to an applicant for a nonresident adjuster's license upon determining that the applicant has paid the license fee required under s. 624.501 and possesses the following qualifications:

(1) Is a currently licensed insurance adjuster in his home state, if such state requires a license.

(2) Is an employee of an insurer admitted to do business in this state.

(3) Does not maintain an office in this state for the purpose of adjusting losses in this state.

(4) That he has filed a certificate or letter of authorization from the insurance department of his home state, if such state requires an adjuster to be licensed, stating that he holds a current license or authorization to adjust insurance losses. Such certificate or authorization must be signed by the insurance commissioner, or his deputy, of the adjuster's home state and reflect whether or not the adjuster has ever had his license or authorization in his home state suspended or revoked and if such is the case, the reason for such action.

**History.**—s. 336, ch. 59-205; ss. 13, 35, ch. 69-106.

**626.874 Catastrophe or emergency adjusters.**—

(1) In the event of a catastrophe or emergency, the department may issue a permit, for the purposes and under the conditions which it shall fix and for the period of emergency as it shall determine, to persons who are residents or nonresidents of this state and who are not licensed adjusters under this part but who have been designated and certified to it as qualified to act as adjusters by independent resident adjusters or by an authorized insurer or by a licensed general lines agent to adjust claims, losses or damages under policies or contracts of insurance issued by such insurers. The fee for such permit shall be as provided in s. 624.501(12)(c).

(2) If any person not a licensed adjuster who has been permitted to adjust such losses, claims or damages under the conditions and circumstances set forth in subsection (1), engages in any of the misconduct described in or contemplated by ss. 626.611 and 626.621 (grounds for suspension, revocation or refusal of license), the department, without notice and hearing, shall be authorized to issue its order denying such person the privileges granted under this section, and thereafter it shall be unlawful for any such person to adjust any such losses, claims or damages in this state.

**History.**—s. 337, ch. 59-205; ss. 13, 35, ch. 69-106.



**626.875 Office and records.—**

(1) Every licensed independent adjuster and every licensed public adjuster shall have and maintain in this state a place of business accessible to the public, and keep therein the usual and customary records pertaining to transactions under the license. This provision shall not be deemed to prohibit maintenance of such an office in the home of the licensee. The license of the adjuster shall show the address of his place of business, and the licensee shall promptly give written notice to the department of any change of such address.

(2) The records of the adjuster relating to a particular claim or loss shall be so retained in the adjuster's place of business for a period of not less than 1 year after completion of the adjustment. This provision shall not be deemed to prohibit return or delivery to the insurer or insured of documents furnished to or prepared by the adjuster and required by the insurer or insured to be returned or delivered thereto.

*History.*—s. 338, ch. 59-205; ss. 13, 35, ch. 69-106.

**626.876 Exclusive employment, public and independent adjusters.—**

(1) No individual licensed as a public adjuster shall be so employed during the same period by more than one public adjuster or public adjuster firm or corporation.

(2) No individual licensed as an independent adjuster shall be so employed during the same period by more than one independent adjuster or independent adjuster firm or corporation.

*History.*—s. 339, ch. 59-205.

**626.877 Adjustments to comply with contract, law.**—Every adjuster and claim investigator shall adjust or investigate every claim, damage, or loss made or occurring under an insurance contract, in accordance with the terms and conditions of the contract and of the applicable laws of this state.

*History.*—s. 340, ch. 59-205.

**626.878 Rules and regulations; code of ethics.**

—The department may promulgate such reasonable rules and regulations as may be necessary for the proper administration of part V of this chapter, including a code of ethics to foster the education of adjusters concerning the ethical, legal, and business principles which should govern their conduct.

*History.*—s. 341, ch. 59-205; ss. 13, 35, ch. 69-106.

**PART VI****UNAUTHORIZED INSURERS AND SURPLUS LINES**

- 626.901 Representing or aiding unauthorized insurer prohibited.
- 626.902 Penalty for representing unauthorized insurer.
- 626.903 Suits by unauthorized insurers prohibited.
- 626.904 "Unauthorized Insurers Process Law"; short title; interpretation.
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- 626.939 Records produced on order.

**626.901 Representing or aiding unauthorized insurer prohibited.—**

(1) No person shall, from offices or by personnel or facilities located in this state, directly or indirectly act as agent for, or otherwise represent or aid on behalf of another, any insurer not then authorized to transact such insurance in this state, or in any other state, in the solicitation, negotiation, procurement, or effectuation of insurance or annuity contracts, or renewals thereof, the dissemination of information as to coverage or rates, the forwarding of applications, the delivery of policies or contracts, the inspection of risks, the fixing of rates, the investigation or adjustment of claims or losses, or the collection or forwarding of premiums or in any other manner represent or assist such an insurer in the transaction of insurance with respect to subjects of insurance resident, located, or to be performed in this state. If the

property or risk is located in any other state, then, subject to the provisions of subsection (2), insurance may only be written with or placed in an insurer authorized to do such business in such state or in an insurer with which a licensed insurance broker of such state may lawfully place such insurance.

(2) This section does not apply to:

(a) Matters authorized to be done by the department under the Unauthorized Insurers Process Law, ss. 626.904-626.912.

(b) Surplus lines insurance when written pursuant to the Surplus Lines Law, ss. 626.913-626.937.

(c) Transactions as to which certificate of authority is not required of an insurer, as stated in s. 624.402 (Exceptions, certificate of authority required).

(3) No insurance contract entered into in violation of this section shall be deemed to have been rendered invalid thereby.

**History.**—s. 342, ch. 59-205; ss. 13, 35, ch. 69-106; s. 1, ch. 71-18.

#### **626.902 Penalty for representing unauthorized insurer.—**

(1) Any person who in this state represents or aids an unauthorized insurer in violation of s. 626.901 shall upon conviction thereof be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) In addition to the penalties provided for in subsection (1), such violator shall be liable, personally, jointly and severally with any other person or persons liable therefor, for payment of taxes payable on account of such insurance under s. 626.938 (report and tax of independently procured coverages).

**History.**—s. 343, ch. 59-205; s. 643, ch. 71-136.

**626.903 Suits by unauthorized insurers prohibited.**—As to transactions not permitted under s. 624.402, no unauthorized insurer shall institute, file, or maintain, or cause to be instituted, filed, or maintained, any suit, action, or proceeding in this state to enforce any right, claim or demand arising out of any insurance transaction in this state.

**History.**—s. 344, ch. 59-205.

#### **626.904 "Unauthorized Insurers Process Law"; short title; interpretation.—**

(1) Sections 626.904-626.912 may be cited as the "Unauthorized Insurers Process Law."

(2) Such law shall be so interpreted as to effectuate its general purpose to make uniform the law of those states which enact it.

**History.**—s. 345, ch. 59-205.

**626.905 Purpose of Process Law.**—The purpose of the Unauthorized Insurers Process Law is to subject certain insurers to the jurisdiction of courts of this state in suits by or on behalf of insureds or beneficiaries under insurance contracts. The Legislature declares that it is a subject of concern that many residents of this state hold policies of insurance issued or delivered in the state by insurers while not authorized to do business in this state, thus presenting to such residents the often insuperable obstacle of resorting to distant forums for the purpose of asserting legal rights under such policies. In furtherance of such state interest, the Legislature

herein provides a method of substituted service of process upon such insurers and declares that in so doing it exercises its power to protect its residents and to define, for the purpose of this chapter, what constitutes doing business in this state, and also exercises powers and privileges available to the state by virtue of Public Law 15, 79th Congress of the United States, chapter 20, 1st session, s. 340, as amended, which declares that the business of insurance and every person engaged therein shall be subject to the laws of the several states.

**History.**—s. 346, ch. 59-205.

**626.906 Acts constituting Insurance Commissioner and Treasurer as process agent.**—Any of the following acts in this state, effected by mail or otherwise, by an unauthorized foreign or alien insurer is equivalent to and shall constitute an appointment by such insurer of the Insurance Commissioner and Treasurer, and his successor or successors in office, to be its true and lawful attorney, upon whom may be served all lawful process in any action, suit, or proceeding instituted by or on behalf of an insured or beneficiary, arising out of any such contract of insurance; and any such act shall be signification of the insurer's agreement that such service of process is of the same legal force and validity as personal service of process in this state upon such insurer:

(1) The issuance or delivery of contracts of insurance to residents of this state or to corporations authorized to do business therein;

(2) The solicitation of applications for such contracts;

(3) The collection of premiums, membership fees, assessments or other considerations for such contracts; or

(4) Any other transaction of insurance.

**History.**—s. 347, ch. 59-205; ss. 13, 35, ch. 69-106.

#### **626.907 Service of process; judgment by default.—**

(1) Service of process upon an insurer pursuant to s. 626.906 shall be made by delivering to and leaving with the Insurance Commissioner and Treasurer or some person in apparent charge of his office two copies thereof. The Insurance Commissioner and Treasurer shall forthwith mail by registered mail one of the copies of such process to the defendant at his last known principal place of business, and shall keep a record of all process so served upon him. The service of process is sufficient, provided notice of such service and a copy of the process are sent within 10 days thereafter by registered mail by plaintiff or plaintiff's attorney to the defendant at his last known principal place of business, and the defendant's receipt, or receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff or plaintiff's attorney showing a compliance herewith are filed with the clerk of the court in which the action is pending on or before the date the defendant is required to appear, or within such further time as the court may allow.

(2) Service of process in any such action, suit or proceeding shall in addition to the manner provided in subsection (1) be valid if served upon any person

within this state, who, in this state on behalf of such insurer, is

- (a) Soliciting insurance,
- (b) Making, issuing or delivering any contract of insurance, or
- (c) Collecting or receiving any premium, membership fee, assessment or other consideration for insurance;

and a copy of such process is sent within 10 days thereafter by registered mail by the plaintiff or plaintiff's attorney to the defendant at the last known principal place of business of the defendant, and the defendant's receipt, or the receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff or plaintiff's attorney showing a compliance herewith are filed with the clerk of the court in which such action is pending on or before the date the defendant is required to appear, or within such further time as the court may allow.

(3) No plaintiff shall be entitled to a judgment by default or a decree pro confesso under this section until the expiration of 30 days from date of the filing of the affidavit of compliance.

(4) Nothing in this section shall limit or abridge the right to serve any process, notice or demand upon any insurer in any other manner now or hereafter permitted by law.

History.—s. 348, ch. 59-205; ss. 13, 35, ch. 69-106.

#### **626.908 Defense of action by unauthorized insurer; damages and attorney fee.—**

(1) Before an unauthorized insurer shall file or cause to be filed any pleading in any action or proceeding instituted against it under ss. 626.906 and 626.907, such insurer shall:

(a) Procure a certificate of authority to transact insurance in this state, or

(b) Deposit with the clerk of the court in which such action or proceeding is pending cash or securities or file with such clerk a bond with good and sufficient sureties, to be approved by the court, in an amount to be fixed by the court sufficient to secure the payment of any final judgment which may be rendered in such action. The court may in its discretion make an order dispensing with such deposit or bond where the insurer makes a showing satisfactory to the court that it maintains in a state of the United States funds or securities, in trust or otherwise, sufficient and available to satisfy any final judgment which may be entered in such action or proceeding, and that the insurer will pay any final judgment entered therein without requiring suit to be brought on such judgment in the state where such funds or securities are located, and that if, nevertheless, such suit is brought on such final judgment the insurer shall waive all defenses thereto.

(c) Any proof, evidence or testimony in support of such motion shall be taken in the jurisdiction of the court in which the action or proceeding is pending.

(d) If the unauthorized insurer seeks to take discovery or de bene esse depositions of witnesses beyond the jurisdiction of the court in which the action is pending, upon seasonable application by the plain-

tiff, the court by appropriate order shall require the unauthorized insurer, before such depositions are taken, to make similar deposit as described in paragraph (b), in sufficient amount to pay the reasonable expenses of the plaintiff and his attorney in attending the taking of such depositions, including reasonable attorney's fees to be fixed by the court.

(2) The court in any action or proceeding in which service is made in the manner provided in s. 626.907 may, in its discretion, order such postponement as may be necessary to afford the defendant reasonable opportunity to comply with the provisions of subsection (1), and to defend such action.

(3) Nothing in subsection (1) is to be construed to prevent an unauthorized insurer from filing a motion to quash or to set aside the service of any process made in the manner provided in s. 626.907, hereof on the ground either:

(a) That such unauthorized insurer has not done any of the acts enumerated in s. 626.906, or

(b) That the person on whom service was made pursuant to s. 626.907(2) was not doing any of the acts therein enumerated.

History.—s. 349, ch. 59-205.

#### **626.909 Jurisdiction of department; service of process on Secretary of State.—**

(1) The Legislature hereby declares that it is a subject of concern that the purpose of the "Unauthorized Insurers Process Law" as expressed in s. 626.905 may be denied by the possibility that the right of service of process provided for in that law may be restricted only to those actions, suits or proceedings brought by insureds or beneficiaries. It therefore declares that it is the intent of s. 626.905 that it is the obligation and duty of the state to protect its residents and also proceed under this law through the department in the courts of this state. It further declares that it is also the intent of the Legislature to subject unauthorized insurers to the jurisdiction of the department in proceedings, examinations or hearings before it as provided for in this code.

(2) In addition to the procedure for service of process on unauthorized insurers contained in ss. 626.906 and 626.907, the department shall have the right to bring any action, suit or proceeding in the name of the state or conduct any proceeding, examination or hearing provided for in this code against any unauthorized insurer for violation of any lawful order of the department or any provision of this code, specifically including but not limited to the regulation of trade practices provided for in ss. 626.951-626.986, if the insurer transacts insurance in this state as defined in ss. 624.10 and 626.906 and does not transact such business under a subsisting certificate of authority as required by s. 624.401. In the event the transaction of business is done by mail, the venue of the act is at the point where the matter transmitted by mail is delivered and takes effect.

(3) Transaction of business in this state, as so defined, by any unauthorized insurer shall be deemed consent by the insurer to the jurisdiction of the department in proceedings, examinations and hearings before it as provided for in this code and shall constitute an irrevocable appointment by such insurer of the Secretary of State and his successor or



successors in office as its true and lawful attorney upon whom may be served all lawful process in any action, suit or proceeding in any court by the department or by the state and upon whom may be served all notices and orders of the department arising out of any such transaction of business; and such transaction of business shall constitute the agreement of such insurer that any such process against it or any such notice or order which is so served shall be of the same legal force and validity as if served personally within this state on such insurer. Service of process shall be in accordance with and in the same manner as now provided for service of process upon nonresidents under the provision of s. 48.161, and service of process shall also be valid if made as provided in s. 626.907(2).

(4) No plaintiff shall be entitled to a judgment by default or a decree pro confesso under this section until the expiration of 30 days from date of the filing of the affidavit of compliance.

(5) Nothing in this section shall limit or abridge the right to serve any process, notice, orders, or demand upon the insurer in any other manner now or hereafter permitted by law.

(6) Nothing in this section shall apply as to surplus lines insurance when written pursuant to the surplus lines law, ss. 626.913-626.937, or as to transactions as to which a certificate of authority is not required of the insurer, as stated in s. 624.402, (Exceptions, certificate of authority required).

**History.**—s. 1, ch. 67-118; ss. 13, 35, ch. 69-106.

**626.910 Penalty for violation by unauthorized insurers.**—Any unauthorized insurer transacting insurance in this state and subject to service of process as referred to in s. 626.909, shall forfeit and pay to the state a civil penalty of not more than \$1,000 for each violation of any lawful order of the department or any provision of this code.

**History.**—s. 2, ch. 67-118; ss. 13, 35, ch. 69-106.

**626.911 Attorney fee.**—In any action against an unauthorized foreign or alien insurer upon a contract of insurance issued or delivered in this state to a resident thereof or to a corporation authorized to do business therein, if the insurer has failed for 30 days after demand prior to the commencement of the action to make payment in accordance with the terms of the contract, the trial judge shall allow to the plaintiff a reasonable attorney fee or compensation and include such fee or compensation in any judgment that may be rendered in such action.

**History.**—s. 350, ch. 59-205.

**626.912 Exemptions from Process Act.**—The provisions of ss. 626.904-626.911 shall not apply to any action, suit or proceeding against any unauthorized foreign or alien insurer arising out of any contract of insurance:

(1) Covering reinsurance, wet marine and transportation, commercial aircraft or railway insurance risks, or

(2) Against legal liability arising out of the ownership, operation, or maintenance of any property having a permanent situs outside of this state, or

(3) Against loss of or damage to any property having a permanent situs outside this state, or

(4) Issued under and in accordance with the surplus lines law, where such insurer enters a general appearance or where such contract of insurance contains a provision designating the Insurance Commissioner and Treasurer and his successor or successors in office or designating a Florida resident agent to be the true and lawful attorney of such unauthorized insurer upon whom may be served all lawful process in any action, suit or proceeding instituted by or on behalf of an insured or beneficiary arising out of any such contract of insurance and service of process effected on such Insurance Commissioner and Treasurer, his successor or successors in office or such resident agent shall be deemed to confer complete jurisdiction over such unauthorized insurer in such action.

**History.**—s. 351, ch. 59-205; ss. 13, 35, ch. 69-106.

**626.913 "Surplus Lines Law"; short title; purposes.**—

(1) Sections 626.913-626.937 constitute and may be referred to as the "Surplus Lines Law."

(2) It is declared that the purposes of the Surplus Lines Law are to provide orderly access for the insuring public of Florida to insurers not authorized to transact insurance in this state, through only qualified, licensed, and supervised surplus lines agents resident in Florida, for insurance coverages and to the extent thereof not procurable from authorized insurers; to protect such authorized insurers, which under the laws of Florida must meet certain standards as to policy forms and rates, from unwarranted competition by unauthorized insurers who, in the absence of this law, would not be subject to similar requirements; and for other purposes as set forth in this Surplus Lines Law.

(3) This section, and this Surplus Lines Law, do not apply as to insurance coverages which are subject to s. 626.938 (Report and tax of independently procured coverages).

**History.**—s. 352, ch. 59-205.

**626.914 Definitions.**—As used in this Surplus Lines Law:

(1) "Surplus lines agent" means an individual licensed as provided in this part to handle the placement of insurance coverages with unauthorized insurers; and to place such coverages with authorized insurers as to which the licensee is not licensed as an agent if so placed through a countersigning Florida licensed resident agent of such insurer.

(2) "Surplus lines insurer" means an unauthorized insurer in which an insurance coverage is placed or may be placed under this surplus lines law.

(3) To "export" means to place in an unauthorized insurer under this surplus lines law, insurance covering a subject of insurance resident, located, or to be performed in Florida.

**History.**—s. 353, ch. 59-205.

**626.915 Surplus lines insurance authorized.**

—If certain insurance coverages of subjects resident, located, or to be performed in this state cannot be procured from authorized insurers, such coverages, hereinafter designated "surplus lines," may be procured from unauthorized insurers, subject to the following conditions:

(1) The insurance must be eligible for export under s. 626.916 or s. 626.917;

(2) The insurer must be an eligible surplus lines insurer under s. 626.917 or s. 626.918;

(3) The insurance must be so placed through a licensed Florida surplus lines agent resident in Florida; and

(4) The other applicable provisions of this surplus lines law must be complied with.

**History.**—s. 354, ch. 59-205.

#### **626.916 Eligibility for export.—**

(1) No insurance coverage shall be eligible for export unless it meets all of the following conditions:

(a) The full amount of insurance required must not be procurable, after a diligent effort has been made to do so, from among the insurers authorized to transact and actually writing that kind and class of insurance in this state, and the amount of insurance exported shall be only the excess over the amount so procurable from authorized insurers.

(b) The premium rate at which the coverage is exported shall not be lower than that rate applicable, if any, in actual and current use by a majority of the authorized insurers for the same coverage on a similar risk.

(c) The policy or contract form under which the insurance is exported shall not be more favorable to the insured as to the coverage or rate than under similar contracts on file and in actual current use in this state by the majority of authorized insurers actually writing similar coverages on similar risks; except, that a coverage may be exported under a unique form of policy designed for use with respect to a particular subject of insurance if a copy of such form is filed with the department by the surplus lines agent desiring to use the same and is subject to the department's disapproval within 10 days of filing such form exclusive of Saturdays, Sundays, and legal holidays if it finds that use of such special form is not reasonably necessary for the principal purposes of the coverage or that its use would be contrary to the purposes of this surplus lines law with respect to the reasonable protection of authorized insurers from unwarranted competition by unauthorized insurers.

(d) Except as to extended coverage in connection with fire insurance policies and except as to wind-storm insurance, the policy or contract under which the insurance is exported shall not provide for deductible amounts, in determining the existence or extent of the insurer's liability, other than those available under similar policies or contracts in actual and current use by one or more authorized insurers. This paragraph shall not apply with respect to workers' compensation self-insurance qualified as such under chapter 440.

(2) Except that the department may by rules and regulations declare eligible for export generally, and notwithstanding the provisions of paragraphs (a), (b), (c) and (d), any class or classes of insurance coverage or risk for which it finds, after a hearing, which it shall hold annually or more often, of which notice thereof was given to each insurer authorized to transact such class or classes in this state, that there is no reasonable or adequate market among authorized insurers. Any such rules and regulations shall continue in effect during the existence of the condi-

tions upon which predicated, but subject to earlier termination by the department.

(3) Subsection (1) does not apply to wet marine and transportation or aviation risks which are subject to s. 626.917.

**History.**—s. 355, ch. 59-205; s. 1, ch. 63-86; s. 1, ch. 67-380; ss. 13, 35, ch. 69-106; s. 91, ch. 79-40.

#### **626.917 Eligibility for export; wet marine, aviation.—**

(1) Insurance coverage of wet marine and transportation or aviation risks as defined in this code in s. 624.607(1)(a)1. may be exported under the following conditions:

(a) The insurance must be placed only by or through a licensed Florida surplus lines agent;

(b) The insurer must be one made eligible by the department specifically for such coverages, based upon information furnished by the insurer and indicating that the insurer is well able to meet its financial obligations; and

(c) The surplus lines agent shall, within 60 days after procurement of the policy or contract, file with the department a copy of the policy, cover note, or contract.

(2) This section shall not apply as to pleasure boats, nor as to private aircraft owned by private owners for business and pleasure purposes only (excluding commercial), exclusive of check flight or ferry flight coverage only.

**History.**—s. 356, ch. 59-205; s. 2, ch. 63-86; ss. 13, 35, ch. 69-106.

#### **626.918 Eligible surplus lines insurers.—**

(1) No surplus lines agent shall place any coverage with any unauthorized insurer which is not then an eligible surplus lines insurer as provided for under this section.

(2) No unauthorized insurer shall be or become an eligible surplus lines insurer unless made eligible by the department in accordance with the following conditions:

(a) Eligibility of the insurer must be requested in writing by a licensed surplus lines agent;

(b) The insurer must be currently an authorized insurer in the state or country of its domicile as to the kind or kinds of insurance proposed to be so placed, and must have been such an insurer for not less than the 3 years next preceding; or must be the wholly-owned subsidiary of an already eligible surplus lines insurer or authorized insurer that has been so eligible for a period of not less than the 3 years next preceding;

(c) Before granting eligibility the requesting surplus lines agent or the insurer shall furnish the department with a duly authenticated copy of its current annual financial statement in the English language and with all monetary values therein expressed in United States dollars, at an exchange rate—in the case of statements originally made in the currencies of other countries—then current and shown in the statement, and with such additional information relative to the insurer as the department may request;

(d) The insurer, if organized under the laws of a state of the United States, must have surplus as to policyholders of not less than the amount required under this code for a like authorized insurer; or, if an

alien insurer, must have and maintain in the United States a trust fund for the protection of all its policyholders in the United States under terms deemed by the department to be reasonably adequate, in an amount equal to the capital and surplus required of authorized insurers. Any such surplus as to policyholders or trust fund shall be represented by investments consisting of public obligations of the United States, or of any state, county, or municipality thereof, or by other investments of the same general character and quality as are eligible investments for like funds of like domestic insurers under part II of chapter 625 of this code;

(e) The insurer must be of good reputation as to the providing of service to its policyholders and the payment of losses and claims;

(f) The insurer must be eligible, as for authority to transact insurance in this state, under subsections (3) (management and affiliations), and (4) (voting control or operation by alien government or agency) of s. 624.404; and

(g) This subsection does not apply as to unauthorized insurers made eligible under s. 626.917 as to wet marine and aviation risks as in such section provided.

(3) The department shall from time to time publish a list of all currently eligible surplus lines insurers, and shall mail a copy thereof to each licensed surplus lines agent at his office last of record with the department.

(4) This section shall not be deemed to cast upon the department any duty or responsibility to determine the actual financial condition or claims practices of any unauthorized insurer; and the status of eligibility, if granted by the department, shall indicate only that the insurer appears to be sound financially and to have satisfactory claims practices, and that the department has no credible evidence to the contrary.

(5) Where it appears that any particular insurance risk which is eligible for export, but insurance coverage thereon, in whole or in part, is not procurable from the eligible surplus lines insurers, after a diligent effort, then the surplus lines agent may file a supplemental affidavit stating such facts and advising the insurance department that such part of the risk as shall be unprocurable, as aforesaid, is being placed with named unauthorized insurers, in the amounts and percentages set forth in the affidavit. Such named unauthorized insurer shall, however, before accepting any risk in this state, deposit with the insurance department United States Government bonds of the market value of \$10,000 which shall be held by said department for the benefit of Florida policyholders only and the surplus lines agent shall procure from such unauthorized insurer and file with the Department of Insurance a certified copy of its statement of condition as of the close of the last calendar year. If such statement reveals, including both capital and surplus, net assets of at least \$500,000, then the surplus lines agent may proceed to consummate such contract of insurance. Whenever any insurance risk or any part thereof, is placed with an unauthorized insurer, as provided herein, the policy, binder or cover note shall bear conspicuously on its face in boldface type the follow-

ing notation: "All or part of the insurers participating in this risk have not been authorized to transact business in Florida, nor have they been declared eligible as a surplus lines insurer by the Department of Insurance of this state. The placing of such insurance by a duly licensed surplus lines agent in this state, shall not be construed as approval of such insurer by the Department of Insurance of Florida. Consequently, you do not have the protection of the insurance laws of Florida." All other provisions of this code shall apply to such placement the same as if such risks were placed with an eligible surplus lines insurer.

**History.**—s. 357, ch. 59-205; s. 1, ch. 61-105; s. 3, ch. 63-86; s. 1, ch. 63-209; ss. 13, 35, ch. 69-106; s. 2, ch. 71-18.

#### **626.919 Withdrawal of eligibility; surplus lines insurer.—**

(1) If at any time the department has reason to believe that any unauthorized insurer then on the list of eligible surplus lines insurers is insolvent, or in unsound financial condition, or does not make reasonable prompt payment of just losses and claims in this state, or that it is no longer eligible under the conditions therefor provided in s. 626.918, it shall withdraw the eligibility of the insurer to insure surplus lines risks in this state.

(2) If the department finds that an insurer currently eligible as a surplus lines insurer has willfully violated the laws of Florida, it may, in its discretion, withdraw the eligibility of the insurer to insure surplus lines risks in this state.

(3) The department shall promptly mail notice of all such withdrawals of eligibility to each surplus lines agent at his address last of record with the department.

**History.**—s. 358, ch. 59-205; ss. 13, 35, ch. 69-106; s. 21, ch. 78-95.

#### **626.920 Export procedure.—**

(1) Within 60 days after the effectuation of any surplus lines insurance (exclusive of Saturdays, Sundays, and legal holidays), the surplus lines agent shall file with the department in its office at Tallahassee:

(a) A copy of the binder, cover note, certificate, policy, or other confirmation of insurance showing the identity and location of the subject of the proposed insurance; name and address of proposed insured; name of proposed insurer or insurers; perils to be covered; form or type of policy or contract under which to be insured; any special or additional coverages or conditions; amount of premium or rate; and such other pertinent information as the department may reasonably require; and

(b) The affidavit of the surplus lines agent, on forms as prescribed and furnished by the department, as to efforts made to place the coverage with authorized insurers and the results thereof.

(2) This section does not apply as to wet marine and transportation or aviation coverages which are subject to s. 626.917.

**History.**—s. 359, ch. 59-205; s. 4, ch. 63-86; ss. 13, 35, ch. 69-106.

#### **626.921 Surplus lines examining office; filings confidential.—**

(1) For the expeditious examination of surplus lines insurance coverages as provided for in s.



626.920, the department shall establish and maintain in its offices at Tallahassee such facilities, as an "examining office," as may reasonably be necessary for the purpose.

(2) In the operation of the examining office, the department may employ or obtain necessary personnel and office furniture, fixtures and facilities, or may make joint use of personnel, furniture, fixtures and facilities otherwise employed or used in its office.

(3) Filings made by surplus lines agents with the examining office, other than the affidavits provided for in s. 626.920(1)(b), shall not be open to public inspection and shall be held as confidential information. This provision shall not apply as to the quarterly reports filed by such agents pursuant to s. 626.931 or to any information in connection with a unique form of policy issued pursuant to s. 626.916(1)(c).

History.—s. 360, ch. 59-205; ss. 13, 35, ch. 69-106.

**626.922 Evidence of the insurance; changes; penalty.—**

(1) Upon placing a surplus line coverage, the surplus lines agent shall promptly issue and deliver to the insured evidence of the insurance consisting either of the policy as issued by the insurer or, if such policy is not then available, a certificate, cover note, or other confirmation of insurance. Such document shall be executed or countersigned by the surplus lines agent and shall show the description and location of the subject of the insurance, coverage, conditions, and term of the insurance, the premium and rate charged and taxes collected from the insured, and the name and address of the insured and insurer. If the direct risk is assumed by more than one insurer, the document shall state the name and address and proportion of the entire direct risk assumed by each insurer.

(2) No surplus lines agent shall issue any such document, or purport to insure or represent that insurance will be or has been granted by any unauthorized insurer unless he has prior written authority from the insurer for the insurance, or has received information from the insurer in the regular course of business that such insurance has been granted, or an insurance policy providing the insurance actually has been issued by the insurer and delivered to the insured.

(3) If after the issuance and delivery of any such document there is any change as to the identity of the insurers, or the proportion of the direct risk assumed by the insurer as stated in the original certificate, cover note, or confirmation, or in any other material respect as to the insurance coverage evidenced by such a document, the surplus lines agent shall promptly issue and deliver to the insured a substitute certificate, cover note or confirmation, or endorsement for the original such document, accurately showing the current status of the coverage and the insurers responsible thereunder. No such change shall result in a coverage or insurance contract which would be in violation of this surplus lines law if originally issued on such basis.

(4) If a policy issued by the insurer is not available upon placement of the insurance and the surplus lines agent has issued and delivered a certificate, cover note or confirmation, as hereinabove provided,

upon request therefor by the insured the surplus lines agent shall as soon as reasonably possible procure from the insurer its policy evidencing the insurance and deliver the policy to the insured in replacement of the certificate, cover note, or confirmation theretofore issued.

(5) Any surplus lines agent who knowingly or negligently issues a false certificate, cover note, or confirmation of insurance, or false endorsement therefor, or who fails promptly to notify the insured of any material change with respect to such insurance by delivery to the insured of a substitute certificate, cover note or confirmation, or endorsement as provided in subsection (3), shall, upon conviction, be subject to the penalties provided by s. 624.15 of this code or to any greater applicable penalty otherwise provided by law.

History.—s. 361, ch. 59-205.

**626.923 Filing copy of policy or certificate.—**

Upon issuing a surplus lines policy, the surplus lines agent shall, within 60 days from the date of such issuance, file with the department an exact copy of the policy so issued. If a policy has not been issued, the surplus lines agent shall so file an exact copy of his certificate, cover note, or other confirmation of insurance as delivered to the insured. The surplus lines agent shall likewise promptly file with the department an exact copy of any substitute certificate, cover note, or other confirmation of insurance, and of every endorsement of an original policy, certificate, cover note, or other confirmation of insurance, delivered to an insured, together with such surplus lines agent's memorandum informing the department as to the substance of any change represented by such substitute certificate, cover note, or other confirmation, or of any such endorsement, as compared with the coverage as originally placed or issued.

History.—s. 362, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 71-18.

**626.924 Information required on contract.—**

Each surplus lines agent through whom a surplus lines coverage is procured shall write or print on the outside of the policy and on any certificate, cover note, or other confirmation of the insurance his name, address, identification number, and the name and address of the local agent through whom the business originated; and shall have stamped or written upon the first page of the policy or the certificate, cover note, or confirmation of insurance the words: THIS INSURANCE IS ISSUED PURSUANT TO THE FLORIDA SURPLUS LINES LAW.

History.—s. 363, ch. 59-205; s. 5, ch. 63-86.

**626.925 Surplus lines insurance valid.—**Insurance contracts procured as "surplus lines" coverages from unauthorized insurers in accordance with this law shall be fully valid and enforceable as to all parties, and shall be given acceptance and recognition in all matters and respects to the same effect and extent as like contracts issued by authorized insurers.

History.—s. 364, ch. 59-205.

**626.926 Liability of insurer as to losses and unearned premiums.—**

(1) If the unauthorized insurer has assumed the risk as to a surplus lines coverage placed under this surplus lines law, and if the premium therefor has been received by the surplus lines agent who placed such insurance, then in all questions thereafter arising under the coverage as between the insurer and the insured the insurer shall be deemed to have received the premium due to it for such coverage; and the insurer shall be liable to the insured as to losses covered by such insurance, and for unearned premiums which may become payable to the insured upon cancellation of such insurance, whether or not in fact the surplus lines agent is indebted to the insurer with respect to such insurance or for any other cause.

(2) Each unauthorized insurer assuming a surplus lines direct risk under this surplus lines law shall be deemed thereby to have subjected itself to the terms of this section.

History.—s. 365, ch. 59-205.

**626.927 Licensing of surplus lines agent.—**

(1) Any individual while licensed as a resident general lines agent as to property, casualty, and surety insurances, and who is deemed by the department to have had sufficient experience in the insurance business to be competent for the purpose, may be licensed as a surplus lines agent, upon taking and successfully passing a written examination as to surplus lines, as given by the department.

(2) Any individual while employed as a supervising or managing general agent, as defined in s. 626.091 of this code, or the full-time salaried employee of such general agent, and who otherwise possesses all of the other qualifications of a general lines agent under this code, may, upon taking and successfully passing a written examination as to surplus lines, as given by the department, be licensed as a surplus lines agent solely for the purpose of placing with surplus lines insurers property, marine, casualty, or surety coverages originated by resident local general lines agents; except, that no examination as for a general lines agent's license shall be required of any supervising or managing general agent, or such employee thereof, who held a Florida surplus lines agent's license as of January 1, 1959.

(3) Application for the license shall be made to the department on forms as designated and furnished by it.

(4) License fee in the amount specified in s. 624.501 (Filing, license and miscellaneous fees) shall be paid to the department in advance. The license shall expire at midnight on the September 30 next following date of issuance, and shall be renewable upon written request therefor filed with the department and accompanied by payment of the license fee, prior to expiration.

(5) The applicant must file and thereafter maintain the bond as required under s. 626.928.

(6) Examinations as to surplus lines, as required under subsections (1) and (2) shall be subject to the provisions of part I as applicable to applicants for licenses in general. But no such examination shall be required as to persons who held a Florida surplus lines agent's license as of the effective date of this

code, except where examinations subsequent to issuance of an initial license are provided for in general under such part I.

(7) Any individual who has been licensed by the department as a surplus lines agent as provided in this section may be subsequently licensed without additional written examination if his application for license is filed with the department within 24 months next following date of cancellation or expiration of the prior license. Except that the department may, in its discretion, require any individual to take and successfully pass an examination as for original issuance of license as a condition precedent to the renewal or continuation of the licensee's current license.

History.—s. 366, ch. 59-205; s. 6, ch. 63-86; ss. 13, 35, ch. 69-106.

**626.928 Surplus lines agent's bond.—**Prior to issuance of license, the applicant shall file with the department, and thereafter for as long as any such license remains in effect he shall keep in force and unimpaired, a bond in favor of the department in the penal sum of not less than \$5,000, aggregate liability, with authorized corporate surety or sureties approved by the department. The department may, in its discretion, require a bond in larger amount commensurate with the volume of surplus lines business transacted or to be transacted by a particular surplus lines agent. The bond shall be conditioned that the surplus lines agent will faithfully conduct business under the license in accordance with the provisions of the surplus lines law and rules and regulations of the department for the effectuation thereof, and that the licensee will promptly remit to the department the taxes as provided for by such law. No such bond shall be terminated unless not less than 30 days prior written notice thereof is given the licensee and filed with the department.

History.—s. 367, ch. 59-205; ss. 13, 35, ch. 69-106.

**626.929 May accept business from local agents; local agent shall not misrepresent.—**

(1) A resident general lines agent while licensed as a surplus lines agent under this part may originate surplus lines business and may accept surplus lines business from any other originating resident general lines agent appointed and licensed as to the kind or kinds of insurance involved, and may compensate such agent therefor.

(2) A supervising or managing general agent while licensed as a surplus lines agent under this part may accept and place solely such surplus lines business as is originated by a resident general lines agent appointed and licensed as to the kind or kinds of insurance involved and may compensate such general lines agent therefor.

(3) No such general lines agent shall knowingly misrepresent to the surplus lines agent any material fact involved in any such insurance, or in the eligibility thereof for placement with a surplus lines insurer.

History.—s. 368, ch. 59-205.

**626.930 Records of surplus lines agent.—**

(1) Each surplus lines agent shall keep in his office in this state a full and true record of each surplus lines contract procured by him, including a copy

of the daily report, if any, and showing such of the following items as may be applicable:

- (a) Amount of the insurance and perils insured against;
- (b) Brief general description of property insured and where located;
- (c) Gross premium charged;
- (d) Return premium paid, if any;
- (e) Rate of premium charged upon the several items of property;
- (f) Effective date of the contract, and the terms thereof;
- (g) Name and post-office address of the insured;
- (h) Name and home-office address of the insurer;
- (i) Amount collected from the insured; and
- (j) Other information as may be required by the department.

(2) The record shall at all times be open to examination by the department without notice, and shall be so kept available and open to the department for 3 years next following expiration or cancellation of the contract.

*History.*—s. 369, ch. 59-205; ss. 13, 35, ch. 69-106.

#### **626.931 Quarterly report; summary of exported business.—**

(1) Each surplus lines agent shall on or before the end of the month next following each calendar quarter file with the department a verified report in duplicate of all surplus lines insurance transacted by him during such calendar quarter.

(2) The report shall be on forms as prescribed and furnished by the department and shall show:

- (a) Aggregate gross premiums charged;
- (b) Aggregate of returned premiums and taxes paid to insureds;
- (c) Aggregate of net premiums; and
- (d) Additional information as required by the department.

(3) The report shall include a separate report of the applicable items referred to in subsection (2) as to wet marine and aviation coverages written under s. 626.917.

(4) Not less frequently than quarterly the department shall prepare and make available upon request to persons interested therein, a report summarizing by lines of insurance as reasonably classified by the department, all insurance business exported under this surplus lines law during such quarter, as based upon the quarterly reports hereinabove required.

*History.*—s. 370, ch. 59-205; s. 7, ch. 63-86; ss. 13, 35, ch. 69-106.

#### **626.932 Surplus lines tax.—**

(1) The premiums charged for surplus lines coverages are subject to a premium receipts tax of 3 percent of all gross premiums charged for such insurance. The surplus lines agent shall collect from the insured the amount of the tax at the time of the delivery of the cover note, certificate of insurance, policy or other initial confirmation of insurance, in addition to the full amount of the gross premium charged by the insurer for the insurance. The surplus lines agent is prohibited from absorbing such tax, or, as an inducement for insurance or for any other reason, rebating all or any part of such tax or of his commission.

(2) The surplus lines agent shall pay to the de-

partment the tax related to each calendar quarter's business as reported, and at the same time as provided for the filing of the quarterly report, under s. 626.931.

(3) If a surplus lines policy covers risks or exposures only partially in this state, the tax payable shall be computed on the portion of the premium which is properly allocable to the risks or exposures located in this state.

(4) This section does not apply as to insurance of, or with respect to, vessels, cargo, or aircraft written under s. 626.917, or as to insurance of risks of the state government or its agencies, or of any county or municipality or of any agency thereof.

(5) The department shall deposit all taxes collected under this section to the credit of the Insurance Commissioner's Regulatory Trust Fund.

*History.*—s. 371, ch. 59-205; s. 15, ch. 65-269; ss. 13, 35, ch. 69-106.

**626.933 Collection of tax.**—If the tax payable by a surplus lines agent under this surplus lines law is not so paid within the time prescribed, the same shall be recoverable in a suit brought by the department against the surplus lines agent and the surety or sureties on the bond filed by the surplus lines agent under s. 626.928.

*History.*—s. 372, ch. 59-205; ss. 13, 35, ch. 69-106.

**626.934 Accounting for funds; contingent commissions.**—The following sections also apply as to surplus lines agents:

(1) Section 626.561 (reporting and accounting for funds);

(2) Section 626.581 (commissions contingent upon adjustment savings prohibited); and

(3) Section 626.591 (same; penalty for violation).

*History.*—s. 373, ch. 59-205.

#### **626.935 Suspension, revocation or refusal of surplus lines agent license.—**

(1) The department shall suspend, revoke, or refuse to renew the license of a surplus lines agent and all other licenses and permits held by the licensee under this code, upon any one or more of the following grounds:

(a) Removal of the licensee's office from the state;

(b) Removal of the accounts and records of his surplus lines business from this state during the period when such accounts and records are required to be maintained under s. 626.930;

(c) Closure of the licensee's office for a period of more than 30 consecutive days.

(d) Failure to make and file his quarterly reports when due as required by s. 626.931.

(e) Failure to pay the tax on surplus lines premiums, as provided for in this surplus lines law.

(f) Failure to maintain the bond as required by s. 626.928.

(g) Suspension, revocation, or refusal to renew or continue the license as a general lines agent.

(h) Lack of qualifications as for an original surplus lines agent's license.

(i) Violation of this surplus lines law.

(j) For any other applicable cause for which the license of a general lines agent could be suspended, revoked, or refused under s. 626.611 (grounds for



compulsory refusal, suspension, revocation of license or permit).

(2) The department may, in its discretion, suspend, revoke, or refuse to renew the license of any surplus lines agent upon any applicable ground for which a general lines agent's license could be suspended, revoked, or refused under s. 626.621 (grounds for discretionary refusal, suspension, revocation of license or permit).

(3) The department shall, in the suspension, revocation, or refusal to renew the license of a surplus lines agent, follow the same procedures, as applicable, as provided for refusal, suspension, or revocation of licenses of general lines agents, but subject to s. 626.936 as to failure to file annual statement or pay tax.

(4) The following sections shall also apply, to the extent so applicable, as to surplus lines agents:

(a) Section 626.641 (duration of suspension or revocation).

(b) Section 626.651 (effect of suspension, revocation upon associated licenses and licensees).

(c) Section 626.661 (surrender of license or permit).

(d) Section 626.681 (administrative fine in lieu of suspension, revocation of license).

(e) Section 626.691 (probation).

History.—s. 374, ch. 59-205; ss. 13, 35, ch. 69-106; s. 21, ch. 78-95.

**626.936 Special procedure; failure to file report or pay tax.—**

(1) If any licensed surplus lines agent fails to file the quarterly report required or pay the taxes as required of him under this surplus lines law, the department shall issue an order directed to the licensee requiring the licensee to file such report and pay such tax.

(2) The only defenses available to the licensee with respect thereto shall be that the department is requiring the payment of a tax greater than that due from the licensee, and such defense will be available only if the licensee shall have filed return purporting to show the tax payable by the licensee and shall have tendered the amount of tax computed by the licensee to be due.

(3) If the department determines that the licensee has failed to pay the tax required, it shall enter an order revoking the licenses of such licensee, which order shall not become effective until 5 days following its entry and shall not become effective if the licensee pays the tax owed within said 5 days.

(4) If any such licensee is required by an order to pay any tax he contends is not legally due, he may pay same under protest.

History.—s. 375, ch. 59-205; ss. 13, 35, ch. 69-106; s. 21, ch. 78-95.

**626.937 Actions against insurer; service of process.—**

(1) An unauthorized insurer may be sued upon any cause of action arising in this state under any surplus lines insurance contract issued by it or certificate, cover note, or other confirmation of such insurance issued by the surplus lines agent, pursuant to the same procedure as is provided in s. 624.423 of this code as to authorized insurers.

(2) The unauthorized insurer accepting the risk or issuing the policy shall be deemed thereby to have

authorized service of process against it in the manner and to the effect as provided in this section, and to have appointed the Insurance Commissioner and Treasurer as its agent for service of process issuing upon any cause of action arising in this state under any such policy, contract, or insurance.

(3) Each unauthorized insurer requesting eligibility pursuant to s. 626.918 shall file with the department its appointment of the Insurance Commissioner and Treasurer and his successors in office, on a form as furnished by the department, as its attorney to receive service of all legal process issued against it in any civil action or proceeding in this state, and agreeing that process so served shall be valid and binding upon the insurer. The appointment shall be irrevocable, shall bind the insurer and any successor in interest as to the assets or liabilities of the insurer, and shall remain in effect as long as there is outstanding in this state any obligation or liability of the insurer resulting from its insurance transactions therein.

(4) At the time of such appointment of the Insurance Commissioner and Treasurer as its process agent the insurer shall file with the department designation of the name and address of the person to whom process against it served upon the Insurance Commissioner and Treasurer is to be forwarded. The insurer may change the designation at any time by a new filing.

(5) This section shall be cumulative to any other methods which may be provided by law for service of process upon the insurer.

History.—s. 376, ch. 59-205; s. 8, ch. 63-86; ss. 13, 35, ch. 69-106.

**626.938 Report and tax of independently procured coverages.—**

(1) Every insured who in this state procures or causes to be procured or continues or renews insurance in an unauthorized foreign insurer, or any self-insurer who in this state so procures or continues excess loss, catastrophe or other insurance, upon a subject of insurance resident, located or to be performed within this state, other than insurance procured through a surplus lines agent pursuant to the surplus lines law of this state or exempted from tax under s. 626.932(4), shall within 30 days after the date such insurance was so procured, continued, or renewed, file a report of the same with the department in writing and upon forms designated by the department and furnished to such an insured upon request. The report shall show the name and address of the insured or insureds, name and address of the insurer, the subject of the insurance, a general description of the coverage, the amount of premium currently charged therefor, and such additional pertinent information as is reasonably requested by the department.

(2) Any insurance in an unauthorized insurer procured through negotiations or an application, in whole or in part occurring or made within or from within this state, or for which premiums in whole or in part are remitted directly or indirectly from within this state, shall be deemed to be insurance procured, or continued or renewed in this state within the intent of subsection (1).

(3) For the general support of the government of this state, there is levied upon the obligation, chose

in action, or right represented by the premium charged for such insurance, a tax at the rate of 3 percent of the gross amount of such premium. The insured shall withhold the amount of the tax from the amount of premium charged by and otherwise payable to the insurer for such insurance, and within 30 days after the insurance was so procured, continued or renewed, and coincidentally with the filing with the department of the report provided for in subsection (1), the insured shall pay the amount of the tax to the department.

(4) If the insured fails to withhold from the premium the amount of tax herein levied, the insured shall be liable for the amount thereof and shall pay the same to the department within the time stated in subsection (3).

(5) The tax imposed hereunder if delinquent shall bear interest at the rate of 6 percent per annum, compounded annually.

(6) The tax shall be collectible from the insured by civil action brought by the department, or by distraint.

(7) The department shall deposit all taxes and interest collected under this section to the credit of the Insurance Commissioner's Regulatory Trust Fund.

(8) This section does not abrogate or modify, and shall not be construed or deemed to abrogate or modify, any provision of ss. 626.901 (Representing or aiding unauthorized insurer prohibited), 626.902 (Penalty for representing unauthorized insurer), or 626.903 (Suits by unauthorized insurers prohibited), or any other provision of this code.

(9) This section does not apply as to life or disability insurances.

**History.**—s. 377, ch. 59-205; s. 9, ch. 63-86; s. 16, ch. 65-269; ss. 13, 35, ch. 69-106.

#### **626.939 Records produced on order.—**

(1) Every person by or as to whom insurance is procured or placed in an unauthorized insurer, upon the department's order shall produce for its examination all policies and other documents evidencing the insurance, and shall disclose to the department the amount of gross premiums paid or agreed to be paid for the insurance. For each refusal to obey such order such person upon conviction thereof shall be liable to a fine of not more than \$500.

(2) This section does not apply to life insurance or disability insurance.

**History.**—s. 378, ch. 59-205; ss. 13, 35, ch. 69-106.

### **PART VII**

#### **UNFAIR INSURANCE TRADE PRACTICES**

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- 626.989 Division of Insurance Fraud; investigative, subpoena powers; accident reports to division; personnel and expenses; division of costs.

#### **626.951 Declaration of purpose.—**

(1) The purpose of this part is to regulate trade practices relating to the business of insurance in accordance with the intent of Congress as expressed in the Act of Congress of March 9, 1945 (Public Law 15, 79th Congress), by defining, or providing for the determination of, all such practices in this state which constitute unfair methods of competition or unfair or deceptive acts or practices and by prohibiting the trade practices so defined or determined.

(2) This part shall be entitled the "Unfair Insurance Trade Practices Act."

**History.**—s. 379, ch. 59-205; s. 9, ch. 76-260.

#### **626.9511 Definitions.—**When used in this part:

(1) "Person" means any individual, corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyds insurer, fraternal benefit society or business trust, or any entity involved in the business of insurance.

(2) "Department" means the Department of Insurance of this state.

(3) "Insurance policy" or "insurance contract" means written contract of, or written agreement for or effecting, insurance, or the certificate thereof, by whatever name called, and includes all clauses, riders, endorsements, and papers which are a part thereof.

**History.**—s. 9, ch. 76-260; s. 1, ch. 77-174.

**626.9521 Unfair methods of competition and unfair or deceptive acts or practices prohibited.**—No person shall engage in this state in any trade practice which is defined in this part as, or deter-

mined pursuant to s. 626.9561 to be, an unfair method of competition or an unfair or deceptive act or practice involving the business of insurance. Any person who violates any provision of this part shall be subject to the penalties provided in s. 627.381.

History.—s. 9, ch. 76-260.

**626.9541 Unfair methods of competition and unfair or deceptive acts or practices defined.**—The following are defined as unfair methods of competition and unfair or deceptive acts or practices:

(1) **MISREPRESENTATIONS AND FALSE ADVERTISING OF INSURANCE POLICIES.**—Knowingly making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, statement, sales presentation, omission, or comparison which:

(a) Misrepresents the benefits, advantages, conditions, or terms of any insurance policy.

(b) Misrepresents the dividends or share of the surplus to be received on any insurance policy.

(c) Makes any false or misleading statements as to the dividends or share of surplus previously paid on any insurance policy.

(d) Is misleading, or is a misrepresentation, as to the financial condition of any person or as to the legal reserve system upon which any life insurer operates.

(e) Uses any name or title of any insurance policy or class of insurance policies misrepresenting the true nature thereof.

(f) Is a misrepresentation for the purpose of inducing, or tending to induce, the lapse, forfeiture, exchange, conversion, or surrender of any insurance policy.

(g) Is a misrepresentation for the purpose of effecting a pledge or assignment of, or effecting a loan against, any insurance policy.

(h) Misrepresents any insurance policy as being shares of stock, or misrepresents ownership interest in the company.

(2) **FALSE INFORMATION AND ADVERTISING GENERALLY.**—Knowingly making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public:

(a) In a newspaper, magazine, or other publication,

(b) In the form of a notice, circular, pamphlet, letter, or poster,

(c) Over any radio or television station, or

(d) In any other way,

an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance, which is untrue, deceptive, or misleading.

(3) **DEFAMATION.**—Knowingly making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of, any oral or written statement, or any pamphlet, circular, article, or literature, which is false or maliciously critical of, or derogatory to, any person and which is calculated to injure such person.

(4) **BOYCOTT, COERCION, AND INTIMIDA-**

**TION.**—Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion, or intimidation resulting in, or tending to result in, unreasonable restraint of, or monopoly in, the business of insurance.

(5) **FALSE STATEMENTS AND ENTRIES.**—

(a) Knowingly:

1. Filing with any supervisory or other public official,

2. Making, publishing, disseminating, circulating,

3. Delivering to any person,

4. Placing before the public,

5. Causing, directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public,

any false material statement.

(b) Knowingly making any false entry of a material fact in any book, report, or statement of any person, or knowingly omitting to make a true entry of any material fact pertaining to the business of such person in any book, report, or statement of such person.

(6) **STOCK OPERATIONS AND ADVISORY BOARD CONTRACTS.**—Issuing or delivering, promising to issue or deliver, or permitting agents, officers, or employees to issue or deliver, agency company stock or other capital stock, benefit certificates or shares in any common-law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns or profits as an inducement to insurance.

(7) **UNFAIR DISCRIMINATION.**—

(a) Knowingly making or permitting any unfair discrimination between individuals of the same actuarially supportable class and equal expectation of life, in the rates charged for any life insurance or annuity contract, in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract.

(b) Knowingly making or permitting any unfair discrimination between individuals of the same actuarially supportable class and essentially the same hazard, in the amount of premium, policy fees, or rates charged for any policy or contract of accident, disability, or health insurance, in the benefits payable thereunder, in any of the terms or conditions of such contract, or in any other manner whatever.

(8) **REBATES.**—

(a) Except as otherwise expressly provided by law, or in an applicable filing with the department, knowingly:

1. Permitting, or offering to make, or making, any contract or agreement as to such contract other than as plainly expressed in the insurance contract issued thereon;

2. Paying, allowing, or giving, or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance contract, any rebate of premiums payable on the contract, any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract;

3. Giving, selling, or purchasing, or offering to give, sell, or purchase, as inducement to such insur-



ance contract or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, or partnership, or any dividends or profits accrued thereon, or anything of value whatsoever not specified in the insurance contract.

(b) Nothing in subsection (7) or paragraph (a) of this subsection shall be construed as including within the definition of discrimination or rebates:

1. In the case of any contract of life insurance or life annuity, paying bonuses to all policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance; provided that any such bonuses or abatement of premiums is fair and equitable to all policyholders and for the best interests of the company and its policyholders.

2. In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expenses.

3. Readjustment of the rate of premium for a group insurance policy based on the loss or expense thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year.

4. Issuance of life insurance policies or annuity contracts at rates less than the usual rates of premiums for such policies or contracts, as group insurance or employee insurance as defined in this code.

5. Issuing life or disability insurance policies on a salary savings, bank draft, preauthorized check, payroll deduction, or other similar plan at a reduced rate reasonably related to the savings made by the use of such plan.

(c)1. No title insurer, or any member, employee, attorney, agent, or solicitor thereof, shall pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, as inducement to title insurance, or after such insurance has been effected, any rebate or abatement of the charge made incident to the issuance of such insurance, any special favor or advantage, or any monetary consideration or inducement whatever. The words "charge made incident to the issuance of such insurance" shall be construed to encompass underwriting premium, agent's commission, abstracting charges, title examination fee, and closing charges; however, nothing herein contained shall preclude an abatement in an attorney fee charged for services rendered incident to the issuance of such insurance.

2. Nothing in this paragraph shall be construed as prohibiting the payment of fees to attorneys at law duly licensed to practice law in the courts of this state, for professional services in the actual examination of title to real property as a condition to the issuance of title insurance, or as prohibiting the payment of earned commissions to duly appointed agents who actually issue the policy of title insurance for the underwriting company.

3. No insured named in a policy, or any other person directly or indirectly connected with the transaction involving the issuance of said policy, including, but not limited to, mortgage broker, real

estate broker, builder, or attorney, any employee, agent, representative, or solicitor thereof, or any other person whatsoever, shall knowingly receive or accept, directly or indirectly, any such rebate or abatement of said charge, or any monetary consideration or inducement, other than as set forth in subparagraph 2.

#### (9) UNFAIR CLAIM SETTLEMENT PRACTICES.—

(a) Attempting to settle claims on the basis of an application, when serving as a binder or intended to become a part of the policy, or any other material document which was altered without notice to, or knowledge or consent of, the insured;

(b) A material misrepresentation made to an insured or any other person having an interest in the proceeds payable under such contract or policy, for the purpose and with the intent of effecting settlement of such claims, loss, or damage under such contract or policy on less favorable terms than those provided in, and contemplated by, such contract or policy; or

(c) Committing or performing with such frequency as to indicate a general business practice any of the following:

1. Failing to adopt and implement standards for the proper investigation of claims;

2. Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue;

3. Failing to acknowledge and act promptly upon communications with respect to claims;

4. Denying claims without conducting reasonable investigations based upon available information;

5. Failing to affirm or deny coverage of claims upon written request of the insured within a reasonable time after proof of loss statements have been completed; or

6. Failing to promptly provide a reasonable explanation in writing to the insured of the basis in the insurance policy, in relation to the facts or applicable law, for denial of a claim or for the offer of a compromise settlement.

(10) FAILURE TO MAINTAIN COMPLAINT HANDLING PROCEDURES.—Failure of any person to maintain a complete record of all the complaints received since the date of the last examination. For purposes of this subsection, "complaint" means any written communication primarily expressing a grievance.

#### (11) MISREPRESENTATION IN INSURANCE APPLICATIONS.—

(a) Knowingly making false or fraudulent statements or representations on, or relative to, an application for an insurance policy for the purpose of obtaining a fee, commission, money, or other benefit from any insurer, agent, broker, or individual.

(b) Any agent, solicitor, examining physician, applicant, or other person who knowingly makes any false and fraudulent statement or representation in, or with reference to, any application or negotiation for insurance, in addition to any other penalty provided in this act, shall, upon conviction, be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(12) "TWISTING."—Knowingly making any misleading representations or incomplete or fraudu-

lent comparisons of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance policy or to take out a policy of insurance in another insurer.

(13) **ADVERTISING GIFTS PERMITTED.**—No provision of subsection (6), subsection (7), or subsection (8) shall be deemed to prohibit a licensed insurer or its agent from giving to insureds, prospective insureds, and others, for the purpose of advertising, any article of merchandise having a value of not more than \$10.

(14) **FREE INSURANCE PROHIBITED.**—

(a) Advertising, offering, or providing free insurance as an inducement to the purchase or sale of real or personal property or of services directly or indirectly connected with such real or personal property.

(b) For the purposes of this subsection, "free" insurance is:

1. Insurance for which no identifiable and additional charge is made to the purchaser of such real property, personal property, or services.

2. Insurance for which an identifiable or additional charge is made in an amount less than the cost of such insurance as to the seller or other person, other than the insurer, providing the same.

(c) Paragraphs (a) and (b) do not apply to:

1. Insurance of loss of or damage to the real or personal property involved in any such sale or services, under a policy covering the interests therein of the seller or vendor.

2. Blanket disability insurance as defined in s. 627.659 of this code.

3. Credit life insurance or credit disability insurance.

4. Any individual, isolated, nonrecurring unadvertised transaction not in the regular course of business.

5. Title insurance.

6. Any purchase agreement involving the purchase of a cemetery lot or lots in which, under stated conditions, any balance due is forgiven upon the death of the purchaser.

(d) Using the word "free" to describe life or disability insurance, in connection with the advertising or offering for sale of any kind of goods, merchandise, or services.

(15) **ILLEGAL DEALINGS IN PREMIUMS; EXCESS OR REDUCED CHARGES FOR INSURANCE.**—

(a) Knowingly collecting any sum as a premium or charge for insurance, which is not then provided, or is not in due course to be provided, subject to acceptance of the risk by the insurer, by an insurance policy issued by an insurer as permitted by this code.

(b) Knowingly collecting as a premium or charge for insurance any sum in excess of or less than the premium or charge applicable to such insurance, in accordance with the applicable classifications and rates as filed with and approved by the department, and as specified in the policy; or, in cases when classifications, premiums, or rates are not required by this code to be so filed and approved, premiums and charges in excess of or less than those specified in the

policy and as fixed by the insurer. This provision shall not be deemed to prohibit the charging and collection, by surplus lines agents licensed under part VI of this chapter, of the amount of applicable state and federal taxes in addition to the premium required by the insurer.

(c) Imposing or requesting an additional premium for automobile liability insurance, or refusing to renew the policy, solely because the insured was involved in an automobile accident, unless the applicant's or insured's insurer has incurred a loss under the insured's policy, other than with respect to uninsured motorist coverage, arising out of the accident, or unless the insurer's file shall contain sufficient proof of fault, or other criteria, to justify the additional charge or refusal to renew. An insurer which imposes and collects such a surcharge shall, in conjunction with the notice of premium due, notify the named insured that he is entitled to reimbursement of such amount under the conditions listed below, and shall subsequently reimburse him, if the named insured demonstrates that the operator involved in the accident was:

1. Lawfully parked.

2. Reimbursed by, or on behalf of, a person responsible for the accident or has a judgment against such person.

3. Struck in the rear by another vehicle headed in the same direction and was not convicted of a moving traffic violation in connection with the accident.

4. Hit by a "hit-and-run" driver, if the accident was reported to the proper authorities within 24 hours after discovering the accident.

5. Not convicted of a moving traffic violation in connection with the accident.

6. Finally adjudicated not to be liable by a court of competent jurisdiction.

7. In receipt of a traffic citation which was dismissed or nolle prossed.

(d) Upon the request of the insured, the insurer and licensed agent shall supply to the insured the complete proof of fault or other criteria which justifies the additional charge of cancellation.

(e) This subsection does not apply to life or disability insurance.

(f) No insurer shall impose or request an additional premium for motor vehicle insurance, cancel a policy, or refuse to renew a policy solely because the insured is a handicapped or physically disabled person.

(g) No insurer may cancel or otherwise terminate any insurance contract, or require execution of a consent to rate endorsement, during the stated policy term for the purpose of offering to issue, or issuing, a similar or identical contract to the same insured at a higher premium rate or continuing an existing contract at an increased premium.

(h) No insurer shall, with respect to premiums charged for automobile insurance, unfairly discriminate solely on the basis of age, sex, marital status, or scholastic achievement.

(16) **INSURANCE COST SPECIFIED IN "PRICE PACKAGE."**—

(a) When the premium or charge for insurance of or involving such property or merchandise is includ-

ed in the overall purchase price or financing of the purchase of merchandise or property, the vendor or lender shall separately state and identify the amount charged and to be paid for the insurance, and the classifications, if any, upon which based; and the inclusion or exclusion of the cost of insurance in such purchase price or financing shall not increase, reduce, or otherwise affect any other factor involved in the cost of the merchandise, property, or financing as to the purchaser or borrower.

(b) This subsection does not apply to transactions which are subject to the provisions of part I of chapter 520, entitled "The Motor Vehicle Sales Finance Act."

(c) This subsection does not apply to credit life or credit disability insurance which is in compliance with s. 627.681(2).

**(17) CERTAIN INSURANCE TRANSACTIONS THROUGH CREDIT CARD FACILITIES PROHIBITED.—**

(a) Except as provided in part VIII of chapter 627, no person shall knowingly solicit or negotiate any insurance, seek or accept applications for insurance, issue or deliver any policy, or receive, collect, or transmit premiums, to or for any insurer, or otherwise transact insurance in this state, or relative to a subject of insurance resident, located, or to be performed in this state, through the arrangement or facilities of a credit card facility or organization, for the purpose of insuring credit card holders or prospective credit card holders. "Credit card holder" as used in this subsection means any person who may pay the charge for purchases or other transactions through the credit card facility or organization, whose credit with such facility or organization is evidenced by a credit card identifying such person as being one whose charges the credit card facility or organization will pay, and who is identified as such upon the credit card either by name, account number, symbol, insignia, or any other method or device of identification. This paragraph does not apply as to disability or health insurance as defined in s. 624.603.

(b) Whenever any person does or performs in this state any of the acts set forth in paragraph (a) for or on behalf of any insurer therein referred to, such insurer shall be held to be doing business in this state and shall be subject to the same state, county, and municipal taxes as insurers that have been legally qualified and admitted to do business in this state by agents or otherwise are subject, the same to be assessed and collected against such insurers; and such persons so doing or performing any of such acts shall be personally liable for all such taxes.

**(18) INTERLOCKING OWNERSHIP AND MANAGEMENT.—**

(a) Any domestic insurer may retain, invest in, or acquire the whole or any part of the capital stock of any other insurer or insurers, or have a common management with any other insurer or insurers, unless such retention, investment, acquisition, or common management is inconsistent with any other provision of this code, or unless by reason thereof the business of such insurers with the public is conducted in a manner which substantially lessens competition generally in the insurance business.

(b) Any person otherwise qualified may be a director of two or more domestic insurers which are competitors, unless the effect thereof is substantially to lessen competition between insurers generally or materially tend to create a monopoly.

(c) Any limitation contained in this subsection shall not apply to any person who is a director of two or more insurers under common control or management.

**(19) PROHIBITED ARRANGEMENTS AS TO FUNERALS.—**

(a) No life insurer shall designate in any life insurance policy the person to conduct the funeral of the insured, or organize, promote, or operate any enterprise or plan to enter into any contract with any insured under which the freedom of choice in the open market of the person having the legal right to such choice is restricted as to the purchase, arrangement, and conduct of a funeral service or any part thereof for any individual insured by the insurer.

(b) No insurer shall contract or agree to furnish funeral merchandise or services in connection with the burial of any person upon the death of any person insured by such insurer.

(c) No insurer shall contract or agree with any funeral director or undertaker to the effect that such funeral director or undertaker shall conduct the funeral of any person insured by such insurer.

(d) No insurer shall provide, in any insurance contract covering the life of any person in this state, for the payment of the proceeds or benefits thereof in other than legal tender of the United States and of this state, or for the withholding of such proceeds or benefits, all for the purpose of either directly or indirectly providing, inducing, or furthering any arrangement or agreement designed to require or induce the employment of a particular person to conduct the funeral of the insured.

**(20) CERTAIN LIFE INSURANCE RELATIONS WITH FUNERAL DIRECTORS PROHIBITED.—**

(a) No life insurer shall permit any funeral director or undertaker to act as its representative, adjuster, claim agent, special claim agent, or agent for such insurer in soliciting, negotiating, or effecting contracts of life insurance on any plan or of any nature issued by such insurer or in collecting premiums for holders of any such contracts.

(b) No life insurer shall:

1. Affix, or permit to be affixed, advertising matter of any kind or character of any funeral director or undertaker to such policies of insurance.

2. Circulate, or permit to be circulated, any such advertising matter with such insurance policies.

3. Attempt in any manner or form to influence policyholders of the insurer to employ the services of any particular funeral director or undertaker.

(c) No such insurer shall maintain, or permit its agent to maintain, an office or place of business in the office, establishment, or place of business of any funeral director or undertaker in this state.

**(21) FALSE CLAIMS; OBTAINING OR RETAINING MONEY DISHONESTLY.—**

(a) Any agent, physician, claimant, or other person who causes to be presented to any insurer a false



claim for payment, knowing the same to be false; or

(b) Any agent, solicitor, collector, or other person who shall represent any insurer or collect or do business without the authority of the insurer, secure cash advances by false statements, or fail to turn over when required, or satisfactorily account for, all collections of such insurer,

shall, in addition to the other penalties provided in this act, be guilty of a misdemeanor of the second degree, and upon conviction thereof shall be subject to the penalties provided by s. 775.082, s. 775.083, or s. 775.084.

(22) **PROPOSAL REQUIRED.**—If a person simultaneously holds a securities license and a life insurance license, he shall prepare and leave with each prospective buyer a written proposal, on or before delivery of any investment plan. "Investment plan" means a mutual funds program, and the proposal shall consist of a prospectus describing the investment feature and a full illustration of any life insurance feature. The proposal shall be prepared in duplicate, dated, and signed by the licensee. The original shall be left with the prospect, the duplicate shall be retained by the licensee for a period of not less than 3 years, and a copy shall be furnished to the department upon its request. In lieu of a duplicate copy, a receipt for standardized proposals filed with the department may be obtained and held by the licensee.

(23) **SOLICITING OR ACCEPTING NEW OR RENEWAL INSURANCE RISKS BY INSOLVENT INSURER PROHIBITED; PENALTY.**—

(a) Whether or not delinquency proceedings as to the insurer have been or are to be initiated, but while such insolvency exists, no director or officer of an insurer, except with the written permission of the Department of Insurance, shall authorize or permit the insurer to solicit or accept new or renewal insurance risks in this state after such director or officer knew, or reasonably should have known, that the insurer was insolvent.

(b) Any such director or officer, upon conviction of violation of this subsection, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(24) **REFUSAL TO INSURE.**—In addition to other provisions of this code, the refusal to insure, or continue to insure, any individual or risk solely because of:

(a) Race, color, creed, marital status, sex, or national origin;

(b) The residence, age, or lawful occupation of the individual or the location of the risk, unless there is a reasonable relationship between the residence, age, or lawful occupation of the individual or the location of the risk and the coverage issued or to be issued;

(c) The insured's or applicant's failure to agree to place collateral business with a particular insurer; or

(d) The fact that the insured or applicant had been previously refused insurance coverage by any insurer, when such refusal to insure or continue to

insure for this reason occurs with such frequency as to indicate a general business practice.

*History.*—s. 9, ch. 76-260; s. 1, ch. 77-174; s. 19, ch. 77-468; s. 1, ch. 78-377; s. 1, ch. 79-289.

**626.9551 Favored agent or insurer; coercion of debtors.**—

(1) No person may:

(a) Require, as a condition precedent or condition subsequent to the lending of money or extension of credit or any renewal thereof, that the person to whom such money or credit is extended, or whose obligation the creditor is to acquire or finance, negotiate any policy or contract of insurance through a particular insurer or group of insurers or agent or broker or group of agents or brokers.

(b) Unreasonably disapprove the insurance policy provided by a borrower for the protection of the property securing the credit or lien. For purposes of this paragraph, such disapproval shall be deemed unreasonable if it is not based solely on reasonable standards, uniformly applied, relating to the extent of coverage required by such lender or person extending credit and the financial soundness and the services of an insurer. Such standards shall not discriminate against any particular type of insurer, nor shall such standards call for the disapproval of an insurance policy because such policy contains coverage in addition to that required.

(c) Require, directly or indirectly, that any borrower, mortgagor, purchaser, insurer, broker, or agent pay a separate charge in connection with the handling of any insurance policy required as security for a loan on real estate or pay a separate charge to substitute the insurance policy of one insurer for that of another. This paragraph does not include the interest which may be charged on premium loans or premium advances in accordance with the security instrument.

(d) Use or disclose information resulting from a requirement that a borrower, mortgagor, or purchaser furnish insurance of any kind on real property being conveyed or used as collateral security to a loan, when such information is to the advantage of the mortgagee, vendor, or lender, or is to the detriment of the borrower, mortgagor, purchaser, or insurer, or the agent or broker, complying with such a requirement.

(2) The department may investigate the affairs of any person to whom this section applies to determine whether such person has violated this section. If a violation of this section is found to have been committed knowingly, the person in violation shall be subject to the same procedures and penalties as provided in ss. 626.9571, 626.9581, 626.9591, and 626.9601.

*History.*—s. 9, ch. 76-260; s. 1, ch. 77-174; s. 2, ch. 79-289; s. 236, ch. 79-400.

**626.9561 Power of department.**—The department shall have power to examine and investigate the affairs of every person involved in the business of insurance in this state in order to determine whether such person has been or is engaged in any unfair method of competition or in any unfair or deceptive act or practice prohibited by s. 626.9521.

*History.*—s. 9, ch. 76-260.

**626.9571 Defined practices; hearings, witnesses, appearances, production of books and service of process.—**

(1) Whenever the department has reason to believe that any person has engaged, or is engaging, in this state in any unfair method of competition or any unfair or deceptive act or practice as defined in s. 626.9541 or s. 626.9551 or is engaging in the business of insurance without being properly licensed as required by this code and that a proceeding by it in respect thereto would be to the interest of the public, it shall conduct or cause to have conducted a hearing in accordance with chapter 120.

(2) The department or a duly empowered hearing officer shall, during the conduct of such hearing, have those powers enumerated in s. 120.58; however, the penalties for failure to comply with a subpoena or with an order directing discovery shall be limited to a fine not to exceed \$1000 per violation.

(3) Statements of charges, notices, and orders under this act may be served by anyone duly authorized by the department, either in the manner provided by law for service of process in civil actions or by certifying and mailing a copy thereof to the person affected by such statement, notice, order, or other process at his or its residence or principal office or place of business. The verified return by the person so serving such statement, notice, order, or other process, setting forth the manner of the service, shall be proof of the same, and the return postcard receipt for such statement, notice, order, or other process, certified and mailed as aforesaid, shall be proof of service of the same.

History.—s. 9, ch. 76-260.

**626.9581 Cease and desist and penalty orders.—**After the hearing provided in s. 626.9571, the department shall enter a final order in accordance with s. 120.59. If it is determined that the person charged has engaged in an unfair or deceptive act or practice or the unlawful transaction of insurance, the department shall also issue an order requiring the violator to cease and desist from engaging in such method of competition, act, or practice or the unlawful transaction of insurance. Further, if the act or practice is a violation of s. 626.9541 or s. 626.9551, the department may, at its discretion, order any one or more of the following:

(1) Suspension or revocation of the person's certificate of authority, license, or eligibility for any certificate of authority or license, if he knew, or reasonably should have known, he was in violation of this act.

(2) Such other relief as may be provided in the insurance code.

History.—s. 9, ch. 76-260.

**626.9591 Appeals from the department.—**Any person subject to an order of the department under s. 626.9581 or s. 626.9601 may obtain a review of such order by filing an appeal therefrom in accordance with the provisions and procedures for appeal from the orders of the department in general under s. 624.329 of this code or s. 120.68.

History.—s. 9, ch. 76-260.

**626.9601 Penalty for violation of cease and desist orders.—**Any person who violates a cease and desist order of the department under s. 626.9581 while such order is in effect, after notice and hearing as provided in s. 626.9571, shall be subject, at the discretion of the department, to any one or more of the following:

(1) A monetary penalty of not more than \$50,000 as to all matters determined in such hearing.

(2) Suspension or revocation of such person's certificate of authority, license, or eligibility to hold such certificate of authority or license.

(3) Such other relief as may be provided in the insurance code.

History.—s. 9, ch. 76-260.

**626.9611 Rules.—**The department may, in accordance with chapter 120, promulgate reasonable rules as are necessary or proper to identify specific methods of competition or acts or practices which are prohibited by s. 626.9541 or s. 626.9551, but the rules shall not enlarge upon or extend the provisions of ss. 626.9541 and 626.9551.

History.—s. 9, ch. 76-260; s. 1, ch. 77-174.

**626.9621 Provisions of part additional to existing law.—**The powers vested in the department by this part shall be additional to any other powers to enforce any penalties, fines, or forfeitures authorized by law.

History.—s. 9, ch. 76-260.

**626.9631 Civil liability.—**The provisions of this part are cumulative to rights under the general civil and common law, and no action of the department shall abrogate such rights to damages or other relief in any court.

History.—s. 9, ch. 76-260.

**626.9641 Policyholders, bill of rights.—**

(1) The principles expressed in the following statements shall serve as standards to be followed by the department in exercising its powers and duties, in exercising administrative discretion, in dispensing administrative interpretations of the law, and in promulgating rules:

(a) Policyholders shall have the right to competitive pricing practices and marketing methods that enable them to determine the best value among comparable policies.

(b) Policyholders shall have the right to obtain comprehensive coverage.

(c) Policyholders shall have the right to insurance advertising and other selling approaches that provide accurate and balanced information on the benefits and limitations of a policy.

(d) Policyholders shall have a right to an insurance company that is financially stable.

(e) Policyholders shall have the right to be serviced by a competent, honest insurance agent or broker.

(f) Policyholders shall have the right to a readable policy.

(g) Policyholders shall have the right to an insurance company that provides an economic delivery of coverage and that tries to prevent losses.

(h) Policyholders shall have the right to a bal-

anced and positive regulation by the department.

(2) This section shall not be construed as creating a civil cause of action by any individual policyholder against any individual insurer.

History.—s. 9, ch. 76-260.

**626.9701 Rate increases and premium surcharges; consideration of certain noncriminal violations for excessive speed prohibited.**—Noncriminal violations solely for excessive speed less than 70 m.p.h. on highways which are outside of business and residential districts and which have at least four lanes divided by a median strip at least 20 feet wide and on highways which comprise a part of the national system of interstate and defense highways shall not be considered by insurance companies in rate increases for individuals or surcharges for insurance premiums.

History.—s. 5, ch. 76-218.

**626.9702 Illegal dealings in premiums; excess charges for insurance.**—

(1) No insurer shall impose or request an additional premium for automobile insurance, or refuse to renew a policy, solely because the insured or applicant was convicted of one or more traffic violations which do not involve an accident or do not cause revocation or suspension of the driving privileges of the insured, without adequate proof of a direct, demonstrable, objective relationship between the violation for which the surcharge was imposed and the increased risk of highway accidents.

(2) No insurer shall cancel or otherwise terminate any automobile insurance contract with an insured after the insured has paid the premiums on such policy for 5 years or more solely because the insured is involved in a single traffic accident.

(3) Any person or organization which violates any provision of this section shall be subject to the penalties provided in s. 627.381.

History.—s. 1, ch. 77-158.

**626.9705 Life or disability insurance; illegal dealings.**—

(1) No life or disability insurer shall refuse to renew, sell, or issue a life or disability insurance policy, establish or charge a premium or rate to an applicant or a prospective policyholder, or establish or charge an unfair, discriminatory premium or rate to such person solely on the ground that the applicant or policyholder suffers from a severe disability.

(2) "Severe disability," as used in this section, means any spinal cord disease or injury resulting in permanent and total disability, amputation of any extremity that requires prosthesis, permanent visual acuity of 20/200 or worse in the better eye with the best correction, a peripheral field so contracted that the widest diameter of such field subtends an angular distance no greater than 20 degrees, or neurosensory deafness.

(3) Nothing in this section should be construed as requiring an insurer to provide insurance coverage against a severe disability which the applicant or policyholder has already sustained.

History.—ss. 1, 7, ch. 75-279; s. 1, ch. 77-174; s. 1, ch. 79-171.

**626.9706 Life insurance; discrimination on basis of sickle-cell trait prohibited.**—

(1) No insurer authorized to transact insurance in this state shall refuse to issue and deliver any policy of life insurance solely because the person to be insured has the sickle-cell trait.

(2) No life insurance policy issued and delivered in this state shall carry a higher premium rate or charge solely because the person to be insured has the sickle-cell trait.

History.—s. 1, ch. 78-35.

**626.9707 Disability insurance; discrimination on basis of sickle-cell trait prohibited.**—

(1) No insurer authorized to transact insurance in this state shall refuse to issue and deliver in this state any policy of disability insurance, whether such policy is defined as individual, group, blanket, franchise, industrial, or otherwise, which is currently being issued for delivery in this state and which affords benefits and coverage for any medical treatment or service authorized and permitted to be furnished by a hospital, clinic, health clinic, neighborhood health clinic, health maintenance organization, physician, physician's assistant, nurse practitioner, or medical service facility or personnel solely because the person to be insured has the sickle-cell trait.

(2) No disability insurance policy issued or delivered in this state shall carry a higher premium rate or charge solely because the person to be insured has the sickle-cell trait.

History.—s. 1, ch. 78-35.

**626.973 Fictitious groups.**—

(1) No insurer or any person on behalf of any insurer shall make, offer to make, or permit any preference or distinction in property, marine, casualty, or surety insurance as to form of policy, certificate, premium, rate, benefits, or conditions of insurance, based upon membership, nonmembership, employment, or of any person or persons by or in any particular group, association, corporation, or organization, and shall not make the foregoing preference or distinction available in any event based upon any "fictitious grouping" of persons as defined in this code, such "fictitious grouping" being hereby defined and declared to be any grouping by way of membership, nonmembership, license, franchise, employment, contract, agreement or any other method or means.

(2) The restrictions and limitations of this section shall not extend to life and disability insurance.

History.—s. 398, ch. 59-205.

**626.988 Financial institutions; agents and solicitors prohibited from employment; exceptions.**—

(1) For the purpose of this section the following definitions shall apply:

(a) "Financial institution" means any bank, bank holding company, savings and loan association, savings and loan association holding company, or savings and loan association service corporation or any subsidiary, affiliate, or foundation of any of the foregoing. This definition shall not, however, include any financial institution which has been granted an



exemption by the Board of Governors of the Federal Reserve System pursuant to s. 4(d) of the Federal Bank Holding Company Act of 1956, as amended, or any financial institution which neither owns more than 10 percent of the capital stock, nor exercises effective control, of a bank, savings and loan association, or entity licensed under chapter 494 and licensed or authorized to transact business in Florida. Specifically excluded from this definition is any bank which is not a subsidiary or affiliate of a bank holding company and is located in a city having a population of less than 5,000 according to the last preceding census.

(b) "Insurance agency activities" means the procurement of applications for, or the solicitation, negotiation, selling, effectuating, or servicing of, any policy or contract of insurance other than credit life insurance and credit disability insurance.

(c) "Financial institution agency" means any person, firm, partnership, or corporate entity which is engaged in insurance agency activities, as herein defined, and is associated with, or owned, controlled, employed, or retained by, a financial institution as herein defined.

(2) No insurance agent or solicitor licensed by the Department of Insurance under the provisions of this chapter who is associated with, under contract with, retained by, owned or controlled by, to any degree, directly or indirectly, or employed by, a financial institution shall engage in insurance agency activities as an employee, officer, director, agent, or associate of a financial institution agency.

(3) Notwithstanding any other provision of this section, an insurance agent or solicitor licensed by the Department of Insurance under the provisions of this chapter who is affiliated with, under contract with, retained by, or owned or controlled directly or indirectly to any degree by, a bank holding company subsidiary or affiliate, which is not a bank, licensed and operating primarily under chapter 494, may engage in insurance agency activities if permitted by the Board of Governors of the Federal Reserve System, but only to the extent that such activities are directly related to the extension of credit, specifically real estate mortgage loans made or brokered by licensees under chapter 494, and only to the extent necessary to protect the real property which is subject to the mortgage loan against loss or damage. With respect only to residential property consisting of not more than four individual dwelling units, such agent or solicitor may offer a policy affording insurance on the primary residence, appurtenant structures, personal property, and personal liability, but excluding any insurance customarily written under an inland marine form. In addition, such agent may offer decreasing term life insurance on the life of the borrower not to exceed the amount and term of the mortgage.

(4) The Department of Insurance shall not grant, renew, continue, or permit to exist any license as such agent or solicitor as to any applicant therefor or licensee thereunder if it finds that the license has been, is being, or will probably be, used by the applicant or licensee for any purpose prohibited by this section.

(5) Notwithstanding any provision of this sec-

tion, the Department of Insurance shall permit the continued operation under the same ownership and control of all financial institution agencies which were in existence and engaged in insurance agency activities as of April 2, 1974. To make possible such continuation, the Department of Insurance may license agents and solicitors who are otherwise qualified, as successors to those agents and solicitors who are exempt from the provisions of this section and their successors, for so long as the specified financial institution agency continues to function as it was constituted on April 2, 1974. However, no agent or solicitor so licensed under this section shall be permitted to be employed, or controlled to any degree, directly or indirectly, by any financial institution agency except the particular agency for which he was so licensed as a successor for the purposes of this section.

(6) This section shall not prevent an agent or solicitor from serving as an officer or director of a financial institution, provided he conducts all of his insurance activities free of ownership or control of the financial institution and provided further that the financial institution does not participate directly or indirectly in the earnings from his insurance activities.

(7) This section shall not apply to agents or solicitors who were engaged as of April 2, 1974, in activities prohibited by this section and who have been continuously so engaged since that date, but this exemption applies only with respect to the specific type of license held and the financial institution with which the agent or solicitor was associated on said date.

History.—s. 1, ch. 74-35; s. 1, ch. 77-174.

**626.989 Division of Insurance Fraud; investigative, subpoena powers; accident reports to division; personnel and expenses; division of costs.—**

(1) If, by its own inquiries or as a result of complaints, the Division of Insurance Fraud has reason to believe that a person has engaged in, or is engaging in, an act or practice that violates s. 817.234 or s. 624.15, it may administer oaths and affirmations, request the attendance of witnesses or proffering of matter, and collect evidence. The department shall not compel the attendance of any person or matter in any such investigation except pursuant to subsection (3).

(2) If matter that the division seeks to obtain by request is located outside the state, the person so requested may make it available to the division or its representative to examine the matter at the place where it is located. The division may designate representatives, including officials of the state in which the matter is located, to inspect the matter on its behalf, and it may respond to similar requests from officials of other states.

(3) The division may request that an individual who refuses to comply with any such request be ordered by the circuit court to provide the testimony or matter. The court shall not order such compliance unless the division has demonstrated to the satisfaction of the court that the testimony of the witness or the matter under request has a direct bearing on a violation of s. 817.234 or s. 624.15 or is pertinent and

necessary to further such investigation. Except in a prosecution for perjury, an individual who complies with a court order to provide testimony or matter after asserting a privilege against self-incrimination to which he is entitled by law may not be subjected to a criminal proceeding or to a civil penalty with respect to the act concerning which he is required to testify or produce relevant matter.

(4) The department's papers, documents, reports, or evidence relative to the subject of an investigation under this section shall not be subject to public inspection for so long as the department deems reasonably necessary to complete the investigation, to protect the person investigated from unwarranted injury, or to be in the public interest. Further, such papers, documents, reports, or evidence relative to the subject of an investigation under this section shall not be subject to subpoena until opened for public inspection by the department, unless the department consents, or until, after notice to the department and a hearing, the court determines the department would not be unnecessarily hindered by such subpoena. Division investigators shall not be subject to subpoena in civil actions by any court of this state to testify concerning any matter of which they have knowledge pursuant to a pending insurance fraud investigation by the division.

(5) Any company which believes that such a fraudulent claim is being made shall, within 60 days of the receipt of such notice, send to the Division of Insurance Fraud, on a form prescribed by the department, the information requested and such additional information relative to the claim and the parties claiming loss or damages because of the accident as the department may require. The Division of Insurance Fraud shall review such reports and select such claims as, in its judgment, may require further investigation. It shall then cause an independent examination of the facts surrounding such claim to be made to determine the extent, if any, to which fraud, deceit, or intentional misrepresentation of any kind exists in the submission of the claim. The Division of Insurance Fraud shall report any alleged violations of law which its investigations disclose to the appropriate licensing agency and state attorney having jurisdiction with respect to any such violation, as provided in s. 624.310. If prosecution by the state

attorney is not begun within 60 days of the division's report, the state attorney shall inform the division of the reasons for the lack of prosecution.

(6) No insurer, or employees or agents of any insurer, shall be subject to civil liability for libel or otherwise by virtue of the filing of reports or furnishing other information required by this section or required by the Division of Insurance Fraud as a result of the authority herein granted.

(7) All costs of administration and operation of said Division of Insurance Fraud shall be borne by the insurers licensed to write fire and casualty insurance in this state. The Insurance Commissioner shall equally divide such costs among all such companies, charging each such company an identical amount adequate to provide the total cost of each fiscal year of operation. Such amounts as derived by said assessment shall be deposited in the State Treasurer and Insurance Commissioner's Regulatory Trust Fund. The total budget of said division shall be as determined annually in the General Appropriations Act.

(8) Division investigators shall have the power to make arrests for criminal violations established as a result of investigations only. The general laws applicable to arrests by peace officers of this state shall also be applicable to such investigators. Such investigators shall have the power to execute arrest warrants and search warrants for the same criminal violations, serve subpoenas issued for the examination, investigation, and trial of all offenses determined by their investigations, and arrest upon probable cause without warrant any person found in the act of violating any of the provisions of applicable laws. Investigators empowered to make arrests under this section shall not be empowered to carry firearms or other weapons in the performance of their duties.

(9) It is unlawful for any person to resist an arrest authorized by this section or in any manner to interfere, either by abetting or assisting such resistance or otherwise interfering, with division investigators in the duties imposed upon them by law or department regulation.

**History.**—s. 9, ch. 76-266; s. 211, ch. 77-104; s. 20, ch. 77-468; s. 2, ch. 78-258; s. 2, ch. 79-81; s. 237, ch. 79-400.

## CHAPTER 627

## INSURANCE CODE: RATES AND CONTRACTS

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## PART I

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**1627.011 Short title.**—Part I of this chapter may be referred to as the "Rating Law."

**History.**—s. 412, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1627.021 Scope of part I.**—

(1) Part I of this chapter applies only to property, casualty, and surety insurances (as defined in part V of chapter 624 of this code) of subjects of insurance resident, located or to be performed in this state, except as provided in subsection (2).

(2) This chapter does not apply to:

(a) Reinsurance, except joint reinsurance as provided in s. 627.311 of this chapter.

(b) Disability insurance.

(c) Insurance against loss of or damage to aircraft, their hulls, accessories or equipment, or against liability, other than workers' compensation and employer's liability, arising out of the ownership, maintenance, or use of aircraft.

(d) Insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance policies.

(3) For the purposes of this chapter all motor vehicle insurance shall be deemed to be casualty insurance only.

**History.**—s. 413, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 92, ch. 79-40.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1627.031 Purpose of part I; interpretation.**—

(1) The purposes of part I of this chapter are:

(a) To promote the public welfare by regulating insurance rates as herein provided to the end that they shall not be excessive, inadequate, or unfairly discriminatory;

(b) To authorize the existence and operation of qualified rating organizations and advisory organizations and require that specified rating services of

such rating organizations be generally available to all authorized insurers; and

(c) To authorize cooperation between insurers in rate making and other related matters.

(2) It is the purpose of this part to protect policyholders and the public against the adverse effects of excessive, inadequate or unfairly discriminatory motor vehicle insurance rates, and to encourage independent action by, and reasonable price competition among, insurers.

**History.**—s. 411, ch. 59-205; s. 1, ch. 67-9; ss. 13, 35, ch. 69-106; s. 1, ch. 71-3(B); s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1627.032 "California Plan" repealed as to motor vehicle insurance.**—

(1) It is hereby declared to be the intent of the Legislature to repeal the so-called "California Plan," insofar as it applies to motor vehicle insurance as defined in s. 627.063, until a more permanent and broad program of automobile insurance reform can be adopted. This act is designed to assure the public that adequate automobile insurance protection will be available to the citizens of Florida at reasonable prices. It is the intention of the Legislature that group marketing of motor vehicle insurance shall be authorized, consistent with sound actuarial principles.

(2) Nothing contained in chapter 71-3(B), Laws of Florida, shall be construed as a modification of any findings of the Legislature contained in chapter 70-989, Laws of Florida, or as an extension of the moratorium, or as an approval of any automobile insurance rates in use in Florida. It is the duty of the department through its office to regulate such rates. If at any time said department has reason to believe any such rate is excessive, inadequate, or unfairly discriminatory under the law, it is directed to take the necessary action to cause such rates to comply with the laws of Florida.

**History.**—s. 2, ch. 71-3(B); s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1627.041 Definitions.**—As used in part I of this chapter:

(1) "Rate" means the unit charge by which the measure of exposure or the amount of insurance specified in a policy of insurance or covered thereunder is multiplied to determine the premium.

(2) "Premium" means the consideration paid or to be paid to an insurer for the issuance and delivery of any binder or policy of insurance.

(3) "Rating organization" means every person, other than an authorized insurer, whether located within or outside this state, who has as his object or purpose the making of rates, rating plans, or rating systems. Two or more authorized insurers which act in concert for the purpose of making rates, rating plans, or rating systems, and which do not operate within the specific authorizations contained in s. 627.311 (joint underwriters and joint reinsurers), s. 627.314(2),(4) (concerted action), and s. 627.351 (assigned risk plan), shall be deemed to be a rating organization. No single insurer shall be deemed to be a rating organization.

(4) "Advisory organization" means every group, association, or other organization of insurers, whether located within or outside this state, which prepares policy forms or makes underwriting rules incident to but not including the making of rates, rating plans or rating systems or which collects and furnishes to authorized insurers or rating organizations loss or expense statistics or other statistical information and data and acts in an advisory, as distinguished from a rate making, capacity.

(5) "Member" means an insurer who participates in or is entitled to participate in the management of a rating, advisory or other organization.

(6) "Subscriber" means an insurer which is furnished at its request:

(a) With rates and rating manuals by a rating organization of which it is not a member; or

(b) With advisory services by an advisory organization of which it is not a member.

(7) "Willful" or "willfully" in relation to an act or omission which constitutes a violation of this part means with actual knowledge or belief that such act or omission constitutes such violation and with specific intent nevertheless to commit such act or omission.

**History.**—s. 414, ch. 59-205; s. 2, ch. 67-9; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **627.062 Rate standards.—**

(1) The rates for all classes of insurance to which the provisions of this part are applicable shall not be excessive, inadequate, or unfairly discriminatory.

(2) As to all such classes of insurance, other than workers' compensation, employer's liability insurance and motor vehicle insurance:

(a) No rate shall be held to be excessive unless:

1. Such rate is unreasonably high for the insurance provided, and

2. A reasonable degree of competition does not exist in the area with respect to the classification to which the rate is applicable.

(b) No rate shall be held to be inadequate unless:

1. The rate is unreasonably low for the insurance provided, and

2. The continued use of the rate endangers the solvency of the insurer using the same, or unless

3. The rate is unreasonably low for the insurance provided, and the use of the rate by the insurer using the same has, or if continued will have, the effect of destroying competition or of creating a monopoly.

(c) A rate shall be deemed excessive if, among other things, the rate structure established by a stock insurance company provides for replenishment of surpluses from premiums, when such replenishment is attributable to investment losses.

(d) This subsection shall not apply to motor vehicle insurance as defined in s. 627.063.

(3) Nothing contained in this section or elsewhere in this part shall be construed to repeal or modify the provisions of ss. 626.951 through 626.986, relating to unfair trade practices, and any rate, rating classification, rating plan or schedule, or variation thereof established in violation of said sections shall, in addition to the consequences stated in said

sections or elsewhere, be deemed a violation of this section.

**History.**—s. 3, ch. 67-9; s. 3, ch. 71-3(B); s. 3, ch. 76-168; s. 21, ch. 77-468; s. 1, ch. 77-457; s. 93, ch. 79-40.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **627.063 "Motor vehicle insurance" defined.—**

For the purposes of this part "motor vehicle insurance" means a policy of automobile or motor vehicle insurance delivered or issued for delivery in the state by an authorized insurer:

(1) Insuring a natural person as named insured or one or more related individuals resident of the same household, or both; and

(2) Insuring a motor vehicle of the private passenger or station wagon type which is not used as public or livery conveyance for passengers or rented to others, or insuring any other four-wheeled motor vehicle having a capacity of 1500 pounds or less which is not used in the occupation, profession, or business of the insured, other than farming; and

(3) Other than any policy:

(a) Issued under an automobile insurance assigned risk plan; or

(b) Insuring more than four automobiles; or

(c) Covering garage, automobile sales agency, repair shop, service station, or public parking place operation hazards.

**History.**—s. 4, ch. 71-3(B); s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **627.0651 Making and use of rates for motor vehicle insurance.—**

(1) Insurers shall establish rates, rating schedules, or rating manuals to allow the insurer a reasonable rate of return on motor vehicle insurance written in Florida. A copy of rates, rating schedules, and rating manuals, and changes therein, shall be filed with the department as soon as practicable following their effective date, but no later than 30 days after that date.

(2) Upon receiving notice of a rate filing or rate change, the department may review the rate or rate change to determine if the rate is excessive, inadequate, or unfairly discriminatory. In making that determination the department may consider the following factors:

(a) Past and prospective loss experience within and outside this state.

(b) The past and prospective administrative, selling, and loss adjustment expenses.

(c) The degree of competition among insurers for the risk insured.

(d) Investment income expected on the flow of funds generated by the average policy for motor vehicle insurance in this state.

(e) Dividends, savings, or unabsorbed premium deposits allowed or returned to Florida policyholders, members, or subscribers.

(f) All other relevant factors, including judgment factors, within and outside this state.

(g) The cost of repairs to automobiles.

(h) The cost of medical services.

(i) The adequacy of loss reserves.

(j) The cost of reinsurance.

(k) Trend factors, including trends in actual losses per insured unit for the insurer making the filing.

(3) Rates shall be deemed excessive if they are likely to produce a profit from Florida business that is unreasonably high in relation to the risk involved in the class of business, or if expenses are unreasonably high in relation to services rendered.

(4) Rates shall be deemed excessive if, among other things, the rate structure established by a stock insurance company provides for replenishment of surpluses from premiums, when such replenishment is attributable to investment losses.

(5) Rates shall be deemed inadequate if they are clearly insufficient, together with the investment income attributable to them, to sustain projected losses and expenses in the class of business to which they apply.

(6) One rate shall be deemed unfairly discriminatory in relation to another in the same class if it clearly fails to reflect equitably the difference in expected losses and expenses.

(7) Rates are not unfairly discriminatory because different premiums result for policyholders with like loss exposures but different expense factors, or like expense factors but different loss exposures, so long as rates reflect the differences with reasonable accuracy.

(8) Rates are not unfairly discriminatory if averaged broadly among members of a group. Nor shall such rates be unfairly discriminatory even though they may be lower than rates for nonmembers of the group. However, such rates are unfairly discriminatory if they are not actuarially measurable and credible and sufficiently related to actual or expected loss and expense experience of the group so as to assure that nonmembers of the group are not unfairly discriminated against.

(9) In reviewing the rate or rate change filed, the department may require the insurer to provide at the insurer's expense all information necessary to evaluate the condition of the company and the reasonableness of the filing according to the criteria enumerated herein.

(10) If after review of the rate or rate change, the pertinent records of the insurer, and market conditions, the department finds on a preliminary basis that the rate or rate change may be excessive, inadequate, or unfairly discriminatory, the department shall so notify the insurer. Upon being so notified, the insurer or rating organization shall, within 60 days, file with the department all information which the insurer or organization believes proves the reasonableness, adequacy, and fairness of the rate or rate change. In such instances the insurer or rating organization shall carry the burden of proof.

(11) In the event the department finds that a rate or rate change is excessive, inadequate, or unfairly discriminatory, the department may order that a new rate or rate schedule be thereafter filed by the insurer. Supporting information responsive to the department's findings shall be submitted with the filing.

(12) Within 30 days after January 1, 1980, the Department of Insurance shall commence a review of the rates of all licensed motor vehicle insurers in

effect at the time. If, after the review, the department finds on a preliminary basis that the rate may be excessive, inadequate, or unfairly discriminatory, the department shall so notify the insurer. Upon being so notified, the insurer shall within 60 days file with the department all information which the insurer believes proves the reasonableness, adequacy, and fairness of the rate. In such instances, the insurer shall carry the burden of proof. In the event the department finds that a rate is excessive, inadequate, or unfairly discriminatory, the department may order that a new rate schedule be thereafter filed by the insurer and further specifying the manner in which noncompliance shall be corrected.

**History.**—s. 22, ch. 77-468; s. 8, ch. 78-374.

#### **627.066 Excessive profits for motor vehicle insurance prohibited.—**

(1) Each insurer group shall file with the department, prior to July 1 of each year on a form prescribed by the department, the following data for Florida private passenger automobile business. The data filed for the group shall be a consolidation of the data of the individual insurers of the group. The data shall include both voluntary and Joint Underwriting Association business, as follows:

- (a) Calendar year total limits earned premium.
- (b) Accident year incurred losses and loss adjustment expenses.
- (c) The administrative and selling expenses incurred in Florida or allocated to Florida for the calendar year.
- (d) Policyholder dividends applicable to the calendar year.

(2) Excessive profit has been realized:

(a) If there has been an underwriting gain for the 3 most recent calendar/accident years combined which is greater than the anticipated underwriting profit plus 5 percent of earned premiums for those calendar/accident years.

(b) As used herein with respect to any 3-year period, "anticipated underwriting profit" means the sum of the dollar amounts obtained by multiplying, for each rate filing of the insurer group in effect during such period, the earned premiums applicable to such rate filing during such period by the percentage factor included in such rate filing for profit and contingencies, such percentage factor having been determined with due recognition to investment income from funds generated by Florida business. Separate calculations need not be made for consecutive rate filings containing the same percentage factor for profits and contingencies.

(3) Each insurer group shall also file a schedule of Florida private passenger automobile loss and loss adjustment experience for each of the 3 most recent accident years. The incurred losses and loss adjustment expenses shall be valued as of March 31 of the year following the close of the accident year, developed to an ultimate basis, and at two 12-month intervals thereafter, each developed to an ultimate basis, so that a total of three evaluations will be provided for each accident year. The first year to be so reported shall be accident year 1976, so that the reporting of 3 accident years will not take place until accident years 1977 and 1978 have become available.

(4) Each insurer group's underwriting gain or



loss for each calendar/accident year shall be computed as follows: The sum of the accident year incurred losses and loss adjustment expenses as of March 31 of the following year, developed to an ultimate basis, plus the administrative and selling expenses incurred in the calendar year, plus policyholder dividends applicable to calendar year, will be subtracted from the calendar year earned premium to determine the underwriting gain or loss.

(5) For the three most recent calendar/accident years, the underwriting gain or loss will be compared to the anticipated underwriting profit.

(6) If the insurer group has realized an excessive profit, the department may order a return of the excessive amounts to policyholders.

(7) In determining what action should be taken if excessive profits are realized, the department shall consider the following as they relate to Florida private passenger automobile insurance:

(a) The underwriting profit or loss of the insurer group in prior years.

(b) The financial strength and stability of the insurer group.

(c) The loss development patterns of the insurer group.

(8) The department may excuse an insurer from complying with these reporting requirements if the volume of business written by the insurer would not justify the expense of the reporting requirement.

(9) Any excess profit of an insurance company offering motor vehicle insurance shall be returned to policyholders in the form of a cash refund rather than a credit towards the future purchase of insurance.

History.—s. 23, ch. 77-468.

#### **627.071 "Inland marine insurance" defined.**

—For the purposes of this code "inland marine insurance" shall be deemed to include insurance now or hereafter defined by statute, or by interpretation thereof, or if not so defined or interpreted, by ruling of the department, or as established as general custom of the business, as inland marine insurance.

History.—s. 417, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **627.072 Making and use of rates.—**

(1)(a) As to all rates which are subject to part I of this chapter, other than motor vehicle insurance, the following factors shall be used in the determination and fixing of rates:

1. Past and prospective loss experience within and outside this state;

2. The conflagration and catastrophe hazards;

3. A reasonable margin for underwriting profit and contingencies;

4. Dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers;

5. Investment income on unearned premium reserves and loss reserves;

6. Past and prospective expenses both country-wide and those specifically applicable to this state; and

7. All other relevant factors, including judgment

factors, within and outside this state.

(b) In the case of fire insurance rates, consideration shall be given to the experience of the fire insurance business during a period of not less than the most recent 5-year period for which such experience is available.

(2) The systems of expense provisions included in the rates for use by an insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the requirements of the operating methods of any such insurer or group with respect to any kind of insurance or with respect to any subdivision or combination thereof for which subdivision or combination separate expense provisions are applicable.

(3) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any difference among risks that can be demonstrated to have a probable effect upon losses or expenses. Such classifications and modifications shall apply to all risks under the same or substantially the same circumstances or conditions.

(4)(a) In the case of workers' compensation and employer's liability insurance, the Department of Insurance shall consider utilizing the following methodology in rate determinations: Premiums, expenses, and expected claim costs would be discounted to a common point of time (such as the initial point of a policy year) in the determination of rates. The cash-flow pattern of premiums, expenses, and claim costs would be determined initially by using data from 8 to 10 of the largest insurers writing workers' compensation insurance in the state. Such insurers may be selected for their statistical ability to report the data on an accident-year basis and in accordance with subparagraphs (b)1., 2., and 3., for at least 2½ years. Such a cash-flow pattern would be modified when necessary in accordance with the data and whenever a radical change in the payout pattern is expected in the policy year under consideration.

(b) If the methodology set forth in paragraph (a) is utilized, to facilitate the determination of such a cash-flow pattern methodology:

1. Each insurer shall include in its statistical reporting to the rating bureau and the department the accident year by calendar quarter data for paid-claim costs;

2. Each insurer shall submit financial reports to the rating bureau and the department which shall include total incurred claim amounts and paid-claim amounts by policy year and by injury types as of December 31 of each calendar year; and

3. Each insurer shall submit to the rating bureau and the department paid-premium data on an individual risk basis in which risks are to be subdivided by premium size as follows:

Number of Risks in  
Premium Range

Standard Premium  
Size

[to be filled in by carrier]	\$300 - 999
	1,000 - 4,999
	5,000 - 49,999
	50,000 - 99,999
	100,000 +

Total:

4. Each insurer which does not have the capability of reporting in accordance with subparagraphs 1., 2., and 3. shall be required to commence such reporting procedures as of January 1, 1980.

(c) The Insurance Commissioner is directed to consider using the methodology specified in paragraph (a) prior to March 31, 1980, and in the event he decides not to use this methodology, he shall report such decision and his reasons therefor to the committees of substance in the area of insurance in each house of the Legislature by March 31, 1980.

**History.**—s. 4, ch. 67-9; s. 1, ch. 70-179; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 24, ch. 77-468; s. 94, ch. 79-40.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **627.091 Rate filings; workers' compensation and employer's liability insurances.—**

(1) As to workers' compensation and employer's liability insurances, every insurer shall file with the department every manual of classifications, rules, and rates, every rating plan, and every modification of any of the foregoing which it proposes to use. Every insurer is authorized to include deductible provisions in its manual of classifications, rules, and rates. Such deductibles shall in all cases be in a form and manner which is consistent with the underlying purpose of chapter 440.

(2) Every such filing shall state the proposed effective date thereof, and shall indicate the character and extent of the coverage contemplated. When a filing is not accompanied by the information upon which the insurer supports the filing and the department does not have sufficient information to determine whether the filing meets the applicable requirements of this part, it shall within 15 days after the date of filing require the insurer to furnish the information upon which it supports the filing and in such event the waiting period provided for in s. 627.101(2) shall commence as of the date such information is furnished. The information furnished in support of a filing may include:

- (a) The experience or judgment of the insurer or rating organization making the filing;
- (b) Its interpretation of any statistical data it relies upon;
- (c) The experience of other insurers or rating organizations; or
- (d) Any other factors which the insurer or rating organization deems relevant.

(3) A filing and any supporting information shall be open to public inspection as provided in s. 627.101.

(4) An insurer may satisfy its obligation to make such filings by becoming a member of, or a subscriber to, a licensed rating organization which makes such filings, and by authorizing the department to accept such filings in its behalf; but nothing contained in this chapter shall be construed as requiring

any insurer to become a member or a subscriber to any rating organization.

(5) Pursuant to the provisions of s. 627.321, the department may examine the underlying statistical data used in such filings.

(6) Whenever the committee of a recognized rating organization with responsibility for workers' compensation and employer's liability insurance rates in Florida meets to discuss the necessity for rate increases or decreases, the determination of rates, the rates to be requested, and any other matters pertaining to such rates, such meetings shall be held in Florida and shall be subject to s. 286.011. The committee of such a rating organization shall provide 6 weeks' notice to the department. The department shall provide at least 3 weeks' notice to the public of such meetings.

**History.**—s. 419, ch. 59-205; s. 5, ch. 67-9; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 20, ch. 78-300; s. 95, ch. 79-40.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.092 Workers' Compensation Administrator.**—There is created within the Division of Insurance Company Regulation of the Department of Insurance the position of Workers' Compensation Administrator to monitor carrier practices in the field of workers' compensation.

**History.**—s. 21, ch. 78-300; s. 96, ch. 79-40.

**627.093 Application of s. 286.011 to workers' compensation and employer's liability insurance.**—Section 286.011 shall be applicable to every rate filing, approval, or disapproval of filing, rating deviation from filing, or appeal from any of these regarding workers' compensation and employer's liability insurance.

**History.**—s. 97, ch. 79-40.

**627.096 Workers' Compensation Rating Bureau.**—

(1) There is created within the Department of Insurance a Workers' Compensation Rating Bureau which shall make an investigation and study of all insurance companies authorized to issue workers' compensation and employer's liability coverage in this state. Such bureau shall study the data, statistics, schedules, or other information as it may deem necessary to assist and advise the department in its review of filings made by or on behalf of workers' compensation and employer's liability insurers. The department shall have the authority to promulgate rules requiring all workers' compensation and employer's liability insurers to submit to the rating bureau any data, statistics, schedules, and other information deemed necessary to the rating bureau's study and advisement.

(2) The acquisition by the Department of General Services of data processing software, hardware, and services necessary to carry out the provisions of this act for the Treasurer's Management Information Center of the Department of Insurance shall be exempt from the provisions of part I of chapter 287.

**History.**—s. 98, ch. 79-40.

**<sup>1</sup>627.101 When filing becomes effective; workers' compensation and employer's liability insurances.—**

(1) The department shall review filings as to workers' compensation and employer's liability insurances as soon as reasonably possible after they have been made in order to determine whether they meet the applicable requirements of this part. If the department determines that part of a rate filing does not meet the applicable requirements of this part, it may reject so much of the filing as does not meet these requirements, and approve the remainder of the filing.

(2) Within 15 days after the date the filing, together with any additional information, if any, in support of the filing which has been requested by the department under s. 627.091(2), has been received by the department, the department shall place the filing and its supporting information on file in its office for public inspection and give notice thereof to the insurer or rating organization that made the filing.

(3) A filing which the department has placed on file for public inspection as provided in subsection (2) shall so remain on file for 15 days (counting such filing date as the first day of such public inspection period) and shall not be approved, disapproved, or become effective during such 15-day period except after a public hearing. After the 15-day public inspection period, the department shall specifically approve the filing before it becomes effective, unless within such 15-day period the department has concluded it to be in the public interest to hold a public hearing to determine whether the filing meets the requirements of this chapter and has given notice of such hearing to the insurer or rating organization that made the filing, and in which case the effectiveness of the filing shall be subject to the further order of the department made as provided in s. 627.111. If after the 15-day public inspection period the department specifically disapproves the filing, the provisions of subsection (5) shall apply.

(4) An insurer or rating organization may, at the time it makes a filing with the department, request a public hearing thereon. In such event, the department shall forthwith place the filing on file in its office for public inspection and shall give notice of the hearing.

(5) If the department disapproves a filing it shall promptly give notice of such disapproval to the insurer or rating organization that made the filing, stating the respects in which it finds the filing does not meet the requirements of this chapter. If the department approves a filing it shall give prompt notice thereof to the insurer or rating organization that made the filing, and in which case the filing shall become effective upon such approval or upon such subsequent date as may be satisfactory to the department and the insurer or rating organization that made the filing. If the filing becomes effective in the absence of affirmative approval, or disapproval, as provided in subsection (3), the filing shall become operative upon such effective date or upon such subsequent date as may be provided for therein.

**History.**—s. 420, ch. 59-205; s. 6, ch. 67-9; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95; s. 22, ch. 78-300; s. 99, ch. 79-40.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective

July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**<sup>1</sup>627.111 Effective date of filing.—**

(1) If, pursuant to s. 627.101(3), the department determines to hold a public hearing as to a filing, or holds such a public hearing pursuant to request therefor under s. 627.101(4), it shall give written notice thereof to the rating organization or insurer that made the filing, shall hold such hearing within 30 days after commencement of the public inspection period provided for in s. 627.101(2) or subsection (4), and not less than 10 days prior to the date of the hearing it shall give written notice of the hearing to the insurer or rating organization that made the filing. The department may also, in its discretion, give advance public notice of such hearing by publication of notice in one or more daily newspapers of general circulation in this state.

(2) If the department's order disapproves the filing, the filing shall not become effective during the effectiveness of such order. If the department's order approves the filing, the filing shall become effective upon the date of the order or upon such subsequent date as may be satisfactory to the insurer or rating organization that made the filing.

**History.**—s. 421, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**<sup>1</sup>627.141 Subsequent disapproval of filing; workers' compensation and employer's liability insurances.—**If at any time after a filing has been approved by it or has otherwise become effective the department finds that the filing no longer meets the requirements of this chapter, it shall issue an order specifying in what respects it finds that such filing fails to meet such requirements and stating when, within a reasonable period thereafter, such filing shall be deemed no longer effective. The order shall not affect any insurance contract or policy made or issued prior to the expiration of the period set forth in the order.

**History.**—s. 424, ch. 59-205; s. 7, ch. 67-9; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95; s. 100, ch. 79-40.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**<sup>1</sup>627.151 Basis of approval or disapproval of workers' compensation or employer's liability insurances filing; scope of disapproval power.—**

(1) In determining at any time whether to approve or disapprove a filing as to workers' compensation or employer's liability insurances, or to permit the filing otherwise to become effective, the department shall give consideration only to the applicable standards and factors referred to in ss. 627.062 and 627.072.

(2) As to workers' compensation and employer's liability insurances, no manual of classifications, rule, rating plan, rating system, plan of operation, or any modification of any of the foregoing which establishes standards for measuring variations in hazards or expense provisions, or both, shall be disapproved



if the rates thereby produced meet the applicable requirements of this part.

**History.**—s. 425, ch. 59-205; s. 8, ch. 67-9; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 101, ch. 79-40.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.171 Excess rates.**—With written consent of the insured filed with the insurer, a rate in excess of that otherwise applicable may be used on any specific risk.

**History.**—s. 427, ch. 59-205; s. 9, ch. 67-9; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.191 Adherence to filings; workers' compensation and employer's liability insurances.**—No insurer or employee thereof, and no agent, shall make or issue a contract or policy of workers' compensation or employer's liability insurance except in accordance with the filings which are in effect for such insurer, as provided in the applicable provisions of this part, or in accordance with s. 627.171 (excess rates) of this code.

**History.**—s. 429, ch. 59-205; s. 11, ch. 67-9; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 102, ch. 79-40.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.211 Deviations; workers' compensation and employer's liability insurances.**—

(1) Every member or subscriber to a rating organization shall, as to workers' compensation or employer's liability insurance, adhere to the filings made on its behalf by such organization; except that any such insurer may make written application to the department for permission to file a uniform percentage decrease or increase to be applied to the premiums produced by the rating system so filed for a kind of insurance, for a class of insurance which is found by the department to be a proper rating unit for the application of such uniform percentage decrease or increase, or for a subdivision of workers' compensation or employer's liability insurance:

(a) Comprised of a group of manual classifications which is treated as a separate unit for ratemaking purposes, or

(b) For which separate expense provisions are included in the filings of the rating organization.

Such application shall specify the basis for the modification and shall be accompanied by the data upon which the applicant relies. A copy of the application and data shall be sent simultaneously to the rating organization.

(2) In considering the application for permission to file the deviation, the department shall give consideration to the applicable principles for rate making as set forth in ss. 627.062 and 627.072. The department shall issue an order permitting the deviation for such insurer to be filed if it finds it to be justified. It shall issue an order denying such application if it finds that the resulting premiums would be excessive, inadequate, or unfairly discriminatory.

(3) Each deviation permitted to be filed shall be effective for a period of 1 year from the date of such permission unless terminated sooner with the ap-

proval of the department, but no such termination shall be effectuated until after the deviation has been in effect for a period of at least 6 months.

**History.**—s. 431, ch. 59-205; s. 12, ch. 67-9; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95; s. 103, ch. 79-40.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.215 Excessive profits for workers' compensation and employer's liability insurance prohibited.**—

(1) Each insurer group shall file with the department prior to July 1 of each year, on a form prescribed by the department, the following data for workers' compensation and employer's liability insurance:

(a) Calendar-year earned premium.

(b) Accident-year incurred losses and loss-adjustment expenses.

(c) The administrative and selling expenses incurred in Florida or allocated to Florida for the calendar year.

(d) Policyholder dividends applicable to the calendar year.

The data filed for the group shall be a consolidation of the data of the individual insurers of the group.

(2)(a) Excessive profit has been realized if underwriting gain plus investment income generated by loss reserves is greater than the anticipated underwriting profit plus 5 percent of earned premiums for the 3 most recent calendar years.

(b) As used in this section with respect to any 3-year period, "anticipated underwriting profit" means the sum of the dollar amounts obtained by multiplying, for each rate filing of the insurer group in effect during such period, the earned premiums applicable to such rate filing during such period by the percentage factor included in such rate filing for profit and contingencies, such percentage factor having been determined with due recognition to investment income from funds generated by Florida business. Separate calculations need not be made for consecutive rate filings containing the same percentage factor for profits and contingencies.

(3) Each insurer group shall also file a schedule of Florida loss and loss-adjustment experience for each of the 3 most recent accident years. The incurred losses and loss-adjustment expenses shall be valued as of December 31 of the accident year, developed to an ultimate basis, and at two 12-month intervals thereafter, each developed to an ultimate basis, so that a total of three evaluations will be provided for each accident year. The first year to be so reported shall be accident year 1979, so that the reporting of 3 accident years will not take place until accident years 1980 and 1981 have become available. For reporting purposes unrelated to determining excessive profits, the loss and loss-adjustment experience of each accident year shall continue to be reported until each accident year has been reported at eight stages of development.

(4) Each insurer group's underwriting gain or loss for each calendar-accident year shall be computed as follows: The sum of the accident-year incurred losses and loss-adjustment expenses as of December 31 of the year, developed to an ultimate basis, plus

the administrative and selling expenses incurred in the calendar year, plus policyholder dividends applicable to the calendar year, shall be subtracted from the calendar-year earned premium to determine the underwriting gain or loss.

(5) For the 3 most recent calendar-accident years, the underwriting gain or loss shall be compared to the anticipated underwriting profit.

(6) If the insurer group has realized an excessive profit, the department may order a return of the excessive amounts to policyholders.

(7) In determining what action should be taken if excessive profits are realized, the department shall consider the following, as they relate to Florida workers' compensation and employer's liability insurance:

(a) The underwriting profit or loss of the insurer group in prior years.

(b) The financial strength and stability of the insurer group.

(c) The loss development patterns of the insurer group.

(8) The department may excuse an insurer from complying with these reporting requirements if the volume of business written by the insurer would not justify the expense of the reporting requirement.

(9) Any excess profit of an insurance company offering workers' compensation or employer's liability insurance shall be returned to policyholders in the form of a cash refund rather than a credit toward the future purchase of insurance.

History.—s. 104, ch. 79-40.

#### **§627.221 Rating organizations; licensing; fee.—**

(1) A corporation, an unincorporated association, a partnership, or an individual, whether located within or outside this state, may make application to the department for license as a rating organization. As to property or inland marine insurance, the application shall be for such kinds of insurance, or subdivision or class of risk or a part or combination thereof as are specified in the application. As to casualty and surety insurances, the application shall be for such kinds of insurance or subdivisions thereof as are specified in the application. The applicant shall file with its application:

(a) A copy of its constitution, its articles of agreement or association or its certificate of incorporation, and of its bylaws, rules, and regulations governing the conduct of its business,

(b) A list of its members and subscribers,

(c) The name and address of a resident of this state upon whom notices or orders of the department or process affecting such rating organization may be served, and

(d) A statement of its qualifications as a rating organization.

If the department finds that the applicant is competent, trustworthy, and otherwise qualified to act as a rating organization and that its constitution, articles of agreement or association or certificate of incorporation, and its bylaws, rules, and regulations governing the conduct of its business conform to the requirements of law, it shall issue a license specifying (in the case of a casualty or surety rating organi-

zation) the kinds of insurance or subdivisions thereof, or (in the case of a property insurance rating organization) the kinds of insurance or subdivision or class of risk or part or combination thereof, for which the applicant is authorized to act as a rating organization.

(2) Licenses issued pursuant to this section shall expire on the September 30 next following date of issuance, and shall be subject to annual renewal.

(3) The fee for the license shall be in the amount specified therefor in s. 624.501 (filing, license, and miscellaneous fees). This fee when collected shall be deposited to the credit of the Insurance Commissioner's Regulatory Trust Fund.

(4) Licenses issued pursuant to this section may be suspended or revoked by the department in the event the rating organization ceases to meet the requirements of this section.

History.—s. 432, ch. 59-205; s. 17, ch. 65-269; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95.

<sup>1</sup>Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **§627.231 Subscribers to rating organizations.—**

(1) Subject to rules and regulations which have been approved by the department as reasonable, each rating organization shall permit any insurer, not a member, to subscribe to its rating services. As to property and marine rating organizations an insurer shall be so permitted to subscribe to rating services for any kind of insurance, subdivision, or class of risk or a part or combination thereof for which the rating organization is authorized so to act. As to casualty and surety rating organizations an insurer shall be so permitted to subscribe to rating services for any kind of insurance or subdivision thereof for which the rating organization is authorized so to act. The rating organization shall give notice to subscribers of proposed changes in such rules and regulations.

(2) The reasonableness of any rule or regulation in its application to subscribers, or the refusal of any rating organization to admit an insurer as a subscriber, shall, at the request of any subscriber or any such insurer, be reviewed by the department. If the department finds that such rule or regulation is unreasonable in its application to subscribers, it shall order that such rule or regulation shall not be applicable to subscribers. If the rating organization fails to grant or reject an insurer's application for subscribership within 30 days after it was made, the insurer may request a review by the department as if the application had been rejected. If the department finds that the insurer has been refused admittance to the rating organization as a subscriber without justification, it shall order the rating organization to admit the insurer as a subscriber. If it finds that the action of the rating organization was justified, it shall make an order affirming its action.

(3) Each rating organization shall furnish its rating services without discrimination to its members and subscribers.

History.—s. 433, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95.

<sup>1</sup>Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective

July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1627.241 Notice of changes.**—Every rating organization shall notify the department promptly of every change in:

(1) Its constitution, its articles of agreement or association, or its certificate of incorporation, and its bylaws, rules and regulations governing the conduct of its business;

(2) Its list of members and subscribers; and

(3) The name and address of the resident of this state designated by it upon whom notices or orders of the department or process affecting such rating organization may be served.

**History.**—s. 434, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1627.251 Bureau rules not to affect dividends.**

—No rating organization shall adopt any rule the effect of which would be to prohibit or regulate the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers.

**History.**—s. 435, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1627.261 Technical services.**—Any rating organization may subscribe for or purchase actuarial, technical or other services, and such services shall be available to all members and subscribers without discrimination.

**History.**—s. 436, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1627.271 Stamping bureau.**—Any property insurance rating organization may provide for the examination of policies, daily reports, binders, renewal certificates, endorsements or other evidences of insurance, or the cancellation thereof and may make reasonable rules governing their submission. Such rules shall contain a provision that in the event any insurer does not within 60 days furnish satisfactory evidence to the rating organization of the correction of any error or omission previously called to its attention by the rating organization, it shall be the duty of the rating organization to notify the department thereof. All information so submitted for examination shall be confidential.

**History.**—s. 437, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1627.281 Appeal from rating organization; workers' compensation and employer's liability insurance filings.**—

(1) Any member or subscriber to a rating organization may appeal to the department from the action or decision of such rating organization in approving or rejecting any proposed change in or addition to the workers' compensation or employer's liability insurance filings of such rating organization, and the department shall issue an order approving the

decision of such rating organization or directing it to give further consideration to such proposal. If such appeal is from the action or decision of the rating organization in rejecting a proposed addition to its filings, the department may, in the event it finds that such action or decision was unreasonable, issue an order directing the rating organization to make an addition to its filings, on behalf of its members and subscribers, in a manner consistent with its findings, within a reasonable time after the issuance of such order.

(2) If such appeal is based upon the failure of the rating organization to make a filing on behalf of such member or subscriber which is based on a system of expense provisions which differs, in accordance with the right granted in s. 627.072(2), from the system of expense provisions included in a filing made by the rating organization, the department shall, if it grants the appeal, order the rating organization to make the requested filing for use by the appellant. In deciding such appeal, the department shall apply the applicable standards set forth in ss. 627.062 and 627.072.

**History.**—s. 438, ch. 59-205; s. 13, ch. 67-9; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95; s. 105, ch. 79-40.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1627.291 Information to be furnished insureds; appeal by insureds; workers' compensation and employer's liability insurances.**—

(1) As to workers' compensation and employer's liability insurances, every rating organization and every insurer which makes its own rates shall, within a reasonable time after receiving written request therefor and upon payment of such reasonable charge as it may make, furnish to any insured affected by a rate made by it, or to the authorized representative of such insured, all pertinent information as to such rate.

(2) As to workers' compensation and employer's liability insurances, every rating organization and every insurer which makes its own rates shall provide within this state reasonable means whereby any person aggrieved by the application of its rating system may be heard, in person or by his authorized representative, on his written request to review the manner in which such rating system has been applied in connection with the insurance afforded him. If the rating organization or insurer fails to grant or rejects such request within 30 days after it is made, the applicant may proceed in the same manner as if his application had been rejected. Any party affected by the action of such rating organization or insurer on such request may, within 30 days after written notice of such action, appeal to the department, which may affirm or reverse such action.

**History.**—s. 439, ch. 59-205; s. 14, ch. 67-9; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95; s. 106, ch. 79-40.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1627.301 Advisory organizations.**—

(1) No advisory organization shall conduct its operations in this state unless and until it has filed with the department:

(a) A copy of its constitution, articles of incorpo-



ration, articles of agreement or of association, and bylaws or rules and regulations governing its activities, all duly certified by the custodian of the originals thereof;

(b) A list of its members and subscribers; and

(c) The name and address of a resident of this state upon whom notices or orders of the department or process may be served.

(2) Every such advisory organization shall notify the department promptly of every change in:

(a) Its constitution;

(b) Its articles of incorporation, agreement, or association;

(c) Its bylaws, rules and regulations governing the conduct of its business;

(d) List of members and subscribers; and

(e) The name and address of the resident of this state designated by it upon whom notices or orders of the department or process affecting such organization may be served.

(3) No such advisory organization shall engage in any unfair or unreasonable practice with respect to such activities.

**History.**—s. 440, ch. 59-205; s. 15, ch. 67-9; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **627.311 Joint underwriters and joint reinsurers.**

(1) Every group, association or other organization of insurers which engages in joint underwritings or joint reinsurance, shall be subject to regulation with respect thereto as herein provided, subject, however, with respect to joint underwriting, to all other provisions of this chapter and, with respect to joint reinsurance, to ss. 624.15 (general penalty) and 627.321 (examinations) of this code.

(2) If the department finds that any activity or practice of any such group, association, or other organization is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, it may issue a written order specifying in what respects such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, and requiring the discontinuance of such activity or practice.

<sup>2</sup>(3) The department may, after consultation with insurers licensed to write automobile insurance in this state, approve a joint underwriting plan for purposes of equitable apportionment or sharing among insurers of automobile liability insurance and other motor vehicle insurance, as an alternate to the plan required in s. 627.351(1). All insurers authorized to write automobile insurance in this state shall subscribe to the plan and participate therein. The plan shall be subject to continuous review by the department which may at any time disapprove the entire plan or any part thereof if it determines that conditions have changed since prior approval and that in view of the purposes of the plan changes are warranted. Any disapproval by the department shall be subject to the provisions of chapter 120. If adopted, the plan:

(a) Shall be subject to all provisions of s. 627.351(1), except apportionment of applicants;

(b) May provide for one or more designated in-

surers, able and willing to provide policy and claims service, to act on behalf of all other insurers to provide insurance for applicants who are in good faith entitled to, but unable to, procure insurance through the voluntary insurance market at standard rates;

(c) Shall provide that designated insurers shall issue policies of insurance and provide policyholder and claim service on behalf of all insurers for the joint underwriting association;

(d) Shall provide for the equitable apportionment among insurers of losses and expenses incurred; and

(e) Shall provide that the joint underwriting association shall operate subject to the supervision and approval of a board of governors consisting of nine individuals including one who shall be elected as chairman.

1. Four members of the board shall be appointed by the Insurance Commissioner. Two of the commissioner's appointees shall be chosen from the insurance industry. Any board member appointed by the Insurance Commissioner may be removed and replaced by him at any time without cause.

2. Five members of the board shall be appointed by the participating insurers, two of whom shall be from the insurance agents' associations.

3. All board members, including the chairman, shall be appointed to serve for 2-year terms beginning annually on a date designated by the plan.

(4)(a) The department may, after consultation with insurers licensed to write workers' compensation and employer's liability insurance in this state, approve a joint underwriting plan for the purpose of equitable apportionment or sharing of workers' compensation and employer's liability insurance among insurers. The plan shall operate subject to the supervision of a board of governors, to be named by the Insurance Commissioner, the members of which shall serve for terms of 2 years, consisting of three insurers participating in the plan, three employers, and one producing agent for the plan. The minutes, audits, and procedures of the board of governors shall be subject to chapter 119. The plan of operation of the joint underwriting plan shall be prepared by the board of governors and shall be subject to approval by the Insurance Commissioner. In addition, the Insurance Commissioner shall review the plan of operation on an ongoing basis. The plan shall be subject to revision at the request of the Insurance Commissioner at any time. The board of governors shall designate one or more servicing carriers for the plan from the ranks of those insurers participating in the plan. Any such designation shall be subject to the approval of the Insurance Commissioner, and any such designation may be rescinded for cause by the board subject to the approval of the Insurance Commissioner or by the Insurance Commissioner if deemed appropriate in the exercise of his judgment. The plan shall take such actions as will, in the judgment of the board, encourage safety among its insureds. It shall annually report to the Department of Insurance and to the Legislature on those actions taken by it in this regard. It shall employ full-time safety consultants or engineers who will be available to advise insureds who may from time to time seek advice regarding safety procedures and to advise

such insureds as may demonstrate an unreasonably high frequency of worker accidents. Each designated servicing carrier shall provide as a condition for such designation sufficient personnel to provide support for such safety management subject to coordination by the chief safety manager of the plan. In addition, each designated servicing carrier shall provide personnel for claims adjustment so as to avoid undue costs due to unjust or improper claims against the plan. Such personnel shall be responsive to the requirements and policy dictates of the board of governors subject to approval by the Insurance Commissioner. In the event that no insurer is willing or able in the judgment of the Insurance Commissioner to act as a servicing carrier for the plan, then the board shall have the power to designate a manager and such staff as may in its judgment be necessary in addition to the chief safety manager and related staff to operate the plan. Designated servicing carriers shall provide policy and claims service on behalf of all other insurers participating in the plan in order to provide workers' compensation and employer's liability insurance for applicants who are in good faith entitled to but who are unable to purchase workers' compensation and employer's liability insurance through the voluntary insurance market at standard rates. Such plan shall provide that the designated insurers shall issue policies of insurance and provide policyholder and claim service on behalf of all insurers for the joint underwriting association. The plan shall provide for the equitable apportionment among insurers of losses and expenses incurred. The plan is authorized to pay a commission to producing agents not to exceed 5 percent of the total premium. If the plan is adopted, all insurers authorized to write workers' compensation and employer's liability insurance in this state shall subscribe thereto and participate therein. The plan shall be operated as a nonprofit venture. The plan shall be divided into two subplans as follows:

1. Subplan "A" shall provide coverage for insureds who have a demonstrated accident frequency problem, who have a measurably adverse loss ratio over a period of years, or who have demonstrated an attitude of noncompliance with safety requirements.

2. Subplan "B" shall provide coverage for all other insureds of the joint underwriting plan.

The methodology of applying these criteria, which shall be used to determine into which subplan an insured shall be placed, shall be determined by the Insurance Commissioner, and such methodology shall be applied regardless of the number of employees or the amount of payroll of the insured. The board of governors shall establish a system of surcharges applicable to insureds covered under subplan A, subject to approval by the Insurance Commissioner. A system of surcharges applicable to insureds covered under subplan B shall not be established. Retrospective evaluation of premiums and loss and expense experience of insureds within either subplan, as well as retrospective evaluation of premiums, losses, and expense experience of each subplan, shall be performed by the board of governors according to methodology submitted by the board to, and approved by, the Insurance Commis-

sioner. If the board of governors determines by such retrospective evaluation of a subplan that a return of a portion of premiums is in order, then such a return shall be accomplished within such subplan subject to the approval of the Insurance Commissioner.

(b) No later than 45 days prior to the expiration date of an insured's policy year, the insured shall be advised by the insurer that he may be continued in or assigned to the joint underwriting plan and advised that such assignment will require an additional cost or premium. The insured shall be advised that if he desires, his name will be filed publicly with the Department of Insurance to enable insurance providers the opportunity to offer coverage outside the plan. If the insured agrees, his name, company name, mailing address, telephone number, and the names of his insurer and agent shall be placed on file no later than 25 days prior to the policy expiration date with the Department of Insurance. Any policy subsequently written as a result of the provisions of this paragraph shall be subject to s. 626.752.

(c) Effective July 1, 1981, self-insurers as defined in s. 440.02(7)(b)1. and 3. shall participate in the equitable apportionment among insurers of losses and loss-adjustment expenses incurred by the plan with credit for investment income. Expenses shall be limited to actual expenses incurred by the plan. However, this paragraph shall not apply to governmental entities which are self-insurers under s. 440.38(6) or s. 440.57 or public utilities who are self-insurers under s. 440.38(1)(b). Self-insurers participating in the plan shall be deemed to be insurers for the purposes of this subsection. When the provisions of this paragraph become effective, two individual self-insurers participating in the plan and authorized under s. 440.38(1)(b) and two group self-insurers participating in the plan and authorized under s. 440.57 shall be added to the board of governors as named by the Insurance Commissioner.

**History.**—s. 441, ch. 59-205; ss. 13, 35, ch. 69-106; s. 1, ch. 74-51; s. 3, ch. 76-168; s. 16, ch. 77-290; s. 1, ch. 77-457; s. 21, ch. 78-95; s. 107, ch. 79-40; ss. 1, 2, 4, ch. 79-394; s. 238, ch. 79-400.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**Note.**—Section 4, ch. 79-394, provides that, if ch. 629 is repealed in accordance with the intent expressed in the Regulatory Reform Act of 1976, as amended by ch. 77-457, or as subsequently amended, it is the intent of the Legislature that ch. 79-394 shall also be repealed on the same date as is therein provided.

#### **§627.314 Concerted action by two or more insurers.—**

(1) Subject to and in compliance with the provisions of this part authorizing insurers to be members or subscribers of rating or advisory organizations or to engage in joint underwriting or joint reinsurance, two or more insurers may act in concert with each other and with others with respect to any matters pertaining to:

- (a) The making of rates or rating systems except for private passenger automobile insurance rates;
  - (b) The preparation or making of insurance policy or bond forms, underwriting rules, surveys, inspections, and investigations;
  - (c) The furnishing of loss or expense statistics or other information and data; or
  - (d) The carrying on of research.
- (2) With respect to any matters pertaining to the

making of rates or rating systems; the preparation or making of insurance policy or bond forms, underwriting rules, surveys, inspections, and investigations; the furnishing of loss or expense statistics or other information and data; or the carrying on of research, two or more authorized insurers having a common ownership or operating in the state under common management or control are hereby authorized to act in concert between or among themselves the same as if they constituted a single insurer. To the extent that such matters relate to cosurety bonds, two or more authorized insurers executing such bond are hereby authorized to act in concert between or among themselves the same as if they constituted a single insurer.

(3)(a) Members and subscribers of rating or advisory organizations may use the rates, rating systems, underwriting rules or policy or bond forms of such organizations, either consistently or intermittently, but except as provided in subsection (2) and ss. 627.311 and 627.351, shall not agree with each other or rating organizations or others to adhere thereto.

(b) The fact that two or more authorized insurers, whether or not members or subscribers of a rating or advisory organization, use, either consistently or intermittently, the rates or rating systems made or adopted by a rating organization or the underwriting rules or policy or bond forms prepared by a rating or advisory organization shall not be sufficient in itself to support a finding that an agreement to so adhere exists, and may be used only for the purpose of supplementing or explaining direct evidence of the existence of any such agreement.

(c) This subsection does not apply as to workers' compensation and employer's liability insurances.

(4) Licensed rating organizations and authorized insurers are authorized to exchange information and experience data with rating organizations and insurers in this and other states and may consult with them with respect to rate making and the application of rating systems.

(5) Upon compliance with the provisions of this part applicable thereto, any rating organization or advisory organization, and any group, association or other organization of authorized insurers which engages in joint underwriting or joint reinsurance through such organization or by standing agreement among the members thereof, may conduct operations in this state. As respects insurance risks or operations in this state, no insurer shall be a member or subscriber of any such organization, group or association that has not complied with the provisions of this part applicable to it.

(6) Notwithstanding any other provisions of part I, insurers shall not participate directly or indirectly in the deliberations or decisions of rating organizations on private passenger automobile insurance. However, such rating organizations shall, upon request of individual insurers, be required to furnish at reasonable cost the rate indications resulting from the loss and expense statistics gathered by them. Individual insurers may modify the indications to reflect their individual experience in determining

their own rates. Such rates shall be filed with the department for public inspection whenever requested and shall be available for public announcement only by the press, department, or insurer.

<sup>1</sup>History.—s. 16, ch. 67-9; s. 1, ch. 70-320; s. 1, ch. 71-6(B); s. 3, ch. 76-168; s. 1, ch. 77-457; s. 108, ch. 79-40.

<sup>2</sup>Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **627.318 Records.—**

(1) Every insurer, rating organization, advisory organization and every group, association or other organization of insurers which engages in joint underwriting or joint reinsurance shall maintain reasonable records, of the type and kind reasonably adapted to its method of operation, of its experience or the experience of its members and of the data, statistics or information collected or used by it in connection with the rates, rating plans, rating systems, underwriting rules, policy or bond forms, surveys or inspections made or used by it, so that such records will be available at all reasonable times to enable the department to determine whether such organization, insurer, group or association, and, in the case of an insurer or rating organization, every rate, rating plan and rating system made or used by it, complies with the provisions of this part applicable to it. The maintenance of such records in the office of a licensed rating organization of which an insurer is a member or subscriber will be sufficient compliance with this section for any such insurer maintaining membership or subscribership in such organization, to the extent that the insurer uses the rates, rating plans, rating systems or underwriting rules of such organization. Such records shall be maintained in an office within this state or shall be made available for examination or inspection within this state by the department at any time upon reasonable notice.

(2) In addition to, or in lieu of, any other penalty therefor, for each failure to maintain the records as required hereunder, the department may impose upon the person so failing the penalty prescribed by s. 627.381(1).

<sup>1</sup>History.—s. 17, ch. 67-9; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

<sup>2</sup>Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **627.321 Examinations.—**

(1) As often as it deems necessary, and not less frequently than each three years, the department shall examine each licensed rating organization, each advisory organization, each group, association or other organization of insurers which engages in joint underwriting or joint reinsurance, and each authorized insurer transacting in this state any class of insurance to which the provisions of this part are applicable. The examination shall be for the purpose of ascertaining compliance by the person examined with the applicable provisions of this part. As to insurers, no such examination requirement shall be satisfied by the periodic examination of the insurer's general affairs.

(2) In lieu of any such examination, the department may accept the report of a similar examination made by the insurance supervisory official of another state.



(3) The reasonable cost of the examination shall be paid by the person examined, and such person shall be subject, as though an "insurer," to the provisions of s. 624.320 (examination expense).

(4) Such examinations shall also be subject to the applicable provisions of ss. 624.318 (conduct of examination), 624.319 (examination reports), 624.321 (witnesses and evidence), 624.322 (testimony compelled; immunity from prosecution), and 624.323 (same; penalty for refusal to testify).

**History.**—s. 442, ch. 59-205; s. 18, ch. 67-9; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 27, ch. 77-468.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.331 Recording and reporting of loss, expense, and claim experience; rating information.**

(1) The department shall promulgate and may modify reasonable rules and statistical plans, reasonably adapted to each of the rating systems used, which shall thereafter be used by each insurer in the recording and reporting of its loss and countrywide expense experience, in order that the experience of all insurers may be made available at least annually in such form and detail as may be necessary to aid the department in determining whether rates comply with the applicable standards of this part. Such rules and plans may also provide for the recording and reporting of expense experience items which are specially applicable to this state and are not susceptible of determination by a prorating of countrywide expense experience. Nothing in this section shall be construed as prohibiting the department from requiring all insurers licensed to write insurance covering a motor vehicle, as defined in s. 324.021, to report their loss and expense experience to the department in a manner in conformity with a statistical plan or plans adopted by the department.

(2) In promulgating such rules and plans, the department shall give due consideration to the rating systems in use in this state and, in order that such rules and plans may be as uniform as is practicable among the several states, to the rules and to the form of the plans used for such rating systems in other states. No insurer shall be required to record or report its loss experience on a classification basis that is inconsistent with the rating system used by it, except for motor vehicle insurance as otherwise provided by law.

(3) The department may designate one or more rating organizations or other agencies to assist it in gathering such experience and making compilations thereof, and such compilations shall be made available, subject to reasonable rules promulgated by the department, to insurers and rating organizations.

(4) The department shall require insurers and rating organizations to furnish it with a copy of their rates, rating schedules, and rating manuals which are in effect, and a copy of any changes in such rates, rating schedules, and rating manuals, as soon as practicable following their effective date, but in no event later than 30 days thereafter. The submission of rates, rating schedules, and rating manuals to the department by a licensed rating organization of which an insurer is a member or subscriber will be sufficient compliance with this subsection for any

insurer maintaining membership or subscribership in such organization, to the extent that the insurer uses the rates, rating schedules, and rating manuals of such organization. All such information shall be available for public inspection, upon receipt by the department, during usual business hours.

(5) Any insurer writing an automobile liability policy in the state shall report certain information annually to the department. The information shall be divided into the following main categories: bodily injury liability, property damage liability, uninsured motorist, personal injury protection benefits, medical payments, comprehensive, and collision. The information given shall be on direct insurance writings in the state alone. For the first year only, the insurer shall provide data for the current year and 4 previous years for paragraphs (a) through (i). Insurers shall be required to report all of the following information:

- (a) Premiums written.
- (b) Premiums earned.
- (c) Unearned premiums.
- (d) The dollar amount of paid claims.
- (e) Incurred claims, but not including claims incurred but not reported.
- (f) Loss reserves for all claims except those incurred but not reported.
- (g) Reserves for claims incurred but not reported.
- (h) Net investment gain or loss and other income gain or loss allocated to Florida business, utilizing the investment allocation formula contained in the National Association of Insurance Commissioners' Profitability Report by line by state.
- (i) Underwriting income or loss.
- (j) Accident year paid losses.
- (k) Loss reserves at the beginning of the year.
- (l) Prior accident year paid losses, paid during the year.
- (m) Accident year incurred losses.
- (n) Accident year outstanding losses.
- (o) Loss reserves at the end of the year.
- (p) Such additional information as may be required by the department in order to evaluate the cost impact of the various deductibles mandated under the insurance code.
- (q) Such additional information as the insurance commissioner may require in order to evaluate the reasonableness of rates or to assure that such rates are not excessive or unfairly discriminatory or to evaluate the financial condition of insurers underwriting motor vehicle insurance.

**History.**—s. 443, ch. 59-205; s. 19, ch. 67-9; ss. 13, 35, ch. 69-106; s. 1, ch. 70-75; s. 1, ch. 70-321; s. 1, ch. 70-439; s. 1, ch. 73-153; s. 1, ch. 74-320; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 27, ch. 77-468.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.343 Uniform risk classification reporting system for motor vehicle insurance.**

(1) The department shall establish and promulgate a uniform statewide reporting system to classify risks for the purpose of evaluating rates and premiums and for the purpose of evaluating competition and the availability of motor vehicle insurance in the voluntary market. The system shall divide risks into classifications based upon variations in hazards or expense of claims. The classification system may

include any difference among risks that can be demonstrated to have a probable effect upon losses or expenses, but in no event shall the system adopted by the department discriminate among risks based upon race, creed, color, or national origin. The classification system shall divide the state into geographical areas based upon hazards or expenses of claims.

(2) Each insurer shall annually file with the department a statement reflecting the total number of persons insured by the insurer within each classification by coverage, the premium volume in each classification by coverage, the paid and reserved losses incurred in each classification by coverage, the number of cancellations or nonrenewals by the insurer during the period, and the number of new insureds during the period. This statement shall be filed annually on a date determined by the department and shall cover a 1-year period.

(3) The department may promulgate rules to require each insurer to report its loss and expense experience by classification, in such detail and as often as may be necessary to aid the department in determining the reasonableness of rates, the validity of loss projections, and the validity of the risk classification system.

History.—s. 9, ch. 78-374.

#### **§627.351 Insurance risk apportionment plan.—**

(1) Agreements may be made among casualty and surety insurers with respect to the equitable apportionment among them of insurance which may be afforded applicants who are in good faith entitled to, but who are unable to, procure such insurance through ordinary methods, and such insurers may agree among themselves on the use of reasonable rate modifications for such insurance, such agreements and rate modifications to be subject to the approval of the department. The department shall, after consultation with the insurers licensed to write automobile liability insurance in this state, adopt a reasonable plan or plans for the equitable apportionment among such insurers of applicants for such automobile insurance or personal injury protection benefits as provided in s. 627.736 who are in good faith entitled to, but are unable to, procure such benefits or such insurance through ordinary methods, and, when such plan has been adopted, all such insurers shall subscribe thereto and shall participate therein. Such plan or plans shall include rules for classification of risks and rates therefor. Any insured placed with the plan shall be notified of the fact that insurance coverage is being afforded through the plan and not through the private market, and such notification shall be given in writing within 10 days of such placement. To assure that plan rates are made adequate to pay claims and expenses, insurers shall develop a means of obtaining loss and expense experience on at least an annual basis, and the plan shall file such experience, when available, with the department in sufficient detail to make a determination of rate adequacy. Such experience shall be filed with the department not more than 9 months following the end of the annual statistical period under review. Within 60 days thereafter the department shall approve such rate revisions as are supported by the filing. In addition to provisions

for claims and expenses, the rate making formula shall include a factor for projected claims trending and 5 percent for contingencies. Trend factors shall not be found to be inappropriate if not in excess of trend factors normally used in the development of residual market rates by the appropriate licensed rating organization.

(2) Agreements may be made among property insurers with respect to the equitable apportionment among them of insurance which may be afforded applicants who are in good faith entitled to, but who are unable to procure, such insurance through ordinary methods, and such insurers may agree among themselves on the use of reasonable rate modifications for such insurance. Such agreements and rate modifications shall be subject to the applicable provisions of this chapter.

(3) It is the finding of the legislature that:

(a) Due to the lack of windstorm insurance coverage in certain areas, economic growth and development is being deterred or otherwise stifled in said areas, mortgages are in default, and financial institutions are unable to make loans.

(b) Other areas of the state may be similarly affected in the future.

<sup>2</sup>(4) The Department of Insurance shall require all insurers licensed to transact property insurance on a direct basis in this state to provide windstorm coverage to applicants from areas determined to be eligible pursuant to subsection (5), who in good faith are entitled to, but are unable to procure, such coverage through ordinary means, or it shall adopt a reasonable plan or plans for the equitable apportionment or sharing among such insurers of windstorm coverage. The commissioner shall promulgate rules which shall provide a formula for the recovery and repayment of any deferred assessments.

(a) For the purpose of this section, "properties" eligible for such windstorm coverage are defined as dwellings, buildings, and other structures, including mobile homes which are used as dwellings and which are tied down in compliance with mobile home tie-down requirements prescribed by the Department of Highway Safety and Motor Vehicles pursuant to s. 320.8325, and the contents of all such properties.

(b) All insurers required to be members of such plan shall participate in its writings, expenses, profits, and losses. Such gross participation shall be in the proportion that the net direct premiums of each member written on property in Florida during the preceding calendar year bears to the aggregate net direct premiums of all members of the plan written on property in Florida during the preceding calendar year. The commissioner, after review of annual statements, other reports, and any other statistics which he shall deem necessary, shall certify to the plan the aggregate net direct premiums written on property in Florida by all members. Any such plan shall provide a formula whereby a company voluntarily providing windstorm coverage in affected areas will be relieved wholly or partially from apportionment. A company which is a member of a group of companies under common management may elect to have its credits applied on a group basis, and any company or group may elect to have its credits applied to any other company or group.

(c) The plan shall also provide that any member with a surplus as to policyholders of \$5,000,000 or less writing 25 percent of its total countrywide property insurance premiums in Florida may petition the department, within 90 days of the effective date of chapter 76-96, Laws of Florida, and thereafter within the first 90 days of each calendar year, to qualify as a limited apportionment company. Such a company's apportionment in any calendar year for which it is qualified shall not exceed its gross participation, which shall not be affected by the formula for voluntary writings. In no event shall a limited apportionment company be required to participate in any apportionment of losses in the aggregate which exceeds \$50,000,000 after payment of available plan funds in any calendar year. The plan shall provide that if the department determines that any assessment will result in an impairment of the surplus of a limited apportionment company, the department may direct that all or part of such assessment be deferred.

(d) The plan shall provide for the deferment, in whole or in part, of the assessment of a member insurer if, in the opinion of the commissioner, payment of the assessment would endanger or impair the solvency of the member insurer. In the event an assessment against a member insurer is deferred in whole or in part, the amount by which such assessment is deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in paragraph (b).

(e) The plan may include deductibles and rules for classification of risks and rate modifications consistent with the objective of providing and maintaining funds sufficient to pay catastrophe losses.

(f) The plan may authorize the formation of a private nonprofit corporation, a private nonprofit unincorporated association, or a nonprofit mutual company which may be empowered, among other things, to borrow money and to accumulate reserves or funds to be used for the payment of insured catastrophe losses. The plan shall incorporate and continue the plan of operation and articles of agreement in effect on the effective date of chapter 76-96, Laws of Florida, to the extent that it is not inconsistent with chapter 76-96, Laws of Florida, and as subsequently modified consistent with chapter 76-96, Laws of Florida. The board of directors and officers currently serving shall continue to serve until their successors are duly qualified as provided under the plan. The assets and obligations of the plan in effect immediately prior to the effective date of chapter 76-96, Laws of Florida, shall be construed to be the assets and obligations of the successor plan created herein.

(g) On such coverage, an agent's remuneration shall be that amount of money payable to him by the terms of his contract with the company with which the business is placed. However, no commission will be paid on that portion of the premium which is in excess of that company's standard premium.

(5) The provisions of subsection (4) shall be applicable only with respect to any county or area which the department has heretofore designated or as to which the department, after public hearing, finds that the following criteria exist:

(a) Due to the lack of windstorm insurance cover-

age in the county or area so affected, economic growth and development is being deterred or otherwise stifled in said county or area, mortgages are in default, and financial institutions are unable to make loans; and

(b) The county or area so affected has adopted and is enforcing the structural requirements of the Southern Standard Building Code, or its equivalent, for new construction and has included adequate minimum floor elevation requirements for structures in areas subject to inundation.

Any time after the department has determined that the criteria referred to in this section do not exist with respect to any county or area of the state, it may, after a subsequent public hearing, declare that the said county or area is no longer eligible for windstorm coverage through the plan.

(6)(a) The Department of Insurance shall, after consultation with the casualty insurers licensed in this state, adopt a plan or plans for the equitable apportionment among them of casualty insurance coverage which may be afforded political subdivisions which are in good faith entitled to, but are unable to, procure such coverage through the voluntary market at standard rates or through a statutorily approved plan authorized by the Department of Insurance. The Department of Insurance may adopt a Joint Underwriting Plan which shall provide for one or more designated insurers able and willing to provide policyholder and claims service, including the issuance of insurance policies, to act on behalf of all other insurers required to participate in the Joint Underwriting Plan. Any Joint Underwriting Plan adopted shall provide for the equitable apportionment of any profits realized, or of losses and expenses incurred, among participating insurers. The plan shall include, but not be limited to:

1. Rules for the classification of risks and rates which reflect the past and prospective loss experience in different geographic areas.

2. A rating plan which reasonably reflects the prior claims experience of the insureds.

3. Excess coverage by insurers if the Insurance Commissioner, in his discretion, requires such coverage by insurers participating in the Joint Underwriting Plan.

(b) In the event an underwriting deficit exists at the end of any year the plan is in effect, each policyholder shall pay to the Joint Underwriting Plan a premium contingency assessment not to exceed one-third of the premium payment paid by such policyholder for that year. The Joint Underwriting Plan shall pay no further claims on any policy for which the policyholder fails to pay the premium contingency assessment.

(c) Any deficit sustained under the plan shall first be recovered through a premium contingency assessment. Concurrently, the rates for insureds shall be adjusted for the next year so as to be actuarially sound in conformance with rules of the department.

(d) If there is any remaining deficit under the plan after maximum collection of the premium contingency assessment, such deficit shall be recovered from the companies participating in the plan in the



proportion that the net direct premiums of each such member written during the preceding calendar year bears to the aggregate net direct premiums written in this state by all members of the Joint Underwriting Plan.

(e) Upon adoption of a plan, all casualty insurers licensed in the state shall subscribe thereto and participate therein.

(7)(a) The Department of Insurance shall, after consultation with insurers as set forth in paragraph (b), adopt a temporary joint underwriting plan as set forth in paragraph (d).

(b) Entities licensed to issue casualty insurance as defined in paragraphs 624.605(1)(b), (j), and (p) and self-insurers authorized to issue medical malpractice insurance under s. 627.357 shall participate in the plan and shall be members of the temporary Joint Underwriting Association.

(c) The Joint Underwriting Association shall operate subject to the supervision and approval of a board of governors consisting of representatives of five of the insurers participating in the Joint Underwriting Association, an attorney to be named by The Florida Bar, a physician to be named by the Florida Medical Association, and a hospital representative to be named by the Florida Hospital Association. The board of governors shall choose, during the first meeting of the board after June 30 of each year, one of its members to serve as chairman of the board and another member to serve as vice chairman of the board.

(d) The temporary joint underwriting plan shall function for a period not exceeding 3 years from July 1, 1978, and if still in existence at the end of such 3-year period, it shall automatically terminate. The plan shall provide coverage for claims arising out of the rendering of, or failure to render, medical care or services and, in the case of health care facilities, coverage for bodily injury or property damage to the person or property of any patient arising out of the insured's activities, in appropriate policy forms for all health care providers as defined in paragraph (i). The plan shall include, but not be limited to:

1. Classifications of risks and rates which reflect past and prospective loss and expense experience in different areas of practice and in different geographical areas.

2. A rating plan which reasonably recognizes the prior claims experience of insureds.

3. Provisions as to rates for:

- a. Insureds who are retired or semiretired.

- b. The estates of deceased insureds.

- c. Part-time professionals.

4. Protection in an amount to be determined by the Insurance Commissioner.

5. Rules to implement the orderly dissolution of the plan at its termination.

The Insurance Commissioner may, in his discretion, require that insurers participating in the Joint Underwriting Association offer excess coverage.

(e) In the event an underwriting deficit exists for any policy year the plan is in effect, each policyholder shall pay to the association a premium contingency assessment not to exceed one-third of the premium payment paid by such policyholder to the associ-

ation for that policy year. The association shall pay no further claims on any policy for the policyholder who fails to pay the premium contingency assessment.

1. Any deficit sustained under the plan shall first be recovered through the premium contingency assessment.

2. If there is any remaining deficit under the plan after maximum collection of the premium contingency assessment, such deficit shall be recovered from the companies participating in the plan in the proportion that the net direct premiums of each such member written during the calendar year immediately preceding the end of the policy year for which there is a deficit assessment bears to the aggregate net direct premiums written in this state by all members of the association. "Premiums" as used herein shall mean premiums for the lines of insurance defined in paragraphs 624.605(1)(b), (j), and (p), including premiums for such coverage issued under package policies.

- (f) The plan shall provide for one or more insurers able and willing to provide policy service through licensed resident agents and claims service on behalf of all other insurers participating in the plan. In the event no insurer is able and willing to provide such services, the Joint Underwriting Association is authorized to perform any and all such services.

- (g) The Department of Insurance, prior to termination of the plan, shall determine whether a need reasonably exists for continuing coverage for those who have been insured by the plan, as to claims solely for incidents which occurred during the existence of the plan. If such need is found, the Department of Insurance shall establish a plan for the purchase of such coverage for a reasonable time, prior to termination of the plan.

- (h) All books, records, documents, or audits relating to the Joint Underwriting Association or its operation shall be open to public inspection, except that a claim file in the possession of the Joint Underwriting Association shall not be available for review during the processing of that claim.

- (i) As used in this subsection:

1. "Health care provider" means hospitals licensed under chapter 395; physicians licensed under chapter 458; osteopaths licensed under chapter 459; podiatrists licensed under chapter 461; dentists licensed under chapter 466; chiropractors licensed under chapter 460; naturopaths licensed under chapter 462; nurses licensed under chapter 464; clinical laboratories registered under chapter 483; physicians' assistants certified under chapter 458; physical therapists and physical therapist assistants licensed under chapter 486; health maintenance organizations certificated under part II of chapter 641; ambulatory surgical centers licensed under chapter 395; other medical facilities as defined in subparagraph 2.; blood banks, plasma centers, industrial clinics, and renal dialysis facilities; or professional associations, partnerships, corporations, joint ventures, or other associations for professional activity by health care providers.

2. "Other medical facility" means a facility the primary purpose of which is to provide human medical diagnostic services or a facility providing nonsur-

gical human medical treatment and in which the patient is admitted to and discharged from said facility within the same working day, and which is not part of a hospital. However, a facility existing for the primary purpose of performing terminations of pregnancy or an office maintained by a physician or dentist for the practice of medicine shall not be construed to be an "other medical facility."

3. "Health care facility" means any hospital licensed under chapter 395, health maintenance organization certificated under part II of chapter 641, ambulatory surgical center licensed under chapter 395, or other medical facility as defined in subparagraph 2.

(j) The manager of the plan or his assistant is the agent for service of process for the plan.

**History.**—s. 445, ch. 59-205; ss. 13, 35, ch. 69-106; s. 1, ch. 69-199; ss. 1, 2, ch. 70-234; s. 1, ch. 72-22; s. 1, ch. 73-259; s. 1, ch. 74-216; s. 14, ch. 75-9; s. 3, ch. 75-279; s. 1, ch. 76-96; s. 3, ch. 76-168; s. 5, ch. 76-260; s. 3, ch. 77-64; s. 1, ch. 77-93; s. 1, ch. 77-174; s. 1, ch. 77-380; s. 1, ch. 77-457; s. 28, ch. 77-468; s. 1, ch. 78-47; s. 164, ch. 79-164; ss. 1, 2, ch. 79-185.

<sup>1</sup>**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

<sup>2</sup>**Note.**—Section 2, ch. 79-185, provides that if, ch. 627 is repealed in accordance with the intent expressed in the Regulatory Reform Act of 1976, as amended by ch. 77-457, or as subsequently amended, it is the intent of the Legislature that ch. 79-185 shall also be repealed on the same date as is therein provided.

#### **627.356 Professional malpractice insurance; self-insurance.—**

(1) A group or association of attorneys licensed to practice law in this state, composed of any number of members, is authorized to self-insure against claims of professional malpractice, upon:

(a) A department determination that the full amount of insurance required is not procurable, after a diligent effort has been made to do so, from among insurers authorized to transact, and actually writing, this kind and class of insurance in this state; and

(b) <sup>1</sup>[Compliance by the group or association] with the following conditions:

1. Establishment of a Professional Malpractice Risk Management Trust Fund to provide coverage against professional malpractice liability.

2. Employment of professional consultants for loss prevention and claims management coordination under a risk management program.

(2) The trust fund is authorized to purchase professional malpractice insurance up to determined limits, specific excess insurance, and aggregate excess insurance as necessary to provide the insurance coverages authorized by this section, consistent with the market availability. The trust fund is further authorized to purchase such risk management services as may be required and pay claims as may arise under any deductible provisions.

(3) The Department of Insurance shall adopt rules to implement the provisions of this section. Such rules shall guarantee the maintenance of a sufficient reserve in the event of the dissolution of any trust fund authorized hereunder so as to cover contingent liabilities.

**History.**—s. 2, ch. 77-297.

<sup>1</sup>**Note.**—Bracketed words substituted by the editors for the words "upon

complying."

#### **<sup>1</sup>627.357 Medical malpractice insurance; purchase.—**

(1) A group or association of health care providers as defined in s. 768.54(1)(b), composed of any number of members, is authorized to self-insure against claims arising out of the rendering of, or failure to render, medical care or services and coverage for bodily injury or property damage, including all patient injuries arising out of the insured's activities, upon obtaining approval from the Department of Insurance and upon complying with the following conditions:

(a) Establishment of a Medical Malpractice Risk Management Trust Fund to provide coverage against professional medical malpractice liability.

(b) Employment of professional consultants for loss prevention and claims management coordination under a risk management program.

Any such group or association shall be subject to regulation and investigation by the department. The group or association shall be subject to such rules as the department adopts, and shall also be subject to part VII of chapter 626, relating to trade practices and frauds.

(2) The trust fund is authorized to purchase medical malpractice insurance up to determined limits, specific excess insurance, and aggregate excess insurance as necessary to provide the insurance coverages authorized by this section, consistent with market availability. The trust fund is further authorized to purchase such risk management services as may be required and pay claims as may arise under any deductible provisions.

(3) The Department of Insurance shall promulgate rules and regulations to implement the provisions of this section. Such rules and regulations shall guarantee the maintenance of a sufficient reserve in the event of the dissolution of any trust fund authorized hereunder so as to cover contingent liabilities.

**History.**—ss. 1-3, ch. 72-265; s. 162, ch. 73-333; s. 4, ch. 75-9; s. 3, ch. 76-168; s. 8, ch. 76-260; s. 5, ch. 77-64; s. 1, ch. 77-457.

<sup>1</sup>**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**Note.**—Former s. 627.355; s. 768.52, 1976 Supplement.

**<sup>1</sup>627.361 False or misleading information.—**No person shall willfully withhold information from or knowingly give false or misleading information to the department, any statistical agency designated by the department, any rating organization, or any insurer, which will affect the rates or premiums chargeable under part I of this chapter. A violation of this section shall subject the one guilty of such violation to the penalties provided in s. 624.15 of this code.

**History.**—s. 446, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

<sup>1</sup>**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **<sup>1</sup>627.371 Hearings.—**

(1) Any person aggrieved by any rate charged, rating plan, rating system, or underwriting rule followed or adopted by an insurer or rating organization may himself or by his authorized representative

make written request of the insurer or rating organization to review the manner in which the rate, plan, system, or rule has been applied with respect to insurance afforded him. If the request is not granted within 30 days after it is made, the requester may treat it as rejected. Any person aggrieved by the refusal of an insurer or rating organization to grant the review requested, or by the failure or refusal to grant all or part of the relief requested, may file a written complaint with the department, specifying the grounds relied upon. If the department has already disposed of the issue as raised by a similar complaint or believes that probable cause for the complaint does not exist or that the complaint is not made in good faith, it shall so notify the complainant. Otherwise, and if it also finds that the complaint charges a violation of this chapter and that the complainant would be aggrieved if the violation is proven, it shall proceed as provided in subsection (2).

(2) If after examination of an insurer, rating organization, advisory organization, or group, association, or other organization of insurers which engages in joint underwriting or joint reinsurance, upon the basis of other information, or upon sufficient complaint as provided in subsection (1), the department has good cause to believe that such insurer, organization, group, or association, or any rate, rating plan, or rating system made or used by any such insurer or rating organization, does not comply with the requirements and standards of this part applicable to it, it shall, unless it has good cause to believe such noncompliance is willful, give notice in writing to such insurer, organization, group, or association stating therein in what manner and to what extent noncompliance is alleged to exist and specifying therein a reasonable time, not less than 10 days thereafter, in which the noncompliance may be corrected, including any premium adjustment. Notices under this subsection shall be confidential as between the department and the parties unless proceedings are held under subsection (3).

(3) If the department has good cause to believe that such noncompliance is willful or if, within the period prescribed by the department in the notice required by subsection (2), the insurer, organization, group, or association does not make such changes as may be necessary to correct the noncompliance specified by the department or establish to the satisfaction of the department that such specified noncompliance does not exist, then the department is required to proceed to further determine the matter. If no notice has been given as provided in subsection (2), the notice shall state in what manner and to what extent noncompliance is alleged to exist. The proceedings shall not consider any subject not specified in the notice required by subsections (2) and (3).

(4) If the department finds:

(a) That any rate, rating plan, or rating system violates the applicable provisions of this part, it may issue an order to the insurer, rating organization, group, or association which has been the subject of the proceedings specifying in what respects such violation exists and requiring compliance within a reasonable time thereafter; or

(b) That an insurer, rating organization, advisory organization, or a group, association, or other or-

ganization of insurers which engages in joint underwriting or joint reinsurance is in violation of the applicable provisions of this part other than the provisions dealing with rates, rating plans, or rating systems, it may issue an order to such insurer, organization, group, or association which has been the subject of the proceedings specifying in what respects such violation exists and requiring compliance within a reasonable time thereafter; or

(c) That any such violation by an insurer or rating organization which has been the subject of proceedings was willful, it may suspend or revoke, in whole or in part, the certificate of authority of such insurer or the license of such rating organization, with respect to the class of insurance which has been a subject of the hearing; or

(d) That any rating organization has willfully engaged in any fraudulent or dishonest act or practice,

it may suspend or revoke, in whole or in part, the license of such organization in addition to any other penalty provided in this part.

**History.**—s. 447, ch. 59-205; s. 20, ch. 67-9; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **§627.381 Penalty for violations.—**

(1) The department may, if it finds that any person or organization has violated any provision of part I of this chapter, impose a penalty of not more than \$250 for each such violation, but, if it finds such violation to be willful, it may impose a penalty of not more than \$1,000 for each such violation. Such penalties may be in addition to any other penalty provided by law.

(2) The department may suspend the license or authority of any rating organization or insurer which fails to comply with an order of the department within the time limited by such order, or any extension thereof which the department may grant. The department shall not suspend the license or authority of any rating organization or insurer for failure to comply with an order until the time prescribed for an appeal therefrom has expired or, if an appeal has been taken, until such order has been affirmed. The department may determine when a suspension of license or authority shall become effective and it shall remain in effect for the period fixed by it, unless it modifies or rescinds such suspension, or until the order upon which such suspension is based is modified, rescinded or reversed.

**History.**—s. 448, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

## **PART II**

### **THE INSURANCE CONTRACT**

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**1627.401 Scope of part II.**—No provision of part II of this chapter shall apply as to:

- (1) Reinsurance.
- (2) Policies or contracts not issued for delivery in this state nor delivered in this state, except as provided in s. 627.410(6) (approval of forms for delivery in jurisdictions where local approval not provided for).
- (3) Wet marine and transportation insurance except ss. 627.409 (representations in applications; warranties), 627.420 (binders), and 627.428 (attorney fee).
- (4) Title insurance, except as to the following provisions:
  - (a) Section 627.406 (power to contract, etc.),
  - (b) Section 627.415 (charter, bylaw provisions),
  - (c) Section 627.416 (execution of policies),
  - (d) Section 627.419 (construction of policies),
  - (e) Section 627.427 (payment of judgment by insurer; penalty for failure), and
  - (f) Section 627.428 (attorney fee).
- (5) Credit life or credit disability insurance except as to s. 627.428 (attorney fee).

**History.**—s. 450, ch. 59-205; s. 1, ch. 70-322; s. 1, ch. 70-371; s. 1, ch. 71-45; s. 163, ch. 73-333; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1627.402 "Policy" defined.**—

- (1) "Policy" means written contract of or written agreement for or effecting insurance, or the certificate thereof, by whatever name called, and includes all clauses, riders, endorsements and papers which are a part thereof.

(2) The word "certificate" as used in this section does not include certificates as to group life or disability insurance or as to group annuities issued to individual insureds.

**History.**—s. 451, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1627.403 "Premium" defined.**—"Premium" is the consideration for insurance, by whatever name called. Any "assessment," or any "membership," "policy," "survey," "inspection," "service" or similar fee or charge in consideration for an insurance contract is deemed part of the premium.

**History.**—s. 452, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1627.4035 Cash payment of premiums.**—

(1) The premiums for insurance contracts issued in this state or covering risk located in this state shall be paid in cash consisting of coins, currency, checks, or money orders.

- (2) This section shall not be applicable to:
  - (a) Reinsurance agreements;
  - (b) Pension plans;
  - (c) Premium loans, whether or not subject to an automatic provision;
  - (d) Dividends, whether to purchase additional paid-up insurance or to shorten the dividend payment period;
  - (e) Salary deduction plans;
  - (f) Preauthorized check plans;
  - (g) Waivers of premiums on disability;
  - (h) Nonforfeiture provisions affording benefits under supplementary contracts; or
  - (i) Such other methods of paying for life insurance as may be permitted by the department pursuant to rule or regulation.

**History.**—s. 1, ch. 70-69; s. 1, ch. 70-439; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1627.404 Insurable interest; personal insurance.**—An insurer shall be entitled to rely upon all statements, declarations and representations made by an applicant for insurance relative to the insurable interest which such applicant has in the insured; and no insurer shall incur any legal liability except as set forth in the policy, by virtue of any untrue statements, declarations or representations so relied upon in good faith by the insurer.

**History.**—s. 453, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1627.405 Same; property.**—

(1) No contract of insurance of property or of any interest in property or arising from property shall be enforceable as to the insurance except for the benefit of persons having an insurable interest in the things insured as at the time of the loss.

(2) "Insurable interest" as used in this section means any actual, lawful, and substantial economic interest in the safety or preservation of the subject of the insurance free from loss, destruction, or pecuniary damage or impairment.

(3) The measure of an insurable interest in property is the extent to which the insured might be damaged by loss, injury, or impairment thereof.

**History.**—s. 454, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **627.406 Power to contract; purchase of insurance by or for minors.—**

(1) Any person of competent legal capacity may contract for insurance.

(2) Any minor of the age of 15 years or more, as determined by the nearest birthday, may, notwithstanding his minority, contract for annuities or for insurance upon his own life, body, health, property, liabilities or other interests, or on the person of another in whom the minor has an insurable interest. Such a minor shall, notwithstanding such minority, be deemed competent to exercise all rights and powers with respect to or under:

(a) Any contract for annuity or for insurance upon his own life, body or health, or

(b) Any contract such minor effected upon his own property, liabilities or other interests, or on the person of another, as might be exercised by a person of full legal age, and may at any time surrender his interest in any such contracts and give valid discharge for any benefits accruing or money payable thereunder. Such a minor shall not, by reason of his minority, be entitled to rescind, avoid or repudiate the contract, nor to rescind, avoid or repudiate any exercise of a right or privilege thereunder, except that such a minor, not otherwise emancipated, shall not be bound by any unperformed agreement to pay by promissory note or otherwise, any premium on any such annuity or insurance contract.

(3) If any minor mentioned in subsection (2), is possessed of an estate that is being administered by a guardian or curator, no such contract shall be binding upon such estate as to payment of premiums, except as and when consented to by the guardian or curator and approved by the probate court of the county in which the administration of the estate is pending, and such consent and approval shall be required as to each premium payment.

(4) Any annuity contract or policy of life or disability insurance procured by or for a minor under subsection (2), shall be made payable either to the minor or his estate or to a person having an insurable interest in the life of such minor.

**History.**—s. 455, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

cf.—s. 1.01 Minor defined.

**627.407 Alteration of application.**—No alteration of any written application for any life or disability insurance policy shall be made by any person other than the applicant without his written consent, except that insertions may be made by the insurer, for administrative purposes only, in such manner as to indicate clearly that such insertions are not to be ascribed to the applicant.

**History.**—s. 456, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior

to that date.

#### **627.408 Application as evidence.—**

(1) No application for the issuance of any life or disability insurance policy or annuity contract shall be admissible in evidence in any action relative to such policy or contract, unless a true copy of the application was attached to or otherwise made a part of the policy or contract when issued. This provision shall not apply to industrial life insurance policies or to monthly debit life insurance policies.

(2) If any policy of life or disability insurance delivered or issued for delivery in this state is reinstated or renewed, and the insured or the beneficiary or assignee of the policy makes written request to the insurer for a copy of the application, if any, for such reinstatement or renewal, the insurer shall, within 30 days after receipt of such request at its home office or at any of its branch offices, deliver or mail to the person making such request a copy of such application, reproduced by any legible means. In the case of such a request from the beneficiary, the time within which the insurer is required to furnish a copy of such application shall not begin to run until after receipt of evidence satisfactory to the insurer of the beneficiary's vested interest in the policy or contract.

**History.**—s. 457, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **627.409 Representations in applications; warranties.—**

(1) All statements and descriptions in any application for an insurance policy or annuity contract, or in negotiations therefor, by or in behalf of the insured or annuitant, shall be deemed to be representations and not warranties. Misrepresentations, omissions, concealment of facts, and incorrect statements shall not prevent a recovery under the policy or contract unless either:

(a) Fraudulent; or

(b) Material either to the acceptance of the risk, or to the hazard assumed by the insurer; or

(c) The insurer in good faith would either not have issued the policy or contract, or would not have issued it at the same premium rate, or would not have issued a policy or contract in as large an amount, or would not have provided coverage with respect to the hazard resulting in the loss, if the true facts had been made known to the insurer as required either by the application for the policy or contract or otherwise.

(2) A breach or violation by the insured of any warranty, condition, or provision of any wet marine or transportation insurance policy, contract of insurance, endorsement, or application therefor shall not render void the policy or contract, or constitute a defense to a loss thereon, unless such breach or violation increased the hazard by any means within the control of the insured.

**History.**—s. 458, ch. 59-205; s. 2, ch. 71-45; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior

to that date.

**627.410 Filing, approval of forms.—**

(1) No basic insurance policy or annuity contract form, or application form where written application is required and is to be made a part of the policy or contract, or group certificates issued under master contracts delivered in this state, or printed rider or endorsement form or form of renewal certificate, shall be delivered or issued for delivery in this state, unless the form has been filed with the department at its offices in Tallahassee by or in behalf of the insurer which proposes to use such form, and approved by the department. This provision shall not apply to surety bonds, or to specially rated inland marine risks, nor to policies, riders, endorsements or forms of unique character designed for and used with relation to insurance upon a particular subject (other than as to disability insurance), or which relate to the manner of distribution of benefits or to the reservation of rights and benefits under life or disability insurance policies and are used at the request of the individual policyholder, contract holder, or certificate holder. As to group insurance policies effectuated and delivered outside this state but covering persons resident in this state, the group certificates to be delivered or issued for delivery in this state shall be filed with the department for information purposes only at its request.

(2) Every such filing shall be made not less than thirty days in advance of any such use or delivery. At the expiration of such 30 days the form so filed shall be deemed approved unless prior thereto it has been affirmatively approved or disapproved by order of the department. Approval of any such form by the department shall constitute a waiver of any unexpired portion of such waiting period. The department may extend by not more than an additional 15 days the period within which it may so affirmatively approve or disapprove any such form, by giving notice of such extension before expiration of the initial 30-day period. At the expiration of any such period as so extended, and in the absence of such prior affirmative approval or disapproval, any such form shall be deemed approved.

(3) The department may, for cause, withdraw a previous approval. No insurer shall issue or use any form disapproved by the department, or as to which the department has withdrawn approval, after the effective date of the department's order.

(4) The department may, by order, exempt from the requirements of this section for so long as it deems proper any insurance document or form or type thereof as specified in such order, to which, in its opinion, this section may not practicably be applied, or the filing and approval of which are, in its opinion, not desirable or necessary for the protection of the public.

(5) This section shall apply also to any such form used by domestic insurers for delivery in a jurisdiction outside this state, if the insurance supervisory official of such jurisdiction informs the department that such form is not subject to approval or disapproval by such official, and upon the department's order requiring the form to be submitted to it for the

purpose. The applicable same standards shall apply to such forms as apply to forms for domestic use.

**History.**—s. 459, ch. 59-205; ss. 13, 35, ch. 69-106; s. 1, ch. 71-17; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.4105 Life and disability insurance; reduced premiums upon rigorous physical examination.**—Upon request, the Department of Insurance may approve special life and disability insurance policy forms providing for reduced premiums for each applicant passing a rigorous physical examination.

**History.**—s. 1, ch. 78-248.

**627.411 Grounds for disapproval.**—The department shall disapprove any form filed under s. 627.410, or withdraw any previous approval thereof, only if the form:

(1) Is in any respect in violation of or does not comply with this code.

(2) Contains or incorporates by reference, where such incorporation is otherwise permissible, any inconsistent, ambiguous, or misleading clauses, or exceptions and conditions which deceptively affect the risk purported to be assumed in the general coverage of the contract.

(3) Has any title, heading, or other indication of its provisions which is misleading.

(4) Is printed or otherwise reproduced in such manner as to render any material provision of the form substantially illegible.

(5) If for disability insurance, provides benefits which are unreasonable in relation to the premium charged, or contains provisions which are unfair or inequitable or contrary to the public policy of this state, or which encourage misrepresentation.

**History.**—s. 460, ch. 59-205; ss. 13, 35, 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.412 Standard provisions, in general.—**

(1) Insurance contracts shall contain such standard or uniform provisions as are required by the applicable provisions of this code pertaining to contracts of particular kinds of insurance. The department may waive the required use of a particular provision in a particular insurance policy form if:

(a) It finds such provision unnecessary for the purpose of the insured and inconsistent with the purposes of the policy, and

(b) The policy is otherwise approved by it.

(2) No policy shall contain any provision inconsistent with or contradictory to any standard or uniform provision used or required to be used, but the department may approve any substitute provision which is, in its opinion, not less favorable in any particular to the insured or beneficiary than the provisions otherwise required.

(3) In lieu of the provisions required by this code for contracts for particular kinds of insurance, substantially similar provisions required by the law of the domicile of a foreign or alien insurer may be used when approved by the department.

**History.**—s. 461, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective



July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**'627.413 Contents of policies in general; identification.—**

- (1) Every policy shall specify:
  - (a) The names of the parties to the contract.
  - (b) The subject of the insurance.
  - (c) The risks insured against.
  - (d) The time when the insurance thereunder takes effect and the period during which the insurance is to continue.
  - (e) The premium.
  - (f) The conditions pertaining to the insurance.
- (2) If under the policy the exact amount of premium is determinable only at stated intervals or termination of the contract, a statement of the basis and rates upon which the premium is to be determined and paid shall be included.

(3) Subsections (1) and (2) shall not apply as to surety contracts, or to group insurance policies.

(4) All policies and annuity contracts issued by domestic insurers, and the forms thereof filed with the department, shall have printed thereon an appropriate designating letter or figure, or combination of letters or figures or terms identifying the respective forms of policies or contracts. Whenever any change is made in any such form, the designating letters, figures or terms thereon shall be correspondingly changed.

**History.**—s. 462, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**'627.4132 Stacking of coverages prohibited.—**

If an insured or named insured is protected by any type of motor vehicle insurance policy for liability, uninsured motorist, personal injury protection, or any other coverage, the policy shall provide that the insured or named insured is protected only to the extent of the coverage he has on the vehicle involved in the accident. However, if none of the insured's or named insured's vehicles is involved in the accident, coverage is available only to the extent of coverage on any one of the vehicles with applicable coverage. Coverage on any other vehicles shall not be added to or stacked upon that coverage. This section shall not apply to reduce the coverage available by reason of insurance policies insuring different named insureds.

**History.**—s. 10, ch. 76-266.

**Note.**—This section was created subsequent to the enactment of ch. 76-168 and is therefore presumed to be excluded from the blanket repeal of ch. 627 by that act.

**'627.414 Additional policy contents.—**A policy may contain additional provisions not inconsistent with this code and which are:

- (1) Required to be inserted by the laws of the insurer's domicile;
- (2) Necessary, on account of the manner in which the insurer is constituted or operated, in order to state the rights and obligations of the parties to the contract; or
- (3) Desired by the insurer and neither prohibited

by law nor in conflict with any provisions required to be included therein.

**History.**—s. 463, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**'627.415 Charter, bylaw provisions.—**No policy shall contain any provision purporting to make any portion of the charter, bylaws or other constituent document of the insurer (other than the subscribers' agreement or power of attorney of a reciprocal insurer) a part of the contract unless such portion is set forth in full in the policy. Any policy provision in violation of this section shall be invalid.

**History.**—s. 464, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**'627.416 Execution of policies.—**

(1) Every insurance policy shall be executed in the name of and on behalf of the insurer by its officer, attorney in fact, employee, or representative duly authorized by the insurer.

(2) A facsimile signature of any such executing individual may be used in lieu of an original signature.

(3) No insurance contract heretofore or hereafter issued and which is otherwise valid shall be rendered invalid by reason of the apparent execution thereof on behalf of the insurer by the imprinted facsimile signature of an individual not authorized so to execute as of the date of the policy.

**History.**—s. 465, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**'627.417 Underwriters' and combination policies.—**

(1) Two or more authorized insurers may jointly issue, and shall be jointly and severally liable on, an underwriters' policy bearing their names. Any one insurer may issue policies in the name of an underwriter's department and such policy shall plainly show the true name of the insurer.

(2) Two or more authorized insurers may, with the approval of the department, issue a combination policy which shall contain provisions substantially as follows:

(a) That the insurers executing the policy shall be severally liable for the full amount of any loss or damage, according to the terms of the policy, or for specified percentages or amounts thereof, aggregating the full amount of insurance under the policy, and

(b) That service of process, or of any notice or proof of loss required by such policy, upon any of the insurers executing the policy, shall constitute service upon all such insurers.

(3) This section shall not apply to cosurety obligations.

**History.**—s. 466, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior

to that date.

#### **§627.418 Validity of noncomplying contracts.—**

(1) Any insurance policy, rider, or endorsement hereafter issued and otherwise valid which contains any condition or provision not in compliance with the requirements of this code, shall not be thereby rendered invalid (except as provided in s. 627.415) but shall be construed and applied in accordance with such conditions and provisions as would have applied had such policy, rider, or endorsement been in full compliance with this code. In the event an insurer issues or delivers any policy for an amount which exceeds any limitations otherwise provided in this code, said insurer shall be liable to the insured or his beneficiary for the full amount stated in said policy in addition to any other penalties that may be imposed under this code.

(2) Any insurance contract delivered or issued for delivery in this state covering a subject or subjects of insurance resident, located or to be performed in this state and which, pursuant to the provisions of this code, the insurer may not lawfully insure under such a contract, shall be cancellable at any time by the insurer, any provision of the contract to the contrary notwithstanding; and the insurer shall promptly cancel the contract in accordance with the department's request therefor. No such illegality or cancellation shall be deemed to relieve the insurer of any liability incurred by it under the contract while in force, or to prohibit the insurer from retaining the pro rata earned premium thereon. This provision does not relieve the insurer from any penalty otherwise incurred by the insurer under this code on account of any such violation.

**History.**—s. 467, ch. 59-205; ss. 13, 35, ch. 69-106; s. 1, ch. 72-23; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**Note.**—Former s. 627.0117.

#### **§627.419 Construction of policies.—**

(1) Every insurance contract shall be construed according to the entirety of its terms and conditions as set forth in the policy and as amplified, extended, or modified by any application therefor or any rider or endorsement thereto.

(2) The word physician or medical doctor, when used in any accident and sickness policy, medical service plan, or other contract providing for the payment of surgical procedures which are specified in the policy or contract or are performed in an accredited hospital in consultation with a licensed physician and are within the scope of a dentist's professional license, shall be construed to include a dentist who performs such specified procedures.

(3) Notwithstanding any other provision of law, when any accident and sickness policy, medical service plan, or other contract provides for the payment for procedures specified in the policy or contract which are within the scope of an optometrist's or podiatrist's professional license, such policy shall be construed to include payment to an optometrist or podiatrist who performs such procedures. In the case of podiatry services, such payments shall be made in accordance with the coverage now provided for medical and surgical benefits.

(a) It is not intended that this subsection be construed to enlarge or diminish the practice of optometry as now defined in chapter 463 or the practice of podiatry as now defined in chapter 461.

(b) This subsection has been presented and considered by the Legislature as a means to eliminate specific problems concerning practitioners in the eye care and podiatry fields. The question as to need as a means to improve the health care system is not a consideration of this subsection.

(4) If the insurer offers a policy containing a provision for medical expense benefits that does not provide payment for chiropractic services, it shall offer as a part thereof an optional rider or endorsement, if specifically requested by the insured or subscriber under an individual policy or a certificate holder or subscriber under a master policy, which defines such benefits as including payment to a chiropractor for procedures specified in the policy which are within the scope of the practice of chiropractic as now defined in chapter 460. Any additional cost to the insured or certificate holder must be reasonably related to benefits provided.

**History.**—s. 468, ch. 59-205; s. 1, ch. 69-245; ss. 1, 2, ch. 72-11; s. 163A, ch. 73-333; s. 1, ch. 74-34; s. 1, ch. 74-87; s. 1, ch. 76-167; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**Note.**—Former s. 627.0118.

**§627.420 Binders.**—Binders or other contracts for temporary property, marine, casualty or surety insurance may be made orally or in writing, and shall be deemed to include all the usual terms of the policy as to which the binder was given together with such applicable endorsements as are designated in the binder, except as superseded by the clear and express terms of the binder.

**History.**—s. 469, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **§627.421 Delivery of policy.—**

(1) Subject to the insurer's requirement as to payment of premium, every policy shall be mailed or delivered to the insured or to the person entitled thereto within a reasonable period of time after its issuance, except where a condition required by the insurer has not been met by the applicant or insured.

(2) In event the original policy is delivered or is so required to be delivered to or for deposit with any vendor, mortgagee, or pledgee of any motor vehicle, and in which policy any interest of the vendee, mortgagor, or pledgor in or with reference to such vehicle is insured, a duplicate of such policy setting forth the name and address of the insurer, insurance classification of vehicle, type of coverage, limits of liability, premiums for the respective coverages, and duration of the policy, or memorandum thereof containing the same such information, shall be delivered by the vendor, mortgagee, or pledgee to each such vendee, mortgagor, or pledgor named in the policy or coming within the group of persons designated in the policy to be so included. If the policy does not provide coverage of legal liability for injury to persons or damage to the property of third parties, a statement of such fact shall be printed, written, or stamped conspicuously on the face of such duplicate policy or memo-

randum. This subsection does not apply to inland marine floater policies.

(3) Any automobile liability or physical damage policy shall contain on the front page a summary of major coverages, conditions, exclusions, and limitations contained in that policy. Any such summary shall state that the issued policy should be referred to for the actual contractual governing provisions. The company may, in lieu of the summary, provide a readable policy.

**History.**—s. 470, ch. 59-205; s. 1, ch. 75-218; s. 3, ch. 76-168; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.422 Assignment of policies.**—A policy may be assignable, or not assignable, as provided by its terms. Subject to its terms relating to assignability, any life or disability policy, whether heretofore or hereafter issued, under the terms of which the beneficiary may be changed upon the sole request of the insured, may be assigned either by pledge or transfer of title, by an assignment executed by the insured alone and delivered to the insurer, whether or not the pledgee or assignee is the insurer. Any such assignment shall entitle the insurer to deal with the assignee as the owner or pledgee of the policy in accordance with the terms of the assignment, until the insurer has received at its home office written notice of termination of the assignment or pledge, or written notice by or on behalf of some other person claiming some interest in the policy in conflict with the assignment.

**History.**—s. 471, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.423 Payment discharges insurer.**—Whenever the proceeds of or payments under a life or disability insurance policy or annuity contract heretofore or hereafter issued become payable in accordance with the terms of such policy or contract, or the exercise of any right or privilege thereunder, and the insurer makes payment thereof in accordance with the terms of the policy or contract or in accordance with any written assignment thereof, the person then designated in the policy or contract or by such assignment as being entitled thereto shall be entitled to receive such proceeds or payments and to give full acquittance therefor, and such payments shall fully discharge the insurer from all claims under the policy or contract unless, before payment is made, the insurer has received at its home office written notice by or on behalf of some other person that such other person claims to be entitled to such payment or some interest in the policy or contract.

**History.**—s. 472, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.4235 Coordination of benefits.**—

(1) No group hospital, medical, or surgical expense policy, group hospital, medical, or surgical service plan, or group-type self-insurance plan providing protection, insurance, or indemnity against hospital, medical, or surgical expenses shall be issued, or issued for delivery, in this state after October 1, 1974, which shall contain any provision whereby the

insurer may reduce or refuse to pay benefits otherwise payable thereunder solely on account of the existence of similar benefits provided under any individual disability insurance policy which is issued by the same or another insurer and which is subject to any of the provisions of part VI.

(2) No group hospital, medical, or surgical expense policy, group hospital, medical, or surgical service plan, or group-type self-insurance plan providing protection, insurance, or indemnity against hospital, medical, or surgical expenses shall be issued, or issued for delivery, in this state after October 1, 1974, which shall contain any provision whereby the insurer may reduce or refuse to pay benefits otherwise payable thereunder solely on account of the existence of similar benefits provided under group disability policies issued by the same or another insurer, group hospital, medical, or surgical expense plans, or group-type self-insurance plans providing protection, insurance, or indemnity against hospital, medical, or surgical expenses, when such reduction would operate to reduce the total benefits payable under these policies and plans below an amount equal to 100 percent of the total allowable expenses actually incurred.

**History.**—s. 1, ch. 74-367; s. 3, ch. 76-168; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.424 Minor may give acquittance.**—

(1) Any minor domiciled in this state who has attained the age of 16 years shall be deemed competent to receive and to give full acquittance and discharge for a payment or payments in aggregate amount not exceeding \$3,000 in any one year made by a life insurer under the maturity, death or settlement agreement provisions in effect or elected by such minor under a life insurance policy or annuity contract, if such policy, contract or agreement provides for the payment to such minor. No such minor shall be deemed competent to alienate the right to or to anticipate or commute such payments. This section shall not be deemed to restrict the rights of minors set forth in s. 627.406 of this chapter.

(2) If a guardian of the property of any such minor is duly appointed and written notice thereof is given to the insurer at its home office, any such payment thereafter falling due shall be paid to the guardian for the account of the minor, unless the policy or contract under which the payment is made expressly provides otherwise.

(3) This section shall not be deemed to require any insurer making any such payment to determine whether any other insurer may be effecting a similar payment to the same minor.

**History.**—s. 473, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.425 Forms for proof of loss to be furnished.**—An insurer shall furnish, upon written request of any person claiming to have a loss under an insurance contract issued by such insurer, forms of proof of loss for completion by such person, but such insurer shall not, by reason of the requirement so to furnish forms, have any responsibility for or with reference to the completion of such proof or the man-



ner of any such completion or attempted completion.

**History.**—s. 474, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.426 Claims administration not waiver.**—

Without limitation of any right or defense of an insurer otherwise, none of the following acts by or on behalf of an insurer shall be deemed to constitute a waiver of any provision of a policy or of any defense of the insurer thereunder:

(1) Acknowledgment of the receipt of notice of loss or claim under the policy.

(2) Furnishing forms for reporting a loss or claim, for giving information relative thereto, or for making proof of loss, or receiving or acknowledging receipt of any such forms or proofs completed or uncompleted.

(3) Investigating any loss or claim under any policy or engaging in negotiations looking toward a possible settlement of any such loss or claim.

**History.**—s. 475, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.427 Payment of judgment by insurer; penalty for failure.**—

(1) Every judgment or decree for the recovery of money, heretofore or hereafter entered in any of the courts of this state against any authorized insurer, shall be fully satisfied within sixty days from and after the entry thereof, or in the case of an appeal from such judgment or decree then within 60 days from and after the affirmance of the same by the appellate court.

(2) If the judgment or decree is not satisfied as required under subsection (1), and proof of such failure to satisfy is made by filing with the department a certified transcript of the docket of the judgment or decree together with a certificate by the clerk of the court wherein the judgment or decree was entered that the judgment or decree remains unsatisfied, in whole or in part, after the time aforesaid, the department shall forthwith revoke the insurer's certificate of authority. The department shall not issue to such insurer any new certificate of authority until the judgment or decree is wholly paid and satisfied and proof thereof filed with the department under the official certificate of the clerk of the court wherein the judgment was recovered, showing that the same is satisfied of record, and until the expenses and fees incurred in the case are also paid by the insurer.

**History.**—s. 476, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.428 Attorney fee.**—

(1) Upon the rendition of a judgment or decree by any of the courts of this state against an insurer and in favor of an insured or the named beneficiary under a policy or contract executed by the insurer, the trial court, or, in the event of an appeal in which the insured or beneficiary prevails, the appellate court, shall adjudge or decree against the insurer and in favor of the insured or beneficiary a reasonable sum

as fees or compensation for the insured's or beneficiary's attorney prosecuting the suit in which the recovery is had.

(2) As to suits based on claims arising under life insurance policies or annuity contracts, no such attorney fee shall be allowed if such suit was commenced prior to expiration of 60 days after proof of the claim was duly filed with the insurer.

(3) Where so awarded, compensation or fees of the attorney shall be included in the judgment or decree rendered in the case.

**History.**—s. 477, ch. 59-205; s. 1, ch. 67-400; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

### PART III

#### LIFE INSURANCE POLICIES AND ANNUITY CONTRACTS

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**627.451 Scope of part III.**—Part III of this chapter applies to contracts of life insurance and to annuity contracts, other than reinsurance, group life insurance, group annuities, and industrial life insurance; except that ss. 627.463 (excluded or restricted coverage), 627.472 (incontestability after reinstatement), 627.476 (standard nonforfeiture law), and 627.479 (prohibited policy plans) shall also apply to industrial life insurance. Part III of this chapter

shall not apply to credit life insurance except as provided in part VIII of chapter 627.

**History.**—s. 478, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**<sup>1</sup>Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**<sup>1</sup>627.452 Standard provisions required.—**

(1) No policy of life insurance, except as stated in subsection (3), shall be delivered or issued for delivery in this state unless it contains in substance each of the provisions as required by ss. 627.453-627.462 inclusive, and ss. 627.475 and 627.476 of this chapter, or provisions which in the department's opinion are more favorable to the policyholder.

(2) Any of such provisions or portions thereof not applicable to single premium or term policies shall to that extent not be incorporated therein.

(3) This section does not apply to annuity contracts, or to any provision of a life insurance policy or contract supplemental thereto relating to disability benefits or to additional benefits in the event of death by accident or accidental means.

**History.**—s. 479, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**<sup>1</sup>Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**<sup>1</sup>627.453 Grace period.**—There shall be a provision that the insured is entitled to a grace period of not less than 30 days or at the option of the insurer of 1 month but not less than 30 days, within which payment of any premium after the first may be made, subject at the option of the insurer to an interest charge not in excess of 6 percent per annum for the number of days of grace elapsing before the payment of the premium, during which period of grace the policy shall continue in force; but in case the policy becomes a claim during the grace period before the overdue premium is paid, or the deferred premiums of the current policy year, if any, are paid, the amount of such premium or premiums with interest not in excess of 6 percent per annum thereon may be deducted in any settlement under the policy.

**History.**—s. 480, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**<sup>1</sup>Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**<sup>1</sup>627.454 Entire contract.**—There shall be a provision that the policy, or the policy and the application therefor if a copy of such application is endorsed upon or attached to the policy when issued, shall constitute the entire contract between the parties, and that all statements contained in the application shall, in the absence of fraud, be deemed representations and not warranties.

**History.**—s. 481, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**<sup>1</sup>Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**<sup>1</sup>627.455 Incontestability.**—There shall be a provision that the policy shall be incontestable after it has been in force during the lifetime of the insured for a period of 2 years from its date of issue, except for nonpayment of premiums and except, at the op-

tion of the insurer, as to provisions relative to benefits in event of disability and as to provisions which grant additional insurance specifically against death by accident or accidental means.

**History.**—s. 482, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**<sup>1</sup>Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**<sup>1</sup>627.456 Misstatement of age or sex.**—There shall be a provision that if it is found that the age or sex of the insured (or the age or sex of any other individual considered in determining the premium or benefit) has been misstated, the amount payable or benefit accruing under the policy shall be such as the premium would have purchased according to the correct age or sex. Such calculations shall be in accordance with the insurer's rate at date of issue and at the option of the insurer this may be so specified in the policy.

**History.**—s. 483, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**<sup>1</sup>Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**<sup>1</sup>627.457 Dividends.—**

(1) There shall be a provision in participating policies that, beginning not later than the end of the third policy year, the insurer shall annually ascertain and apportion the divisible surplus, if any, that will accrue on the policy anniversary or other dividend date specified in the policy provided the policy is in force and all premiums to that date are paid.

(2) Except as hereinafter provided, any dividend so apportioned shall at the option of the party entitled to elect such option be either payable in cash or applied to any one of such other dividend options as may be provided by the policy. If any such other dividend options are provided, the policy shall further state which option shall be automatically effective if such party shall not have elected some other option. If the policy specifies a period within which such other option may be elected, such period shall be not less than 30 days following the date on which such dividend is due and payable.

(3) The annually apportioned dividend shall be deemed to be payable in cash within the meaning of subsection (2) even though the policy provides that payment of such dividend is to be deferred for a specified period, provided such period does not exceed 6 years from the date of apportionment and that interest will be added to such dividend at a specified rate.

(4) If a participating policy provides that the benefit under any paid-up nonforfeiture provision is to be participating, it may provide that any divisible surplus apportioned while the insurance is in force under such nonforfeiture provision shall be applied in the manner set forth in the policy.

**History.**—s. 484, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**<sup>1</sup>Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**<sup>1</sup>627.458 Policy loan.—**

(1)(a) There shall be a provision that after the policy has a cash surrender value and while no premium is in default, the insurer will advance, on proper assignment or pledge of the policy and on the sole security thereof, at a rate of interest not exceeding

8 percent per annum, payable in advance, an amount equal to or, at the option of the party entitled thereto, less than the loan value of the policy. The loan value of the policy shall be at least equal to the cash surrender value at the end of the then current policy year, provided that the insurer may deduct, either from such loan value or from the proceeds of the loan, any existing indebtedness not already deducted in determining such cash surrender value including any interest then accrued but not due, any unpaid balance of the premium for the current policy year, and interest on the loan to the end of the current policy year. However, as a condition for approval of a policy loan interest rate in excess of 6 percent per annum, the Insurance Commissioner and Treasurer shall require the insurer to furnish such assurances as the Commissioner deems necessary that the interest rate on such loans will bear a reasonable relationship to other interest rates and that the holders of such policies will benefit through higher dividends or lower premiums, or both.

(b) The provisions of this section shall not impair the terms and conditions of any policy of life insurance in force before July 1, 1977.

(2) The policy may also provide that if interest on any indebtedness is not paid when due it shall then be added to the existing indebtedness and shall bear interest at the same rate, and that if and when the total indebtedness on the policy, including interest due or accrued, equals or exceeds the amount of loan value thereof, then the policy shall terminate and become void, but not until at least 30 days' notice shall have been mailed by the insurer to the last known address of the insured or policy owner and of any assignee of record at the home office of the insurer.

(3) The policy shall reserve to the insurer the right to defer the granting of a loan, other than for the payment of any premium to the insurer, for 6 months after application therefor.

(4) This section shall not apply to term policies nor to term insurance benefits provided by rider or supplemental policy provision.

**History.**—s. 485, ch. 59-205; s. 3, ch. 76-168; ss. 1, 3, ch. 77-324; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1627.459 Reinstatement.**—There shall be a provision that the policy may be reinstated upon written application therefor at any time within 3 years after the date of default in the payment of any premiums, unless the policy has been surrendered for its cash value or unless the paid-up term insurance, if any, has expired, upon evidence of insurability satisfactory to the insurer and the payment of all overdue premiums, and payment (or, within the limits permitted by the then cash value of the policy, reinstatement) of any other indebtedness to the insurer upon the policy with interest as to both premium and indebtedness at a rate not exceeding 6 percent per annum compounded annually.

**History.**—s. 486, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior

to that date.

**1627.460 Authority to alter contract.**—There shall be a provision, at the option of the insurer, that no agent shall have the power or authority to waive, change, or alter any of the terms or conditions of any policy; except that, at the option of the insurer, the terms or conditions may be changed by an endorsement or rider signed by a duly authorized officer of the insurer.

**History.**—s. 487, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1627.461 Settlement on proof of death.**—There shall be a provision that when a policy becomes a claim by the death of the insured, settlement shall be made upon receipt of due proof of death and surrender of the policy.

**History.**—s. 488, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1627.462 Table of installments.**—If a policy provides for payment of its proceeds in installments, a table showing the amount and period of such installments shall be included in the policy; except, that certain tables may be omitted from the policy if in the department's judgment it is not practical to include them.

**History.**—s. 489, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1627.463 Excluded or restricted coverage.**—A clause in any policy of life insurance providing that such policy shall be incontestable after a specified period shall preclude only a contest of the validity of the policy, and shall not preclude the assertion at any time of defenses based upon provisions in the policy which exclude or restrict coverage, whether or not such restrictions or exclusions are excepted in such clause.

**History.**—s. 490, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1627.464 Annuity, pure endowment contracts; standard provisions required.**—

(1) No fixed dollar annuity, variable annuity or pure endowment contract, other than reversionary annuities, survivorship annuities, or group annuities, shall be delivered or issued for delivery in this state unless it contains in substance each of the provisions set forth in ss. 627.465-627.470, inclusive, or provisions which in the opinion of the department are more favorable to the policyholder. Any of such provisions not applicable to single premium annuities or single premium pure endowment contracts shall not to that extent be incorporated therein.

(2) This section shall not apply to contracts for annuities included in or upon the lives of beneficiaries under life insurance policies.

**History.**—s. 491, ch. 59-205; s. 10, ch. 61-441; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective



July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1627.465 Annuities; grace period.**—In a fixed dollar annuity, variable annuity or pure endowment contract, other than a reversionary, survivorship or group annuity, there shall be a provision that there shall be a period of grace of 1 month but not less than 30 days, within which any stipulated payment to the insurer falling due after the first may be made, subject at the option of the insurer, to an interest charge thereon at a rate to be specified in the contract but not exceeding 6 percent per annum for the number of days of grace elapsing before such payment, during which period of grace the contract shall continue in full force; but in case a claim arises under the contract on account of death prior to expiration of the period of grace before the overdue payment to the insurer or the deferred payments of the current contract year, if any are made, the amount of such payments, with interest on any overdue payments, may be deducted from any amount payable under the contract in settlement.

**History.**—s. 492, ch. 59-205; s. 11, ch. 61-441; s. 3, ch. 76-168; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1627.466 Same; incontestability.**—If any statements, other than those relating to age, sex and identity are required as a condition to issuing a fixed dollar annuity contract, variable annuity contract or pure endowment contract, other than a reversionary, survivorship or group annuity, and subject to s. 627.468, there shall be a provision that the contract shall be incontestable after it has been in force during the lifetime of the person or of each of the persons as to whom such statements are required, for a period of 2 years from its date of issue except for nonpayment of stipulated payments to the insurer; and at the option of the insurer such contract may also except any provisions relative to benefits in the event of disability and any provisions which grant insurance specifically against death by accident or accidental means.

**History.**—s. 493, ch. 59-205; s. 12, ch. 61-441; s. 3, ch. 76-168; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1627.467 Same; entire contract.**—In a fixed dollar annuity contract, variable annuity contract or pure endowment contract, other than a reversionary, survivorship, or group annuity, there shall be a provision that the contract shall constitute the entire contract between the parties or, if a copy of the application is endorsed upon or attached to the contract when issued, a provision that the contract and the application therefor shall constitute the entire contract between the parties.

**History.**—s. 494, ch. 59-205; s. 13, ch. 61-441; s. 3, ch. 76-168; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1627.468 Same; misstatement of age or sex.**—In a fixed dollar annuity contract, variable annuity contract or pure endowment contract, other than a reversionary, survivorship, or group annuity, there shall be a provision that if the age or sex of the

person or persons upon whose life or lives the contract is made, or of any of them, has been misstated, the amount payable or benefits accruing under the contract shall be such as the stipulated payment or payments to the insurer would have purchased according to the correct age or sex; and that if the insurer shall make or has made any overpayment or overpayments on account of any such misstatement, the amount thereof, with interest at the rate to be specified in the contract but not exceeding 6 percent per annum, may be charged against the current or next succeeding payment or payments to be made by the insurer under the contract.

**History.**—s. 495, ch. 59-205; s. 14, ch. 61-441; s. 3, ch. 76-168; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1627.469 Same; dividends.**—If a fixed dollar annuity contract, variable annuity contract or pure endowment contract, other than a reversionary, survivorship, or group annuity, is participating, there shall be a provision that, beginning not later than the end of the third contract year, the insurer shall annually ascertain and apportion any divisible surplus accruing on the contract.

**History.**—s. 496, ch. 59-205; s. 15, ch. 61-441; s. 3, ch. 76-168; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1627.470 Same; reinstatement.**—In a fixed dollar annuity contract, variable annuity contract or pure endowment contract, other than a reversionary, survivorship, or group annuity, there shall be a provision that the contract may be reinstated upon written application therefor at any time within 1 year from the date of default in making stipulated payments to the insurer, unless the cash surrender value has been paid, but all overdue stipulated payments and any indebtedness to the insurer on the contract shall be paid or reinstated, with interest thereon at a rate to be specified in the contract but not exceeding 6 percent per annum payable annually; and in cases where applicable the insurer may also include a requirement of evidence of insurability satisfactory to the insurer.

**History.**—s. 497, ch. 59-205; s. 16, ch. 61-441; s. 3, ch. 76-168; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1627.471 Reversionary annuities; standard provisions.**—

(1) Except as stated herein, no contract for a reversionary annuity shall be delivered or issued for delivery in this state unless it contains in substance each of the following provisions:

(a) Any such reversionary annuity contract shall contain the provisions specified in ss. 627.465 through 627.469 except that under s. 627.465 the insurer may at its option provide for an equitable reduction of the amount of the annuity payments in settlement of an overdue or deferred payment in lieu of providing for deduction of such payments from an amount payable upon settlement under the contract.

(b) In such reversionary annuity contracts there shall be a provision that the contract may be reinstated at any time within three years from the date of default in making stipulated payments to the in-

suror, upon production of evidence of insurability satisfactory to the insurer, and upon condition that all overdue payments and any indebtedness to the insurer on account of the contract be paid, or, within the limits permitted by the then cash value of the contract, reinstated, with interest as to both payments and indebtedness at a rate to be specified in the contract but not exceeding 6 percent per annum compounded annually.

(2) This section shall not apply to group annuities or to annuities included in life insurance policies, and any of such provisions not applicable to single premium annuities shall not to that extent be incorporated therein.

**History.**—s. 498, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **1627.472 Incontestability after reinstatement.**

—A reinstated policy of life insurance, fixed dollar annuity contract or variable annuity contract may be contested on account of fraud or misrepresentation of facts material to the reinstatement only for the same period following reinstatement and with the same conditions and exceptions as the policy provides with respect to contestability after original issuance.

**History.**—s. 499, ch. 59-205; s. 17, ch. 61-441; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1627.473 Policy settlements.**—Any life insurer shall have the power to hold under agreement the proceeds of any policy issued by it, upon such terms and restrictions as to revocation by the policyholder and control by beneficiaries and with such exemptions from the claims of creditors of beneficiaries other than the policyholder as set forth in the policy or as agreed to in writing by the insurer and the policyholder. Upon maturity of a policy, in the event the policyholder has made no such agreement, the insurer shall have the power to hold the proceeds of the policy under an agreement with the beneficiaries. The insurer shall not be required to segregate the funds so held but may hold them as part of its general assets.

**History.**—s. 500, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **1627.474 Policy must contain entire contract.**

—No life insurer or any agent thereof shall make any contract of insurance or agreement as to such contract other than as plainly expressed in the policy issued thereon.

**History.**—s. 501, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1627.475 Nonforfeiture benefits; certain interim policies.**—Each life insurance policy issued between the effective date of this code and the operative date of s. 627.476 (standard nonforfeiture law) shall provide:

(1) That, in the event of default in any premium, the insurer will grant, upon proper request not later than 60 days after the due date of the premium in

default, a paid-up nonforfeiture benefit on a plan stipulated in the policy.

(2) That, upon surrender of the policy within 60 days after the due date of any premium payment in default after premiums have been paid for at least 3 full years, the insurer will pay, in lieu of any paid-up nonforfeiture benefit, a cash surrender value at least equal to the minimum cash surrender value herein-after specified. The minimum cash surrender value shall be equal to

(a) The reserve on the date of default of the premium less a sum of not more than 2.5 percent of the face amount, or

(b) An amount as defined in s. 627.476 but on the basis of the commissioners' 1941 standard ordinary mortality table in lieu of the commissioners' 1958 standard ordinary mortality table therein specified. The policy shall reserve to the insurer the right to defer the granting of any cash surrender value for 6 months after demand therefor with surrender of the policy.

(3) That a specified paid-up nonforfeiture benefit the present value of which shall be at least equal to the cash surrender value shall become effective as specified in the policy unless the person entitled to make such election elects another available option not later than 60 days after the due date of the premium in default, provided, however, that where the mortality table used is the commissioners' 1941 standard ordinary mortality table, the rates of mortality to be assumed in calculating any extended term insurance with accompanying pure endowment, if any, may be not more than 130 percent of the rates of mortality according to such table.

(4) A statement of the mortality table and interest rate used in calculating the cash surrender values and the paid-up nonforfeiture benefits available under the policy, together with a table showing the cash surrender value, if any, and paid-up nonforfeiture benefit, if any, available under the policy on each policy anniversary either during the first 20 policy years or during the term of the policy, whichever is shorter.

(5) This section does not apply to term policies of uniform amount of 15 years duration or less, to increasing term policies of 15 years duration or less, nor to decreasing term policies.

**History.**—s. 502, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **1627.476 Standard nonforfeiture law for life insurance.**

<sup>2</sup>(1) This section shall be known as the standard nonforfeiture law for life insurance.

(2) **NONFORFEITURE PROVISIONS.**—In the case of policies issued on or after the operative date of this section as defined in subsection (11), no policy of life insurance, except as set forth in subsection (10), shall be delivered or issued for delivery in this state unless it shall contain in substance the following provisions, or corresponding provisions which in the opinion of the department are at least as favorable to the defaulting or surrendering policyholder.

(a) That in the event of default in any premium payment, after premiums have been paid for at least 1 full year in the case of ordinary insurance or 3 full

years in the case of industrial insurance, the insurer will grant, upon proper request not later than 60 days after the due date of the premium in default, a paid-up nonforfeiture benefit on a plan stipulated in the policy, effective as of such due date, of such value as may be hereinafter specified.

(b) That upon surrender of the policy within 60 days after the due date of any premium payment in default after premiums have been paid for at least 3 full years in the case of ordinary insurance, and 5 full years in the case of industrial insurance, the insurer will pay, in lieu of any paid-up nonforfeiture benefit, a cash surrender value of such amount as may be hereinafter specified.

(c) That a specified paid-up nonforfeiture benefit shall become effective as specified in the policy unless the person entitled to make such election elects another available option not later than 60 days after the due date of the premium in default.

(d) That if the policy shall have become paid up by completion of all premium payments, or if it is continued under any paid-up nonforfeiture benefit which became effective on or after the third policy anniversary in the case of ordinary insurance, or the fifth policy anniversary in the case of industrial insurance, the insurer will pay upon surrender of the policy within 30 days after any policy anniversary, a cash surrender value of such amount as may be hereinafter specified.

(e) A statement of the mortality table and interest rate used in calculating the cash surrender values and the paid-up nonforfeiture benefits available under the policy, together with a table showing the cash surrender value, if any, and paid-up nonforfeiture benefit, if any, available under the policy on each policy anniversary, either during the first 20 policy years or during the term of the policy, whichever is shorter, such values and benefits to be calculated upon the assumption that there are no dividends or paid-up additions credited to the policy and that there is no indebtedness to the insurer on the policy.

(f) A statement that the cash surrender values and the paid-up nonforfeiture benefits available under the policy are not less than the minimum values and benefits required by or pursuant to the insurance law of this state; an explanation of the manner in which the cash surrender values and the paid-up nonforfeiture benefits are altered by the existence of any paid-up additions credited to the policy or any indebtedness to the insurer on the policy; if a detailed statement of the method of computation of the values and benefits shown in the policy is not stated therein, a statement that such method of computation has been filed with the insurance supervisory official of the state in which the policy is delivered; and a statement of the method to be used in calculating the cash surrender value and paid-up nonforfeiture benefit available under the policy on any policy anniversary beyond the last anniversary for which such values and benefits are consecutively shown in the policy.

(3) Any of the provisions or portions thereof set forth in paragraphs (a) through (f) of subsection (2) which are not applicable by reason of the plan of insurance may, to the extent inapplicable, be omit-

ted from the policy. The insurer shall reserve the right to defer the payment of any cash surrender value for a period of 6 months after demand therefor with surrender of the policy.

(4) CASH SURRENDER VALUE.—Any cash surrender value available under the policy in the event of default in the premium payment due on any policy anniversary, whether or not required by subsection (2), shall be an amount not less than the excess, if any, of the present value on such anniversary of the future guaranteed benefits which would have been provided for by the policy, including any existing paid-up additions, if there had been no default, over the sum of:

(a) The then present value of the adjusted premiums as defined in subsection (6), corresponding to premiums which would have fallen due on and after such anniversary, and

(b) The amount of any indebtedness to the insurer on account of or secured by the policy.

Any cash surrender value available within thirty days after any policy anniversary under any policy paid up by completion of all premium payments, or any policy continued under any paid-up nonforfeiture benefits, whether or not required by such subsection (2), shall be an amount not less than the present value, on such anniversary, of the future guaranteed benefits provided for by the policy, including any existing paid-up additions, decreased by any indebtedness to the insurer on account of or secured by the policy.

(5) PAID-UP NONFORFEITURE BENEFITS.—Any paid-up nonforfeiture benefit available under the policy in the event of default in the premium payment due on any policy anniversary shall be such that its present value as of such anniversary shall be at least equal to the cash surrender value then provided for by the policy, or, if none is provided for, that cash surrender value which would have been required by this section in the absence of the condition that premiums shall have been paid for at least a specified period.

(6) THE ADJUSTED PREMIUM.—The adjusted premiums for any policy shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding extra premiums on a substandard policy, that the present value, at the date of issue of the policy, of all such adjusted premiums shall be equal to the sum of:

(a) The then present value of the future guaranteed benefits provided for by the policy;

(b) Two percent of the amount of the insurance if the insurance be uniform in amount, or of the equivalent uniform amount, as hereinafter defined, if the amount of insurance varies with the duration of the policy;

(c) Forty percent of the adjusted premium for the first policy year;

(d) Twenty-five percent of either the adjusted premium for the first policy year or the adjusted premium for a whole life policy of the same uniform or equivalent uniform amount with uniform premiums for the whole of life issued at the same age for the same amount of insurance, whichever is less.



Provided, however, that in applying the percentages specified in paragraphs (c) and (d) above, no adjusted premium shall be deemed to exceed 4 percent of the amount of insurance or uniform amount equivalent thereto. The date of issue of a policy for the purpose of this subsection shall be the date as of which the rated age of the insured is determined.

(7) In the case of a policy providing an amount of insurance varying with the duration of the policy, the equivalent uniform amount thereof for the purpose of subsection (6) shall be deemed to be the uniform amount of insurance provided by an otherwise similar policy, containing the same endowment benefit or benefits, if any, issued at the same age and for the same term, the amount of which does not vary with duration and the benefits under which have the same present value at the date of issue as the benefits under the policy, provided, however, that in the case of a policy for a varying amount of insurance issued on the life of a child under age 10, the equivalent uniform amount may be computed as though the amount of insurance provided by the policy prior to the attainment of age 10 were the amount provided by such policy at age 10.

<sup>2</sup>(8) All adjusted premiums and present values referred to in this section shall for all policies of ordinary insurance be calculated on the basis of the Commissioners' 1958 Standard Ordinary Mortality Table, provided that for any category of such policies issued on female risks, adjusted premiums and present values may be calculated according to an age not more than 6 years younger than the actual age of the insured. Such calculations for all policies of industrial insurance shall be made on the basis of the following tables:

(a) For policies issued on and after the operative date of this section but before January 1, 1968, the 1941 Standard Industrial Mortality Table, unless the Commissioners' 1961 Standard Industrial Mortality Table is applicable according to subsection (11) of this section;

(b) For policies issued on and after January 1, 1968, the Commissioners' 1961 Standard Industrial Mortality Table.

All calculations shall be made on the basis of the rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits; provided that such rate of interest shall not exceed 3.5 percent per annum, except that a rate of interest not exceeding 4 percent per annum may be used for policies issued on or after July 1, 1973, and prior to October 1, 1979, and a rate of interest not exceeding 4.5 percent per annum may be used for policies issued on or after October 1, 1979; and provided that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioners' 1958 Extended Term Insurance Table, for ordinary policies. In the case of industrial policies:

(c) For policies issued on and after the operative date of this section but before January 1, 1968, not more than 130 percent of the rates of mortality according to the 1941 Standard Industrial Mortality

Table, unless the Commissioners' 1961 Industrial Extended Term Insurance Table is applicable according to subsection (11) of this section, in which case not more than those of the latter table;

(d) For policies issued on and after January 1, 1968, not more than those of the Commissioners' 1961 Industrial Extended Term Insurance Table.

For insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the insurer and approved by the department.

(9) **CALCULATION OF VALUES.**—Any cash surrender value and any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment due at any time other than on the policy anniversary shall be calculated with allowance for the lapse of time and the payment of fractional premiums beyond the last preceding policy anniversary. All values referred to in subsections (4)-(8) of this section may be calculated upon the assumption that any death benefit is payable at the end of the policy year of death. The net value of any paid-up additions, other than paid-up term additions, shall be not less than the dividends used to provide such additions. If term insurance benefits are provided by a rider or by a supplemental policy provision to which, if issued as a separate policy, this section would apply, additional cash surrender values and additional paid-up nonforfeiture benefits, if any, at least equal to those required if issued as a separate policy, may be provided by the insurer and shall be deemed to be in compliance with this section. Notwithstanding the provisions of subsection (4), additional benefits payable:

(a) In the event of death or dismemberment by accident or accidental means.

(b) In the event of total and permanent disability,

(c) As reversionary annuity or deferred reversionary annuity benefits,

(d) As term insurance benefits provided by a rider or supplemental policy provision to which, if issued as a separate policy, this section would not apply, and

(e) As term insurance on the life of a child or on the lives of children provided in a policy on the life of a parent of the child, if such term insurance expires before the child's age is 26, is uniform in amount after the child's age is 1, and has not become paid-up by reason of the death of a parent of the child, and

(f) As other policy benefits additional to life insurance and endowment benefits, and premiums for all such additional benefits, shall be disregarded in ascertaining cash surrender values and nonforfeiture benefits required by this section, and no such additional benefits shall be required to be included in any paid-up nonforfeiture benefits.

(10) **EXCEPTIONS.**—This section shall not apply to any reinsurance, group insurance, pure endowment, annuity or reversionary annuity contract, nor to any term policy of uniform amount, or renewal thereof, of, 15 years or less expiring before age 66, for which uniform premiums are payable during the

entire term of the policy, nor to any term policy of decreasing amount on which each adjusted premium calculated as specified in subsections (6)-(8) is less than the adjusted premium so calculated on a policy of uniform amount issued at the same age and for the same initial amount of insurance for a term defined as follows: For ages at issue 50 and under the term shall be 15 years; thereafter, the term shall decrease 1 year for each year of age beyond 50.

(11) **OPERATIVE DATE.**—After the effective date of this code, any insurer may file with the department a written notice or notices of its election to comply with the provisions of this section on and after a specified date or dates before January 1, 1966, as to either or both of its policies of ordinary and industrial insurance, in which case such specified date or dates shall be the operative date of this section with respect to such policies. The operative date of this section for policies of both ordinary and industrial insurance shall be the earlier of January 1, 1966, and any prior operative date or dates resulting from such previously filed written notices. With respect to policies of industrial insurance issued on and after the operative date of this section for such policies but before January 1, 1968, any insurer may file with the department written notice of its election to have the Commissioners' 1961 Standard Industrial Mortality Table and the Commissioners' 1961 Industrial Extended Term Insurance Table applicable with respect to subsection (8) for policies issued on and after the date specified in such election.

**History.**—s. 503, ch. 59-205; s. 3, ch. 61-106; ss. 2, 3, ch. 65-11; ss. 13, 35, ch. 69-106; s. 3, ch. 73-324; s. 3, ch. 76-168; s. 2, ch. 77-324; s. 1, ch. 77-457; ss. 2, 3, ch. 79-356.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**Note.**—Section 3, ch. 79-356, provides that, if chs. 625 and 627 are repealed in accordance with the intent expressed in the Regulatory Reform Act of 1976, as amended by ch. 77-457, or as subsequently amended, it is the intent of the Legislature that ch. 79-356 shall also be repealed on the same date as is therein provided.

#### **§627.477 Registered policies; deposit of assets.—**

(1) Any life insurer which has outstanding any policies heretofore issued under laws heretofore in force providing for the deposit with the commissioner of assets equal to the legal reserve on such policies in force, less any loans or liens on such policies not in excess of such legal reserve, and providing for a certificate upon the face of such policies in substantially the following words: "This policy is registered, and approved securities equal in value to the legal reserve thereon are held in trust by the insurance commissioner," shall continue to make such deposits as required by such laws and such policies.

(2) No insurer shall hereafter issue any new such policy.

(3) All deposits under this section are subject to the applicable provisions of part III of chapter 625 of this code (administration of deposits).

**History.**—s. 504, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **§627.478 Same; deficiency of deposit.—**

(1) If at any time the value of assets held on deposit as to a particular insurer under s. 627.477 is

less than the legal reserves currently required to be held as to all the insurer's life insurance policies and annuity contracts, which are subject to s. 627.477, then in force, the insurer shall not issue any additional life insurance policies or annuity contracts while such deficiency exists. This provision does not apply as to industrial life insurance.

(2) If the insurer has failed to cure such a deficiency after the department has given the insurer notice thereof by registered mail, within such reasonable time, not exceeding ninety days, as may be allowed therefor by the department and so specified in such notice, the insurer shall be deemed to be insolvent and the department shall revoke its certificate of authority and institute delinquency proceedings against the insurer under chapter 631 of this code.

**History.**—s. 505, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the effect of laws affecting this section prior to that date.

#### **§627.479 Prohibited policy plans.—**

(1) No insurer shall issue policies, certificates or contracts to policyholders or members providing for the grouping of its policyholders or members into groups and divisions, classified according to age, and providing for payment of contingent endowment benefits, by whatever name called, from special funds created for such purpose to the oldest member in seniority of the group or division, or under any other similar plan.

(2) No insurer shall issue policies containing annual endowments or other specialty-type policies such as founder's policies or coupon-bearing policies. The Department of Insurance shall, by rules and regulations, define such prohibited policies.

(3) The department shall revoke the certificate of authority of any insurer which violates this section. Any officer or agent of an insurer who violates this section shall be guilty of a misdemeanor, and upon conviction thereof shall be punished as provided in s. 624.15 of this code.

**History.**—s. 506, ch. 59-205; ss. 13, 35, ch. 69-106; s. 1, ch. 74-50; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§627.480 Cash payments of single premium life policies.**—Premiums for single premium life insurance policies shall be paid in cash consisting of coins, currency, checks, or money orders. This section shall not be applicable to the use of dividends to purchase paid-up additional insurance or to such other usual and customary methods of paying for life insurance as may be permitted by the Department of Insurance pursuant to rule or regulation.

**History.**—s. 1, ch. 70-66; s. 1, ch. 70-439; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **§627.481 Special permit for certain annuity agreements.—**

(1) The department may, in its discretion, issue a special permit to make annuity agreements with donors to any duly organized domestic or foreign non-stock corporation, or to any unincorporated charitable trust, if such corporation or trust has been in

active operation for at least 10 years prior thereto and has qualified as an exempt organization under the Internal Revenue Code, 26 U.S.C. s. 501(c)(3). Such permit shall authorize such corporation or trust to receive gifts conditioned upon, or in return for, its agreement to pay an annuity to the donor or other designated beneficiary or beneficiaries and to make and carry out such annuity agreement. Every such corporation or trust shall, before making any such agreement, file with the department copies of its forms of agreements with annuitants and a schedule of its maximum annuity rates, which shall be so computed, on the basis of the annuity standard adopted by it for the calculation of its reserves, as to return to such corporation or trust upon the death of the annuitant a residue at least equal to one-half the original gift or other consideration for such annuity.

(2) Every such domestic corporation or such domestic or foreign trust shall have and maintain admitted assets at least equal to the sum of the reserves on its outstanding agreements, calculated in accordance with the United States Internal Revenue Code Revenue Ruling 72-438, and a surplus of 25 percent of such reserves. In determining the reserves of any such corporation or trust, a deduction shall be made for all or any portion of an annuity risk which is reinsured by a life insurance company authorized to do business in this state. The assets of such corporation or trust in an amount at least equal to the sum of such reserves and surplus shall be invested only in securities permitted under part II of chapter 625 for the investment of the reserves of authorized life insurance companies, and such assets shall be segregated as separate and distinct funds, independent of all other funds of such corporation or trust, and shall not be applied for the payment of the debts and obligations of the corporation or trust or for any purpose other than the annuity benefits hereinbefore specified.

(3) No such corporation incorporated or organized under the laws of another state shall be permitted to make such annuity agreements in this state unless it complies with all the requirements of this section imposed upon like domestic corporations, except that any such foreign corporation may invest its reserve and surplus funds in the kind of securities permitted by the laws of the state in which it was incorporated or organized.

(4) If the department finds that any such corporation or trust having such a special permit has failed to comply with the requirements of this section, it may revoke or suspend such permit or it may order such corporation or trust to cease making any new annuity contracts until such requirements have been satisfied. The department may, in its discretion, require annual statements by such corporation or trust and may accept in lieu thereof a sworn statement by two or more of the principal officers thereof, in such form as will satisfy the department that the requirements of this section are being complied with.

(5) Except as provided in this section, every such corporation or trust shall be exempt from the provisions of the Insurance Code in making annuity agreements pursuant to a special permit issued under this section.

(6) Any annuity agreement entered into by a corporation or trust whose sole purpose is to support a state institution of higher learning shall contain the following clause:

"This agreement is the entire contract between the parties, with rights and responsibilities of each party to the other as set forth herein. The donor or annuitant shall not have recourse against any assets of the state other than any funds or assets donated by, or funds derived from any assets donated by, the donor as set forth herein."

<sup>1</sup>History.—s. 1, ch. 74-149; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95.

<sup>2</sup>Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

## PART IV

### INDUSTRIAL LIFE INSURANCE POLICIES

- 627.501 Scope of part IV.
- 627.502 "Industrial life insurance" defined.
- 627.503 Required provisions.
- 627.504 Grace period.
- 627.505 Entire contract; statements in application.
- 627.506 Incontestability.
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- 627.514 Nonforfeiture benefits; certain interim policies.
- 627.515 Title.
- 627.516 Direct payment of premiums.
- 627.517 Conversion.

<sup>1</sup>627.501 **Scope of part IV.**—The provisions of part IV of this chapter shall apply only to industrial life insurance policies. Sections 627.463 (excluded or restricted coverage), 627.472 (incontestability after reinstatement), 627.476 (standard nonforfeiture law), and 627.479 (prohibited policy plans) of part III of chapter 627 shall also apply as to industrial life insurance policies.

<sup>2</sup>History.—s. 507, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

<sup>3</sup>Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

<sup>1</sup>627.502 **"Industrial life insurance" defined.**—For the purposes of this code "industrial life insurance" is that form of life insurance written under policies under which premiums are payable monthly or more often, bearing the words "industrial policy" or "weekly premium policy" or words of similar import imprinted upon the policy as part of the descriptive matter, and issued by an insurer which, as to such industrial life insurance, is operating under a system of collecting a debit by its agent.

<sup>2</sup>History.—s. 508, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

<sup>3</sup>Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.



to that date.

**1627.503 Required provisions.—**

(1) No policy of industrial or weekly premium life insurance shall be delivered or issued for delivery in this state unless it contains in substance each of the provisions as required in ss. 627.504-627.515 inclusive, and s. 627.476 or provisions which in the department's opinion are more favorable to the policyholder.

(2) Any of such provisions or portions thereof not applicable to single premium or term policies shall to that extent not be incorporated therein.

**History.**—s. 509, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1627.504 Grace period.**—There shall be a provision that the insured is entitled to a grace period of 4 weeks within which the payment of any premiums after the first may be made, except that in policies the premiums for which are payable monthly, the period of grace shall be 1 month, but not less than 30 days; that during the period of grace the policy shall continue in full force, but if during the grace period the policy becomes a claim, then any premiums then due and unpaid may be deducted from any settlement under the policy.

**History.**—s. 510, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1627.505 Entire contract; statements in application.**—There shall be a provision that the policy shall constitute the entire contract between the parties, or, if a copy of the application is endorsed upon or attached to the policy when issued, a provision that the policy and the application therefor shall constitute the entire contract. If the application is so made a part of the contract, the policy shall also provide that all statements made by the applicant in such application shall, in the absence of fraud, be deemed to be representations and not warranties.

**History.**—s. 511, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1627.506 Incontestability.**—There shall be a provision that the policy shall be incontestable after it has been in force during the lifetime of the insured for a period of 2 years from its date of issue except for nonpayment of premiums, and except, at the option of the insurer, as to provisions providing benefits for disability or specifically for death by accident or accidental means.

**History.**—s. 512, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1627.507 Misstatement of age or sex.**—There shall be a provision that if it is found that the age or sex of the individual insured, or the age or sex of any other individual considered in determining the premium, has been misstated, any amount payable or benefit accruing under the policy shall be such as the premium would have purchased according to the correct sex or age. Such calculations shall be in accord-

ance with the insurer's rate at date of issue and at the insurer's option this may be so specified in the policy.

**History.**—s. 513, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1627.508 Dividends.**—If a participating policy, there shall be a provision that the insurer shall annually ascertain and apportion any divisible surplus accruing on the policy. This provision shall not prohibit the payment of additional dividends on default of payment of premiums or termination of the policy.

**History.**—s. 514, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1627.509 Reinstatement.**—There shall be a provision that the policy may be reinstated at any time within 2 years after the date of default in the payment of any premium, unless the policy has been surrendered for its cash value or unless the paid-up term insurance, if any, has expired, upon evidence of insurability satisfactory to the insurer and the payment of all overdue premiums and payment (or, within the limits permitted by the then cash value of the policy, reinstatement) of any other indebtedness to the insurer upon the policy with interest as to both premiums and indebtedness at a rate not exceeding 6 percent per annum compounded annually.

**History.**—s. 515, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1627.510 Settlement.**—There shall be a provision that when the policy becomes a claim by the death of the insured, settlement shall be made upon surrender of the policy and receipt of due proof of death or after a specified period not exceeding 60 days after such surrender and receipt of such proof. At the insurer's option surrender of the premium receipt book may also be required.

**History.**—s. 516, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1627.511 Authority to alter contract.**—There shall be a provision that no agent shall have the power or authority to waive, change or alter any of the terms or conditions of any policy; except that at the option of the insurer the terms or conditions may be changed by an endorsement or rider signed by a duly authorized officer of the insurer.

**History.**—s. 517, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1627.512 Beneficiary.**—Each such policy shall have a space for the name of the beneficiary designated with a reservation of the right to designate or change the beneficiary after the issuance of the policy. The policy may also provide that no designation or change of beneficiary shall be binding on the insurer until endorsed on the policy by the insurer, and that the insurer may refuse to endorse the name

of any proposed beneficiary who does not appear to the insurer to have an insurable interest in the life of the insured.

**History.**—s. 518, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§627.513 Facility of payment.**—The policy may also provide that if the beneficiary designated in the policy does not make a claim under the policy or does not surrender the policy with due proof of death within the period stated in the policy, which shall not be less than 30 days after the death of the insured, or if the beneficiary is the estate of the insured or is a minor, or dies before the insured or is not legally competent to give valid release, then the insurer may make payment thereunder to the executor or administrator of the insured, or to any of the insured's relatives by blood or legal adoption or connection by marriage, or to any person appearing to the insurer to be equitably entitled thereto or to any person who has incurred expense for the maintenance, medical attention or burial of the insured. The policy may also include a similar provision applicable to any other payment due under the policy.

**History.**—s. 519, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§627.514 Nonforfeiture benefits; certain interim policies.**—Each industrial life insurance policy issued between the effective date of this code and the operative date of s. 627.476 (standard nonforfeiture law) shall provide:

(1) That, in the event of default in any premiums, the insurer will grant upon proper request not later than 13 weeks or 3 months after the due date of the premium in default, a paid-up nonforfeiture benefit on a plan stipulated in the policy.

(2) That upon surrender of the policy within 13 weeks or 3 months after the due date of any premium payment in default after premiums have been paid for at least 5 full years, the insurer will pay, in lieu of any paid-up nonforfeiture benefit, a cash surrender value at least equal to the minimum cash surrender value hereinafter specified. The minimum cash surrender value shall be equal to

(a) The reserve on the date of default of the premium less a sum of not more than 2.5 percent of the face amount, or

(b) An amount as defined in s. 627.476. The policy shall reserve to the insurer the right to defer the granting of any cash surrender value for 6 months after demand therefor with surrender of the policy.

(3) That a specified paid-up nonforfeiture benefit, the present value of which shall be at least equal to the cash surrender value, shall become effective as specified in the policy unless the person entitled to make such election elects another available option not later than 13 weeks or 3 months after the due date of the premium in default, provided, however, that where the mortality table used is the 1941 Standard Industrial Mortality Table, the rates of mortality to be assumed in calculating any extended term insurance with accompanying pure endowment, if any, may be not more than 130 percent of the rates of mortality according to such table.

(4) A statement of the mortality table and interest rate used in calculating the cash surrender values and the paid-up nonforfeiture benefits available under the policy, together with a table showing the cash surrender value, if any, and paid-up nonforfeiture benefits, if any, available under the policy on each policy anniversary either during the first 20 policy years or during the term of the policy, whichever is shorter.

(5) This section does not apply to term policies of uniform amount of 15 years duration or less, to increasing term policies of 15 years duration or less, nor to decreasing term policies.

**History.**—s. 520, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§627.515 Title.**—There shall be a title on the face of each such policy briefly describing its form.

**History.**—s. 521, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§627.516 Direct payment of premiums.**—In the case of weekly premium policies, there may be a provision that upon proper notice to the insurer, while premiums on the policy are not in default beyond the grace period, of the intention to pay future premiums directly to the insurer at its home office or any office designated by the insurer for the purpose, the insurer will at the end of each period of a year from the due date of the first premium so paid, for which period such premiums are so paid continuously without default beyond the grace period, refund a stated percentage of the premiums in an amount which fairly represents the savings in collection expense.

**History.**—s. 522, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§627.517 Conversion.**—There may be a provision in the case of industrial policies granting to the insured, upon proper written request and upon presentation of evidence of insurability satisfactory to the insurer, the privilege of converting any industrial insurance policy to any form of life insurance with less frequent premium payments regularly issued by the insurer, in accordance with terms and conditions agreed upon with the insurer. The privilege of making such conversion need be granted only if the insurer's industrial policies on the life insured, in force as premium paying insurance and on which conversion is requested, grant benefits in event of death, exclusive of additional accidental death benefits and exclusive of any dividend additions, in an amount not less than the minimum amount of such insurance with less frequent premium payments issued by the insurer at the age of the insured on the plan of industrial or ordinary insurance desired.

**History.**—s. 523, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

to that date.

## PART V

### GROUP LIFE INSURANCE

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- 627.574 Liability of succeeding insurer on replacement of group policy.
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#### **627.551 Group contracts must meet group requirements.—**

(1) No life insurance policy shall be delivered or issued for delivery in this state insuring the lives of more than one individual unless to one of the groups as provided for in ss. 627.552-627.556, and unless in compliance with the other applicable provisions of part V of this chapter.

(2) Subsection (1) shall not apply to life insurance policies:

(a) Insuring only individuals related by blood, marriage or legal adoption; or

(b) Insuring only individuals having a common interest through ownership of a business enterprise, or a substantial legal interest or equity therein, and who are actively engaged in the management thereof; or

(c) Insuring only individuals otherwise having an insurable interest in each other's lives.

(3) Nothing in this chapter shall affect the provisions of ss. 112.08 to 112.14.

**History.**—s. 524, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.552 Employee groups.**—The lives of a group of individuals may be insured under a policy issued to an employer, or to the trustees of a fund established by an employer, which employer or trustees shall be deemed the policyholder, to insure em-

ployees of the employer for the benefit of persons other than the employer, subject to the following requirements:

(1) The employees eligible for insurance under the policy shall be all of the employees of the employer, or all of any class or classes thereof determined by conditions pertaining to their employment. The policy may provide that the term "employees" shall include the employees of one or more subsidiary corporations, and the employees, individual proprietors, and partners of one or more affiliated corporations, proprietors or partnerships if the business of the employer and of such affiliated corporations, proprietors or partnerships is under common control. The policy may provide that the term "employees" shall include the individual proprietor or partners if the employer is an individual proprietor or a partnership. The policy may provide that the term "employees" shall include retired employees. No director of a corporate employer shall be eligible for insurance under the policy unless such person is otherwise eligible as a bona fide employee of the corporation by performing services other than the usual duties of a director. No individual proprietor or partner shall be eligible for insurance under the policy unless he is actively engaged in and devotes a substantial part of his time to the conduct of the business of the proprietor or partnership. A policy issued to insure the employees of a public body may provide that the term "employees" shall include elected or appointed officials.

(2) The premium for the policy shall be paid by the policyholder, either wholly from the policyholder's funds or funds contributed by the employer, or partly from such funds and partly from funds contributed by the insured employees. No policy may be issued on which the entire gross premium charged for the insurance by the insurer is to be derived from funds contributed by the insured employees. A policy on which part of the premium is to be derived from funds contributed by the insured employees may be placed in force only if at least 60 percent of the then eligible employees, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured employees must insure all eligible employees, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(3) The policy must cover at least 10 employees at date of issue.

(4) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the employees or by the employer or trustees.

**History.**—s. 525, ch. 59-205; s. 1, ch. 63-187; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.553 Debtor groups.**—The lives of a group of individuals may be insured under a policy issued to a creditor, who shall be deemed the policyholder, to insure debtors of the creditor, subject to the following requirements:

(1) The debtors eligible for insurance under the



policy shall be all of the debtors of the creditor whose indebtedness is repayable in installments, or all of any class or classes thereof determined by conditions pertaining to the indebtedness or to the purchase giving rise to the indebtedness. The policy may provide that the term "debtors" shall include the debtors of one or more subsidiary corporations, and the debtors of one or more affiliated corporations, proprietors or partnerships if the business of the policyholder and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership, contract, or otherwise.

(2) The premium for the policy shall be paid by the policyholder, either from the creditor's funds, or from charges collected from the insured debtors, or from both. A policy on which part or all of the premium is to be derived from the collection from the insured debtors of identifiable charges not required of uninsured debtors shall not include, in the class or classes of debtors eligible for insurance, debtors under obligations outstanding at its date of issue without evidence of individual insurability unless at least 75 percent of the then eligible debtors elect to pay the required charges. A policy on which no part of the premium is to be derived from the collection of such identifiable charges must insure all eligible debtors, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer. The policy may be issued only if the group of eligible debtors is then receiving new entrants at the rate of at least 100 persons yearly, or may reasonably be expected to receive at least 100 new entrants during the first policy year, and only if the policy reserves to the insurer the right to require evidence of individual insurability if less than 75 percent of the new entrants become insured. The policy may exclude from the classes eligible for insurance classes of debtors determined by age.

(3) The amount of insurance on the life of any debtor shall at no time exceed the amount owed by him which is repayable in installments to the creditor, or \$20,000, whichever is less, except that loans not exceeding 1 year duration shall not be subject to such limits. However, on such loans not exceeding 1 year duration, the limit of coverage shall not exceed \$20,000 with any one insurer.

(4) The insurance shall be payable to the policyholder. Such payment shall reduce or extinguish the unpaid indebtedness of the debtor to the extent of such payment.

(5) On a policy for which the premium is paid wholly from the creditor's funds without the collection of identifiable charges from the insured debtors for the insurance, directly or indirectly, and which policy is effected through a licensed life agent principally engaged in the sale of life insurance, other than one defined in s. 626.321(1)(e), who shall receive all commission or any other form of compensation thereunder, the provisions of part VIII shall not apply to such policy, and the amount of insurance under such policy on the life of any debtor shall at no time exceed the amount owed by him to the creditor or \$20,000, whichever is less, and the term of insurance on any loan insured thereunder shall not be

longer than 5 years from the date it becomes effective.

**History.**—s. 526, ch. 59-205; s. 1, ch. 67-131; s. 3, ch. 76-168; s. 1, ch. 77-246; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§627.554 Labor union groups.**—The lives of a group of individuals may be insured under a policy issued to a labor union, or to the trustees of a fund established in this state by a labor union, which shall be deemed the policyholder, to insure members of such union for the benefit of persons other than the union or any of its officials, representatives or agents, subject to the following requirements:

(1) The members eligible for insurance under the policy shall be all of the members of the union, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the union, or both. In the case of a policy issued to the trustees of a fund established in this state by a labor union, the policy may provide that the trustees or their employees, or both, may be insured under the policy if their duties are principally connected with such trusteeship.

(2) The premium for the policy shall be paid by the policyholder either wholly from the policyholder's funds or funds contributed by the employer or employers of the insured persons, or by the labor union, or by both, or partly from such funds and partly from funds contributed by the insured members specifically for their insurance. No policy may be issued on which the entire gross premium charged for the insurance by the insurer is to be derived from funds contributed by the insured members specifically for their insurance. A policy on which part of the premium is to be derived from funds contributed by the insured members specifically for their insurance may be placed in force only if at least 60 percent of the then eligible members, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance must insure all eligible members, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(3) The policy must cover at least 10 members at date of issue.

(4) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the members or by the union.

**History.**—s. 527, ch. 59-205; s. 1, ch. 61-107; s. 2, ch. 63-187; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§627.555 Trustee groups.**—The lives of a group of individuals may be insured under a policy issued to the trustees of a fund established by two or more employers in the same industry, or by two or more labor unions, or to the trustees of a fund established by one or more employers in the same industry and one or more labor unions, or by one or more employers and one or more labor unions whose members are in the same or related occupations or trades, which

trustees shall be deemed the policyholder, to insure employees of the employers or members of the unions for the benefit of persons other than the employers or the unions, subject to the following requirements:

(1) No policy may be issued

(a) To insure employees of any employer whose eligibility to participate in the fund as an employer arises out of considerations directly related to the employer being a commercial correspondent or business client or patron of another employer (regardless of whether such other employer is or is not participating in the fund), or

(b) To insure employees of any employer which is not located in this state, unless the majority of the employers whose employees are to be insured are located in this state, or unless the employer has assumed obligations through a collective bargaining agreement and is participating in the fund either pursuant to those obligations with regard to one or more classes of his employees which are encompassed in the collective bargaining agreement or as a method of providing insurance benefits for other classes of his employees, or unless the policy is issued to the trustees of a fund established by two or more labor unions.

(2)(a) The persons eligible for insurance shall be all of the employees of the employers or all of the members of the unions, or all of any class or classes thereof determined by conditions pertaining to their employment or to membership in the unions, or both. The policy may provide that the term "employees" shall include retired employees and the individual proprietor or partners if an employer is an individual proprietor or a partnership. No director of a corporate employer shall be eligible for insurance under the policy unless such person is otherwise eligible as a bona fide employee of the corporation by performing services other than the usual duties of a director.

(b) Except as otherwise provided herein with respect to retired employees, no individual proprietor or partner shall be eligible for insurance under the policy as an employee unless he is actively engaged in and devotes a substantial part of his time to the conduct of the business of the proprietor or partnership. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship.

(3) The premium for the policy shall be paid by the policyholder either wholly from the policyholder's fund or funds contributed by the employer or employers of the insured persons, or by the union or unions, or by both, or partly from such funds and partly from funds contributed by the insured persons. No policy may be issued on which the entire gross premium charged for the insurance by the insurer is to be derived from funds contributed by the insured employees or members specifically for their insurance. A policy on which part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance may be placed in force only if at least 75 percent of the then eligible persons, excluding any as to whom evidence of insurability is not satisfactory to the insurer, elect

to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance must insure all eligible persons or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(4) The policy must cover at date of issue at least 100 persons and not less than an average of five persons, other than individual proprietors or partners per employer unit unless the policy is issued to the trustees of a fund established by employers which have assumed obligations through a collective bargaining agreement and are participating in the fund either pursuant to those obligations with regard to one or more classes of their employees which are encompassed in the collective bargaining agreement or as a method of providing insurance benefits for other classes of their employees, or unless the employer unit is a subsidiary corporation of an employer in the group or is an affiliated corporation, proprietorship or partnership of an employer in the group whose business and that of such employer is under common control, or unless the policy is issued to the trustees of a fund established by two or more labor unions; and in addition to the foregoing requirements if the fund is established by the members of a group of employers the policy may be issued only if either

(a) The participating employers constitute at date of issue at least 60 percent of those employer members whose employees are not already covered for group life insurance, or

(b) The total number of persons covered at date of issue exceeds 600; and the policy shall not require that, if a participating employer discontinues membership in such group of employers, the insurance of his employees shall cease solely by reason of such discontinuance.

(5) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the insured persons or by the policyholder, or employers or unions.

**History.**—s. 528, ch. 59-205; s. 2, ch. 61-107; s. 1, ch. 65-19; s. 1, ch. 67-96; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.556 Credit union groups.**—The lives of a group of individuals may be insured under a policy issued to a credit union, which shall be deemed to be the policyholder for the purpose of this section, the premium on which is to be paid by the credit union or by the credit union and its members jointly, and insuring all of its eligible members for the amounts of insurance, not in excess of the share balance, or \$2,000, whichever is less, as to each member, based upon some plan which will preclude individual selection, for the benefit of the share account of the member or some person or persons other than the credit union or its officials, provided, that all eligible members of a credit union may be insured; provided, also, that when the premium is to be paid by the credit union and its members jointly and the benefits are

offered to all eligible members, not less than 75 percent of such members may be so insured.

**History.**—s. 529, ch. 59-205; s. 1, ch. 63-6; s. 3, ch. 76-168; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.558 Provisions required in group contracts.**—No policy of group life insurance shall be delivered in this state unless it contains in substance the provisions set forth in ss. 627.559-627.568 or provisions which in the opinion of the department are more favorable to the persons insured, or at least as favorable to the persons insured and more favorable to the policyholder; except, however, that:

(1) Sections 627.564-627.568 inclusive shall not apply to policies issued to a creditor to insure debtors of such creditor;

(2) The standard provisions required for individual life insurance policies shall not apply to group life insurance policies; and

(3) If the group life insurance policy is on a plan of insurance other than the term plan, it shall contain a nonforfeiture provision or provisions which in the opinion of the department is or are equitable to the insured persons and to the policyholder, but nothing herein shall be construed to require that group life insurance policies contain the same nonforfeiture provisions as are required for individual life insurance policies.

**History.**—s. 531, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.559 Grace period.**—The group life insurance policy shall contain a provision that the policyholder is entitled to a grace period of 31 days for the payment of any premium due except the first, during which grace period the death benefit coverage shall continue in force, unless the policyholder shall have given the insurer written notice of discontinuance in advance of the date of discontinuance and in accordance with the terms of the policy. The policy may provide that the policyholder shall be liable to the insurer for the payment of a pro rata premium for the time the policy was in force during such grace period.

**History.**—s. 532, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.560 Incontestability.**—The group life insurance policy shall contain a provision that the validity of the policy shall not be contested, except for nonpayment of premium, after it has been in force for two years from its date of issue; and that no statement made by any person insured under the policy relating to his insurability shall be used in contesting the validity of the insurance with respect to which such statement was made after such insurance has been in force prior to the contest for a period of two years during such person's lifetime nor unless it is contained in a written instrument signed by him.

**History.**—s. 533, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior

to that date.

**627.561 Application; statements deemed representations.**—The group life insurance policy shall contain a provision that a copy of the application, if any, of the policyholder shall be attached to the policy when issued, that all statements made by the policyholder or by the persons insured shall be deemed representations and not warranties, and that no statement made by any person insured shall be used in any contest unless a copy of the instrument containing the statement is or has been furnished to such person or to his beneficiary.

**History.**—s. 534, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.562 Insurability.**—The group life insurance policy shall contain a provision setting forth the conditions, if any, under which the insurer reserves the right to require a person eligible for insurance to furnish evidence of individual insurability satisfactory to the insurer as a condition to part or all of his coverage.

**History.**—s. 535, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.563 Misstatement of age.**—The group life insurance policy shall contain a provision specifying an equitable adjustment of premiums or of benefits or of both to be made in the event the age of a person insured has been misstated, such provision to contain a clear statement of the method of adjustment to be used.

**History.**—s. 536, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.564 Payment of benefits.**—The group life insurance policy shall contain a provision that any sum becoming due by reason of the death of the person insured shall be payable to the beneficiary designated by the person insured, subject to the provisions of the policy in the event there is no designated beneficiary as to all or any part of such sum, living at the death of the person insured, and subject to any right reserved by the insurer in the policy and set forth in the certificate to pay at its option a part of such sum not exceeding \$500 to any person appearing to the insurer to be equitably entitled thereto by reason of having incurred funeral or other expenses incident to the last illness or death of the person insured.

**History.**—s. 537, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.565 Certificate.**—The group life insurance policy shall contain a provision that the insurer will issue to the policyholder for delivery to each person insured an individual certificate setting forth a statement as to the insurance protection to which he is entitled, to whom the insurance benefits are paya-



ble, and the rights and conditions set forth in ss. 627.566, 627.567, and 627.568.

**History.**—s. 538, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.566 Conversion on termination of eligibility.**—The group life insurance policy shall contain a provision that if the insurance, or any portion of it, on a person covered under the policy ceases because of termination of employment or of membership in the class or classes eligible for coverage under the policy, such person shall be entitled to have issued to him by the insurer, without evidence of insurability, an individual policy of life insurance without disability or other supplementary benefits, provided application for the individual policy shall be made, and the first premium paid to the insurer, within 31 days after such termination, and provided further that:

(1) The individual policy shall, at the option of such person, be on any one of the forms, except term insurance, then customarily issued by the insurer at the age and for the amount applied for;

(2) The individual policy shall be in an amount not in excess of the amount of life insurance which ceases because of such termination, less, in the case of a person whose membership in the class or classes eligible for coverage terminates but who continues in employment in another class, the amount of any life insurance for which such person is or becomes eligible under any other group policy within 31 days after such termination, provided that any amount of insurance which shall have matured on or before the date of such termination as an endowment payable to the person insured, whether in one sum or in installments or in the form of an annuity, shall not, for the purposes of this provision, be included in the amount which is considered to cease because of such termination; and

(3) The premium on the individual policy shall be at the insurer's then customary rate applicable to the form and amount of the individual policy, to the class of risk to which such person then belongs, and to his age attained on the effective date of the individual policy.

**History.**—s. 539, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.567 Conversion on termination of policy.**—The group life insurance policy shall contain a provision that if the group policy terminates or is amended so as to terminate the insurance of any class of insured persons, every person insured thereunder at the date of such termination whose insurance terminates and who has been so insured for at least five years prior to such termination date shall be entitled to have issued to him by the insurer an individual policy of life insurance, subject to the same conditions and limitations as are provided by s. 627.566, except that the group policy may provide that the amount of such individual policy shall not exceed the smaller of:

(1) The amount of the person's life insurance protection ceasing because of the termination or amendment of the group policy, less the amount of any life

insurance for which he is or becomes eligible under any group policy issued or reinstated by the same or another insurer within 31 days after such termination, and

(2) Two thousand dollars.

**History.**—s. 540, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.568 Death pending conversion.**—The group life insurance policy shall contain a provision that if a person insured under the policy dies during the period within which he would have been entitled to have an individual policy issued to him in accordance with s. 627.566 or s. 627.567 and before such an individual policy shall have become effective, the amount of life insurance which he would have been entitled to have issued to him under such individual policy shall be payable as a claim under the group policy, whether or not application for the individual policy or the payment of the first premium therefor has been made.

**History.**—s. 541, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.569 Use of dividends, refunds, fees, etc.**—If a dividend, premium refund, rate reduction, commission or service fee is received by any employer, labor union or association, under any and all group insurance policies heretofore or hereafter delivered in this state, with respect to which they are the policyholder, or an affiliate or subsidiary of a policyholder, covering the employees of one or more employers or the members of one or more labor unions or associations, or any combination thereof to which such employees or members contribute to the cost of the premiums for such insurance, the excess, if any, of the aggregate of such dividends, premium refunds, rate reductions, commissions and service fees over the aggregate expenditure of such employer, labor union or association towards the cost of such insurance, including its administration, for the current and preceding 2 years to the extent that they were not defrayed by dividends, premium refunds, rate reductions, commissions and service fees, shall be applied by the policyholder for the sole benefit of insured employees or members on a basis which precludes individual selection and unfair discrimination. If the aforesaid dividend, premium refund, rate reduction, commission or service fee is received by a trustee fund, it shall be applied by the trustees for the sole purposes of the trust.

**History.**—s. 542, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.570 Premium rates.**—A life insurer may issue insurance policies under the provisions of this chapter at premium rates less than the usual rates or premiums for individual insurance policies.

**History.**—s. 543, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior

to that date.

**1627.571 Assignment of incidents of ownership in group life insurance policies, including conversion privileges.—**

(1) Nothing in this insurance code or in any other law shall be construed to prohibit any person insured under a group life insurance policy from making an assignment of all or any part of his incidents of ownership under such policy, including, but not limited to, the privilege of having issued to him an individual policy of life insurance pursuant and subject to the provisions of ss. 627.566 and 627.567 and the right to name a beneficiary. Subject to the terms of the policy, agreement, or arrangement between the insured, the group policyholder, and the insurer, relating to assignment of incidents of ownership thereunder, such an assignment by an insured, heretofore or hereafter made, is valid for the purpose of vesting in the assignee, in accordance with any provisions included therein as to the time at which it is to be effective, all of such incidents of ownership so assigned, but without prejudice to the insurer on account of any payment it may make or individual policy it may issue in accordance with ss. 627.566 and 627.567 prior to receipt of notice of the assignment.

(2) The purpose of subsection (1) is to declare and codify existing rights under policies of the types described therein.

**History.**—ss. 1, 3, ch. 70-10; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1627.572 Group life insurance; association.—**

The lives of a group of individuals may be insured under a policy issued to an association whose members are engaged in a particular profession, members of which are licensed to engage in such profession in the State of Florida and which has been in existence for at least 10 years, and holds regular meetings not less than annually to further the purposes of the association members, or to the trustees of a fund established in this state for such association, which shall be deemed the policyholder, to insure the members of such association for the benefit of persons other than the association or any of its official representatives or agents, subject to the following requirements:

(1) The members eligible for insurance under the policy shall be all of the members of the association, or all of any class or classes thereof determined by conditions pertaining to their profession, or to membership in the association, or both. In the case of a policy issued to the trustees of a fund established in this state by an association, the policy may provide that the trustees or their employees, or both, may be insured under the policy if their duties are principally connected with such trusteeship.

(2) The premium for the policy shall be paid by the policyholder either wholly from the policyholder's funds or funds contributed by the insured persons or by the association, or by both, or partly from such funds and partly from funds contributed by the insured members specifically for their insurance:

(a) A policy on which part of the premium is to be derived from funds contributed by the insured

members specifically for their insurance may be placed in force only if at least 200 of the then eligible members elect to make the required contributions. The policy may contain a provision requiring evidence of insurability of individual members.

(b) A policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance must insure all eligible members.

(3) The association shall have been in existence for at least 10 years prior to the issuance of the policy, its annual dues actually collected from its members shall have been not less than \$25, and it shall not have been organized for the sole and exclusive purpose of qualifying for insurance under this section.

(4) No policy of group life insurance may be issued to an association, or to the trustees of a fund established in whole or in part by an association, which provides term insurance on any person that, together with any other term insurance under any group life insurance policy or policies issued to any association of which such person is a member or to the trustees of any fund or funds established in whole or in part by such an association, exceeds \$20,000, unless 200 percent of the annual compensation of such person exceeds \$20,000, in which event such term insurance shall not exceed \$100,000 or 200 percent of such annual compensation, whichever is the lesser.

(5) If a dividend, premium refund, rate reduction, commission, or service fee is received by any association or by the trustees of a fund established in whole or in part by an association, under any and all group insurance policies heretofore or hereafter delivered in this state, with respect to which they are the policyholder, covering the members of the association, to which such members contribute to the cost of the premiums for such insurance, the excess, if any, of the aggregate of such dividends, premium refunds, rate reductions, commissions, and service fees over the aggregate expenditure of such association or trustees towards the cost of such insurance, including its administration, for the current and preceding 2 years, to the extent that they were not defrayed by dividends, premium refunds, rate reductions, commissions, and service fees, shall be applied by the policyholder for the sole benefit of insured members, on a basis which precludes individual selection and unfair discrimination.

**History.**—s. 1, ch. 72-57; s. 164, ch. 73-333; s. 1, ch. 74-283; s. 1, ch. 75-141; s. 3, ch. 76-168; s. 212, ch. 77-104; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1627.573 Replacement or termination of group life insurance; liability of prior insurer.—**

When an insurance purchaser replaces or terminates an existing group life contract, the prior insurer remains liable only to the extent of its accrued liabilities and extensions of benefits as required by s. 627.575.

**History.**—s. 1, ch. 74-72; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 1, 3, ch. 79-179.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior

to that date. Section 3, ch. 79-179, provides that, if ch. 627 is repealed in accordance with the intent expressed in the Regulatory Reform Act of 1976, as amended by ch. 77-457, or as subsequently amended, it is the intent of the Legislature that ch. 79-179 shall also be repealed on the same date as is therein provided.

**627.574 Liability of succeeding insurer on replacement of group policy.—**

(1) Each person who is eligible for coverage in accordance with the succeeding insurer's plan of benefits shall be covered by that insurer's plan of benefits unless such coverage would result in duplication of benefits payable under the prior insurer's plan.

(2) Each person not covered under the succeeding insurer's plan of benefits in accordance with subsection (1) must be covered by the succeeding insurer in accordance with the following provisions if such individual was validly covered, including benefit extensions, under the prior plan on the date of discontinuance of the prior plan and if such individual is a member of the class or classes of individuals eligible for coverage under the succeeding insurer's plan.

(a) The minimum level of benefits to be provided by the succeeding insurer shall be the applicable level of benefits of the prior insurer's plan reduced by any benefits payable by the prior plan.

(b) Coverage must be provided by the succeeding insurer until at least the earliest of the following dates:

1. The date the individual becomes eligible under the succeeding insurer's plan as described in subsection (1).

2. The date the individual's coverage would terminate in accordance with the succeeding insurer's plan provisions applicable to individual termination of coverage (e.g., at termination of employment).

3. In the case of an individual who was totally disabled immediately prior to the date the succeeding insurer's coverage became effective and the policy of the prior insurer did not conform to s. 627.575, the end of any period of extension or accrued liability which would have been required of the prior insurer by s. 627.575, had s. 627.575 been applicable.

(3) If chapter 627 is repealed in accordance with the intent expressed in the Regulatory Reform Act of 1976, as amended by ch. 77-457, Laws of Florida, or as subsequently amended, it is the intent of the Legislature that this section shall also be repealed on the same date as is therein provided.

History.—ss. 2, 3, ch. 79-179.

**627.575 Extension of benefits.—**

(1) Every group life policy delivered or issued for delivery in this state or under which benefits are hereafter altered, modified, or amended shall provide a reasonable provision for extension of benefits for those individuals who become totally disabled while insured under the policy on or after the date ch. 79-179, Laws of Florida, becomes applicable to such policy and who continue to be totally disabled at the date of discontinuance of the policy, as required by subsection (2).

(2) A reasonable provision for extension of benefits in the case of a group life plan is either premium waiver extension, extended death benefit for a period of at least 12 months in the event of total disability, or payment of income for a specified period dur-

ing total disability. The discontinuance of the group policy shall not operate to terminate such extension.

(3) If chapter 627 is repealed in accordance with the intent expressed in the Regulatory Reform Act of 1976, as amended by ch. 77-457, Laws of Florida, or as subsequently amended, it is the intent of the Legislature that this section shall also be repealed on the same date as is therein provided.

History.—ss. 2, 3, ch. 79-179.

**PART VI**

**DISABILITY INSURANCE POLICIES**

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**627.601 Scope of part VI.**—Nothing in part VI of this chapter shall apply to or affect:

(1) Any policy of liability or workers' compensation insurance with or without supplementary expense coverage therein.

(2) Any group or blanket policy.

(3) Life insurance, endowment or annuity contracts, or contracts supplemental thereto which contain only such provisions relating to disability insurance as:

(a) Provide additional benefits in case of death or dismemberment or loss of sight by accident or accidental means, or as

(b) Operate to safeguard such contracts against lapse, or to give a special surrender value or special benefit or an annuity in the event that the insured or annuitant becomes totally and permanently disabled, as defined by the contract or supplemental contract.

(4) Reinsurance.

**History.**—s. 544, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 109, ch. 79-40.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.602 Scope, format of policy.**—No policy of disability insurance shall be delivered or issued for delivery to any person in this state unless it otherwise complies with this code, and complies with the following:

(1) The entire money and other considerations therefor shall be expressed therein;

(2) The time when the insurance takes effect and terminates shall be expressed therein;

(3) It shall purport to insure only one person, except that a policy may insure, originally or by subsequent amendment, upon the application of an adult member of a family who shall be deemed the policyholder, any two or more eligible members of that family, including husband, wife, dependent children or any children under a specified age which shall not exceed 18 years and any other person dependent upon the policyholder;

(4) The style, arrangement and overall appearance of the policy shall give no undue prominence to any portion of the text, and every printed portion of the text of the policy and of any endorsements or attached papers shall be plainly printed in light-faced type of a style in general use, the size of which shall be uniform and not less than 10-point with a lower case unspaced alphabet length not less than 120-point (the "text" shall include all printed matter except the name and address of the insurer, name or title of the policy, the brief description, if any, and captions and subcaptions);

(5) The exceptions and reductions of indemnity shall be set forth in the policy and, other than those contained in ss. 627.606-627.629, inclusive, shall be printed, at the insurer's option, either included with the benefit provisions to which they apply, or under an appropriate caption such as "Exceptions," or "Exceptions and Reductions," except that if an exception or reduction specifically applies only to a particular benefit of the policy, a statement of such exception or reduction shall be included with the benefit provision to which it applies;

(6) Each such form, including riders and endorsements, shall be identified by a form number in the lower left-hand corner of the first page thereof; and

(7) The policy shall contain no provision purporting to make any portion of the charter, rules, constitution or bylaws of the insurer a part of the policy unless such portion is set forth in full in the policy, except in the case of the incorporation of, or reference to, a statement of rates or classification of risks, or short-rate table filed with the department.

(8) The department may require any disability insurance policy or certificate containing a provision commonly known as a deductible provision to have printed or stamped on such policy or certificate "this policy or certificate contains a deductible provision," or appropriate words of similar import approved by the department. This legend shall appear on the first page of such policy or certificate in at least 18-point type and may be either as an overprint or by means of a rubber stamp impression in a contrasting color.

**History.**—s. 545, ch. 59-205; s. 1, ch. 61-423; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 57, ch. 77-121; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.603 Death benefits.**—Any such policy may contain a provision for paying a benefit for death from any cause in an amount not exceeding \$250, which benefit shall not relieve such policy from the requirements of this chapter. This provision shall not limit benefits for death by accident.

**History.**—s. 546, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.604 Nonresident insured.**—If any policy is issued by an insurer domiciled in this state for delivery to a person residing in another state, and if the official having responsibility for the administration of the insurance laws of such other state shall have advised the department that any such policy is not subject to approval or disapproval by such official, the department may by ruling require that such policy meet the standards set forth in this part VI.

**History.**—s. 547, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.605 Required provisions; captions, omissions, substitutions.**—

(1) Except as provided in subsection (2), each such policy delivered or issued for delivery to any person in this state shall contain the provisions specified in ss. 627.606-627.617, inclusive, in the words in which the same appear; except, that the insurer may, at its option, substitute for one or more of such provisions corresponding provisions of different wording approved by the department which are in each instance not less favorable in any respect to the insured or the beneficiary. Each such provision shall be preceded individually by the applicable caption shown, or at the option of the insurer, by such appropriate individual or group captions or subcaptions as the department may approve.

(2) If any such provision is in whole or in part inapplicable to or inconsistent with the coverage

provided by a particular form of policy, the insurer, with the approval of the department, shall omit from such policy any inapplicable provision or part of a provision, and shall modify any inconsistent provision or part of a provision in such manner as to make the provision as contained in the policy consistent with the coverage provided by the policy.

**History.**—s. 548, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.6055 Handicapped children; continuation of coverage under individual policy.**—An individual hospital or medical expense insurance policy or hospital or medical service plan contract, delivered or issued for delivery in this state subsequent to October 29, 1970, which provides that coverage of a dependent child shall terminate upon attainment of the limiting age for dependent children specified in the policy or contract shall also provide in substance that attainment of such limiting age shall not operate to terminate the coverage of such child while the child is and continues to be both:

(1) Incapable of self-sustaining employment by reason of mental retardation or physical handicap; and

(2) Chiefly dependent upon the policyholder or subscriber for support and maintenance,

provided proof of such incapacity and dependency is furnished to the insurer or service plan corporation by the policyholder or subscriber within 31 days of the child's attainment of the limiting age and subsequently as may be required by the insurer or corporation, but not more frequently than annually after the 2-year period following the child's attainment of the limiting age.

**History.**—s. 1, ch. 70-187; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.606 Entire contract; changes.**—There shall be a provision as follows:

"Entire Contract; Changes: This policy, including the endorsements and the attached papers, if any, constitutes the entire contract of insurance. No change in this policy shall be valid until approved by an executive officer of the insurer and unless such approval be endorsed hereon or attached hereto. No agent has authority to change this policy or to waive any of its provisions."

**History.**—s. 549, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.607 Time limit on certain defenses.**—There shall be a provision as follows:

"Time Limit on Certain Defenses: (1) After 3 years from the date of issue of this policy no misstatements, except fraudulent misstatements, made by the applicant in the application for such policy shall be used to void the policy or to deny a claim for loss incurred or disability (as defined in the policy) commencing after the expiration of such 3-year period."

(The foregoing policy provision shall not be so construed as to affect any legal requirement for avoid-

ance of a policy or denial of a claim during such initial 3-year period, nor to limit the application of ss. 627.619-627.623 in the event of misstatement with respect to age or occupation or other insurance.)

A policy which the insured has the right to continue in force subject to its terms by the timely payment of premium (a) Until at least age 50 or, (b) In the case of a policy issued after age 44, for at least 5 years from its date of issue, may contain in lieu of the foregoing the following provision (from which the clause in parentheses may be omitted at the insurer's option) under the caption "Incontestable":

"After this policy has been in force for a period of 3 years during the lifetime of the insured (excluding any period during which the insured is disabled), it shall become incontestable as to the statements contained in the application."

(2) No claim for loss incurred or disability (as defined in the policy) commencing after three years from the date of issue of this policy shall be reduced or denied on the ground that a disease or physical condition not excluded from coverage by name or specific description effective on the date of loss had existed prior to the effective date of coverage of this policy."

(For the purpose of permitting insurers to use a uniform policy in several states, the insurer is permitted to print in the policy form in required provisions (1) and (2), above, the term "3 years." Nevertheless, the provisions of the contract and text of the statute to the contrary notwithstanding, the time limits for such defenses under any contract delivered or issued for delivery to any person in this state shall not exceed 2 years.)

**History.**—s. 550, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.608 Grace period.**—There shall be a provision as follows:

"Grace Period: A grace period of .... (insert a number not less than '7' for the weekly premium policies, '10' for monthly premium policies and '31' for all other policies) days will be granted for the payment of each premium falling due after the first premium, during which grace period the policy shall continue in force."

(A policy which contains a cancellation provision may add, at the end of the above provision:

"subject to the right of the insurer to cancel in accordance with the cancellation provision hereof.")

A policy in which the insurer reserves the right to refuse any renewal shall have, at the beginning of the above provision:

"Unless not less than 5 days prior to the premium due date the insurer has delivered to the insured or has mailed to his last address as shown by the records of the insurer written notice of its intention not to renew this policy beyond the period for which the premium has been accepted."

**History.**—s. 551, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior

to that date.

**1627.609 Reinstatement.**—There shall be a provision as follows:

"Reinstatement: If any renewal premium be not paid within the time granted the insured for payment, a subsequent acceptance of premium by the insurer or by any agent duly authorized by the insurer to accept such premium, without requiring in connection therewith an application for reinstatement, shall reinstate the policy; provided, however, that if the insurer or such agent requires an application for reinstatement and issues a conditional receipt for the premium tendered, the policy will be reinstated upon approval of such application by the insurer or, lacking such approval, upon the 45th day following the date of such conditional receipt unless the insurer has previously notified the insured in writing of its disapproval of such application. The reinstated policy shall cover only loss resulting from such accidental injury as may be sustained after the date of reinstatement and loss due to such sickness as may begin more than 10 days after such date. In all other respects the insured and insurer shall have the same rights thereunder as they had under the policy immediately before the due date of the defaulted premium, subject to any provisions endorsed hereon or attached hereto in connection with the reinstatement. Any premium accepted in connection with a reinstatement shall be applied to a period for which premium has not been previously paid, but not to any period more than 60 days prior to the date of reinstatement."

(The last sentence of the above provision may be omitted from any policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums until at least age 50 or, in the case of a policy issued after age 44, for at least 5 years from its date of issue.)

**History.**—s. 552, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1627.610 Notice of claim.**—

(1) There shall be a provision as follows:

"Notice of Claim: Written notice of claim must be given to the insurer within 20 days after the occurrence or commencement of any loss covered by the policy, or as soon thereafter as is reasonably possible. Notice given by or on behalf of insured or the beneficiary to the insurer at ..... (insert the location of such office as the insurer may designate for the purpose), or to any authorized agent of the insurer, with information sufficient to identify the insured, shall be deemed notice to the insurer."

(2) In a policy providing a loss-of-time benefit which may be payable for at least 2 years, an insurer may at its option insert the following between the first and second sentences of the above provision:

"Subject to the qualifications set forth below, if the insured suffers loss of time on account of disability for which indemnity may be payable for at least 2 years, he shall, at least once in every 6 months after having given notice of the claim, give to the insurer notice of continuance of the disability, except in the event of legal incapacity. The period of 6 months following any filing of proof by the insured

or any payment by the insurer on account of such claim or any denial of liability in whole or in part by the insurer shall be excluded in applying this provision. Delay in the giving of such notice shall not impair the insured's right to any indemnity which would otherwise have accrued during the period of 6 months preceding the date on which such notice is actually given."

**History.**—s. 553, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1627.611 Claim forms.**—There shall be a provision as follows:

"Claim Forms: The insurer, upon receipt of a notice of claim, will furnish to the claimant such forms as are usually furnished by it for filing proofs of loss. If such forms are not furnished within 15 days after the giving of such notice the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting, within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, the character and the extent of the loss for which claim is made."

**History.**—s. 554, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.6111 Standard health claim form.**—

(1) The Department of Insurance shall prescribe a standard health claim form to be used by all hospitals and a standard health claim form to be used by all physicians and pharmacists. Such forms shall be in a format that allows for the use of generally accepted coding systems by providers in order to facilitate the processing of claims. The required information on diagnosis, medical procedures, services, date of service, supplies, and fees may also be met by an attachment to the physician claim form. However, for the purpose of filing Medicaid claims, such attachments shall be prohibited. Such standard health claim forms shall be accepted by all insurers and the Department of Health and Rehabilitative Services.

(2) This section shall not apply to claims submitted by electronic or electromechanical means.

**History.**—s. 1, ch. 77-46; s. 1, ch. 79-175.

**1627.612 Proofs of loss.**—There shall be a provision as follows:

"Proofs of Loss: Written proof of loss must be furnished to the insurer at its said office in case of claim for loss for which this policy provides any periodic payment contingent upon continuing loss within 90 days after the termination of the period for which the insurer is liable and in case of claim for any other loss within 90 days after the date of such loss. Failure to furnish such proof within the time required shall not invalidate nor reduce any claim if it was not reasonably possible to give proof within such time, provided such proof is furnished as soon as reasonably possible and in no event, except in the absence of legal capacity, later than 1 year from the time proof is otherwise required."

**History.**—s. 555, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.



to that date.

**627.613 Time of payment of claims.**—There shall be a provision as follows:

"Time of Payment of Claims: Indemnities payable under this policy for any loss other than loss for which this policy provides any periodic payment will be paid immediately upon receipt of due written proof of such loss. Subject to due written proof of loss, all accrued indemnities for loss for which this policy provides periodic payment will be paid ..... (insert period for payment which must not be less frequently than monthly) and any balance remaining unpaid upon the termination of liability will be paid immediately upon receipt of due written proof."

**History.**—s. 556, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.614 Payment of claims.**—

(1) There shall be a provision as follows:

"Payment of Claims: Indemnity for loss of life will be payable in accordance with the beneficiary designation and the provisions respecting such payment which may be prescribed herein and effective at the time of payment. If no such designation or provision is then effective, such indemnity shall be payable to the estate of the insured. Any other accrued indemnities unpaid at the insured's death may, at the option of the insurer, be paid either to such beneficiary or to such estate. All other indemnities will be payable to the insured."

(2) The following provisions, or either of them, may be included with the foregoing provision at the option of the insurer:

"If any indemnity of this policy shall be payable to the estate of the insured, or to an insured or beneficiary who is a minor or otherwise not competent to give a valid release, the insurer may pay such indemnity, up to an amount not exceeding \$.....(insert an amount which shall not exceed \$1,000), to any relative by blood or connection by marriage of the insured or beneficiary who is deemed by the insurer to be equitably entitled thereto. Any payment made by the insurer in good faith pursuant to this provision shall fully discharge the insurer to the extent of such payment."

"Subject to any written direction of the insured in the application or otherwise all or a portion of any indemnities provided by this policy on account of hospital, nursing, medical or surgical services may, at the insurer's option and unless the insured requests otherwise in writing not later than the time of filing proof of such loss, be paid directly to the hospital or person rendering such services; but it is not required that the service be rendered by a particular hospital or person."

**History.**—s. 557, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.615 Physical examination, autopsy.**—There shall be a provision as follows:

"Physical Examinations and Autopsy: The insurer at its own expense shall have the right and opportunity to examine the person of the insured when and as often as it may reasonably require during the

pendency of a claim hereunder and to make an autopsy in case of death where it is not forbidden by law."

**History.**—s. 558, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.616 Legal actions.**—There shall be a provision as follows:

"Legal Actions: No action at law or in equity shall be brought to recover on this policy prior to the expiration of 60 days after written proof of loss has been furnished in accordance with the requirements of this policy. No such action shall be brought after the expiration of 3 years after the written proof of loss is required to be furnished."

**History.**—s. 559, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.617 Change of beneficiary.**—There shall be a provision as follows:

"Change of Beneficiary: Unless the insured makes an irrevocable designation of beneficiary, the right to change a beneficiary is reserved to the insured and the consent of the beneficiary or beneficiaries shall not be requisite to surrender or assignment of this policy or to any change of beneficiary or beneficiaries, or to any other changes in this policy."

The first clause of this provision, relating to the irrevocable designation of beneficiary, may be omitted at the insurer's option.

**History.**—s. 560, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.618 Optional policy provisions.**—Except as provided in s. 627.605(2), no such policy delivered or issued for delivery to any person in this state shall contain provision respecting the matters set forth in ss. 627.619-627.629, inclusive, unless such provisions are in the words in which the same appear in the applicable section, except that the insurer may, at its option, use in lieu of any such provision a corresponding provision of different wording approved by the department which is not less favorable in any respect to the insured or the beneficiary. Any such provision contained in the policy shall be preceded individually by the appropriate caption or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the department may approve.

**History.**—s. 561, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.619 Change of occupation.**—There may be a provision as follows:

"Change of Occupation: If the insured be injured or contract sickness after having changed his occupation to one classified by the insurer as more hazardous than that stated in this policy or while doing for compensation anything pertaining to an occupation so classified, the insurer will pay only such portion of the indemnities provided in this policy as the

premium paid would have purchased at the rates and within the limits fixed by the insurer for such more hazardous occupation. If the insured changes his occupation to one classified by the insurer as less hazardous than that stated in this policy, the insurer, upon receipt of proof of such change of occupation, will reduce the premium rate accordingly, and will return the excess pro rata unearned premium from the date of change of occupation or from the policy anniversary date immediately preceding receipt of such proof, whichever is the more recent. In applying this provision, the classification of occupational risk and the premium rates shall be such as have been last filed by the insurer prior to the occurrence of the loss for which the insurer is liable or prior to date of proof of change in occupation with the state official having supervision of insurance in the state where the insured resided at the time this policy was issued; but if such filing was not required, then the classification of occupational risk and the premium rates shall be those last made effective by the insurer in such state prior to the occurrence of the loss or prior to the date of proof of change in occupation."

**History.**—s. 562, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1627.620 Misstatement of age or sex.**—There may be a provision as follows:

"Misstatement of Age or Sex: If the age or sex of the insured has been misstated, all amounts payable under this policy shall be such as the premium paid would have purchased according to the correct age or sex."

**History.**—s. 563, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1627.621 Other insurance in this insurer.**—There may be a provision as follows:

"Other Insurance in This Insurer: If an accident or sickness or accident and sickness policy or policies previously issued by the insurer to the insured be in force concurrently herewith, making the aggregate indemnity for ..... (insert type of coverage or coverages) in excess of \$.....(insert maximum limit of indemnity or indemnities) the excess insurance shall be void and all premiums paid for such excess shall be returned to the insured or to his estate."

Or, in lieu thereof:

"Insurance effective at any one time on the insured under a like policy or policies in this insurer is limited to the one such policy elected by the insured, his beneficiary or his estate, as the case may be, and the insurer will return all premiums paid for all other such policies."

**History.**—s. 564, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1627.622 Insurance with other insurers.**—(Provision of service or expense incurred basis).

(1) There may be a provision as follows:

"Insurance with Other Insurers: If there be other valid coverage, not with this insurer, providing benefits for the same loss on a provision of service basis

or on an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability under any expense incurred coverage of this policy shall be for such proportion of the loss as the amount which would otherwise have been payable hereunder plus the total of the like amounts under all such other valid coverages for the same loss of which this insurer had notice bears to the total like amounts under all valid coverages for such loss, and for the return of such portion of the premiums paid as shall exceed the pro rata portion for the amount so determined. For the purpose of applying this provision when other coverage is on a provision of service basis, the 'like amount' of such other coverage shall be taken as the amount which the services rendered would have cost in the absence of such coverage."

(2) If the foregoing policy provision is included in a policy which also contains the policy provision set out in s. 627.623, there shall be added to the caption of the foregoing provision the phrase "—Expense Incurred Benefits." The insurer may, at its option, include in this provision a definition of "other valid coverage," approved as to form by the department, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, and by hospital or medical service organizations, and to any other coverage the inclusion of which may be approved by the department. In the absence of such definition, such term shall not include group insurance, automobile medical payments insurance, or coverage provided by hospital or medical service organizations or by union welfare plans or employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute (including any workers' compensation or employer's liability statute) whether provided by a governmental agency or otherwise shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying the foregoing policy provision, no third-party liability coverage shall be included as "other valid coverage."

**History.**—s. 565, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 110, ch. 79-40.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1627.623 Same; other benefits.**—

(1) There may be a provision as follows:

"Insurance With Other Insurers: If there be other valid coverage, not with this insurer, providing benefits for the same loss on other than an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability for such benefits under this policy shall be for such proportion of the indemnities otherwise provided hereunder for such loss as the like indemnities of which the insurer had notice (including the indemnities under this policy) bear to the total amount of all like indemnities for such loss, and for the return of such portion of the

premium paid as shall exceed the pro rata portion for the indemnities thus determined."

(2) If the foregoing policy provision is included in a policy which also contains the policy provision set out in s. 627.622, there shall be added to the caption of the foregoing provision the phrase "—Other Benefits." The insurer may, at its option, include in this provision a definition of "other valid coverage," approved as to form by the department, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, and to any other coverage the inclusion of which may be approved by the department. In the absence of such definition, such term shall not include group insurance, or benefits provided by union welfare plans or by employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute (including any workers' compensation or employer's liability statute) whether provided by a governmental agency or otherwise shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying the foregoing policy provision, no third-party liability coverage shall be included as "other valid coverage."

**History.**—s. 566, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 111, ch. 79-40.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **627.624 Relation of earnings to insurance.—**

(1) There may be a provision as follows:

"Relation of Earnings to Insurance: If the total monthly amount of loss of time benefits promised for the same loss under all valid loss of time coverage upon the insured, whether payable on a weekly or monthly basis, shall exceed the monthly earnings of the insured at the time disability commenced or his average monthly earnings for the period of 2 years immediately preceding a disability for which claim is made, whichever is the greater, the insurer will be liable only for such proportionate amount of such benefits under this policy as the amount of such monthly earnings or such average monthly earnings of the insured bears to the total amount of monthly benefits for the same loss under all such coverage upon the insured at the time such disability commences and for the return of such part of the premiums paid during such 2 years as shall exceed the pro rata amount of the premiums for the benefits actually paid hereunder; but this shall not operate to reduce the total monthly amount of benefits payable under all such coverage upon the insured below the sum of \$200 or the sum of the monthly benefits specified in such coverages, whichever is the lesser, nor shall it operate to reduce benefits other than those payable for loss of time."

(2) The foregoing policy provision may be inserted only in a policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums until at least age 50 or, in the case of a policy issued after age 44, for at least 5 years from its date of issue. The insurer may, at its option,

include in this provision a definition of "valid loss of time coverage," approved as to form by the department, which definition shall be limited in subject matter to coverage provided by governmental agencies or by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, or to any other coverage the inclusion of which may be approved by the department or any combination of such coverages. In the absence of such definition, such term shall not include any coverage provided for such insured pursuant to any compulsory benefit statute (including any workers' compensation or employer's liability statute), or benefits provided by union welfare plans or by employer or employee benefit organizations.

**History.**—s. 567, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 112, ch. 79-40.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.625 Unpaid premiums.**—There may be a provision as follows:

"Unpaid Premium: Upon the payment of a claim under this policy, any premium then due and unpaid or covered by any note or written order may be deducted therefrom."

**History.**—s. 568, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.626 Cancellation.**—There may be a provision as follows: "Cancellation: The insurer may cancel this policy at any time by written notice delivered to the insured, or mailed to his last address as shown by the records of the insurer, stating when, not less than 5 days thereafter, such cancellation shall be effective; and after the policy has been continued beyond its original term the insured may cancel this policy at any time by written notice delivered or mailed to the insurer, effective upon receipt or on such later date as may be specified in such notice. In the event of cancellation, the insurer will return promptly the unearned portion of any premium paid. If the insured cancels, the earned premium shall be computed by the use of the short-rate table last filed with the state official having supervision of insurance in the state where the insured resided when the policy was issued. If the insurer cancels, the earned premium shall be computed pro rata. Cancellation shall be without prejudice to any claim originating prior to the effective date of cancellation."

**History.**—s. 569, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.627 Conformity with statutes.**—There may be a provision as follows:

"Conformity with State Statutes: Any provision of this policy which, on its effective date, is in conflict with the statutes of the state in which the insured resides on such date is hereby amended to conform to the minimum requirements of such statutes."

**History.**—s. 570, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.



to that date.

**1627.628 Illegal occupation.**—There may be a provision as follows:

"Illegal Occupation: The insurer shall not be liable for any loss to which a contributing cause was the insured's commission of or attempt to commit a felony or to which a contributing cause was the insured's being engaged in an illegal occupation."

**History.**—s. 571, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1627.629 Intoxicants and narcotics.**—There may be a provision as follows:

"Intoxicants and Narcotics: The insurer shall not be liable for any loss sustained or contracted in consequence of the insured's being intoxicated or under the influence of any narcotic unless administered on the advice of a physician."

**History.**—s. 572, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1627.630 Order of certain provisions.**—The provisions which are the subject of ss. 627.606-627.629, inclusive, or any corresponding provisions which are used in lieu thereof in accordance with such sections, shall be printed in the consecutive order of the provisions in such sections or, at the option of the insurer, any such provision may appear as a unit in any part of the policy, with other provisions to which it may be logically related, provided that the resulting policy shall not be in whole or in part unintelligible, uncertain, ambiguous, abstruse, or likely to mislead a person to whom the policy is offered, delivered or issued.

**History.**—s. 573, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1627.631 Third party ownership.**—The word "Insured," as used in this chapter, shall not be construed as preventing a person other than the insured with a proper insurable interest from making application for and owning a policy covering the insured or from being entitled under such a policy to any indemnities, benefits, and rights provided therein.

**History.**—s. 574, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1627.632 Requirements of other jurisdictions.**—

(1) Any policy of a foreign or alien insurer, when delivered or issued for delivery to any person in this state, may contain any provision which is not less favorable to the insured or the beneficiary than the provisions of this chapter and which is prescribed or required by the law of the state or country under which the insurer is organized.

(2) Any policy of a domestic insurer may, when issued for delivery in any other state or country, contain any provision permitted or required by the laws of such other state or country.

**History.**—s. 575, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

to that date.

**1627.633 Other policy provisions.**—No policy provision which is not subject to part VI of this chapter shall make a policy, or any portion thereof, less favorable in any respect to the insured or the beneficiary than the provisions thereof which are subject to this chapter.

**History.**—s. 576, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1627.634 Age limit.**—If any such policy contains a provision establishing, as an age limit or otherwise, a date after which the coverage provided by the policy will not be effective, and if such date falls within a period for which premium is accepted by the insurer or if the insurer accepts a premium after such date, the coverage provided by the policy will continue in force subject to any right of cancellation until the end of the period for which premium has been accepted. In the event the age of the insured has been misstated and if, according to the correct age of the insured, the coverage provided by the policy would not have become effective, or would have ceased prior to the acceptance of such premium or premiums, then the liability of the insurer shall be limited to the refund, upon request, of all premiums paid for the period not covered by the policy.

**History.**—s. 577, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1627.635 Excess insurance.**—

(1) No provision of this chapter shall be deemed to prohibit an insurer from issuing a policy as, or including in a policy a provision providing for, excess insurance; that is, to the effect that the insurer's liability for benefits payable on account of expense incurred for any hospitalization, medical, surgical and other service resulting from covered sickness or injury of the insured, shall be limited to that part of such expense, if any, which is in excess of all benefits payable on account thereof by the same insurer under any other policy or policies covering the same insured and by all other insurers and service organizations by whom benefits are payable as to the same such expense.

(2) Any such policy, or any policy containing any such provision, shall have imprinted or stamped conspicuously upon the face thereof the designation "excess insurance" or appropriate words of similar import approved by the department.

**History.**—s. 578, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1627.636 Industrial disability insurance.**—Industrial disability insurance is that form of individual disability insurance for which the premium is payable weekly. No such policy of industrial disability insurance may be delivered or issued for delivery in this state unless it has printed thereon the words "industrial policy" or "weekly premium policy" or words of similar import. Each such policy shall be

subject to the provisions of this chapter except that:

(1) Any such policy may contain a provision requiring proof of continuance of disability. If such provision is used it shall be in the following words: "Affirmative proof of continuance of disability must be furnished at the expiration of each period for which a claim is filed."

(2) The insurer may refuse to endorse the name of any proposed beneficiary who does not appear to the insurer to have an insurable interest in the life of the insured.

**History.**—s. 579, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.637 Construction of noncomplying contracts.**—If any insurer writes or issues in this state any disability insurance contract, as contemplated by this chapter, and the form of such contract is not authorized by or in conformity with the provisions of this chapter, such contract shall nevertheless be a valid and binding contract of the insurer, and shall be construed as though the terms and provisions thereof were in conformity with those required by this chapter, any provision in such contract to the contrary notwithstanding.

**History.**—s. 580, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.638 Direct payment for hospital, medical services.**—Any disability insurance policy insuring against loss or expense due to hospital confinement or to medical and related services may provide for payment of benefits direct to any recognized hospital, doctor, or other person who provided such services, in accordance with the provisions of the policy. To comply with this section the words "or to the hospital, doctor, or person rendering services covered by this policy," or similar words appropriate to the terms of the policy, shall be added to applicable provisions of the policy.

**History.**—s. 581, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.639 Application signed by agent.**—If the application for a disability insurance policy is to be made a part of the contract of insurance, the insurer's agent who completed the application shall sign the same in the capacity of soliciting agent.

**History.**—s. 582, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.640 Filing of classifications and rates.**—An insurer shall not deliver or issue for delivery in this state any disability insurance policy until it has filed with the department a copy of any classification of risks and premium rates applicable thereto.

**History.**—s. 583, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

to that date.

#### **627.641 Coverage for newborn children.**

(1) All disability insurance policies providing coverage on an expense-incurred basis and all service or indemnity-type contracts issued by a nonprofit corporation which provide coverage for a family member of the insured or subscriber shall, as to such family member's coverage, also provide that the health insurance benefits applicable for children shall be payable with respect to a newborn child of the insured or subscriber from the moment of birth.

(2) The coverage for newborn children shall consist of coverage for injury or sickness, including the necessary care or treatment of medically diagnosed congenital defects, birth abnormalities, or prematurity.

(3) This section shall apply to all such disability insurance policies and to all such contracts renewed, delivered or issued for delivery after April 29, 1974. This section shall not apply to disability income or hospital indemnity policies or to normal maternity policy provisions applicable to the mother.

**History.**—s. 1, ch. 72-82; s. 1, ch. 74-8; s. 3, ch. 76-168; s. 1, ch. 77-174; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **627.642 Outline of coverage.**

(1) No individual or family accident and health insurance policy shall be delivered, or issued for delivery, in this state unless:

(a) Accompanied by an appropriate outline of coverage; or

(b) An appropriate outline of coverage is completed and delivered to the applicant at the time application is made, and an acknowledgment of receipt or certificate of delivery of such outline is provided to the insurer with the application.

In the case of a direct response, such as a written application to the insurance company from an applicant, the outline of coverage shall accompany the policy when issued.

(2) Such outline of coverage shall contain:

(a) A statement identifying the applicable category of coverage afforded by the policy as based on the minimum basic standards set forth in the rules and regulations issued to effect compliance with s. 627.643.

(b) A brief description of the principal benefits and coverage provided in the policy.

(c) A summary statement of the principal exclusions and limitations or reductions contained in the policy, including, but not limited to, preexisting conditions, probationary periods, elimination periods, and any age limitations or reductions.

(d) A summary statement of the renewal provision, including any reservation of the insurer of a right to change premiums.

(e) A statement that the outline contains a summary only of the details of the policy as issued or of the policy as applied for and that the issued policy should be referred to for the actual contractual governing provisions.

**History.**—s. 1, ch. 74-69; s. 1, ch. 74-281; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

to that date.

**1627.643 Uniform minimum standards.—**

(1) The department shall adopt rules and regulations which establish minimum standards for the general content of forms of individual and family health policies, which shall be inclusive of terms of renewability, initial and subsequent conditions of eligibility, termination of insurance, probationary periods, exclusions, limitations, and reductions. The minimum standards expressed in such rules and regulations shall be in addition to, and in accord with, individual accident and sickness policy provisions as provided in parts II and VI.

(2) The department shall adopt rules and regulations which establish minimum standards of benefits and identification for each of the following categories of coverage in individual and family forms, other than conversion policies, of accident and health insurance:

- (a) Basic hospital expense insurance.
- (b) Basic medical expense insurance.
- (c) Basic surgical expense insurance.
- (d) Hospital confinement indemnity insurance.
- (e) Major medical expense insurance.
- (f) Disability income protection insurance.
- (g) Accident-only insurance.
- (h) Limited benefit insurance.

Nothing in this section shall preclude the issuance of any policy which combines two or more of the categories of coverage enumerated in paragraphs (a) through (e), or any policy which does not meet the prescribed minimum standards for categories of coverage in paragraphs (a) through (g) when such policy is, in the opinion of the department, either experimental in nature or is demonstrated to be a type of coverage that will fulfill a reasonable need of the person or persons to be insured. Any policy so approved will be identified as to category only as prescribed by the department.

(3) The department may, within such time as provided by law for the disapproval of an individual or family form of accident or health insurance, disapprove any such form if it finds that it does not comply with applicable law in this state or it finds that such form is unjust, unfair, or inequitable to the policyholder, any person insured thereunder, or any beneficiary. In acting upon any such submission, the commissioner shall, under this section, consider whether the benefits afforded under the submitted policy or benefit form would fulfill a reasonable need of a policyholder.

**History.**—s. 1, ch. 74-281; s. 3, ch. 76-168; s. 1, ch. 77-174; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1627.644 Discrimination against handicapped prohibited.**—No disability insurer shall refuse to provide, or charge unfairly discriminatory rates for, disability coverage for a person solely because he or she is mentally or physically handicapped. Nothing in this section should be construed as requiring an insurer to provide insurance coverage against a per-

son's handicap which the applicant or policyholder has already sustained.

**History.**—s. 1, ch. 76-127; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.645 Disability insurance claims.**—No claim for payment under a disability insurance policy for medical care or treatment of a child in a licensed hospital which is nonprofit, which primarily provides diagnosis, treatment, or care for patients whose physical functions or movements are impaired by accident, disease, or congenital deformity, and which accepts patients for treatment without regard to race, color, national origin, sex, religion, or affiliation shall be denied solely because the hospital does not have facilities for major surgery or because the treatment and care is primarily of a charitable nature. This section shall apply to any claim presented under a policy with an effective date or renewal date on or after October 1, 1977.

**History.**—s. 1, ch. 77-32; s. 12, ch. 78-106.

**Note.**—Former s. 391.11.

**627.646 Conversion on termination of eligibility.**—Every disability insurance policy providing hospital or medical expense coverage hereafter delivered or issued for delivery in this state or under which benefits are altered, modified, or amended shall contain a provision that if the insurance on a person covered under the policy ceases because of the termination of such person's eligibility for coverage, prior to his becoming eligible for Medicare or Medicaid benefits, then such person shall be entitled to have issued to him by the insurer, without evidence of insurability, a policy of disability insurance, either individual or family, whichever is appropriate, provided that application for the policy shall be made and the first premium paid to the insurer within 31 days after such termination and provided further that:

(1) The policy shall be in an amount not in excess of the amount of disability insurance which ceases because of such termination.

(2) The premium on the policy shall be at the insurer's then customary rate applicable to such policies, to the class of risk to which such person then belongs, and to his age attained on the effective date of the policy.

(3) The policy of disability insurance will not result in overinsurance on the basis of the company's underwriting standards at the time of issue.

(4) The policy of disability insurance may be reduced by the amount of any benefits paid for the same injury or same sickness under the prior policy.

(5) The policy of disability insurance may exclude any condition excluded by the prior policy.

(6) The provisions of this section shall be effectuated in such a way as to result in continuous coverage during the 31-day period for such insured.

**History.**—s. 1, ch. 78-385.



## PART VII

GROUP, BLANKET, AND FRANCHISE  
DISABILITY INSURANCE

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- 627.668 Optional coverage for mental and nervous disorders required; exception.
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**<sup>1</sup>627.651 Group contracts must meet group requirements.—**

(1) No disability insurance policy shall be delivered or issued for delivery in this state insuring more than one individual unless to one of the groups as provided for in ss. 627.653-627.655, and unless in compliance with the other applicable provisions of part VII of this chapter.

(2) Subsection (1) shall not apply to disability insurance policies:

(a) Insuring only individuals related by blood, marriage or legal adoption; or

(b) Insuring only individuals having a common interest through ownership of a business enterprise, or a substantial legal interest or equity therein, and who are actively engaged in the management thereof; or

(c) Insuring only individuals otherwise having an insurable interest in each other's lives; or

(d) Issued as blanket insurance pursuant to s. 627.659.

(3) Nothing in this chapter shall affect the provisions of ss. 112.08 to 112.14, inclusive.

**History.**—s. 584, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**<sup>1</sup>627.652 Group disability insurance defined, in general.**—Group disability insurance is that form of disability insurance covering groups of persons under a master group disability insurance policy issued pursuant to any one of ss. 627.653-627.655.

**History.**—s. 585, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**<sup>1</sup>627.653 Employee groups.—**

(1) A group of individuals may be insured under a policy issued to an employer, or to the trustees of a fund established by an employer, which employer or trustees shall be deemed the policyholder, insuring at least ten employees of the employer for the benefit of persons other than the employer. The term employees as used herein may include:

(a) Retired employees,

(b) The individual proprietor or partners if the employer is a proprietor or partnership, and

(c) Elected or appointed officials if the policy is issued to insure employees of a public body. The policy may provide for insuring the employees of one or more subsidiary or affiliated corporations, proprietors and partnerships if the business of the employer and such subsidiary or affiliated corporations, proprietors and partnerships are under common control. No director of a corporate employer shall be eligible for insurance under the policy unless such person is otherwise eligible as a bona fide employee of the corporation by performing services other than the usual duties of a director or unless such person receives an annual compensation from the corporation in excess of \$2,500.

(2) No such policy of insurance as defined in subsection (1) may be issued to any employer, as enumerated therein, unless all employees of such employer, or all of any class or classes thereof, determined by conditions pertaining to their employment, but not determined so as to exclude those in the more hazardous employment solely because of their hazardous employment, are declared eligible and acceptable to the insurer at the time of issuance of the policy, and unless 60 percent of the eligible employees are so insured.

(3) Any such policy may insure spouse or dependent children with or without the employee being insured.

**History.**—s. 586, ch. 59-205; s. 1, ch. 63-218; s. 1, ch. 72-17; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**Note.**—Former s. 627.0602.

**<sup>1</sup>627.654 Labor union and association groups.—**

(1) A group of individuals may be insured under a policy issued to an association, including a labor union, which association shall have a constitution and bylaws and not less than 25 individual members and which has been organized and has been main-

tained in good faith for a period of 1 year for purposes other than that of obtaining insurance, or to the trustees of a fund established by such an association, which association or trustees shall be deemed the policyholder, insuring at least 15 individual members of the association for the benefit of persons other than the officers of the association, the association or trustees.

(2) No such policy of insurance as defined in subsection (1) may be issued to any such association, unless all individual members of such association or all of any class or classes thereof, are declared eligible and acceptable to the insurer at the time of issuance of the policy, and unless 60 percent of the eligible members are so insured.

(3) Any such policy may insure the spouse or dependent children with or without the member being insured.

**History.**—s. 587, ch. 59-205; s. 1, ch. 61-368; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§627.655 Debtor groups.**—A group of individuals may be insured under a policy issued to a creditor, who shall be deemed the policyholder, under which the debtors of such creditor are indemnified in connection with a specific loan or credit transaction against loss of time resulting from bodily injury or sickness. The debtors eligible for such insurance under the policy shall be all of the debtors of the creditor, or all of any class or classes thereof, determined by conditions pertaining to the indebtedness or to the credit transaction giving rise to the indebtedness. The policy may provide that the term "debtors" shall include the debtors of one or more subsidiary or affiliated corporations, proprietors or partnerships, if the business of the creditor and of such subsidiary or affiliated corporations, proprietors or partnerships is under common control. The policy may be issued only if the group of eligible debtors is then receiving new entrants at the rate of at least one hundred persons yearly, or may reasonably be expected to receive at least 100 new entrants during the first policy year, and only if the policy reserves to the insurer the right to require evidence of individual insurability if less than 75 percent of the new entrants become insured.

**History.**—s. 588, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§627.656 Additional groups.**—A group of individuals, other than the groups defined in s. 627.556, may be insured under a policy issued to any person or organization to which a policy of group life insurance may be issued or delivered in this state to insure any class or classes of individuals for disability insurance that could be insured under such group life policy. Any such policy may insure the spouse and dependent children with or without the "employee" being insured.

**History.**—s. 1, ch. 61-377; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior

to that date.

**§627.657 Provisions of group disability policies.**—Each group disability policy shall contain in substance the following provisions:

(1) A provision that, in the absence of fraud, all statements made by applicants or the policyholder or by an insured person shall be deemed representations and not warranties, and that no statement made for purpose of effecting insurance shall avoid such insurance or reduce benefits unless contained in a written instrument signed by the policyholder or the insured person, a copy of which has been furnished to such policyholder or to such person or his beneficiary.

(2) A provision that the insurer will furnish to the policyholder for delivery to each employee or member of the insured group, a certificate setting forth the essential features of the insurance coverage of such employee or member and to whom benefits are payable. If dependents are included in the coverage, only one certificate need be issued for each family unit.

(3) A provision that to the group originally insured may be added from time to time eligible new employees or members or dependents, as the case may be, in accordance with the terms of the policy.

(4) The provisions of part VI of chapter 627 shall not apply to group disability insurance policies, but no such policy shall contain any provision relative to notice or proof of loss, or to the time for paying benefits, or to the time within which suit may be brought on the policy, which is less favorable to the individuals insured than would be permitted by the comparable provisions required for individual disability insurance policies.

**History.**—s. 589, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§627.6575 Coverage for newborn children.**—

(1) All group, blanket, or franchise disability insurance policies providing coverage on an expense-incurred basis, and group, blanket, or franchise service or indemnity-type contracts issued by a nonprofit corporation, which provide coverage for a family member of the certificate holder or subscriber shall, as to such family member's coverage, also provide that the health insurance benefits applicable for children shall be payable with respect to a newborn child of the certificate holder or subscriber from the moment of birth.

(2) The coverage for newborn children shall consist of coverage for injury or sickness, including the necessary care or treatment of medically diagnosed congenital defects, birth abnormalities, or prematurity.

(3) This section shall apply to all such group, blanket, or franchise disability insurance policies and to all such contracts renewed, delivered, or issued for delivery after April 29, 1974. The benefits provided by this section shall also apply to holders of group certificates which are delivered or issued for delivery to residents of this state under group poli-

cies effectuated or delivered outside of this state. This section shall not apply to disability income or hospital indemnity policies or to normal maternity policy provisions applicable to the mother.

**History.**—s. 2, ch. 74-8; s. 3, ch. 76-168; s. 1, ch. 77-162; s. 1, ch. 77-174; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.6576 Discrimination against handicapped under policies of group, blanket, or franchise insurance prohibited.**—No insurer offering a policy or policies of group, blanket, or franchise disability insurance shall refuse to provide, or charge unfairly discriminatory rates for, disability coverage for a person solely because he or she is mentally or physically handicapped. Nothing in this section should be construed as requiring an insurer to provide insurance coverage against a person's handicap which the applicant or policyholder has already sustained.

**History.**—s. 2, ch. 76-127; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.658 Use of dividends, refunds, fees, etc.; premium rates.**—

(1) Section 627.569 of this code shall apply also as to group disability insurance policies.

(2) An insurer may issue insurance policies under the provisions of this chapter at premium rates less than the usual rates or premiums for individual insurance policies.

**History.**—s. 590, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.659 Blanket disability insurance; eligible groups.**—Blanket disability insurance is that form of disability insurance covering special groups of individuals as enumerated in one of the following subsections (1) to (6) inclusive:

(1)(a) Under a policy or contract issued to any common carrier, which shall be deemed the policyholder, covering a group defined as all persons who may become passengers on such common carrier.

(b) Under a policy or contract issued to any health maintenance organization licensed pursuant to the provisions of part II of chapter 641, which shall be deemed the policyholder, covering the subscribers of the health maintenance organization.

(2) Under a policy or contract issued to an employer, who shall be deemed the policyholder, covering any group of employees defined by reference to exceptional hazards incident to such employment, or under a policy or contract issued to an employer where all employees are covered under any such policy or contract.

(3) Under a policy issued to a school, district school system, college, university or other institution of learning, or to the official or officials of such institution insuring the students and teachers. Any such policy issued to a college or a university may insure the spouse and dependent children or the spouse or dependent children of the insured student.

(4) Under a policy or contract issued in the name of any volunteer fire department, first aid, or other

such volunteer group, which shall be deemed the policyholder, covering all of the members of such department or group.

(5) Under a policy or contract issued to an organization, or branch thereof, such as boy scouts of America, future farmers of America, religious, or educational bodies, or similar organizations, or to an individual, firm or corporation, holding or operating meetings such as summer camps or other meetings for religious, instructive or recreational purposes, covering all those attending such camps or meetings, including counselors, instructors and persons in other administrative positions.

(6) Under a policy or contract issued in the name of a newspaper, which shall be deemed the policyholder, covering independent contractor newspaper boys.

**History.**—s. 591, ch. 59-205; s. 2, ch. 65-10; s. 1, ch. 69-300; s. 1, ch. 75-10; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.660 Conditions and provisions of blanket disability policies.**—

(1) An individual application shall not be required from a person covered under a blanket disability insurance policy or contract nor shall it be necessary for the insurer to furnish such person a certificate, except as provided in subsection (6).

(2) Any benefit under a blanket disability policy shall be payable as provided in s. 627.614 (payment of claims).

(3) No such policy shall contain any provision relative to notice or proof of loss, or to the time for paying benefits, or to the time within which suit may be brought on the policy, which is less favorable to the individuals insured than would be permitted by the comparable provisions required for individual disability insurance policies.

(4) The provisions of part VI of chapter 627 shall not apply to blanket disability insurance policies, but no such policy shall contain any provision relative to notice or proof of loss, or to the time for paying benefits, or to the time within which suit may be brought on the policy, which is less favorable to the individuals insured than would be permitted by the comparable provisions required for individual disability insurance policies.

(5) Nothing contained in s. 627.659 or in this section shall be deemed to affect the legal liability of policyholders for the death or injury to any person insured under a blanket disability policy.

(6) The insurer shall issue or cause to be issued to each insured person covered under a policy issued pursuant to s. 627.659(3), a written certificate setting forth the essential features of the insurance coverage. Such certificate shall be subject to filing and approval in accordance with ss. 627.640 and 627.410. The department shall have the full power and authority to adopt, promulgate and enforce rules and regulations pertaining to the issuance and the use of the insurance referred to in s. 627.659(3).

**History.**—s. 592, ch. 59-205; s. 3, ch. 65-10; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective



July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1627.661 School accident insurance claims; policy service.**—An insurer issuing a school accident policy referred to in s. 627.659(3) shall maintain an office or offices in this state for the processing and payment of claims, and to render service to insureds, or appoint a duly licensed adjuster or resident agent for that purpose; except that processing and payment of claims and service may be performed at the insurer's home office.

**History.**—s. 4, ch. 65-10; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1627.6615 Handicapped children; continuation of coverage under group policy.**—A group hospital or medical expense insurance policy or hospital or medical service plan contract, delivered or issued for delivery in this state subsequent to October 29, 1970, which provides that coverage of a dependent child of an employee or other member of the covered group shall terminate upon attainment of the limiting age for dependent children specified in the policy or contract shall also provide in substance that attainment of such limiting age shall not operate to terminate the coverage of such child while the child is and continues to be both:

(1) Incapable of self-sustaining employment by reason of mental retardation or physical handicap and

(2) Chiefly dependent upon the employee or member for support and maintenance,

provided proof of such incapacity and dependency is furnished to the insurer or service plan corporation by the employee or member within 31 days of the child's attainment of the limiting age and subsequently as may be required by the insurer or corporation, but not more frequently than annually after the 2-year period following the child's attainment of the limiting age.

**History.**—s. 1, ch. 70-187; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1627.662 Other provisions applicable.**—The following sections from part VI of chapter 627 (Disability insurance policies) shall also apply as to group disability insurance and blanket disability insurance and franchise disability insurance:

(1) Section 627.635 (Excess insurance).

(2) Section 627.638 (Direct payment for hospital, medical services).

(3) Section 627.640 (Filing of classifications and rates).

(4) Section 627.602(8) (deductible provisions of policies or certificates).

**History.**—s. 593, ch. 59-205; s. 2, ch. 61-423; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1627.663 Franchise disability insurance.**—

(1) "Franchise disability insurance" (also known as "franchise group insurance") is that form of disability insurance issued to:

(a) Two or more employees of any corporation, professional association, copartnership, or individual employer or of any governmental corporation, agency, or department; or

(b) Ten or more individuals who are members of any trade association or of a labor union or any other association having had an active existence for at least 2 years where such association or union has a constitution or bylaws and is formed in good faith for purposes other than that of obtaining insurance; where such persons, with or without their dependents, are issued the same form of an individual policy varying only as to amounts and kinds of coverage applied for by such persons under an arrangement whereby the premiums on such policies may be paid to the insurer periodically by the employer, with or without payroll deductions, or by the association, or by some designated person acting on behalf of such employer or association. Notwithstanding the provisions of any state antidiscriminatory law, such provisions shall not prohibit different rates charged or benefits payable or different underwriting procedure for individuals insured under a franchise plan provided rates charged, benefits payable, or underwriting procedure used do not discriminate between franchise plans.

(2) Sections 627.602-627.640 of this code shall also apply as to franchise disability insurance.

**History.**—s. 594, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 1, ch. 79-67.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1627.664 Assignment of incidents of ownership in group, blanket, or franchise disability policies.**—

(1) No provision of the insurance code or any other law shall be construed to prohibit an insured under any group, blanket, or franchise disability insurance policy, or any other person who may be the owner of any incidents of ownership under such policy, from making an assignment of all or any part of his incidents of ownership under the policy, including specifically, but not by way of limitation, any right to designate a beneficiary thereunder and the right, if any, to have an individual policy issued in accordance with the terms thereof. Subject to the terms of the policy or any contract relating thereto, an assignment by an insured or by any other owner of rights under the policy, made either before or after May 7, 1970 is valid for the purpose of vesting in the assignee, in accordance with any provisions included therein as to the time at which it is to be effective, all incidents of ownership so assigned, but without prejudice to the company on account of any payment it may make or individual policy it may issue prior to receipt of notice of the assignment.

(2) The purpose of subsection (1) is to declare and codify existing rights under policies of the types described therein.

**History.**—ss. 2, 3, ch. 70-10; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1627.6651 Replacement or termination of group, blanket or franchise disability policy or contract; liability of prior insurer.**—When a purchaser of insurance terminates or replaces an exist-

ing group, blanket, or franchise disability insurance policy or contract with another such policy, the prior insurer remains liable only to the extent of its accrued liabilities and extensions of benefits as required by s. 627.667.

**History.**—s. 4, ch. 75-279; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§627.666 Liability of succeeding insurer on replacement of group policy or contract.—**

(1) Each person who is eligible for coverage in accordance with the succeeding insurer's plan of benefits shall be covered by that insurer's plan of benefits.

(2) Each person not covered under the succeeding insurer's plan of benefits in accordance with subsection (1) must be covered by the succeeding insurer in accordance with the following provisions if such individual was validly covered (including benefit extension) under the prior plan on the date of discontinuance of the prior plan and if such individual is a member of the class or classes of individuals eligible for coverage under the succeeding insurer's plan.

(a) The minimum level of benefits to be provided by the succeeding insurer shall be the applicable level of benefits of the prior insurer's plan reduced by any benefits payable by the prior plan.

(b) Coverage must be provided by the succeeding insurer until at least the earliest of the following dates:

1. The date the individual becomes eligible under the succeeding insurer's plan as described in subsection (1);

2. The date the individual's coverage would terminate in accordance with the succeeding insurer's plan provisions applicable to individual termination of coverage (e.g., at termination of employment or ceasing to be an eligible dependent, etc.).

3. In the case of an individual who was totally disabled immediately prior to the date the succeeding insurer's coverage became effective, the end of any period of extension or accrued liability required of the prior insurer under s. 627.667, if s. 627.667 is applicable, or the end of any period of extension or accrued liability which would have been required of the prior insurer by s. 627.667, had s. 627.667 been applicable.

(3) If the succeeding insurer's plan contains a "pre-existing conditions" clause, the level of benefits applicable while the limitation would otherwise apply shall be the lesser of:

(a) The benefits of the succeeding insurer's plan determined without application of the pre-existing conditions limitation, or

(b) The benefits of the prior plan.

(4) The succeeding insurer, in applying any deductibles or waiting periods in its plan, shall give credit for the satisfaction or partial satisfaction of the same or similar provisions under a prior plan providing similar benefits. In the case of deductible provisions, the credit shall apply for the same or overlapping benefit periods and shall be given for expenses actually incurred and applied against the deductible provisions of the prior insurer's plan during the 90 days preceding the effective date of the succeeding insurer's plan, but only to the extent

these expenses are recognized under the terms of the succeeding insurer's plan and are subject to a similar deductible provision.

(5) In any situation in which a determination of the prior insurer's benefit is required by the succeeding insurer, the prior insurer shall, at the succeeding insurer's request, furnish a statement of the benefits available or pertinent information sufficient to permit verification of the benefit determination, or the determination itself, by the succeeding insurer. For the purpose of this section, benefits of the prior plan will be determined in accordance with all of the definitions, conditions, and covered expense provisions of the prior plan rather than those of the succeeding plan. The benefit determination will be made as if coverage had not been replaced by the succeeding insurer.

**History.**—s. 5, ch. 75-279; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§627.667 Extension of benefits.—**

(1) Every group, blanket, or franchise policy or contract subject to the provisions of this act hereafter delivered, or issued for delivery, in this state, or under which benefits are hereafter altered, modified, or amended, shall provide a reasonable provision for extension of benefits in the event of total disability at the date of discontinuance of the policy or contract, as required by this section. Such extension shall be required irrespective of whether the group policyholder or other entity secures replacement coverage from a new insurer or foregoes the provision of coverage.

(2) In the case of a group plan providing benefits for loss of time from work or specific indemnity during hospital confinement, discontinuance of the policy during a disability shall have no effect on benefits payable for that disability or confinement.

(3) In the case of hospital or medical expense coverages other than dental and maternity expense, a reasonable extension-of-benefits-or-acrued-liability provision is required. Such provision will be considered "reasonable" if it provides an extension of at least 12 months under "major medical" and "comprehensive medical" type coverages and, under other types of hospital or medical expense coverages, provides either an extension of at least 90 days or an accrued liability for expenses incurred during a period of disability or during a period of at least 90 days starting with a specific event which occurred while coverage was in force (e.g., an accident).

(4) Any applicable extension of benefits or accrued liability shall be described in any policy or contract involved as well as in group insurance certificates. The benefits payable during any period of extension or accrued liability may be subject to the policy's or contract's regular benefit limits (e.g., benefits ceasing at exhaustion of a benefit period or of maximum benefits).

**History.**—s. 6, ch. 75-279; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior

to that date.

**627.6675 Conversion on termination of eligibility.**—Every group, blanket, or franchise policy or contract providing hospital or medical expense coverage hereafter delivered or issued for delivery in this state or under which benefits are altered, modified, or amended shall contain a provision that if the insurance on a person covered under the policy or contract ceases because of the termination of such person's eligibility for coverage, prior to his becoming eligible for Medicare or Medicaid benefits, then such person shall be entitled to have issued to him by the insurer, without evidence of insurability, a nongroup policy of disability insurance, either individual or family, whichever is appropriate, in the event that the insurer offers such a policy, provided that application for such a policy shall be made and the first premium paid to the insurer within 31 days after such termination and provided further that:

(1) The policy shall be in an amount not in excess of the amount of disability insurance which ceases because of such termination.

(2) The premium on the policy shall be at the insurer's then customary rate applicable to such policies, to the class of risk to which such person then belongs, and to his age attained on the effective date of the policy.

(3) The policy of disability insurance will not result in overinsurance on the basis of the company's underwriting standards at the time of issue.

(4) The policy of disability insurance may be reduced by the amount of any benefits paid for the same injury or same sickness under the prior policy.

(5) The policy of disability insurance may exclude any condition excluded by the prior policy.

(6) The provisions of this section shall be effectuated in such a way as to result in continuous coverage during the 31-day period for such insured.

*History.*—s. 2, ch. 78-385.

**627.668 Optional coverage for mental and nervous disorders required; exception.**—

(1) Insurers, health maintenance organizations, and nonprofit hospital and medical service plan corporations transacting group health insurance or providing prepaid health care in this state shall make available, for an appropriate additional premium under group hospital and medical expense incurred insurance policies, under group prepaid health care contracts, and under group hospital and medical service plan contracts, the level of benefits specified herein for the necessary care and treatment of mental and nervous disorders, as defined in the standard nomenclature of the American Psychiatric Association, subject to the right of the applicant for a group policy or contract to select any alternative level of benefits as may be offered by the insurer, health maintenance organization, or service plan corporation.

(2) Under group policies or contracts, inpatient hospital benefits or outpatient benefits consisting of durational limits, dollar amounts, deductibles, and coinsurance factors shall not be less favorable than for physical illness generally, except that:

(a) Inpatient benefits may be limited to not less than 30 days per benefit year as defined in the policy

or contract. If inpatient hospital benefits are provided beyond 30 days per benefit year, the durational limits, dollar amounts, and coinsurance factors thereto need not be the same as applicable to physical illness generally.

(b) If outpatient benefits are provided, the coinsurance factor applicable to outpatient benefits payable by the insured may not exceed 50 percent or the coinsurance factor applicable to physical illness generally, whichever is greater, the maximum benefit in any applicable benefit year may be limited to \$500 for consultations with an appropriate mental health professional as defined in the policy or contract, and the dollar amounts need not be the same as applicable to physical illness generally.

(3) This section shall apply to group policies or contracts delivered or issued for delivery in this state more than 120 days after the effective date of chapter 76-160, Laws of Florida, but shall not apply to individual, blanket, short-term travel, accident only, limited or specified disease, and individual conversion policies or contracts, or to policies or contracts designed for issuance to persons eligible for coverage under Title XVIII of the Social Security Act, known as Medicare, or any other similar coverage under state or federal governmental plans.

*History.*—ss. 1, 2, ch. 76-160; s. 3, ch. 76-168; s. 1, ch. 77-174; s. 1, ch. 77-457.  
*Note.*—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.669 Optional coverage for alcoholism required; exception.**—

(1) Insurers, health maintenance organizations, and nonprofit hospital and medical service plan corporations transacting group health insurance or providing prepaid health care in this state shall make available, if requested by a group policyholder, in any such policy of insurance issued or delivered in this state or contract executed or operative in this state, the level of benefits specified herein for the necessary care and treatment of alcoholics, subject to the right of the applicant for a group policy or contract to select any alternative level of benefits as may be offered by the insurer, health maintenance organization, or service plan corporation. A group must have at least 25 eligible employees. At least 75 percent of the eligible employees must enroll in each group. For the purposes of this section, "alcoholic" is to be construed as defined in s. 396.032(5).

(2) Under group policies or contracts, inpatient benefits or outpatient benefits shall consist of:

(a) *Basic benefit.*—Intensive treatment program for the treatment of alcoholism.

(b) *Limitations.*—

1. Benefits shall be available only to covered individuals in a group health plan.

2. There shall be a minimum lifetime benefit of \$2,000.

3. There shall be allowable a maximum of 44 outpatient visits.

4. The maximum benefit payable for an outpatient visit shall not exceed \$25.

5. Detoxification shall not be considered as a benefit under the outpatient program.

(3) The benefits provided under this section shall be applicable only if treatment is provided by, or under the supervision of, or is prescribed by, a li-



censed medical doctor or osteopathic doctor under provisions of chapters 458 and 459 and if services are provided in a program accredited by the Joint Commission on the Accreditation of Hospitals or approved by the state.

(4) This section shall not apply to individual, short-term travel, accident only, limited or specified disease, or individual conversion policies or contracts, or to policies or contracts designed for issuance to persons eligible for coverage under Title XVIII of the Social Security Act, known as Medicare, or any other similar coverage under state or federal governmental plans.

(5) This section shall apply to group policies or contracts delivered or issued for delivery in this state on or after January 1, 1980.

(6) If chapter 627 is repealed in accordance with the intent expressed in the Regulatory Reform Act of 1976, as amended by chapter 77-457, Laws of Florida, or as subsequently amended, it is the intent of the Legislature that this section shall also be repealed on the same date as is therein provided.

<sup>1</sup>History.—ss. 1-3, ch. 79-392.

<sup>1</sup>Note.—Effective January 1, 1980.

## PART VIII

### CREDIT LIFE AND DISABILITY INSURANCE

- 627.676 Scope of part VIII.
- 627.677 Definitions.
- 627.678 Rules and regulations.
- 627.679 Amount of insurance; credit life.
- 627.680 Same; credit disability.
- 627.681 Term and evidence of insurance.
- 627.682 Filing, approval of forms.
- 627.683 Licensed agent required.
- 627.684 Premium not deemed loan or finance charge.
- 627.685 Penalty for violations.

**<sup>1</sup>627.676 Scope of part VIII.**—Part VIII of chapter 627 applies only to credit life and credit disability insurances as defined in s. 627.677.

<sup>1</sup>History.—s. 595, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

<sup>1</sup>Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **<sup>1</sup>627.677 Definitions.**—

(1) Credit life insurance is that form of term life insurance which precludes debtor selection as to beneficiary or assignee under which the life of a borrower of money or a purchaser of goods is insured in connection with a specific loan or credit transaction. The policy, certificate, or statement shall be issued on a plan especially designed for the sole purpose of meeting the requirements of the definition of this section and shall bear the description "creditor-debtor insurance only" or words of similar import on the face of each such policy, certificate or statement. There are three recognized forms:

(a) Group credit life insurance is that form of insurance which is subject to the provisions of s. 627.553 (debtor groups).

(b) Franchise credit life insurance is that form of insurance by which a master policy is issued to and

in favor of a creditor and under which debtors are insured at the option of the creditor.

(c) Individual credit life insurance is individual insurance upon the life of an individual debtor in favor of a creditor.

(2) Credit disability insurance is that form of insurance under which a borrower of money or a purchaser of goods is insured in connection with a specific loan or credit transaction against loss of time resulting from accident or sickness.

<sup>1</sup>History.—s. 596, ch. 59-205; s. 19, ch. 61-530; s. 1, ch. 73-363; s. 3, ch. 76-168; s. 1, ch. 77-457.

<sup>1</sup>Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **<sup>1</sup>627.678 Rules and regulations.**—

(1) For the effective protection of the public interest the department shall have full power and authority to adopt, promulgate and enforce separate rules and regulations pertaining to issuance and use of each type of credit insurance defined in s. 627.677.

(2) Rules and regulations made pursuant to this section shall be principally designed, and shall be promulgated with the purpose of protecting the borrower from excessive charges by or collected through the lender for insurance in relation to the amount of the loan, to avoid duplication or overlapping of insurance coverage and to avoid loss of the borrower's funds by short-rate cancellation or termination of such insurance. However, nothing in such rules and regulations shall be construed to authorize the department to prohibit operation of normal dividend distributions under participating insurance contracts.

<sup>1</sup>History.—s. 597, ch. 59-205; ss. 10, 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95.

<sup>1</sup>Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **<sup>1</sup>627.679 Amount of insurance; credit life.**—

(1) The amount of credit life insurance written under one or more policies shall not exceed by more than \$5 the original face amount of the specific contracts of indebtedness in connection with which it is written; except, that where the indebtedness is repayable in substantially equal installments the amount of insurance shall never exceed the approximate unpaid balance of the loan.

(2) The total amount of credit life insurance on the life of any debtor with respect to any loan or loans covered in one or more insurance policies shall at no time exceed \$20,000 with any one creditor, except that loans not exceeding 1 year's duration shall not be subject to such limits, and on such loans not exceeding 1 year's duration, the limits of coverage shall not exceed \$20,000 with any one insurer. Before any credit life insurance may be sold, the creditor must advise the borrower that he has the option of assigning any other policy or policies the [borrower] owns or may procure for the purpose of covering said loan.

(3) Notwithstanding the provisions of this section credit life insurance in connection with agricultural loans not exceeding 1 year may be written up

to the amount of the loan commitment on the nondecreasing or level term plan.

**History.**—s. 598, ch. 59-205; s. 1, ch. 71-150; s. 3, ch. 76-168; s. 2, ch. 77-246; s. 1, ch. 77-457.

**<sup>1</sup>Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**<sup>2</sup>Note.**—Bracketed word substituted by the editors for the word "debtor."

**§627.680 Same; credit disability.—**

(1) The total indemnities provided under the terms of credit disability coverage shall not exceed by more than \$5 the amount of the initial indebtedness; except, that where the indebtedness is repayable in substantially equal installments the amount of insurance shall never exceed the approximate unpaid balance of the loan.

(2) The total amount of credit disability insurance on the life of any debtor with respect to any loan or loans covered in one or more insurance policies, as defined in s. 627.677(2) shall at no time exceed \$10,000.

**History.**—s. 599, ch. 59-205; s. 2, ch. 71-150; s. 3, ch. 76-168; s. 1, ch. 77-457.

**<sup>1</sup>Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§627.681 Term and evidence of insurance.—**

(1) The term of credit life insurance or credit disability insurance coverages shall not extend more than 15 days beyond the term of the indebtedness except where extended without additional cost to the insured borrower or purchaser, and in no event shall the term of the insurance policy exceed 10 years from the date of issue thereof.

(2) All credit insurance sold shall be evidenced by a policy, certificate or statement of insurance, which shall be delivered to the insured borrower or purchaser. Said policy, certificate, or statement of insurance shall set forth a description of the coverage, including any exceptions, limitations, or restrictions and the amount of the premium in the case of individual or franchise insurance, or the amount of any identifiable charge in the case of group insurance provided that in the case of group insurance in lieu of setting forth the amount of identifiable charge in the certificate or statement of insurance, such identifiable charge may be set forth in an instrument in writing, which shall be delivered to the insured borrower or purchaser.

**History.**—s. 600, ch. 59-205; s. 3, ch. 71-150; s. 3, ch. 76-168; s. 1, ch. 77-457.

**<sup>1</sup>Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§627.682 Filing, approval of forms.—**All forms of policies, certificates of insurance, statements of insurance, applications for insurance, binders, endorsements and riders of credit life or disability insurance delivered or issued for delivery in this state shall be filed with and approved by the department before use as provided in ss. 627.410 and 627.411 of this code. In addition to grounds as specified in s. 627.411 the department, upon compliance with the procedures set forth in s. 627.410, shall disapprove any such form and may withdraw any previous approval thereof if the benefits provided therein are

not reasonable in relation to the premiums charged, or if it contains provisions which are unjust, unfair, inequitable, misleading, deceptive or encourage misrepresentation of such policy.

**History.**—s. 601, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**<sup>1</sup>Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§627.683 Licensed agent required.—**All policies to which this chapter applies shall be issued through a licensed agent of the insurer.

**History.**—s. 602, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**<sup>1</sup>Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§627.684 Premium not deemed loan or finance charge.—**The premium or cost of credit life or disability insurance, when written by or through any lender or other creditor, its affiliate or associate or subsidiary or a director, officer or employee of any of them shall not be deemed as interest or charges or consideration or an amount in excess of permitted charges in connection with the loan or credit transaction and any gain or advantage to any lender or other creditor, its affiliate, associate or subsidiary or a director, officer or employee of any of them, arising out of the premium or commission or dividend from the sale or provision of such insurance shall not be deemed a violation of any other law general or special, civil or criminal of this state, or of any rule, regulation or order issued by any regulatory authority.

**History.**—s. 603, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**<sup>1</sup>Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§627.685 Penalty for violations.—**If the department determines that any insurer, agent, or other representative of such insurer has violated the provisions of this chapter or any valid rule or regulation adopted and promulgated pursuant thereto, after having been ordered to cease and desist from such violation, and that such violation was committed willfully and knowingly, it may revoke the license or certificate of authority of such agent or insurer. In addition, any person who violates a cease and desist order or an order of revocation after it has become final and while such order is in effect shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 604, ch. 59-205; ss. 13, 35, ch. 69-106; s. 650, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95.

**<sup>1</sup>Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

## PART IX

### PROPERTY INSURANCE CONTRACTS

- 627.701 Coinsurance contracts.
- 627.702 Valued policy law.
- 627.703 Same; penalty for violation.
- 627.704 Replacement insurance.
- 627.705 Return of unearned premium on overin-

sured personal property.

**1627.701 Coinsurance contracts.**—No property insurer shall issue any policy or contract of fire insurance covering either real or personal property in this state which contains any clause or provision requiring the insured to take out or maintain a larger amount of fire insurance than that expressed in such policy; nor in any way provide that the insured shall be liable as a coinsurer with the insurer issuing the policy for any part of the loss or damage which may be caused by fire to the property described in such policy; and any such clause or provision shall be null and void, and of no effect unless there is printed or stamped on the face of such policy or on a form attached thereto the words: "COINSURANCE CONTRACT. The rate charged in this policy is based upon use of a coinsurance clause attached hereto, with the consent of the insured." The rate for the insurance with and without the coinsurance clause shall be furnished the insured upon request.

**History.**—s. 605, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1627.702 Valued policy law.**—

(1) In event of total loss by fire or lightning of any building or structure or mobile home as defined in s. 320.01(2) or <sup>2</sup>factory-built housing as defined in s. 553.36(4) located in this state and insured by any insurer as to such perils, in the absence of any change increasing the risk without the insurer's consent, the insurer's liability, if any, under the policy for such total loss shall be in the amount of money for which such property was so insured as specified in the policy and for which premium has been charged and paid.

(2) In the case of partial loss by fire or lightning of any such property the insurer's liability, if any, under the policy shall be for the actual amount of such loss but not to exceed the amount of insurance specified in the policy as to such property and such perils.

(3) Except, however, that the amount of any loss referred to in subsection (1) or subsection (2) shall be subject to any coinsurance clause contained in the policy pursuant to s. 627.701.

(4) This section shall not apply as to personal property or any interest therein, except with respect to mobile homes as defined in s. 320.01(2) or <sup>2</sup>factory-built housing as defined in s. 553.36(4).

(5) With regard to mobile homes included in subsection (1), any total loss shall be adjusted on the basis of the amount of money for which such property was insured as specified in the policy, whether on an actual cash value basis, replacement cost basis, or stated amount, and for which a premium has been charged and paid only if the insured has elected to purchase such coverage at the inception of the policy. However, when coverage is written for mobile homes on any basis other than stated value, a complete disclosure of relative cost between that policy and the stated value policy shall be made to the insured on a form and in a format approved by the Department of Insurance. Such forms shall disclose and describe the differences between the types of policies and shall be signed by the insured, and cop-

ies shall be maintained in the insurer's file and a copy shall be made available to the insured. Each insurer licensed to write insurance covering mobile homes shall make such stated value coverage available at the option of the insured.

**History.**—s. 606, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 1, 2, ch. 79-237.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**Note.**—The term "factory-built housing" is no longer defined in s. 553.36 because of an amendment to that section by s. 1, ch. 79-152.

**1627.703 Same; penalty for violation.**—If any insurer writes into or attaches to any policy of fire insurance on any building or structure in this state any provision or condition conflicting with the provisions of s. 627.702, and complaint thereof is made to the department by the policyholder, the department shall revoke the insurer's certificate of authority. The department shall withhold any new certificate of authority from the insurer until a new policy has been issued to the complaining policyholder without such conflicting provision or condition.

**History.**—s. 607, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1627.704 Replacement insurance.**—In case of total or partial loss of a building or structure insured against fire and lightning the liability of the insurer for such loss shall be as provided in s. 627.702; except, that any property insurer may, by appropriate riders or endorsements or otherwise, provide insurance indemnifying the insured for the difference between the insurable value of the insured property at the time any loss or damage occurs, and the amount actually expended to repair, rebuild or replace within this state with new materials of like size, kind and quality, such property as has been damaged or destroyed by fire or lightning.

**History.**—s. 608, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1627.705 Return of unearned premium on over-insured personal property.**—In the event of a total loss or destruction of any personal property on which the amount of the appraised or agreed loss is less than the total amount insured thereon, the insurer shall return to the insured the unearned premium for the excess of insurance over the appraised or agreed loss, to be paid at the same time and in the same manner as the loss shall be paid; and the unearned premium shall be a just and legal claim against the insurer.

**History.**—s. 609, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

## PART X

### CASUALTY INSURANCE CONTRACTS

- 627.726 Contracts are subject to general provisions.
- 627.7261 Refusal to issue policy.
- 627.7262 Nonjoinder of insurers.
- 627.7263 Rental and leasing driver's insurance to



- be primary; exception.
- 627.727 Automobile liability insurance; uninsured vehicle coverage; insolvent insurer protection.
- 627.728 Cancellations; nonrenewals.
- 627.7285 Experience while operating a train.
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- 627.729 Cancellation of policies following holding of invalidity of ch. 70-989, Laws of Florida.
- 627.730 Short title.
- 627.731 Purpose.
- 627.732 Definitions.
- 627.733 Required security.
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- 627.7372 Collateral sources of indemnity.
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- 627.7378 Comprehensive coverage; deductible not to apply to motor vehicle glass.
- 627.739 Personal injury protection; optional limitations; deductibles; optional methods of payment for repair work.
- 627.7403 Mandatory joinder of derivative claim.
- 627.7405 Subrogation.
- 627.741 Implementation of ss. 627.730-627.741.

**627.726 Contracts are subject to general provisions.**—All contracts of casualty insurance covering subjects resident, located, or to be performed in this state shall be subject to the applicable provisions of part II of chapter 627, (the insurance contract), and to the other applicable provisions of this code.

**History.**—s. 610, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.7261 Refusal to issue policy.**—No insurer may deny an application for automobile liability insurance solely on the grounds that renewal of similar coverage has been denied by another insurer, or on the grounds of an applicant's failure to disclose that such denial has occurred.

**History.**—s. 2, ch. 71-7(B); s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.7262 Nonjoinder of insurers.**—

(1) No motor vehicle liability insurer shall be joined as a party defendant in an action to determine the insured's liability. However, each insurer which does or may provide liability insurance coverage to pay all or a portion of any judgment which might be entered in the action shall file a statement, under oath, of a corporate officer setting forth the following information with regard to each known policy of insurance:

- (a) The name of the insurer.
- (b) The name of each insured.

(c) The limits of liability coverage.

(d) A statement of any policy or coverage defense which said insurer reasonably believes is available to said insurer filing the statement at the time of filing said statement.

(2) The statement required by subsection (1) shall be amended immediately upon discovery of facts calling for an amendment to said statement.

(3) If the statement or any amendment thereto indicates that a policy or coverage defense has been or will be asserted, then the insurer may be joined as a party.

(4) After the rendition of a verdict, or final judgment by the court if the case is tried without a jury, the insurer may be joined as a party and judgment may be entered by the court based upon the statement or statements herein required.

(5) The rules of discovery shall be available to discover the existence and policy provisions of liability insurance coverage.

**History.**—s. 12, ch. 76-266.

**Note.**—This section was created subsequent to the enactment of ch. 76-168 and is therefore presumed to be excluded from the blanket repeal of ch. 627 by that act.

**627.7263 Rental and leasing driver's insurance to be primary; exception.**—

(1) The valid and collectible liability insurance or personal injury protection insurance providing coverage for the lessor of a motor vehicle for rent or lease shall be primary unless otherwise stated in bold type on the face of the rental or lease agreement. Such insurance shall be primary for the limits of liability and personal injury protection coverage as required by ss. 324.021(7) and 627.736.

(2) Each rental or lease agreement between the lessee and the lessor shall contain a provision on the face of the agreement, stated in bold type, informing the lessee of the provisions of subsection (1) and shall provide a space for the lessee's insurance company's name if the lessor's insurance is not to be primary.

**History.**—s. 1, ch. 76-56; s. 3, ch. 76-168; s. 1, ch. 77-174; s. 1, ch. 77-457; s. 29, ch. 77-468.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.727 Automobile liability insurance; uninsured vehicle coverage; insolvent insurer protection.**—

(1) No automobile liability insurance covering liability arising out of the ownership, maintenance, or use of any motor vehicle shall be delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state unless coverage is provided therein or supplemental thereto for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness, or disease, including death, resulting therefrom. However, the coverage required under this section shall not be applicable when, or to the extent that, any insured named in the policy shall reject the coverage. When a vehicle is leased for a period of 1 year or longer and the lessor of such vehicle, by the terms of the lease contract, provides liability coverage on the leased vehicle in a policy wherein the lessee is a named insured or on a certificate of a master policy

issued to the lessor, the lessee of such vehicle shall have the sole privilege to reject uninsured motorist coverage. Unless the named insured, or lessee having the privilege of rejecting uninsured motorist coverage, requests such coverage in writing, the coverage need not be provided in or supplemental to a renewal policy when the named insured had rejected the coverage in connection with a policy previously issued to him by the same insurer. The coverage provided under this section shall be over and above, but shall not duplicate the benefits available to an insured under any workers' compensation law, personal injury protection benefits, disability benefits law, or any similar law; under automobile medical expense coverages; or from the owner or operator of the uninsured motor vehicle or any other person or organization jointly or severally liable together with such owner or operator for the accident. Only the underinsured motorist's automobile liability insurance shall be set off against underinsured motorist coverage. Such coverage shall not inure directly or indirectly to the benefit of any workers' compensation or disability benefits carrier or any person or organization qualifying as a self-insurer under any workers' compensation or disability benefits law or any similar law.

(2) The limits of uninsured motorist coverage shall be not less than the limits of bodily injury liability insurance purchased by the named insured, or such lower limit complying with the company's rating plan as may be selected by the named insured, but in any event the insurer shall make available, at the written request of the insured, limits up to \$100,000 each person, \$300,000 each occurrence, irrespective of the limits of bodily injury liability purchased, in compliance with the company's rating plan.

(3) For the purpose of this coverage, the term "uninsured motor vehicle" shall, subject to the terms and conditions of such coverage, be deemed to include an insured motor vehicle when the liability insurer thereof:

(a) Is unable to make payment with respect to the legal liability of its insured within the limits specified therein because of insolvency; or

(b) Has provided limits of bodily injury liability for its insured which are less than the limits applicable to the injured person provided under uninsured motorist's coverage applicable to the injured person.

(4) An insurer's insolvency protection shall be applicable only to accidents occurring during a policy period in which its insured's uninsured motorist coverage is in effect when the liability insurer of the tortfeasor becomes insolvent within 1 year after such an accident. Nothing herein contained shall be construed to prevent any insurer from affording insolvency protection under terms and conditions more favorable to its insureds than is provided hereunder.

(5) Any person having a claim against an insolvent insurer as defined in s. 631.54(5) under the provisions of this section shall present such claim for payment to the Florida Insurance Guaranty Association only. In the event of a payment to any person in settlement of a claim arising under the provisions of this section, the association shall not be subrogated or entitled to any recovery against the claimant's

insurer. The association shall, however, have the rights of recovery as set forth in chapter 631 in the proceeds recoverable from the assets of the insolvent insurer.

(6) If an injured person or, in the case of death, the personal representative agrees to settle a claim with a liability insurer and its insured for the limits of liability, and such settlement would not fully satisfy the claim for personal injuries or wrongful death so as to create an uninsured motorist claim against the uninsured motorist insurer, then such settlement agreement shall be submitted in writing to the uninsured motorist insurer, which shall have a period of 30 days from receipt thereof in which to agree to arbitrate the uninsured motorist claim and approve the settlement, waive its subrogation rights against the liability insurer and its insured, and authorize the execution of a full release. If the uninsured motorist insurer does not agree within 30 days to arbitrate the uninsured motorist claim and approve the proposed settlement agreement, waive its subrogation rights against the liability insurer and its insured, and authorize the execution of a full release, the injured person or, in the case of death, the personal representative may file suit joining the liability insurer's insured and the uninsured motorist insurer to resolve their respective liability for any damages to be awarded; however, in such action, the liability insurer's coverage shall first be exhausted before any award may be entered against the uninsured motorist insurer, and any such award against the uninsured motorist insurer shall be excess and subject to the provisions of s. 627.727(1). Any award in such action against the liability insurer's insured shall be binding and conclusive as to the injured person and uninsured motorist insurer's liability for damages up to its coverage limits. The provisions of s. 627.428 shall not apply to any action brought pursuant to this section against the uninsured motorist insurer.

(7) The legal liability of an uninsured motorist coverage insurer shall not include damages in tort for pain, suffering, mental anguish, and inconvenience unless the injury or disease is described in one or more of paragraphs (a) through (d) of s. 627.737(2).

**History.**—s. 1, ch. 61-175; s. 1, ch. 63-148; ss. 13, 35, ch. 69-106; s. 19, ch. 70-20; s. 1, ch. 71-88; s. 182, ch. 71-355; s. 20, ch. 71-970; ss. 3, 4, ch. 73-180; s. 165, ch. 73-333; s. 3, ch. 76-168; s. 3, ch. 76-266; s. 1, ch. 77-457; s. 30, ch. 77-468; s. 1, ch. 78-374; s. 113, ch. 79-40; ss. 2, 3, ch. 79-241.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **627.728 Cancellations; nonrenewals.—**

(1) As used in this section:

(a) "Policy" means the bodily injury and property damage liability, medical payments and uninsured motorist coverage portions of a policy of automobile liability insurance delivered or issued for delivery in this state:

1. Insuring a natural person as named insured or one or more related individuals resident of the same household, and

2. Insuring only a motor vehicle of the private passenger or station wagon type which is not used as a public or livery conveyance for passengers or rented to others; or insuring any other four-wheel motor vehicle having a load capacity of 1500 pounds or less which is not used in the occupation, profession, or

business of the insured other than farming, and

3. Other than any policy:

a. Issued under an automobile insurance assigned risk plan, or

b. Insuring more than four automobiles, or

c. Covering garage, automobile sales agency, repair shop, service station, or public parking place operation hazards.

(b) "Renewal" or "to renew" means the issuance and delivery by an insurer of a policy superseding at the end of the policy period a policy previously issued and delivered by the same insurer, or the issuance and delivery of a certificate or notice extending the term of a policy beyond its policy period or term. Any policy with a policy period or term of less than 6 months or any policy with no fixed expiration date shall for the purpose of this section be considered as if written for successive policy periods or terms of 6 months.

(c) "Nonpayment of premium" means failure of the named insured to discharge when due any of his obligations in connection with the payment of premiums on a policy or any installment of such premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit, or failure to maintain membership in an organization if such membership is a condition precedent to insurance coverage and if such organization does not constitute a fictitious grouping in violation of s. 626.973.

(2) No notice of cancellation of a policy shall be effective unless it is based on one or more of the following grounds:

(a) Nonpayment of premium;

(b) Material misrepresentation or fraud; or

(c) The driver's license or motor vehicle registration of the named insured or of any other operator who either resides in the same household or customarily operates an automobile insured under the policy has been under suspension or revocation during the policy period or the 180 days immediately preceding its effective date or, if the policy is a renewal, during its policy period. This subsection shall not apply to any policy which has been in effect less than 60 days at the time notice of cancellation is mailed or delivered by the insurer unless it is a renewal policy. Nothing in this subsection shall apply to non-renewal.

(3)(a) No notice of cancellation of a policy to which this section applies shall be effective unless mailed or delivered by the insurer to the named insured and to the named insured's insurance agent at least 45 days prior to the effective date of cancellation, except that when cancellation is for nonpayment of premium, at least 10 days' notice of cancellation accompanied by the reason therefor shall be given. No notice of cancellation of a policy to which this section applies shall be effective unless the reason or reasons for cancellation accompany the notice of cancellation.

(b) Nothing in this subsection (3) shall apply to nonrenewal.

(4)(a) No insurer shall fail to renew a policy unless it shall mail by registered mail or certified mail, or deliver to the named insured, at the address shown in the policy, and to the named insured's in-

surance agent at his business address, at least 45 days' advance notice of its intention not to renew, and the reasons for refusal to renew must accompany such notice. The requirement for mailing notice by registered mail or certified mail shall not apply to an agent that has agreed to represent exclusively one insurer or a group of insurers under common management. This subsection shall not apply:

1. If the insurer has manifested its willingness to renew; or

2. In case of nonpayment of premium.

Notwithstanding the failure of an insurer to comply with this subsection, the policy shall terminate on the effective date of any other automobile liability insurance policy procured by the insured with respect to any automobile designated in both policies. Unless a written explanation for refusal to renew accompanies the notice of intention not to renew, the policy shall remain in full force and effect.

(b) Renewal of a policy shall not constitute a waiver or estoppel with respect to grounds for cancellation which existed before the effective date of such renewal.

(c) No insurer shall fail to renew a policy for reasons based entirely on the sex, occupation, marital status, race, color, creed, national origin, residence, military service, or age of the insured or on the principal place of garaging the insured vehicle in this state, or for any other reason which is arbitrary or capricious.

(5) Proof of mailing of notice of cancellation, of intention not to renew, or of reasons for cancellation to the named insured at the address shown in the policy shall be sufficient proof of notice.

(6) When a policy is canceled, other than for nonpayment of premium, or in the event of failure to renew a policy to which subsection (4) applies, the insurer shall notify the named insured of his possible eligibility for insurance through the automobile assigned risk plan. Such notice shall accompany or be included in the notice of cancellation or the notice of intent not to renew, and shall state that such notice of availability of the automobile assigned risk plan is given pursuant to this section.

(7) Where the reason or reasons for cancellation do not accompany or are not included in the notice of cancellation, the insurer shall, upon written request of the named insured mailed or delivered to the insurer not less than 15 days prior to the effective date of cancellation, specify in writing the reason or reasons for such cancellation. Such reasons shall be mailed or delivered to the named insured within 5 days after receipt of such request, except in the case of cancellation for nonpayment of premium, and shall contain or be accompanied by a notice of the named insured's right to apply to the department for a hearing thereon if the application is made not less than 4 days prior to the effective date of cancellation and is accompanied by a filing fee of \$7.50. If the reasons for cancellation are stated in or accompany the notice of cancellation, such notice shall, except in the case of cancellation of nonpayment of premium, also contain or be accompanied by a notice of the named insured's right to apply to the department for a hearing if the application is made



not less than 10 days prior to the effective date of cancellation and is accompanied by a filing fee of \$7.50. This subsection shall apply only to a cancellation to which subsection (2) applies.

(8)(a) A named insured who wishes to contest the reason or reasons for a cancellation to which subsection (2) is applicable, shall, not less than 4 days prior to the effective date of cancellation where the reasons for cancellation are furnished upon written request and not less than 10 days prior to the effective date of cancellation where the reasons for cancellation are furnished with the notice of cancellation, mail or deliver to the department a written request for a hearing, which shall state clearly the basis for the appeal and be accompanied by a filing fee of \$7.50. This subsection shall not apply to cancellation for nonpayment of premium.

(b) A cancellation which is subject to the provisions of this subsection shall be deemed effective unless the department determines otherwise in accordance with the provisions of this section.

(9)(a) Within 2 working days after receipt of a timely request for a hearing, the department shall call a hearing upon 10 days' notice to the parties. The department may, where it finds that a request for a hearing is not timely made because the insurer did not, within the time period provided in subsection (8), furnish the reason for cancellation upon the timely request therefor by the named insured, accept the request for a hearing and, after notice to the insurer, extend the effective date of cancellation for a period not to exceed 4 days from the date the reason for cancellation was mailed or delivered.

(b) Each insurer subject to this section shall maintain on file with the department the name and address of the person authorized to receive notices pursuant to this section on behalf of the insurer.

(c) The department shall, at the conclusion of the hearing or not later than 2 working days thereafter, issue its written findings to the parties and, if it finds for the named insured, it shall assess the insurer \$7.50 to defray the cost of the hearing and shall refund the \$7.50 filing fee to the named insured, and it shall either order the insurer to rescind its notice of cancellation or, if the date cancellation is to be effective has elapsed, order the policy reinstated from the date of cancellation, and such coverage shall be continuous to, and shall operate prospectively from, the date on which the order was issued. However, no policy shall be reinstated while the named insured is in arrears in payment of premium on such policy. If the department finds for the insurer, its written order shall so state, and it shall assess the named insured \$7.50 and apply the named insured's \$7.50 filing fee against the assessment to defray the cost of the hearing.

(d) Reinstatement of a policy under this subsection shall not operate in any way to extend the expiration, termination, or anniversary date provided in the policy. Upon such reinstatement, costs and attorney's fees may be assessed by the department and paid to the named insured by an insurer who has wrongfully canceled or wrongfully refused to renew a policy, as determined by the hearing provided for in paragraph (c).

(10) The department shall deposit all filing fees

provided for in this section in the insurance commissioner's regulatory trust fund.

(11) There shall be no liability on the part of, and no cause of action of any nature shall arise against, any insurer or its authorized representative, agents, or employees or any firm, person or corporation furnishing to the insurer or insured information as to reasons for cancellation or refusal to renew, for any statement made by any of them in any written notice of cancellation or refusal to renew, for the providing of information pertaining thereto, or for statements made or evidence submitted at the hearings conducted in connection therewith.

(12) The notice of cancellation as provided by this section shall contain the following words which are to be prominently displayed:

"You are permitted by law to appeal this cancellation. Appeal should be filed before the effective date of cancellation set forth in this notice. Forms for such appeal and the regulations pertaining thereto may be obtained from the offices of the Department of Insurance. Appeals must be accompanied by a deposit. You or this company may be charged with the costs of the appeal, depending on the outcome."

**History.**—s. 1, ch. 67-148; ss. 13, 35, ch. 69-106; s. 1, ch. 70-213; s. 1, ch. 71-7(B); s. 1, ch. 71-8(B); s. 1, ch. 72-18; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 1, ch. 78-31.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**Note.**—Former s. 627.0852.

#### **627.7285 Experience while operating a train.**

—The experience of any person while operating any vehicle or train as a public conveyance or acting as a member of the crew of such train shall not be a factor in the setting of such person's motor vehicle liability insurance rates, nor shall such person's personal motor vehicle liability insurance policy be canceled or nonrenewed due to such experience. As used in this section, the term "public conveyance" means any vehicle or train operated over fixed rails.

**History.**—s. 1, ch. 78-50.

**627.7286 Renewal of policy and setting of rates; certain experience not a factor.**—No insurer providing motor vehicle liability coverage shall refuse to renew any policy providing coverage for a personal motor vehicle of any person based solely on such person's experience while operating a vehicle as a part of his employment for any local transit system or as a part of his employment as a bus operator for any nonpublic-sector bus company certified by the Public Service Commission or the Interstate Commerce Commission, and no points assessed against such person under s. 322.27 in connection with such experience shall be considered as a factor in the setting of such person's personal motor vehicle liability insurance rates. The burden of demonstrating that such points were assessed in connection with such experience shall lie with the insured.

**History.**—s. 1, ch. 78-75; ss. 1, 2, ch. 79-389.

**Note.**—Section 2, ch. 79-389, provides that, if ch. 627 is repealed in accordance with the intent expressed in the Regulatory Reform Act of 1976, as amended by ch. 77-457, or as subsequently amended, it is the intent of the Legislature that ch. 79-389 shall also be repealed on the same date as is therein

provided.

**627.729 Cancellation of policies following holding of invalidity of ch. 70-989, Laws of Florida.**—In the event that a law preventing increases on automobile insurance policy premium rates effective July 1, 1970, should be found to be invalid, no insurance policy in effect on July 1, 1970, or renewed in reliance of such law, shall be declared canceled or invalid. Provided, however, that the policyholder shall be required to remit, within 30 days after receiving written notice from the insurer of an increase in rates, the difference between the rate on July 1, 1970, and the rate set by the insurer. Such notice shall not be effective unless sent to the insured after a law preventing the increase of rates is declared invalid.

**History.**—s. 1, ch. 70-999; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.730 Short title.**—Sections 627.730-627.741 may be cited and known as the "Florida Automobile Reparations Reform Act."

**History.**—s. 1, ch. 71-252; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.731 Purpose.**—The purpose of ss. 627.730-627.741 is to require medical, surgical, funeral and disability insurance benefits to be provided without regard to fault under motor vehicle policies that provide bodily injury and property damage liability insurance, or other security, for motor vehicles registered in this state and, with respect to motor vehicle accidents, a limitation on the right to claim damages for pain, suffering, mental anguish and inconvenience.

**History.**—s. 2, ch. 71-252; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.732 Definitions.**—As used in ss. 627.730-627.741:

(1) "Motor vehicle" means any self-propelled vehicle which is of a type both designed and required to be licensed for use on the highways of this state except mopeds, as defined in s. 316.003(2), and any trailer or semi-trailer designed for use with such vehicle and includes:

(a) A "private passenger motor vehicle" which is any motor vehicle which is a sedan, station wagon, or jeep-type vehicle not used at any time as a public or livery conveyance for passengers and, if not used primarily for occupational, professional, or business purposes, a motor vehicle of the pickup, panel, van, camper, or motor home type.

(b) A "commercial motor vehicle" which is any motor vehicle which is not a private passenger motor vehicle.

The term "motor vehicle," however, does not include any self-propelled vehicle with fewer than four wheels or a mobile home.

(2) "Owner" means a person who holds the legal title to a motor vehicle, or, in the event a motor vehicle is the subject of a security agreement or lease

with option to purchase with the debtor or lessee having the right to possession, then the debtor or lessee shall be deemed the owner for the purposes of s. 627.730-627.741.

(3) "Named insured" means a person, usually the owner of a vehicle, identified in a policy by name as the insured under the policy.

(4) "Relative residing in the same household" means a relative of any degree by blood or by marriage who usually makes his home in the same family unit, whether or not temporarily living elsewhere.

**History.**—s. 3, ch. 71-252; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 2, ch. 78-374.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **627.733 Required security.**—

(1) Every owner or registrant of a motor vehicle required to be registered and licensed in this state shall maintain security as required by subsection (3) in effect continuously throughout the registration or licensing period.

(2) Every nonresident owner or registrant of a motor vehicle which, whether operated or not, has been physically present within this state for more than 90 days during the preceding 365 days shall thereafter maintain security as defined by subsection (3) in effect continuously throughout the period such motor vehicle remains within this state.

(3) Such security shall be provided by one of the following methods:

(a) Security by insurance may be provided with respect to such motor vehicle by an insurance policy delivered or issued for delivery in this state by an authorized or eligible motor vehicle liability insurer which is actually writing such insurance as otherwise defined in this code, which provides the benefits and exemptions contained in ss. 627.730-627.741. Any such policy of motor vehicle insurance covering motor vehicles registered or licensed in this state and any policy of insurance represented or sold as providing the security required hereunder for registered and licensed motor vehicles under ss. 627.730-627.741 shall be deemed to provide insurance for the payment of such benefits; or

(b) Security may be provided with respect to any motor vehicle by any other method authorized by s. 324.031(2), (3), or (4) and approved by the Department of Highway Safety and Motor Vehicles as affording security equivalent to that afforded by a policy of insurance, if such security is continuously maintained throughout the motor vehicle's registration or licensing period. The person filing such security shall have all of the obligations and rights of an insurer under ss. 627.730-627.741.

(4) An owner of a motor vehicle with respect to which security is required by this section who fails to have such security in effect at the time of an accident shall have no immunity from tort liability, but shall be personally liable for the payment of benefits under s. 627.736. With respect to such benefits, such an owner shall have all of the rights and obligations of an insurer under ss. 627.730-627.741.

**History.**—s. 4, ch. 71-252; s. 3, ch. 76-168; s. 8, ch. 77-118; s. 1, ch. 77-457; s. 31, ch. 77-468.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective

July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.734 Proof of security; security requirements; penalties.—**

(1) The provisions of chapter 324 which pertain to the method of giving and maintaining proof of financial responsibility and which govern and define a motor vehicle liability policy shall apply to filing and maintaining proof of security or financial responsibility required by ss. 627.730-627.741. It is intended that the provisions of chapter 324 relating to proof of financial responsibility required of each operator and each owner of any motor vehicle shall continue in full force and effect.

(2) Any person who:

(a) Gives information required in a report or otherwise as provided for in ss. 627.730-627.741, knowing or having reason to believe that such information is false;

(b) Forges or, without authority, signs any evidence of proof of security; or

(c) Files, or offers for filing, any such evidence of proof, knowing or having reason to believe that it is forged or signed without authority,

shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) Sections 627.730-627.741 do not apply to any motor vehicle owned by the state, a political subdivision of the state, or the Federal Government.

**History.**—ss. 5, 5A, ch. 71-252; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.735 Operation of a motor vehicle illegal without security; penalties.**—Any owner or registrant of a motor vehicle with respect to which security is required under s. 627.733 who operates such motor vehicle or permits it to be operated in this state without having in full force and effect security complying with the terms of s. 627.733 shall have his operator's license and registration suspended.

**History.**—s. 6, ch. 71-252; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 32, ch. 77-468; s. 11, ch. 78-374.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.736 Required personal injury protection benefits; exclusions; priority.—**

(1) **REQUIRED BENEFITS.**—Every insurance policy complying with the security requirements of s. 627.733 shall provide personal injury protection providing for payment of all reasonable expenses incurred for necessary medical, surgical, X-ray, dental, and rehabilitative services, including prosthetic devices; necessary ambulance, hospital, and nursing services; and funeral and disability benefits to the named insured, relatives residing in the same household, persons operating the insured motor vehicle, passengers in such motor vehicle, and other persons struck by such motor vehicle and suffering bodily injury while not an occupant of a self-propelled vehicle, all as specifically provided in subsection (2) and paragraph (4)(d), to a limit of \$10,000 for loss sustained by any such person as a result of bodily injury, sickness, disease, or death arising out of the own-

ership, maintenance, or use of a motor vehicle as follows:

(a) **Medical benefits.**—Eighty percent of all reasonable expenses for necessary medical, surgical, X-ray, dental, and rehabilitative services, including prosthetic devices, and necessary ambulance, hospital, and nursing services. Such benefits shall also include necessary remedial treatment and services recognized and permitted under the laws of the state for an injured person who relies upon spiritual means through prayer alone for healing, in accordance with his religious beliefs.

(b) **Disability benefits.**—Eighty percent of any loss of gross income and loss of earning capacity per individual, unless such benefits are deemed not includable in gross income for federal income tax purposes, in which event such benefits shall be limited to 60 percent, from inability to work proximately caused by the injury sustained by the injured person, plus all expenses reasonably incurred in obtaining from others ordinary and necessary services in lieu of those that, but for the injury, the injured person would have performed without income for the benefit of his household. All disability benefits payable under this provision shall be paid not less than every 2 weeks.

Any insurer providing medical or disability benefits which have been reduced under this section shall also provide a corresponding rate reduction to the insured in proportion to the reduction of benefits provided.

(c) **Funeral, burial, or cremation benefits.**—Funeral, burial, or cremation expenses in an amount not to exceed \$1,000 per individual.

Only insurers writing motor vehicle liability insurance in this state may provide the required benefits of this section, and no such insurer shall require the purchase of any other motor vehicle coverage as a condition for providing such required benefits. Such insurers shall make such benefits available through normal marketing channels. Any insurer writing motor vehicle liability insurance in this state failing to comply with such availability requirement as a general business practice shall be deemed to have violated part VII of chapter 626, and such violation shall constitute an unfair method of competition or an unfair or deceptive act or practice involving the business of insurance, and any such insurer committing such violation shall be subject to the penalties afforded in such part, as well as those which may be afforded elsewhere in the insurance code.

(2) **AUTHORIZED EXCLUSIONS.**—Any insurer may exclude benefits:

(a) For injury sustained by the named insured and relatives residing in the same household while occupying another motor vehicle owned by the named insured and not insured under the policy or for injury sustained by any person operating the insured motor vehicle without the express or implied consent of the insured.

(b) To any injured person, if such person's conduct contributed to his injury under any of the following circumstances:

1. Causing injury to himself intentionally;



2. Being convicted of driving while under the influence of alcohol or narcotic drugs to the extent that his driving faculties are impaired; or
3. Being injured while committing a felony.

Whenever an insured is charged with conduct as set forth in subparagraphs 2. or 3., the 30-day payment provision of paragraph (4)(b) shall be held in abeyance, and the insurer shall withhold payment of any personal injury protection benefits pending the outcome of the case at the trial level. If the charge is nolle prossed or dismissed or the insured is acquitted, the 30-day payment provision shall run from the date the insurer is notified of such action.

(3) **INSURED'S RIGHTS TO RECOVERY OF SPECIAL DAMAGES IN TORT CLAIMS.**—No insurer shall have a lien on any recovery in tort by judgment, settlement, or otherwise for personal injury protection benefits, whether suit has been filed or settlement has been reached without suit. An injured party who is entitled to bring suit under the provisions of s. 627.737, or his legal representative, shall have no right to recover any damages for which personal injury protection benefits are paid or payable. The plaintiff may prove all of his special damages notwithstanding this limitation, but if special damages are introduced in evidence, the trier of facts, whether judge or jury, shall not award damages for personal injury protection benefits paid or payable. In all cases in which a jury is required to fix damages, the court shall instruct the jury that the plaintiff shall not recover such special damages for personal injury protection benefits paid or payable.

(4) **BENEFITS; WHEN DUE.**—Benefits due from an insurer under ss. 627.730-627.741 shall be primary, except that benefits received under any workers' compensation law or Medicaid as provided under 42 U.S.C. s. 1396 et seq. shall be credited against the benefits provided by subsection (1) and shall be due and payable as loss accrues, upon receipt of reasonable proof of such loss and the amount of expenses and loss incurred which are covered by the policy issued under ss. 627.730-627.741.

(a) An insurer may require written notice to be given as soon as practicable after an accident involving a motor vehicle with respect to which the policy affords the security required by ss. 627.730-627.741.

(b) Personal injury protection insurance benefits shall be overdue if not paid within 30 days after the insurer is furnished written notice of the fact of a covered loss and of the amount of same. If such written notice is not furnished to the insurer as to the entire claim, any partial amount supported by written notice is overdue if not paid within 30 days after such written notice is furnished to the insurer. Any part or all of the remainder of the claim that is subsequently supported by written notice is overdue if not paid within 30 days after such written notice is furnished to the insurer. However, any payment shall not be deemed overdue when the insurer has reasonable proof to establish that the insurer is not responsible for the payment, notwithstanding that written notice has been furnished to the insurer. For the purpose of calculating the extent to which any benefits are overdue, payment shall be treated as being made on the date a draft or other valid instru-

ment which is equivalent to payment was placed in the United States mail in a properly addressed, post-paid envelope or, if not so posted, on the date of delivery.

(c) All overdue payments shall bear simple interest at the rate of 10 percent per annum.

(d) The insurer of the owner of a motor vehicle shall pay personal injury protection benefits for:

1. Accidental bodily injury sustained in this state by the owner while occupying a motor vehicle, or while not an occupant of a self-propelled vehicle if the injury is caused by physical contact with a motor vehicle.

2. Accidental bodily injury sustained outside this state, but within the United States of America or its territories or possessions or Canada by the owner while occupying the owner's motor vehicle.

3. Accidental bodily injury sustained by a relative of the owner residing in the same household, under the circumstances described in subparagraph 1. or subparagraph 2., provided the relative at the time of the accident is domiciled in the owner's household and is not himself the owner of a motor vehicle with respect to which security is required under ss. 627.730-627.741.

4. Accidental bodily injury sustained in this state by any other person while occupying the owner's motor vehicle or, if a resident of this state, while not an occupant of a self-propelled vehicle, if the injury is caused by physical contact with such motor vehicle, provided the injured person is not himself:

a. The owner of a motor vehicle with respect to which security is required under ss. 627.730-627.741, or

b. Entitled to personal injury benefits from the insurer of the owner or owners of such a motor vehicle.

(e) If two or more insurers are liable to pay personal injury protection benefits for the same injury to any one person, the maximum payable shall be as specified in subsection (1), and any insurer paying the benefits shall be entitled to recover from each of the other insurers an equitable pro rata share of the benefits paid and expenses incurred in processing the claim.

(5) **CHARGES FOR TREATMENT OF INJURED PERSONS.**—Any physician, hospital, clinic, or other person or institution lawfully rendering treatment to an injured person for a bodily injury covered by personal injury protection insurance may charge only a reasonable amount for the products, services, and accommodations rendered, and the insurer providing such coverage may pay for such charges directly to such person or institution lawfully rendering such treatment, if the insured receiving such treatment or his guardian has countersigned the invoice or bill upon which such charges are to be paid for as having actually been rendered, to the best knowledge of the insured or his guardian. In no event, however, may such a charge be in excess of the amount the person or institution customarily charges for like products, services, or accommodations in cases involving no insurance.

(6) **DISCOVERY OF FACTS ABOUT AN INJURED PERSON; DISPUTES.**—

(a) Every employer shall, if a request is made by

an insurer providing personal injury protection benefits under ss. 627.730-627.741 against whom a claim has been made, furnish forthwith, in a form approved by the Department of Insurance, a sworn statement of the earnings, since the time of the bodily injury and for a reasonable period before the injury, of the person upon whose injury the claim is based.

(b) Every physician, hospital, clinic, or other medical institution providing, before or after bodily injury upon which a claim for personal injury protection insurance benefits is based, any products, services, or accommodations in relation to that or any other injury, or in relation to a condition claimed to be connected with that or any other injury, shall, if requested to do so by the insurer against whom the claim has been made, furnish forthwith a written report of the history, condition, treatment, dates, and costs of such treatment of the injured person, together with a sworn statement that the treatment or services rendered were reasonable and necessary with respect to the bodily injury sustained and identifying which portion of the expenses for said treatment or services was incurred as a result of such bodily injury, and produce forthwith, and permit the inspection and copying of, his or its records regarding such history, condition, treatment, dates, and costs of treatment. Said sworn statement shall read as follows: "Under penalty of perjury, I declare that I have read the foregoing, and the facts alleged are true, to the best of my knowledge and belief." No cause of action for violation of the physician-patient privilege or invasion of the right of privacy shall be permitted against any physician, hospital, clinic, or other medical institution complying with the provisions of this section. The person requesting such records and said sworn statement shall pay all reasonable costs connected therewith.

(c) In the event of any dispute regarding an insurer's right to discovery of facts about an injured person's earnings or about his history, condition, or treatment, or the dates and costs of such treatment, the insurer may petition a court of competent jurisdiction to enter an order permitting such discovery. The order may be made only on motion for good cause shown and upon notice to all persons having an interest, and it shall specify the time, place, manner, conditions, and scope of the discovery. Such court may, in order to protect against annoyance, embarrassment, or oppression, as justice requires, enter an order refusing discovery or specifying conditions of discovery and may order payments of costs and expenses of the proceeding, including reasonable fees for the appearance of attorneys at the proceedings, as justice requires.

(d) The injured person shall be furnished, upon request, a copy of all information obtained by the insurer under the provisions of this section, and shall pay a reasonable charge, if required by the insurer.

(e) Notice to an insurer of the existence of a claim shall not be unreasonably withheld by an insured.

**(7) MENTAL AND PHYSICAL EXAMINATION OF INJURED PERSON; REPORTS.—**

(a) Whenever the mental or physical condition of an injured person covered by personal injury protec-

tion is material to any claim that has been or may be made for past or future personal injury protection insurance benefits, such person shall, upon request of an insurer, submit to mental or physical examination by a physician or physicians. The costs of any examinations requested by an insurer shall be borne entirely by the insurer. Such examination shall be conducted within the city of residence of the insured. If there is no qualified physician to conduct the examination within the city of residence of the insured, then such examination shall be conducted in an area of the closest proximity to the insured's residence. Personal protection insurers are authorized to include reasonable provisions in personal injury protection insurance policies for mental and physical examination of those claiming personal injury protection insurance benefits.

(b) If requested by the person examined, a party causing an examination to be made shall deliver to him a copy of every written report concerning the examination rendered by an examining physician, at least one of which reports must set out the examining physician's findings and conclusions in detail. After such request and delivery, the party causing the examination to be made is entitled, upon request, to receive from the person examined every written report available to him or his representative concerning any examination, previously or thereafter made, of the same mental or physical condition. By requesting and obtaining a report of the examination so ordered, or by taking the deposition of the examiner, the person examined waives any privilege he may have, in relation to the claim for benefits, regarding the testimony of every other person who has examined, or may thereafter examine, him in respect to the same mental or physical condition. If a person unreasonably refuses to submit to an examination, the personal injury protection carrier is no longer liable for subsequent personal injury protection benefits.

(8) With respect to any dispute under the provisions of ss. 627.730-627.741 between the insured and the insurer, the provisions of s. 627.428 shall apply.

**History.**—s. 7, ch. 71-252; s. 3, ch. 76-168; s. 4, ch. 76-266; s. 1, ch. 77-457; s. 33, ch. 77-468; s. 3, ch. 78-374; s. 114, ch. 79-40; s. 165, ch. 79-164; s. 239, ch. 79-400.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§627.737 Tort exemption; limitation on right to damages; punitive damages.—**

(1) Every owner, registrant, operator, or occupant of a motor vehicle with respect to which security has been provided as required by ss. 627.730-627.741, and every person or organization legally responsible for his acts or omissions, is hereby exempted from tort liability for damages because of bodily injury, sickness, or disease arising out of the ownership, operation, maintenance, or use of such motor vehicle in this state to the extent that the benefits described in s. 627.736(1) are payable for such injury, or would be payable but for any exclusion or deductible authorized by ss. 627.730-627.741, under any insurance policy or other method of security complying with the requirements of s. 627.733, or by an owner personally liable under s. 627.733 for the payment of such benefits, unless a person is enti-

tled to maintain an action for pain, suffering, mental anguish, and inconvenience for such injury under the provisions of subsection (2).

(2) In any action of tort brought against the owner, registrant, operator, or occupant of a motor vehicle with respect to which security has been provided as required by ss. 627.730-627.741, or against any person or organization legally responsible for his acts or omissions, a plaintiff may recover damages in tort for pain, suffering, mental anguish, and inconvenience because of bodily injury, sickness, or disease arising out of the ownership, maintenance, operation, or use of such motor vehicle only in the event that the injury or disease consists in whole or in part of:

(a) Significant and permanent loss of an important bodily function.

(b) Permanent injury within a reasonable degree of medical probability, other than scarring or disfigurement.

(c) Significant and permanent scarring or disfigurement.

(d) Death.

(3) When a defendant, in a proceeding brought pursuant to ss. 627.730-627.741, questions whether the plaintiff has met the requirements of s. 627.737(2), then the defendant may file an appropriate motion with the court, and the court shall, on a one-time basis only, 30 days before the date set for the trial or the pre-trial hearing, whichever is first, by examining the pleadings and the evidence before it, ascertain whether the plaintiff will be able to submit some evidence that the plaintiff will meet the requirements of s. 627.737(2). If the court finds that the plaintiff will not be able to submit such evidence, then the court shall dismiss the plaintiff's claim without prejudice.

(4) In any action brought against an automobile liability insurer for damages in excess of its policy limits, no claim for punitive damages shall be allowed.

**History.**—s. 8, ch. 71-252; s. 3, ch. 76-168; s. 5, ch. 76-266; s. 1, ch. 77-457; s. 35, ch. 77-468; s. 4, ch. 78-374.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **627.7372 Collateral sources of indemnity.**—

(1) In any action for personal injury or wrongful death arising out of the ownership, operation, use, or maintenance of a motor vehicle, the court shall admit into evidence the total amount of all collateral sources paid to the claimant, and the court shall instruct the jury to deduct from its verdict the value of all benefits received by the claimant from any collateral source.

(2) For purposes of this section, "collateral sources" means any payments made to the claimant, or on his behalf, by or pursuant to:

(a) The United States Social Security Act; any federal, state, or local income disability act; or any other public programs providing medical expenses, disability payments, or other similar benefits.

(b) Any health, sickness, or income disability insurance; automobile accident insurance that provides health benefits or income disability coverage; and any other similar insurance benefits except life insurance benefits available to the claimant, wheth-

er purchased by him or provided by others.

(c) Any contract or agreement of any group, organization, partnership, or corporation to provide, pay for, or reimburse the costs of hospital, medical, dental, or other health care services.

(d) Any contractual or voluntary wage continuation plan provided by employers or any other system intended to provide wages during a period of disability.

(3) Notwithstanding any other provision of this section, benefits received under the Workers' Compensation Law shall not be considered a collateral source.

**History.**—s. 34, ch. 77-468; s. 5, ch. 78-374; s. 115, ch. 79-40.

**627.7377 Physical damage deductibles.**—In providing collision coverage for physical damage to an insured's motor vehicle, insurers shall make available, upon request, deductibles of \$500, or any other amount for which the parties may contract, subject to the insurer's filed rating plan.

**History.**—s. 11, ch. 76-266.

**Note.**—This section was created subsequent to the enactment of ch. 76-168 and is therefore presumed to be excluded from the blanket repeal of ch. 627 by that act.

**627.7378 Comprehensive coverage; deductible not to apply to motor vehicle glass.**—The deductible provisions of any policy of motor vehicle insurance providing comprehensive coverage shall not be applicable to damage to the windshield of any motor vehicle covered under such policy.

**History.**—s. 1, ch. 79-241.

**627.739 Personal injury protection; optional limitations; deductibles; optional methods of payment for repair work.**—In order to prevent duplication with other private or governmental insurance or benefits for senior citizens and others with access to such insurance or benefits, each insurer providing the coverage and benefits described in s. 627.736(1) shall offer to the named insureds modified forms of personal injury protection as described in this section. Such election may be made by the named insured to apply to the named insured alone, or to the named insured and dependent relatives residing in the same household. Any person electing such modified coverage, or subject to such modified coverage as a result of the named insured's election, shall have no right to claim or to recover any amount so deducted from any owner, registrant, operator, or occupant of a vehicle or any person or organization legally responsible for any such person's acts or omissions who is made exempt from tort liability by ss. 627.730-627.741. Premium reductions for each modification or combination of modifications shall be adequate to recognize the reduction in hazard and shall be subject to the approval of the Department of Insurance.

(1) Insurers shall offer to each applicant and to each policyholder, upon the renewal of an existing policy, deductibles, in amounts of \$250, \$500, \$1,000, \$2,000, \$3,000, \$4,000, \$6,000 and \$8,000, said amount to be deducted from the benefits otherwise due each person subject to the deduction, and shall explain to each applicant or policyholder that if they have coverage under private or governmental disability plans, they may avail themselves of deducti-



bles or other modifications as provided in subsections (1), (2), and (3).

(2) Insurers shall offer coverage wherein at the election of the named insured all benefits payable under 42 U.S.C. s. 1395, the federal "Medicare" program, or to active or retired military personnel and their dependent relatives shall be deducted from those benefits otherwise payable pursuant to s. 627.736(1).

(3) Insurers shall offer coverage wherein at the election of named insured the benefits for loss of gross income and loss of earning capacity described in s. 627.736(1)(b) shall be excluded.

(4) Insurers shall offer, at the election of the named insured, one of the following options:

(a) Either a direct payment to the policyholder or a payment to any person, corporation, association, or other business entity which performs repair work upon the motor vehicle, or a combination of the foregoing; or

(b) A payment to any person, corporation, association, or other business entity performing repair work upon the motor vehicle, when the payee is under contract with the insurer to perform such work at stipulated rates which are no greater than 85 percent of prevailing rates for similar work within the county where the payee performs the work upon the motor vehicle.

(5) Each insurer may prepare and distribute to each of its policyholders a listing of all business entities under contract with the insurer to perform motor vehicle repair work at the rates described in paragraph (4)(b) of this section. The listing shall include a clear and plain explanation of the options provided as required by this section, and shall further state that if the policyholder elects to have required motor vehicle repair work done by any such business entity, the rates stipulated in the contract with the insurer shall be all of the consideration which the business entity will demand for such work and shall be paid by the insurer.

(6) Insurers may offer coverage wherein, at the election of the named insured, medical services shall be limited to specified medical providers, including hospitals, which specified medical providers may be health maintenance organizations, as provided in chapter 641, part II.

**History.**—s. 10, ch. 71-252; s. 3, ch. 76-168; s. 6, ch. 76-266; s. 1, ch. 77-457; s. 37, ch. 77-468; s. 6, ch. 78-374.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.7403 Mandatory joinder of derivative claim.**—In any action brought pursuant to the provisions of s. 627.737 claiming personal injuries, all claims arising out of the plaintiff's injuries, including all derivative claims, shall be brought together, unless good cause is shown why such claims should be brought separately.

**History.**—s. 38, ch. 77-468.

**627.7405 Subrogation.**—Notwithstanding any other provisions of ss. 627.730-627.741, any insurer providing personal injury protection benefits on a private passenger motor vehicle shall have, to the extent of any personal injury protection benefits paid to any person as a benefit arising out of such

private passenger motor vehicle insurance, a right of reimbursement against the owner or the insurer of the owner of a commercial motor vehicle, if the benefits paid result from such person having been an occupant of the commercial motor vehicle or having been struck by the commercial motor vehicle while not an occupant of any self-propelled vehicle.

**History.**—s. 7, ch. 78-374.

**627.741 Implementation of ss. 627.730-627.741.**

—The Department of Insurance shall adopt rules and regulations necessary to implement the provisions of ss. 627.730-627.741.

**History.**—s. 12, ch. 71-252; s. 3, ch. 76-168; s. 13, ch. 76-266; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

## PART XI

### SURETY INSURANCE CONTRACTS

- 627.751 Surety on required bonds; release.
- 627.752 Bonds in judicial proceedings.
- 627.753 Bond premium allowable as expense or costs.
- 627.754 Sureties upon official bonds.
- 627.755 Certain official and fiduciary bonds; special approval of surety and forms required.
- 627.756 Bonds for construction contracts; attorney fees in case of suit.
- 627.757 Deposit agreements for surety's protection authorized.
- 627.758 Surety on auto club arrest bond; conditions, limit.
- 627.759 Estoppel to deny power.

**627.751 Surety on required bonds; release.**—

(1) Subject to other applicable provisions of part XI of chapter 627, any surety insurer having a currently effective certificate of authority to transact such insurance in this state may be accepted as surety on the bond of any person required by the laws of this state to give bond, and may be the only surety necessary to render the bond valid, but other surety may, in the discretion of the official authorized to approve the bond, be required.

(2) Such a surety insurer may be released from its liability on any such bond on the same terms and conditions as are by law prescribed for the release of individuals, and shall be subject to all the rights and liabilities of natural persons.

**History.**—s. 611, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.752 Bonds in judicial proceedings.**—

(1) In all judicial proceedings, whenever it may become necessary for any party thereto to give a bond for any purpose, the bond of such party having as surety thereon any surety insurer authorized to do business in this state, may be accepted, by any officer or court whose duty is to approve such bond, without other surety. This section shall apply also to bonds given in connection with any appellate proceeding for the purpose of obtaining supersedeas, or for any other purpose.

(2) Such surety insurer may become surety upon administrators', executors' and guardians' bonds, and in such cases there need only be one surety upon such bonds.

**History.**—s. 612, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.753 Bond premium allowable as expense or costs.**—Any receiver, assignee, trustee, committee, guardian, executor or administrator, or other fiduciary required by law to give bond as such, may include as part of his lawful expense such reasonable sum paid such an insurer for such suretyship not exceeding 1 percent per annum on the amount of the bond, as the head of department, board, court, judge or officer by whom, or the court or body in which, he was appointed allows; and in all actions or proceedings the party entitled to recover costs may include therein such reasonable sum as may have been paid such an insurer executing or guaranteeing any bond or undertaking therein.

**History.**—s. 613, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.754 Sureties upon official bonds.**—

(1) Subject to s. 627.755, a solvent surety insurer authorized to transact such business in this state and having a paid-up capital stock (if a stock insurer) or surplus (if a mutual or reciprocal insurer) of not less than \$250,000, may, upon proper proof thereof and production of evidence of solvency, be accepted as surety upon the bonds of all city, county and state officers.

(2) Subject to s. 627.755, the various officers of this state whose duty it is to approve the sureties upon such bonds may accept such insurer as one of the sureties, or as the only surety, upon such bond as the solvency of the insurer may warrant.

(3) No insurer shall be relieved of its liability upon any such bond by reason of the fact that the books and accounts of the principal have been examined and approved as correct by the proper authorities when in fact there has been a breach of the bond and a loss accruing from such breach.

**History.**—s. 614, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.755 Certain official and fiduciary bonds; special approval of surety and forms required.**—

(1) No surety insurer shall execute a fidelity or surety bond for an officer or employee of this state or of any county, municipality or other subdivision thereof, or for any officer or employee of any bank, trust company or other fiduciary corporation organized under the laws of this state, except upon such assumption of risk and upon forms which have been prescribed or approved by the governor, the Department of Banking and Finance, the Department of Insurance, and the Department of Legal Affairs, or by any three of them, and until such insurer shall have procured a special authority from the governor, the Department of Banking and Finance, the Department of Insurance, and the Department of Legal Affairs, or by any three of them for the writing of

such fidelity or surety bonds.

(2) The governor, Department of Banking and Finance, Department of Insurance and Department of Legal Affairs shall remove from the list of surety insurers whose bonds are acceptable under this section, the names of any such insurers as in their judgment shall fail or refuse to carry out such obligations promptly and in good faith.

**History.**—s. 615, ch. 59-205; ss. 11, 12, 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.756 Bonds for construction contracts; attorney fees in case of suit.**—Section 627.428 (attorney fee) shall also apply as to suits brought by owners, subcontractors, laborers and material men against a surety insurer under payment or performance bonds written by the insurer under the laws of Florida to indemnify such owners, subcontractors, laborers and material men against pecuniary loss by breach of a building or construction contract; except, that the amount to be so recovered for fees or compensation of such a plaintiff's attorney shall not be more than 12.5 percent of the amount which the judgment or decree awards such plaintiff under the bond (exclusive of the costs of suit and attorney fees or compensation), nor shall it be less than \$100 where the judgment or decree is for more than \$500 nor less than \$50 where the judgment or decree is \$500 or less. Such owners, subcontractors, laborers and material men shall be deemed to be "insureds" or "beneficiaries" for the purposes of this section.

**History.**—s. 616, ch. 59-205; s. 1, ch. 70-334; s. 3, ch. 76-168; s. 17, ch. 77-353; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.757 Deposit agreements for surety's protection authorized.**—It shall be lawful for any party of whom a bond, undertaking or other obligation is required, to agree with his surety or sureties for the deposit of any or all moneys and assets for which he and his surety or sureties are or may be held responsible, with a bank, savings bank, safe-deposit or trust company, authorized by law to do business as such, or with other depository approved by the court or a judge thereof, if such deposit is otherwise proper, for the safekeeping thereof, and in such manner as to prevent the withdrawal of such money or assets or any part thereof, without the written consent of such surety or sureties, or an order of court, or a judge thereof made on such notice to such surety or sureties as such court or judge may direct; provided, however, that such agreement shall not in any manner release from or change the liability of the principal or sureties as established by the terms of the bond.

**History.**—s. 617, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.758 Surety on auto club arrest bond; conditions, limit.**—

(1) Any surety insurer which has qualified to transact surety business in this state may, in any year, become surety in an amount not to exceed \$200

with respect to any guaranteed arrest bond certificates issued in such year by an authorized automobile club or association by filing with the department an undertaking thus to become surety.

(2) Such undertaking shall be in form to be prescribed by the department and shall state the following:

(a) The name and address of the automobile club or clubs or automobile association or associations with respect to the guaranteed arrest bond certificates of which the surety insurer undertakes to be surety.

(b) The unqualified obligation of the surety insurer to pay the fine or forfeiture in an amount not to exceed \$200 of any person who, after posting a guaranteed arrest bond certificate with respect to which the insurer has undertaken to be surety, fails to make the appearance to guarantee which the guaranteed arrest bond certificate was posted.

(3) The term, guaranteed arrest bond certificate, as used herein, means any printed card or other certificate issued by the automobile club or association to any of its members, which card or certificate is signed by such member and contains a printed statement that such automobile club or association and a named surety company guarantee the appearance of the person whose signature appears on the card or certificate and that they will, in the event of failure of such person to appear in court at the time of trial, pay any fine or forfeiture imposed on such person in an amount not to exceed \$200.

**History.**—s. 618, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.759 Estoppel to deny power.**—Any surety insurer which executes any bond or undertaking of surety under part XI of this chapter shall be estopped in any proceeding to enforce the liability which it has assumed to incur to deny its corporate or other power to execute such bond or assume such liability.

**History.**—s. 619, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

## PART XII

### TITLE INSURANCE CONTRACTS

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### **627.776 Especially applicable provisions; nonapplicable chapters.**

(1) Provisions of this code especially applicable as to title insurers are contained in the following sections:

(a) Section 624.404(7) (as to "business trust insurer").

(b) Section 624.406(3) (title insurer must be a stock insurer, except as to existing domestic mutual or business trust insurers).

(c) Section 624.407 (capital, surplus, net trust fund required of new insurers).

(d) Section 624.408 (special surplus requirements; new insurers).

(e) Section 624.409 (capital funds required; old insurers).

(f) Section 624.411 (deposit requirement).

(g) Section 624.608 (definition of "title insurance").

(h) Section 625.031(4) (nonadmitted assets do not include certain properties of title insurers).

(i) Section 625.051(5) (title insurers exempt from usual unearned premium reserve).

(j) Section 625.111 (title insurance reserve).

(k) Section 625.330 (special investments by title insurer).

(l) Section 626.966 (rebates prohibited; title insurance).

(m) Section 627.401(4) (limited applicability of chapter, "the insurance contract," as to title insurance).

(n) Section 628.151 (power of title insurer to engage in related businesses).

(2) None of the provisions of any of the following are applicable as to title insurance:

(a) Part I of chapter 626 (insurance representatives; licensing procedures and general requirements);

(b) Part II of chapter 626 (general lines agents and solicitors; qualifications and requirements);

(c) Part III of chapter 626 (life insurance agents);

(d) Part IV of chapter 626 (disability insurance agents);

(e) Part V of chapter 626 (insurance adjusters);

(f) Part I of chapter 627 (rates and rating organizations);

(g) Part III of chapter 627 (life insurance policies and annuity contracts);

(h) Part IV of chapter 627 (industrial life insurance policies);

(i) Part V of chapter 627 (group life insurance);

(j) Part VI of chapter 627 (disability insurance policies);

(k) Part VII of chapter 627 (group, blanket and franchise disability insurance);

(l) Part VIII of chapter 627 (credit life and disability insurance);

(m) Part IX of chapter 627 (property insurance contracts);

(n) Part X of chapter 627 (casualty insurance contracts);

(o) Part XI of chapter 627 (surety insurance contracts);



- (p) Chapter 629 (reciprocal insurers); and  
 (q) Chapter 632 (fraternal benefit societies).

**History.**—s. 620, ch. 59-205; s. 2, ch. 61-141; s. 3, ch. 76-168; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§627.777 Approval of forms.**—No title insurer shall issue or agree to issue any form of title insurance binder, title insurance commitment, preliminary report, title insurance policy, other contract of title insurance or related forms unless the same has first been filed with and approved by the department. No title guarantee or policy form shall be disapproved on the ground that it has on it a blank form for an attorney's opinion on the title.

**History.**—s. 3, ch. 65-359; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§627.778 Limit of risk.**—

(1) No title insurer shall issue any contract of title insurance, either as a primary insurer or as a coinsurer or reinsurer, upon an estate, lien or interest in property located in this state, which does not show on its face the dollar amount of the risk assumed and which is in an amount exceeding one-half of its surplus to policyholders, unless the excess shall be simultaneously reinsured in one or more approved insurers. No title insurer shall circumvent the foregoing limitation by the issuance of two or more policies upon the same estate, lien or interest. This subsection shall not be construed to prohibit:

(a) The simultaneous issuance of policies insuring different estates, liens or interests in the same property provided each of such simultaneous policies except the paramount estates, liens or interests to which the insured estate, lien or interest is subject and provided that each policy so simultaneously issued conforms to the limitations and inhibitions of this subsection;

(b) Ceding portions of the total risk to authorized insurers. Insurance ceded, including coinsurance effected shall be deemed a retention of risk by the insurer assuming the ceded risk and not by the insurer ceding the same.

(2) Surplus to policyholders shall be determined from the last annual statement of the insurer as provided by s. 624.424.

**History.**—s. 4, ch. 65-359; s. 3, ch. 76-168; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§627.779 Trained employees.**—The department shall appoint, employ, prescribe the duties of and discharge such employees trained and knowledgeable in the field of title insurance as it deems necessary. The department shall fix the compensation of all such personnel in such amount as other state employees receive for similar services.

**History.**—s. 5, ch. 65-359; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§627.780 Illegal dealings in minimum risk rate premium.**—

(1) No person shall knowingly quote, charge, accept, collect or receive a premium for title insurance

less than the minimum risk rate premium promulgated by the department.

(2) No insurer shall knowingly accept, collect or receive any sum as minimum risk rate premium for title insurance, which insurance is not then provided or is not in due course (subject to acceptance of the risk) to be provided, unless such sum be promptly entered upon the books of account of such insurer as premium collected in advance.

**History.**—s. 6, ch. 65-359; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the effect of laws affecting this section prior to that date.

**§627.781 "Risk premium" defined.**—

(1) "Risk premium" or "premium" for the purpose of part XII of this chapter is the charge as promulgated by the Department of Insurance which shall be made by a stock insurer for the assumption of the risk or the contribution or deposit allocated to and charged by a business trust title insurer for the assumption of risk, under the several classifications of title insurance contracts. Wherever the words "premium" or "risk premium" are used in part XII of this chapter, or in the laws of this state, with respect to title insurance the same shall be construed to mean "premium" or "risk premium" as defined in this section and shall not relate to any other charge incidental to title insurance.

(2) The minimum risk premium shall not be construed to prevent a title insurer from making a reasonable charge in addition to the minimum risk premium for other services rendered the insured.

**History.**—s. 7, ch. 65-359; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§627.782 Promulgation of rates.**—

(1) The Department of Insurance shall have the power and it shall be its duty, subject to the applicable rating section of this code, to promulgate the minimum risk rate premium to be charged in this state by insurers for the respective types of title insurance contracts and services incident thereto and in connection therewith to promulgate rules and regulations incident to the applicability of such rates. Rates shall be made in accordance with the following:

(a) Due consideration shall be given to past and prospective loss experience, to a reasonable margin for underwriting profit and contingencies, to past and prospective expenses for administration and handling of risks, and other relevant factors.

(b) Rates may be grouped by classification or schedule and may differ as to class of risk assumed.

(c) Rates shall not be excessive, inadequate, or unfairly discriminatory.

(2) The minimum risk rate premium shall apply to each \$100 of insurance issued to an insured. Only the minimum risk rate premium shall be published by the department.

(3) The minimum risk rate premium promulgated for title insurance shall apply throughout this state.

**History.**—s. 8, ch. 65-359; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

to that date.

#### **1627.783 Rate deviation.—**

(1) At any time after the first promulgation of risk rates as provided for in part XII of this chapter, an authorized insurer may petition the department for an order authorizing and permitting a specific deviation in the risk premium. Such petition shall be in writing and sworn to and shall set forth allegations of fact upon which the petitioner will rely including the petitioner's reasons for requesting such deviation. Any authorized title insurer may join in such petition for like authority to deviate or may file a separate petition praying for such authority or opposing such deviation. All such petitions shall be ruled upon simultaneously.

(2) If in the judgment of the department the requested deviation is not justified, the department may enter an order denying such petition. The order or orders entered by the department granting a deviated rate shall be in the nature of a change and amendment of the promulgated risk rate and the provisions of the rate section of part XII of this chapter shall apply to any such change and amendment and the order or orders affecting the same.

**History.**—s. 9, ch. 65-359; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **1627.784 Casualty title insurance prohibited.—**

(1) No title insurance policy or guarantee of title shall be issued upon a casualty basis.

(2) The term "casualty basis" as used in this section means the issuance of a title insurance policy or guarantee of title with disregard to the possible existence of adverse matters or defects of title.

**History.**—s. 10, ch. 65-359; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.7841 Insurance against adverse matters or defects in the title.**—A title insurer issuing a binder, commitment, policy of title insurance, or guarantee of title upon an estate, lien, or interest in property located in this state through its officers, employees, contract agents, or members of a business trust title insurer, which disburses settlement or closing funds, shall insure against the possible existence of adverse matters or defects in the title which are recorded during the period of time between the effective date of the binder or commitment and the date of recording of the document creating the estate or interest to be insured, except as to matters of which the insured has knowledge.

**History.**—s. 1, ch. 79-15.

**1627.785 Preemption by state.**—The State of Florida hereby preempts the regulation of title insurers and title insurance.

**History.**—s. 11, ch. 65-359; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior

to that date.

#### **1627.786 Transaction of title insurance and any other kind of insurance prohibited.—**

(1) No insurer shall transact title insurance and any other kind of insurance in this state.

(2) Subsection (1) shall not apply to any insurer actively transacting title insurance and any other kind of insurance in this state on January 1, 1965.

(3) Subsection (1) shall not preclude a title insurer from providing instruments to any prospective insured, in the form and content as approved by the department, whereby the title insurer assumes liability for loss due to the fraud of, dishonesty of, misappropriation of funds by, or failure to comply with written closing instructions by its contract agents, approved attorneys, or members of a business trust title insurer in connection with a real property transaction for which a title insurance policy or guarantee of title by such title insurer is to be issued.

**History.**—s. 12, ch. 65-359; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 1, 2, ch. 79-16.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

### **PART XIII**

#### **VARIABLE CONTRACTS**

- 627.801 Application of part XIII.
- 627.802 Establishment and maintenance of separate accounts.
- 627.803 Statement of value of benefits.
- 627.804 Investment of assets.
- 627.805 Department; rules and regulations; qualification of companies to issue variable contracts.
- 627.806 Policy provisions; effect of other requirements.
- 627.807 Variable contract reserve requirements.

**1627.801 Application of part XIII.**—Part XIII of this chapter applies to annuity contracts with variable benefits and contracts upon the lives of beneficiaries under life insurance contracts and life insurance policies (and benefits incidental thereto) payable in fixed or variable amounts or both.

**History.**—s. 1, ch. 61-441; s. 1, ch. 73-30; s. 3, ch. 76-168; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1627.802 Establishment and maintenance of separate accounts.**—A domestic life insurance company may establish one or more separate accounts and allocate thereto amounts, including without limitation proceeds applied under optional modes of settlement or under dividend options, to provide for life insurance or annuities, and benefits incidental thereto, payable in fixed or variable amounts or both. All amounts received by the company which are required by contract to be applied to provide such variable payments or values shall be added to the appropriate separate account. If so provided under applicable contracts, that portion of the assets of any such separate account equal to the reserves and other contract liabilities with respect to such account shall not be chargeable with liabilities arising out of any other business the company may

conduct. Any deficit from mortality experience which may arise in any such separate account shall be adjusted by additions to such account by the company so that the assets of such account are always at least equal to the assets required to satisfy the company's obligations for such variable payments.

**History.**—s. 2, ch. 61-441; ss. 13, 35, ch. 69-106; s. 1, ch. 73-30; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.803 Statement of value of benefits.**—Any contract on a variable basis delivered or issued for delivery in this state, and any group certificate evidencing variable benefits issued pursuant to any such contract on a group basis, shall contain a statement of the essential features of the procedure to be followed by the insurance company in determining the dollar amount of variable benefits or values thereunder and shall state in clear terms that such amount may decrease or increase according to such procedure. However, in the case of variable life or variable endowment contracts the amount of proceeds may never decrease below the face amount of the contract. Any such contract delivered or issued for delivery in this state, and any such group certificate, shall contain on its first page, in a prominent position in 10-point type or larger, a clear statement that the benefits or values thereunder are on a variable basis.

**History.**—s. 3, ch. 61-441; s. 1, ch. 73-30; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.804 Investment of assets.**—

(1) An insurer which issues contracts providing for payments or values that vary directly according to investment experience and which has established a separate account or accounts in connection with such contracts, may invest and reinvest the assets held by such company in such separate account or accounts without regard to any requirements or limitations prescribed by the laws of this state governing the investments of life insurance companies. The investments in such separate account or accounts shall not be taken into account in applying the investment limitations otherwise applicable to the investments of the company.

(2) Where the expense factor for purchase or liquidation of securities would not be increased, any securities purchased or liquidated for any contracts with variable benefits sold in this state by a company, shall whenever possible be executed through a security brokerage office located in this state.

**History.**—s. 4, ch. 61-441; s. 1, ch. 73-30; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.805 Department; rules and regulations; qualification of companies to issue variable contracts.**—

(1) The department, notwithstanding any other provision of law, shall have the sole authority to regulate the issuance and sale of variable contracts and to issue such reasonable rules and regulations as may be necessary to carry out the purposes and provisions of this part.

(2) No life insurance corporation heretofore or hereafter incorporated pursuant to the provisions of any general or special law of this state shall undertake the issuance of any contract on a variable basis, and no insurance company formed by authority of another state or foreign country and heretofore or hereafter admitted to transact business in this state, shall undertake the issuance or delivery of any contract on a variable basis within this state, until said company has satisfied the department that its condition or methods of operation in connection with the issuance of such contracts on a variable basis will not be such as would render its operation hazardous to the public or its policyholders in this state. In determining the qualification of a company requesting authority to issue or deliver contracts on a variable basis within this state, the department will consider, among other things,

- (a) The history of the company;
- (b) The character, responsibility and general fitness of the officers and directors of the company; and
- (c) The regulation of a foreign company by its state of domicile. The state of entry of an alien company should be deemed its place of domicile for this purpose.

**History.**—s. 5, ch. 61-441; ss. 13, 35, ch. 69-106; s. 1, ch. 73-30; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.806 Policy provisions; effect of other requirements.**—Except for s. 627.453 (grace period); s. 627.458 (policy loan); s. 627.459 (reinstatement); s. 627.462 (table of installments); s. 627.475 (nonforfeiture benefits; certain interim policies); and s. 627.476 (standard nonforfeiture law; life insurance) of part III, s. 627.559 (grace period-group insurance) of part V, and as otherwise provided in this part XIII, all pertinent provisions of the Insurance Code shall apply to separate accounts and contracts relating to variable life insurance policies. Any individual variable life insurance contract delivered or issued for delivery in this state shall contain grace, reinstatement, and nonforfeiture provisions appropriate to such a contract. Any group variable life insurance contract delivered or issued for delivery in this state shall contain a grace provision appropriate to such a contract.

**History.**—s. 2, ch. 73-30; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.807 Variable contract reserve requirements.**—The reserve liability for variable contracts shall be established in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees.

**History.**—s. 2, ch. 73-30; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

## PART XIV

### PREMIUM FINANCE COMPANIES

- 627.826 "Premium finance company" defined.
- 627.827 Premium finance agreement defined.



- 627.828 License required.
- 627.829 Approval; disapproval of application; and waiting period.
- 627.830 License provisions and posting.
- 627.831 Change of location.
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- 627.833 Administrative fine and probation in lieu of suspension, revocation, or refusal to renew license.
- 627.834 Examinations.
- 627.835 Excessive premium finance charge; penalty.
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- 627.837 Rebates and inducements prohibited.
- 627.838 Filing, approval of forms, service charge filing.
- 627.839 Form and content of premium finance agreements.
- 627.840 Limitation on service and other charges.
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- 627.844 Notice of assignment; payments.
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- 627.847 Refinancing.
- 627.848 Cancellation of insurance contract upon default.
- 627.849 Fees.

**<sup>1</sup>627.826 "Premium finance company" defined.—**

(1) An "insurance premium finance company" is:

(a) A person engaged, in whole or in part, in the business of entering into premium finance agreements with insureds; or

(b) A person engaged, in whole or in part, in the business of acquiring premium finance agreements from other premium finance companies.

(2) Credit unions, banks, building and loan associations, and other lending institutions as defined under chapters 516, 656, 657, 658, and 665 are exempt from the provisions of part XIV of this chapter.

(3) The inclusion of a charge for insurance on a bona fide sale of goods or services on installments is not subject to the provisions of part XIV of chapter 627.

**History.**—s. 1, ch. 63-16; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 166, ch. 79-164.

**<sup>1</sup>Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**<sup>1</sup>627.827 Premium finance agreement defined.**

—Premium finance agreement means a promissory note or other written agreement by which an insured promises or agrees to pay to, or to the order of, a premium finance company the amount advanced or to be advanced under the agreement to an insurer or to an insurance agent, in payment of premiums on an insurance contract, together with a service charge as authorized and limited by law.

**History.**—s. 1, ch. 63-16; s. 3, ch. 76-168; s. 1, ch. 77-457.

**<sup>1</sup>Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

to that date.

**<sup>1</sup>627.828 License required.—**

(1) Except as provided in ss. 627.901 and 627.902, no person shall engage in the business of a premium finance company without a license therefor obtained from the department, as provided in part XIV of this chapter. Every premium finance company licensed under the provisions of this part shall maintain at all times a net worth of \$35,000, except that any licensed premium finance company in existence on October 1, 1973, and not having a net worth of \$35,000 shall have a period of 3 years from said date to attain such net worth. The increase in net worth during each year of such 3-year period shall not be less than \$10,000 or such amount as is needed to attain the required \$35,000 net worth. However, in lieu of having a net worth of \$35,000, a premium finance company may file a surety bond or other acceptable collateral with the department as approved by it in the amount of \$35,000.

(2) The application for license required under part XIV of this chapter shall be in writing and in the form prescribed by the department. Every applicant shall provide proof, on forms prescribed by the department, of a net worth of \$35,000 as provided for in subsection (1). Assets to be used in computing the required net worth shall be determined by rules and regulations adopted by the department.

(3) When an applicant has more than one office, separate applications for license shall be made for each such office.

(4) At the time of filing an application for a license, the applicant shall pay to the department the license fee and, upon original application or upon application subsequent to denial of application, or revocation, suspension or surrender of a license, an investigation fee.

(a) The license fee specified in s. 627.849 for each license year or part thereof shall be paid for each office where the business of a premium finance company is conducted.

(b) The investigation fee specified in s. 627.849, when required by this section, shall be paid for each office where the business of a premium finance company is conducted, except that when an applicant files application for license for more than three offices at the same time, the total investigation fee for all the applications shall be the same as the fee for three offices.

**History.**—s. 1, ch. 63-16; ss. 13, 35, ch. 69-106; s. 2, ch. 69-197; s. 1, ch. 72-249; s. 1, ch. 73-134; s. 3, ch. 76-168; s. 1, ch. 77-457.

**<sup>1</sup>Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**Note.**—Former s. 627.0992.

**<sup>1</sup>627.829 Approval; disapproval of application; and waiting period.—**

(1) The department shall issue the license or refuse to issue the license, if it is found by it that the management of the premium finance company filing the application is lacking in managerial experience as to make the proposed operation hazardous to the insurance-buying public, or which it has good reason to believe is affiliated directly or indirectly through ownership, control, or in other business relations with any person or persons whose business operations are or have been marked as detrimental to the

public, policyholders, stockholders, investors, or creditors by manipulation of assets or of accounts or by bad faith. Such license to engage in business in accordance with the provisions of this law at the location specified in the application shall be executed in duplicate by the department, and it shall transmit one copy thereof to the applicant and file a copy in the office of the department.

(2) If the department refuses to issue a license, it shall notify the applicant of the denial, return to the applicant the sum paid as a license fee, but retain the investigation fee to cover the costs of investigating the applicant.

(3) Each license issued hereunder shall remain in full force and effect until September 30 of the year for which issued unless earlier surrendered, suspended, or revoked pursuant to part XIV, and may be renewed for the ensuing license year upon the filing of an application in conformity with s. 627.828 but subject to all of the provisions of this section. If an application for a renewal of a license is filed with the department before October 1 of any year, the license sought to be renewed shall be continued in full force and effect either until the issuance by the department of the renewal license applied for or until 5 days after the department refuses to issue such renewal license under the provisions of this section.

(4) Only one office may be maintained under each license, but more than one license may be issued to the same licensee pursuant to part XIV.

(5) Any person engaged in the business of a premium finance company on October 1, 1963 may continue in operation in accordance with the provisions of part XIV but must obtain a license for each office at which he engages in the business of a premium finance agency by October 1, 1963.

**History.**—s. 1, ch. 63-16; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.830 License provisions and posting.**—Such license shall state the name and address of the licensee and shall be kept conspicuously posted in the office of the licensee and shall not be transferable or assignable.

**History.**—s. 1, ch. 63-16; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.831 Change of location.**—Before any licensee changes any office of his to another location, he shall give written notice thereof to the department which shall without charge issue an endorsement indicating the change and the date thereof, which endorsement shall be attached to the license for such office and be authority for the operation of the business under such license at such new location.

**History.**—s. 1, ch. 63-16; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.832 Grounds for refusal, suspension, and revocation of license.**—

(1) The department may forthwith deny, suspend, revoke, or refuse to renew or continue any license hereunder, if it shall find that:

(a) The licensee has failed to pay the annual license fee or any sum of money lawfully demanded under authority of any other section of this chapter, or to comply with any demand, ruling, or requirement of the department lawfully made pursuant to and within the authority of part XIV.

(b) The licensee has violated any provision of part XIV or any rule or regulation lawfully made by the department under and within the authority of part XIV.

(c) Any fact or condition exists which, if it had existed at the time of the original application for such license, clearly would have warranted the department in refusing originally to issue such license.

(2) The department may revoke or suspend only the particular license with respect to which grounds for revocation or suspension may occur or exist; or if it shall find that such grounds for revocation or suspension are of general application to all offices, or to more than one office, operated by such licensee, it shall revoke or suspend all of the licenses issued to such licensee or such number of licenses as such grounds apply to, as the case may be.

(3) Any licensee may surrender any license by delivering to the department written notice that he thereby surrenders such license, but such surrender shall not affect such licensee's civil or criminal liability for acts committed prior to such surrender.

(4) No revocation or suspension or surrender of any license shall impair or affect the obligation of any insured under any lawful premium finance agreement previously acquired or held by the licensee.

(5) Every license issued hereunder shall remain in force and effect until the same shall have been surrendered, revoked, suspended, or expires in accordance with the provisions of part XIV; but the department shall have authority to reinstate suspended licenses or to issue new licenses to a licensee whose license or licenses shall have been revoked, if no fact or condition then exists which clearly would have warranted the department in refusing originally to issue such license under part XIV.

**History.**—s. 1, ch. 63-16; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.833 Administrative fine and probation in lieu of suspension, revocation, or refusal to renew license.**—The department may in its discretion in lieu of a suspension, revocation, or refusal to renew or continue any license, impose on the licensee an administrative penalty or place such licensee on probation pursuant to ss. 626.681 and 626.691 of this code.

**History.**—s. 1, ch. 63-16; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.834 Examinations.**—

(1) The department may conduct examinations and investigations of premium finance companies under the provisions of ss. 624.307 and 626.601 of this code.

(2) As often as it deems necessary and not less frequently than each 3 years, the department shall examine each licensed premium finance company.

The examination shall be for the purpose of ascertaining compliance by the person examined with the applicable provisions of this part.

**History.**—s. 1, ch. 63-16; ss. 13, 35, ch. 69-106; s. 2, ch. 72-249; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**Note.**—Former s. 627.0998.

#### **§627.835 Excessive premium finance charge; penalty.—**

(1) Any person, premium finance company, or other legal entity who or which knowingly takes, receives, reserves, or charges a premium finance charge other than that authorized by this law shall thereby forfeit the entire premium finance charge to which such person, premium finance company, or entity would otherwise be entitled and any person who shall have paid such unlawful finance charge may personally or by his legal or personal representative, by suit for recovery thereof brought within two years from the date of such payment, recover from such person, premium finance company, or legal entity twice the entire amount of the premium finance charge so paid.

(2) Section 624.15 shall be applicable to each willful violation as to which a greater penalty is not provided by another provision of this code or by other applicable laws of this state.

**History.**—s. 1, ch. 63-16; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **§627.836 Licensee's books and records; reports.—**

(1) The licensee shall keep and use in his business such books, accounts, and records as will enable the department to determine whether such licensee is complying with the provisions of part XIV and with the rules and regulations lawfully made by the department hereunder. Every licensee shall preserve such books, accounts, and records, including cards used in a card system, if any, for at least 3 years after making the final entry in respect to any premium finance agreement recorded therein; provided, however, the preservation of photographic reproductions thereof or records in photographic form shall constitute compliance with this requirement.

(2) Each licensee shall annually, on or before March 1, file a report with the department giving such information as the department may require concerning the business and operations during the preceding calendar year of each licensed place of business conducted by the licensee within the state under the authority of part XIV. Such report shall be made under oath and in the form prescribed by the department and shall be accompanied by the annual report filing fee specified in s. 627.849. The department may make and publish annually an analysis and recapitulation of such reports. In addition to such annual reports, the department may require of licensees, under oath and in the form prescribed by it, such additional regular or special reports as it may deem necessary to the proper supervision of licensees under part XIV.

**History.**—s. 1, ch. 63-16; ss. 13, 35, ch. 69-106; s. 4, ch. 72-249; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective

July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**Note.**—Former s. 627.1000.

#### **§627.837 Rebates and inducements prohibited.—**

(1) No premium finance company, and no employee of such a company, shall pay, allow, or offer to pay or allow in any manner whatsoever to an insurance agent or any employee of an insurance agent, or to any other person, either as an inducement to the financing of any insurance policy with the premium finance company or after any such policy has been financed, any rebate whatsoever, either from the service charge for financing specified in the premium finance agreement or otherwise, or shall give or offer to give any valuable consideration or inducement of any kind directly or indirectly, other than an article of merchandise not exceeding \$1 in value which shall have thereon the advertisement of the premium finance company; but a premium finance company may purchase or otherwise acquire a premium finance agreement, provided that it conforms to part XIV in all respects, from another premium finance company with recourse against the premium finance company on such terms and conditions as may be mutually agreed upon; and

(2) No filing of the assignment or notice thereof to the insured shall be necessary to the validity of the written assignment of a premium finance agreement as against creditors or subsequent purchasers, pledgees, or encumbrancers of the assignor.

**History.**—s. 1, ch. 63-16; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **§627.838 Filing, approval of forms, service charge filing.—**

(1) No premium finance agreement form or related form shall be used in this state by a premium finance company unless it has been filed with and approved by the department.

(2) Every such filing shall be made not less than 30 days in advance of issuance or use. At the expiration of 30 days from date of filing, a form so filed shall be deemed approved unless prior thereto it has been affirmatively approved or disapproved by written order of the department. The department may extend by not more than an additional 15 days the period within which it may so affirmatively approve or disapprove any such form by giving notice of such extension before the expiration of the initial 30-day period. At the expiration of any such period as so extended and in the absence of prior affirmative approval or disapproval, any such form shall be deemed approved.

(3) In addition each premium finance company shall file with the department the service charge and interest rate plan to be charged in premium financing including all modifications of service charges and interest rate to be paid by the insured or others under a premium finance agreement. Every filing shall state the effective date thereon. Such filing shall be made not less than 30 days prior to its effective date.



(4) Each such filing shall be accompanied by the applicable filing fee specified in s. 627.849.

**History.**—s. 1, ch. 63-16; ss. 13, 35, ch. 69-106; s. 3, ch. 72-249; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**Note.**—Former s. 627.1002.

#### **627.839 Form and content of premium finance agreements.—**

(1) A premium finance agreement shall be in writing, dated, and signed by or on behalf of the insured, and the printed portion thereof shall be in at least 8-point type.

(2) It shall contain the entire agreement of the parties with respect to the insurance contract, the premiums for which are advanced or to be advanced under it, and:

(a) At its top, the words PREMIUM FINANCE AGREEMENT in at least 10-point bold type; and

(b) A notice in at least 8-point bold type, reading as follows: "NOTICE:

1. Do not sign this agreement before you read it or if it contains any blank space.

2. You are entitled to a completely filled-in copy of this agreement.

3. Under the law, you have the right to pay off in advance the full amount due and under certain conditions to obtain a partial refund of the service charge."

(3) A premium finance agreement shall:

(a) Contain the name and place of business of the insurance agent negotiating the related insurance contract, the name and residence or the place of business of the insured as specified by him, the name and place of business of the premium finance company to which installment or other payments are to be made, a description of the insurance contract, the premiums for which are advanced or to be advanced under the agreement, and the amount of the premiums for such insurance contract; and

(b) Set forth the following items:

1. The total amount of the premiums;

2. The amount of the down payment;

3. The principal balance, which is the difference between subparagraphs 1. and 2.;

4. The amount of the service charge;

5. The balance, which is the sum of subparagraphs 3. and 4., payable by the insured, the number of installments required, the amount of each installment expressed in dollars and the due date or period thereof;

(4) The items need not be stated in the sequence or order set forth above, inapplicable items may be omitted; additional items may be included to explain the computations made in determining the amount to be paid by the insured.

(5) No premium finance agreement shall be signed by an insured when it contains any blank space to be filled in after it has been signed; however, if the insurance contract, the premiums for which are advanced or to be advanced under the agreement, has not been issued at the time of its signature by the insured and it so provides, the name of the authorized insurer by whom such insurance contract is issued and the policy number and the due date of the first installment may be left blank and later

inserted in the original of the agreement after it has been signed by the insured.

**History.**—s. 1, ch. 63-16; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **627.840 Limitation on service and other charges.—**

(1) A premium finance company shall not charge, contract for, receive, or collect a service charge other than as permitted by part XIV of this chapter.

(2) A premium finance company may, in a premium finance agreement, contract for, charge, receive, and collect a service charge for financing the premiums under the agreement computed as provided in subsection (3).

(3)(a) The service charge provided for in this section shall be computed on the balance of the premiums due, after subtracting the down payment made by the insured in accordance with the premium finance agreement, from the effective date of the insurance coverage for which the premiums are being advanced to and including the date when the final payment of the premium finance agreement is payable.

(b) The service charge shall be a maximum of \$9 per \$100 per annum plus an additional charge, which shall not exceed \$15, which additional charge need not be refunded upon prepayment. Such additional charge may be charged only once in a 12-month period for any one customer unless that customer's policy has been canceled due to nonpayment within the immediately preceding 12-month period. However, any insured may prepay his premium finance agreement in full at any time before due date of the final payment, and in such event the unearned service charge shall be refunded in accordance with the "Rule of 78ths" and shall represent at least as great a proportion of the service charge, if any, as the sum of the periodic balances after the month in which prepayment is made bears to the sum of all periodic balances under the schedule of payments in the agreement. When the amount of the refund is less than \$1, no refund need be made.

(c) Such service charge shall be inclusive of all charges incident to the premium finance agreement and for the extension of credit provided for therein.

(d) Paragraphs (a)-(c) apply if the premiums under only one insurance contract are advanced or to be advanced under a premium finance agreement; if premiums under more than one insurance contract are advanced or to be advanced under a premium finance agreement, the service charge shall be computed from the inception date of such insurance contracts, or from the due date of such premiums; however, not more than one minimum service charge shall apply to each premium finance agreement.

(e) No insurance agent or premium finance company shall induce an insured to become obligated under more than one premium finance agreement for the purpose of obtaining more than one minimum service charge.

**History.**—s. 1, ch. 63-16; s. 1, ch. 69-224; s. 1, ch. 76-126; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective

July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§627.841 Delinquency, collection, and cancellation charges; attorney's fees.—**

(1) A premium finance agreement may provide for the payment by the insured of a delinquency and collection charge on each installment in default for a period of not less than 5 days in an amount of \$1 to a maximum not to exceed 5 percent of such installment or \$5, whichever is less, provided that only one such delinquency and collection charge may be collected on any such installment regardless of the period during which it remains in default; and if the default results in the cancellation of any insurance contract listed in the agreement, the agreement may provide for the payment by the insured of a cancellation charge equal to the difference between any delinquency and collection charge imposed in respect to the installment in default and \$5.

(2) A premium finance agreement may, also, provide for the payment of attorney's fees not exceeding 20 percent of the amount due and payable under the agreement if it is referred for collection to an attorney not a salaried employee of the premium finance company holding the agreement.

(3) Notwithstanding the provisions of this section, a premium finance company shall not take, receive from, or charge an insured any cancellation charge or attorney's fees unless, within 10 days after default in the payment of any installment of a premium finance agreement, the premium finance company has mailed a notice of the default to the insured at his address as shown on the agreement and to any insurance agent named therein at his place of business as shown giving the insured at least 5 days within which to make the payment in default.

**History.**—s. 1, ch. 63-16; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§627.842 Restrictions on premium finance agreements.—**No premium finance agreement shall contain any provision by which:

(1) In the absence of default of the insured, the premium finance company holding the agreement may, arbitrarily and without reasonable cause, accelerate the maturity of any part or all of the amount owing thereunder;

(2) A power of attorney is given to confess judgment in this state; or

(3) The insured relieves the insurance agent or the premium finance company holding the agreement from liability for any legal rights or remedies which the insured may otherwise have against him.

**History.**—s. 1, ch. 63-16; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§627.843 Delivery of copy of premium finance agreement.—**Before the due date of the first installment payable under a premium finance agreement, the premium finance company holding the agreement or the insurance agent shall deliver to the insured, or mail to him at his address as shown in the agreement, a copy thereof or, if the agreement contained any blank space when it was signed and such

blank space was subsequently filled in, in accordance with s. 627.839(5), a copy of the agreement as so filled in.

**History.**—s. 1, ch. 63-16; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§627.844 Notice of assignment; payments.—**

Unless the insured has notice of actual or intended assignment of a premium finance agreement, payment thereunder by him to the last known holder of the agreement shall be binding upon all subsequent holders or assignees.

**History.**—s. 1, ch. 63-16; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§627.845 Statement of account; receipts.—**

(1) At any time after its execution, but not later than 1 year after the last payment thereunder, a premium finance company holding a premium finance agreement shall, upon written request of the insured, give or mail to him a written statement of the dates and amounts of payments and the total amount, if any, unpaid thereunder. Such a statement shall be supplied once each year without charge; if any additional statement is requested, the premium finance company shall supply such statement at a charge not exceeding \$1 for each additional statement so supplied. An insured shall be given a receipt for a payment when made in cash.

(2) After the payment of all sums for which an insured is obligated under a premium finance agreement, and upon his written demand, the premium finance company holding the agreement shall deliver, or mail to the insured at his last known address, such one or more good and sufficient instruments as may be necessary to acknowledge payment in full and to release all interest in or rights to the insurance contracts, the premiums for which were advanced or are to be advanced under the agreement.

**History.**—s. 1, ch. 63-16; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§627.847 Refinancing.—**A premium finance company may, upon agreement with the insured, extend the scheduled due date or defer the scheduled payment of all or any part of any installment or installments payable thereunder. The agreement for such extension or deferment must be in writing and signed by the parties thereto. The premium finance company may charge and contract for the payment of an extension or deferral charge by the insured and collect and receive the same; but such charge may not exceed an amount equal to 1 percent per month simple interest on the amount of the installment or installments, or part thereof, extended or deferred for the period of extension or deferral. Such period shall not exceed the period from the date when such extended or deferred installment or installments, or part thereof, would have been payable in the absence of such extension or deferral, to the date when such installment or installments, or part thereof, are made payable under the agreement of extension or deferment; except that a minimum charge of \$1 for the period of extension or deferral may be made in

any case where the extension or deferral charge, when computed at such rate, amounts to less than \$1.

**History.**—s. 1, ch. 63-16; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§627.848 Cancellation of insurance contract upon default.**—When a premium finance agreement contains a power of attorney or other authority enabling the premium finance company to cancel any insurance contract or contracts listed in the agreement, the insurance contract or contracts shall not be canceled unless such cancellation is effectuated in accordance with the following provisions:

(1) Not less than 10 days' written notice be served upon the insured or insureds shown on the premium finance agreement of the intent of the premium finance company to cancel his or their insurance contract or contracts unless the defaulted installment payment is received within 10 days.

(2) After expiration of such period, the premium finance company shall mail the insurer a request for cancellation, specifying the effective date of such cancellation, mailing a copy to the insured at his last known address as shown on the premium finance agreement.

(3) Every such notice of cancellation shall include, in type or print of which its face shall not be smaller than 12 point, a statement that if the insurance contract or contracts provide motor vehicle liability insurance required by the financial responsibility law proof of financial responsibility is required to be maintained continuously for a period of 3 years, pursuant to chapter 324 and that the operation of a vehicle without such financial responsibility is unlawful.

(4) Upon receipt of a copy of such cancellation notice by the insurer or insurers, the insurance contract shall be canceled with the same force and effect as if the aforesaid notice of cancellation had been submitted by the insured himself, without requiring the return of the insurance contract or contracts.

(5) All statutory, regulatory, and contractual restrictions providing that the insured may not cancel his insurance contract unless he or the insurer first satisfies such restrictions by giving a prescribed notice to a governmental agency, the insurance carrier, a mortgagee, an individual, or a person designated to receive such notice for said governmental agency, insurance carrier, or individual shall apply where cancellation is effected under the provisions of this section. The insurer, in accordance with said prescribed notice where it is required to give such notice in behalf of itself or the insured, shall give notice to such governmental agency, person, mortgagee or individual; and it shall determine and calculate the effective date of cancellation from the day it receives the copy of the notice of cancellation from the premium finance company.

(6) Whenever an insurance contract is canceled in accordance with this section, the insurer shall promptly return whatever gross unearned premiums are due under the contract to the premium fi-

nance company effecting the cancellation for the benefit of the insured or insureds.

**History.**—s. 1, ch. 63-16; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **§627.849 Fees.**

(1) The department shall collect in advance, and the persons so served shall pay to it in advance, the following fees:

- (a) Annual license fee ..... \$250
- (b) Investigation fee ..... 100
- (c) Annual report filing fee ..... 25
- (d) Form filing fee ..... 10

(2) The fees received under this section shall be credited to the Insurance Commissioner's Regulatory Trust Fund.

**History.**—s. 5, ch. 72-249; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

### **PART XV**

#### **PREMIUM FINANCING**

- 627.901 Premium financing by an insurance agent or agency.
- 627.902 Premium financing by an insurer or subsidiary.
- 627.903 Premium finance cost specified.
- 627.904 Insurers filing; approval of forms; service charge filing.

#### **§627.901 Premium financing by an insurance agent or agency.**

(1) A general lines agent as defined in the code and duly licensed thereunder or a general lines insurance agency transacting kinds of insurance as provided in s. 626.041, may make certain reasonable service charges for financing such insurance premiums on policies issued or business produced by said agent or agency, ss. 626.965 and 626.970 notwithstanding. The service charge for financing such premium or premiums shall not exceed \$1 per installment, nor exceed \$6 total service charge per annum, for any premium balance of \$120 or less. For any premium balance greater than \$120 but not more than \$220 the service charge shall not exceed \$9 per annum. The maximum service charge of \$1 per installment for any premium balance greater than \$220 shall not exceed \$12 per annum. An insurance agent or agency in lieu of such service charges may charge a rate of interest not to exceed 10 percent simple interest per annum on the unpaid balance.

(2) Every such agent or agency engaging in premium financing whose service charge or rate of interest is more than as provided in subsection (1) shall be subject to part XIV of this chapter.

**History.**—s. 2, ch. 63-16; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **§627.902 Premium financing by an insurer or subsidiary.**

(1) An insurer as defined in the code and authorized to transact insurance in this state or a subsidiary of such insurer or a corporation under substan-



tially the same management or control as an authorized insurer or group of authorized insurers, may finance property, casualty, surety, and marine insurance premiums on policies issued or business produced by said insurer or insurers in substantial accordance with the service charges or rate of interest as provided in s. 627.901.

(2) Any insurer, subsidiary, corporation or group of insurers referred to in subsection (1) whose service charge or rate of interest is substantially more than that provided in s. 627.901 shall be subject to part XIV of this chapter.

**History.**—s. 2, ch. 63-16; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.903 Premium finance cost specified.—**

(1) Where premium financing service charges or interest is included in the overall price or cost of insurance, the insurer, insurance agent, or agency shall separately state and identify the amount of service charges or interest to be paid for the financing of such premiums.

(2) All service charges or interest shall be separately stated and identified in all invoices issued to the policyholder and in the records or accounts maintained by the insurer or corporation as provided in s. 627.902 agent, or agency.

**History.**—s. 2, ch. 63-16; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**627.904 Insurers filing; approval of forms; service charge filing.**—An insurer or a subsidiary of such insurer or a corporation under substantially the same management or control as an authorized insurer or group of authorized insurers shall file premium finance agreement forms or related forms and service charge or interest rate plan to be charged as provided in s. 627.838 separately from rates and filings required under part I of this chapter.

**History.**—s. 2, ch. 63-16; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

## CHAPTER 628

INSURANCE CODE: STOCK AND MUTUAL INSURERS;  
ORGANIZATION AND CORPORATE PROCEDURES

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**628.011 Scope of chapter.**—This chapter applies only as to domestic stock and mutual insurers, except that s. 628.341(2) (nonassessable policies, mutual insurers) shall apply also as to foreign and alien insurers.

**History.**—s. 621, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**628.021 "Stock insurer" defined.**—A "stock insurer" is an incorporated insurer with its capital divided into shares and owned by its stockholders.

**History.**—s. 622, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**628.031 "Mutual insurer" defined.**—A "mutual insurer" is an incorporated insurer without permanent capital stock, and the governing body of which is elected in accordance with this chapter.

**History.**—s. 623, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**628.041 Applicability of general corporation statutes.**—The applicable statutes of this state relating to the powers and procedures of domestic private corporations formed for profit shall apply to domestic stock insurers and to domestic mutual insurers, except where in conflict with the express provisions of this code.

**History.**—s. 624, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**628.051 Permit required to form insurer; application.**—

(1) No domestic insurer shall hereafter be formed unless the persons so proposing have applied to the department for and have received from the department a permit therefor.

(2) Written application for such permit shall be filed with the department and shall include:

(a) Name, type, and purpose of insurer.

(b) Name, residence address, business background, and qualifications of each person associated or to be associated in the formation or financing of the insurer.

(c) Full disclosure of the terms of all understandings and agreements existing or proposed among persons so associated relative to the insurer, or the formation or financing thereof, accompanied by a

copy of each such agreement or understanding.

(d) Full disclosure of the terms of all understandings and agreements existing or proposed for management or exclusive agency contracts.

(e) A copy of each of any or all proposed articles or certificates of incorporation and proposed bylaws of the proposed insurer.

(f) Such other pertinent information as the department may reasonably require.

(3) File with the department:

(a) A copy of each of any and all articles or certificates of incorporation of involved corporations, if a copy of the same is not already on file in the department.

(b) A copy of each of any and all syndicate, association, firm, partnership, organization or other similar agreements, by whatever name called, involved in the formation of the proposed insurer or its financing.

(c) If the insurer or proposed insurer is a reciprocal insurer, a copy of the power of attorney and of other agreements existing or proposed as affecting investors, subscribers, the attorney in fact, the insurer or proposed insurer.

(d) A copy of any security, or of any proposed document evidencing any right or interest, proposed to be offered.

(e) A copy of any other pertinent document as reasonably requested by the department.

(4) The application shall be accompanied by the filing fee specified therefor in s. 624.501.

**History.**—s. 625, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**628.061 Investigation of proposed organization.**—In connection with any proposal to incorporate a domestic insurer as referred to in s. 628.051, the department shall make an investigation of:

(1) The character, reputation, financial standing, and motives of the organizers, incorporators, and subscribers organizing the proposed insurer.

(2) The character, financial responsibility, insurance experience, and business qualifications of its proposed officers.

(3) The character, the financial responsibility, business experience and standing of the proposed stockholders and directors.

**History.**—s. 626, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**628.071 Granting, denial of permit.**—

(1) The department shall expeditiously examine and investigate the application for a permit as referred to in s. 628.051. Subject to subsection (3), if it finds that:

(a) The application is complete,

(b) The documents therewith filed are in compliance with law,

(c) The proposed financial structure is adequate, and

(d) The proposed officers and directors have sufficient insurance experience, ability, and standing to assure reasonable promise of successful operation,

it shall issue to the applicant a permit to form the proposed insurer.

(2) No permit granted under the provisions of this section shall be valid after 1 year from date of issue or after extension of such period, not exceeding 1 year, as may be authorized by the department upon cause shown. The articles of incorporation and all other proceedings thereunder shall become void 1 year from issue date of such permit or expiration of such extended period, unless the formation of the proposed insurer shall have been completed and a certificate of authority issued by the department.

(3) If the department does not so find, or finds that the insurer if formed or financed would not be able to qualify for or retain a certificate of authority by reason of the provisions of s. 624.404(3), a permit will not be granted.

**History.**—s. 627, ch. 59-205; s. 1, ch. 63-18; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**628.081 Incorporation of domestic insurer.**—

(1) This section applies to stock and mutual insurers hereafter incorporated in this state.

(2) Five or more individuals, none of whom is less than 18 years of age, may incorporate a stock insurer; 10 or more individuals, none of whom is less than 18 years of age, may incorporate a mutual insurer. At least a majority of the incorporators shall be citizens of the United States.

(3) The incorporators shall execute articles of incorporation in triplicate, and at least three of the incorporators shall acknowledge their execution thereof before an officer authorized to take acknowledgments. The articles of incorporation shall state the purpose for which the corporation is formed, and shall state and show:

(a) The name of the corporation, which shall comply with s. 624.405 of this code. If a mutual, the name shall contain "mutual" as part thereof.

(b) The duration of its existence, which may be perpetual.

(c) The kinds of insurance, as defined in this code, which the corporation is formed to transact.

(d) If a stock corporation, its authorized capital stock, number of shares of stock into which divided, and the par value of each such share, which par value shall be at least \$1 but not more than \$100.

(e) If a mutual corporation, the maximum contingent liability of its members, other than as to nonassessable policies, for payment of losses and expenses incurred; such liability shall be as stated in the articles of incorporation, but shall not be less than one nor more than 10 times the premium for the member's policy at the annual premium rate for a term of 1 year.

(f) The number of directors, not less than five, who shall constitute the board of directors and conduct the affairs of the corporation; also the names, addresses and terms of the members of the initial board of directors. The term of office of initial directors shall be for not more than 1 year after the date of incorporation.

(g) The name of the county, and the city, town or place within the county, in which its principal office



or principal place of business is to be located in this state.

(h) Such other provisions, not inconsistent with law, deemed appropriate by the incorporators.

(i) The name and residence address of each incorporator and the citizenship of each incorporator who is not a citizen of the United States.

(4) Articles of incorporation shall be filed and be subject to approval as provided in s. 628.091.

**History.**—s. 628, ch. 59-205; s. 3, ch. 76-168; s. 58, ch. 77-121; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **628.091 Filing, approval of articles of incorporation.—**

(1) No domestic stock or mutual insurer shall hereafter be formed in this state unless the articles of incorporation thereof are approved by the department prior to filing the same with and approval by the Department of State as otherwise provided by law.

(2) The incorporators shall file the triplicate originals of the articles of incorporation with the department, accompanied by the filing fee therefor as specified in s. 624.501.

(3) The department shall promptly examine the articles of incorporation. If it finds that the articles of incorporation conform to law, and that a permit has been or will be issued as provided by s. 628.071, it shall endorse its approval on each of the triplicate originals of the articles of incorporation, retain one copy thereof for its files, and return the two remaining copies to the incorporators for filing with the Department of State as required by law.

(4) If after examining the articles of incorporation the department does not find as referred to in subsection (3), it shall refuse to approve the articles of incorporation and shall return the triplicate originals thereof to the incorporators.

**History.**—s. 629, ch. 59-205; ss. 10, 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**628.101 Amendment of certificate of incorporation; stock insurer.**—A domestic stock insurer shall not effectuate an amendment to its certificate of incorporation until a copy of the proposed amendment has been filed with and approved by the department. The department shall promptly examine any such proposed amendment and shall approve the same unless it finds that the proposed amendment does not comply with law.

**History.**—s. 630, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **628.111 Same; mutual insurer.—**

(1) A domestic mutual insurer heretofore or hereafter formed may amend its articles of incorporation for any lawful purpose by affirmative vote of a majority of those of its members present or represented by proxy at a lawful meeting of its members of which the notice given members included due notice of the proposal to amend.

(2)(a) Upon adoption of the amendment the in-

surer shall make in triplicate under its corporate seal a certificate thereof, setting forth the amendment and the date and manner of the adoption thereof, which certificate shall be executed by the insurer's president or vice president and secretary or assistant secretary and acknowledged before an officer authorized to take acknowledgments. The insurer shall deliver the triplicate originals of the certificate to the department together with the filing fee specified therefor in s. 624.501.

(b) The department shall promptly examine the certificate of amendment, and if it finds that the certificate and the amendment comply with law it shall endorse its approval upon each of the triplicate originals, place one thereof on file in its office, and return the remaining two sets to the insurer. The insurer shall forthwith file such endorsed certificates of amendment with the Department of State as otherwise required by law. The amendment shall be effective when filed with and approved by the Department of State.

(3) If the department finds that the proposed amendment or certificate does not comply with the law, it shall not approve the same, and shall return the triplicate certificate of amendment to the insurer.

**History.**—s. 631, ch. 59-205; ss. 10, 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **628.121 Capital stock; amount; payment.—**

(1) The articles of incorporation of a stock insurer shall provide for authorized capital in amount not less than that required under this code as to such insurer for the kind or kinds of insurance to be transacted.

(2) In the sale of the insurer's capital stock an amount not less than the minimum paid-in capital stock required under this code as to the insurer for authority to transact the kind or kinds of insurance to be transacted, shall be paid-in lawful money of the United States or in equivalent United States Government securities; any additional sums paid for stock or any stock sold after the minimum required capital has been so paid-in in money, may be in the form of any type of securities in which the insurer is authorized under part II of chapter 625 of this code to invest its funds, subject to the terms and conditions of such chapter, and subject further to the applicable provisions of law.

**History.**—s. 632, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **628.131 Limitation on organization and stock sales expenses.—**

(1) Total expense involved in the incorporation and financing of a new domestic stock insurer shall not exceed 15 percent of the funds actually received by or on behalf of the corporation from the sale of its securities, including incorporation fees, underwriting fees and costs, attorneys' fees, printing costs and other services and costs involved in such incorporation and financing.

(2) No president, vice president, secretary, treasurer, director or any other executive officer of any

such insurer shall participate in the commissions received or to be received by any person selling or negotiating the sale of any security of such an insurer either directly or indirectly.

**History.**—s. 633, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **1628.141 Underwriters represented on board.**

—In event the financing of a new domestic stock insurer is by public offering of its securities through an underwriter or underwriters of such an offering, such underwriter or underwriters shall be entitled to have not less than one nominee on the insurer's board of directors.

**History.**—s. 634, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **1628.151 Insurance business exclusive.—**

(1) No domestic insurer heretofore or hereafter formed shall engage in or have corporate power to engage directly or indirectly in any business other than the insurance business and in business activities reasonably and necessarily incidental to such insurance business.

(2) Except that:

(a) Any title insurer heretofore formed under a charter authorizing it to engage also in the trust business, shall have the right to continue to engage in both such businesses.

(b) A title insurer may also engage in business as an escrow agent, and any insurer may also engage in the business of making, acquiring, selling, dealing in, and servicing of real estate mortgage loans and loans incidental thereto.

(3) A business trust whose declaration of trust was filed with the Secretary of State of Florida prior to January 1, 1959, and which, at the time of the adoption of this code, held a certificate of authority as a title insurer may qualify as an insurer for lawyers' professional liability insurance by complying with the applicable provisions of this code.

**History.**—s. 635, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **1628.152 Domestic stock insurers; proxies, consents and authorizations in respect of any voting security.—**

(1) The department may, by regulation, prescribe the form, content and manner of solicitation of any proxy, consent or authorization in respect of any voting security issued by a domestic stock insurer as necessary or appropriate in the public interest or for the proper protection of investors in the voting securities issued by such insurer, or to insure the fair dealing in such voting securities.

(2) No person and no domestic stock insurer or any director, officer or employee of such insurer shall solicit or permit the use of his name to solicit, by mail or otherwise, any person to give any proxy, consent or authorization in respect of any voting security issued by such insurer in contravention of any rule or regulation the department may prescribe pursuant to this section.

(3) Failure to comply with any rule or regulation

of the department made pursuant to this section shall be unlawful and any proxy or consent obtained in violation of this section or in contravention of any rule or regulation issued pursuant thereto shall be void. Any domestic stock insurer or any person (who is legally entitled to vote, consent or authorize by virtue of being the holder of record of such voting security) or the department, if any of the foregoing parties shall fail to act within 15 days after the date on which such vote was cast or counted, may enforce compliance with the rules and regulations made pursuant to this section, by appropriate action in law or equity.

(4) None of the provisions of this section shall apply to voting securities of a domestic stock insurer if such voting securities shall be registered pursuant to s. 12 of the Securities Exchange Act of 1934, as amended.

(5) The term "voting security" as used in this section shall mean any instrument which, in law or by contract, gives the holder the right to vote, consent to, or authorize any corporate action of a domestic stock insurer.

(6) Any person who knowingly fails to file information, documents, or reports required to be filed under this section or any rule or regulation thereunder shall forfeit to the state the sum of \$100 for each and every day such failure to file shall continue. Such forfeiture shall be payable into the treasury of the state to be deposited in the Insurance Commissioner's Regulatory Trust Fund and shall be recoverable in a civil suit in the name of the state. However, the times for filing may be extended for a reasonable period by the department.

**History.**—s. 1, ch. 65-213; ss. 13, 35, ch. 69-106; s. 2, ch. 71-87; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **1628.161 Initial qualifications; domestic mutuals.—**

(1) When newly organized, a domestic mutual insurer may be authorized to transact any one of the kinds of insurance listed in the schedule contained in subsection (2).

(2) When applying for an original certificate of authority, the insurer must be otherwise qualified therefor under this code, and must have received and accepted bona fide applications as to substantial insurable subjects for insurance coverage of a substantial character of the kind of insurance proposed to be transacted, must have collected in cash the full premium therefor at a rate not less than the usual rate charged by stock insurers for comparable coverages, must have deposited surplus funds in the amount shown in line (f), or, in lieu of such applications, premiums and surplus, may deposit surplus in the amount shown in line (g), all in accordance with that part of the following schedule which applies to the one kind of insurance the insurer proposes to transact:

	Kind of insurance			
	(i)	(ii)	(iii)	(iv)
Standards	Life	Disability	Property	Casualty

(a) Minimum no. of applicants accepted	500	500	250	250
(b) Minimum no. of subjects covered	500	500	250	500
(c) Minimum premium collected	annual	quarterly	annual	annual
(d) Minimum amount of insurance each sub- ject	\$1000	\$10 (weekly indem.)	\$2000	\$2000
(e) Maximum amount of insurance each sub- ject (v)	\$2500	\$25 (weekly indem.)	\$3000	\$10,000
(f) Deposit of minimum surplus funds (vi)	\$100,000	\$100,000	\$150,000	\$150,000
(g) Deposit of surplus in lieu (vi)	\$150,000	\$150,000	\$200,000	\$200,000

The following provisos are respectively applicable to the foregoing schedule and provisions as indicated by like Roman numerals appearing in such schedule:

(i) No group insurance or term policies for terms of less than 10 years shall be included.

(ii) No group, blanket, or family plans of insurance shall be included. In lieu of weekly indemnity a like premium value in medical, surgical, and hospital benefits may be provided. Any accidental death or dismemberment benefit provided shall not exceed \$2500.

(iii) Only insurance of the owner's interest in real property may be included.

(iv) Insurance of legal liability for bodily injury and property damage, to which the maximum and minimum insured amounts apply, must be included.

(v) The maximums provided for in this line (e) are net of applicable reinsurance.

(vi) The deposit of surplus in the amounts specified in lines (f) and (g) must thereafter be maintained unimpaired. The deposit is subject to the provisions of part III of chapter 625 (administration of deposits).

(3) In addition to the surplus deposited as required under subsection (2), the insurer must possess when first so authorized to transact insurance expendable surplus in amount as required of a like foreign mutual insurer under s. 624.408.

<sup>1</sup>History.—s. 636, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

<sup>1</sup>Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior

to that date.

#### **628.171 Formation of mutual insurer; bond.—**

(1) Before soliciting any applications for insurance required under s. 628.161 as qualification for the original certificate of authority, the incorporators of the proposed insurer shall file with the department a corporate surety bond in the penalty of \$20,000 in favor of the State of Florida and for the use and benefit of the state and of applicant members and creditors of the corporation. The bond shall be conditioned as follows:

(a) Upon due accounting for and deposit, as required under s. 628.191, of funds received as premium upon preliminary applications for insurance;

(b) That in event the corporation fails to complete its organization and secure a certificate of authority issued by the department within 1 year after the date of its certificate of incorporation, all premiums collected in advance from applicant members will be promptly returned to them, all other indebtedness of the corporation other than any compensation to directors, officers, or solicitors of insurance applications, will be paid, and for payment of costs incurred by the state in event of any legal proceedings for liquidation or dissolution of the corporation.

(2) In lieu of such a bond, the incorporators may deposit with the department \$20,000 in cash, or in United States Government bonds at par value, to be held in trust upon the same conditions as required for the bond.

(3) Any such bond filed or deposit or remaining portion thereof held under this section shall be released and discharged upon settlement and termination of all liabilities against it hereunder.

<sup>1</sup>History.—s. 637, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

<sup>1</sup>Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **628.181 Applications for insurance in formation of mutual insurer.—**

(1) Upon receipt of the department's approval of the bond or deposit as provided in s. 628.171, the directors and officers of the proposed domestic mutual insurer may commence solicitation of such requisite applications for insurance policies as they may accept, and may receive deposits of premiums thereon.

(2) All such applications shall be in writing signed by the applicant, covering subjects of insurance resident, located or to be performed in this state.

(3) All such applications shall provide that:

(a) Issuance of the policy is contingent upon the insurer qualifying for and receiving a certificate of authority;

(b) No insurance is in effect unless and until the certificate of authority has been issued; and

(c) The prepaid premium or deposit, and membership or policy fee, if any, shall be refunded in full to the applicant if organization is not completed and the certificate of authority is not issued and received by the insurer before a specified reasonable date which date shall be not later than 1 year after the date of the certificate of incorporation.



(4) All qualifying premiums collected shall be in cash.

(5) Solicitation for such qualifying applications for insurance shall be by licensed agents of the corporation, and the department shall, upon the corporation's application therefor, issue temporary agent's licenses expiring on the date specified pursuant to subsection (3)(c) to individuals qualified as for a resident agent's license. The department may suspend or revoke any such license for any of the causes and pursuant to the same procedures as are applicable to suspension or revocation of licenses of agents in general under part I of chapter 626.

**History.**—s. 638, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **628.191 Formation of mutuals; trust deposit of premiums; issuance of policies.—**

(1) All sums collected by a domestic mutual corporation as premiums or fees on qualifying applications for insurance therein shall be deposited in trust in a bank or trust company in this state under a written trust agreement consistent with this section and with s. 628.181(3)(c). The corporation shall file an executed copy of such trust agreement with the department.

(2) Upon issuance to the corporation of a certificate of authority as an insurer for the kind of insurance for which such applications were solicited, all funds so held in trust shall become the funds of the insurer, and the insurer shall thereafter in due course, issue and deliver its policies for which premiums had been paid and accepted. The insurance provided by such policies shall be effective as of the date of the certificate of authority, or thereafter as provided in the respective policies.

**History.**—s. 639, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**628.201 Same; failure to qualify.**—If the proposed domestic mutual insurer fails to complete its organization and to secure its original certificate of authority within 1 year from and after date of its certificate of incorporation, the corporation shall be dissolved by the department, and the department shall return or cause to be returned to the persons entitled thereto all advance deposits or payments of premiums held in trust under s. 628.191.

**History.**—s. 640, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**628.211 Additional kinds of insurance, mutuals.**—A domestic mutual insurer, after being authorized to transact one kind of insurance, may be authorized by the department to transact such additional kinds of insurance as are permitted under s. 624.406, while otherwise in compliance with this code and while maintaining unimpaired surplus funds in an amount not less than the amount of paid-in capital stock required of a domestic stock insurer transacting like kinds of insurance, subject further in the case of insurers other than those to

which s. 624.409 is applicable, to the additional expendable surplus requirements of s. 624.408 applicable to such a stock insurer.

**History.**—s. 641, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **628.221 Bylaws of mutual.—**

(1) The initial board of directors of a domestic mutual insurer shall adopt original bylaws, subject to the approval of the insurer's members at the next succeeding meeting. The members shall have power to make, modify, and revoke bylaws.

(2) The bylaws shall provide:

(a) That each member is entitled to one vote upon each matter coming to a vote at meetings of members, or to more votes in accordance with a reasonable classification of members as set forth in the bylaws and based upon the amount of insurance in force, or upon the amount of the premiums paid by such member, or upon other reasonable factors. A member shall have the right to vote in person or by his written proxy. No such proxy shall be made irrevocable or for longer than a reasonable period of time;

(b) For election of directors by the members, and the number, qualifications, terms of office, and powers of directors;

(c) The time, notice, quorum, and conduct of annual and special meetings of members and voting thereat. The bylaws may provide that the annual meeting shall be held at a place, date and time to be set forth in the policy and without giving other notice of such meeting;

(d) The number, designation, election, terms and powers and duties of the respective corporate officer;

(e) For deposit, custody, disbursement and accounting for corporate funds;

(f) For any other reasonable provisions customary, necessary or convenient for the management or regulation of its corporate affairs and not inconsistent with law.

(3) No provision in the bylaws for determining a quorum of members at any meeting thereof of less than a majority of all the insurer's members shall be effective unless approved by the department. This subsection shall not affect any other provision of law requiring vote of a larger percentage of members for a specified purpose.

(4) The insurer shall promptly file with the department a copy, certified by the insurer's secretary, of its bylaws and of every modification thereof or addition thereto. The department shall disapprove any bylaw provision deemed by it to be unlawful, unreasonable, inadequate, unfair, or detrimental to the proper interests or protection of the insurer's members or any class thereof. The insurer shall not, after receiving written notice of such disapproval and during the existence thereof, effectuate any bylaw provision so disapproved.

**History.**—s. 642, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior

to that date.

**1628.231 Directors; number, election.—**

(1) The affairs of every domestic insurer shall be managed by not less than five directors.

(2) Directors must be elected by the members or stockholders of a domestic insurer at the annual meeting of stockholders or members. Directors may be elected for terms of not more than 3 years each and until their successors are elected and have qualified, and if to be elected for terms of more than 1 year the insurer's bylaws shall provide for a staggered terms system under which the terms of a proportionate part of the members of the board of directors will expire on the date of each annual meeting of stockholders or members.

(3) At least one-fourth of the directors of such insurer must be residents of this state. A majority of the directors must be citizens of the United States.

(4) If so provided in the insurer's bylaws, a director of a stock insurer shall be a stockholder thereof, and a director of a mutual insurer shall be a policyholder thereof.

**History.**—s. 643, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1628.241 Bonds of mutual officers.**—The president, secretary, and treasurer of a domestic mutual insurer, together with such other officers and administrative personnel as may handle the funds thereof, shall be bonded, under a fidelity bond issued by an authorized surety insurer, in such respective amounts, not less than \$10,000 in any instance, as may be provided for in the insurer's bylaws or as may reasonably be required by the department. The cost of any such bond shall be paid by the insurer.

**History.**—s. 644, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1628.251 Management and exclusive agency contracts.—**

(1) No domestic mutual insurer or stock insurer shall make any contract whereby any person is granted or is to enjoy in fact the management of the insurer to the substantial exclusion of its board of directors or to have the controlling or preemptive right to produce substantially all insurance business for the insurer, unless the contract is filed with and approved by the department.

(2) Any such contract shall provide that any such manager or producer of its business shall within 90 days after expiration of each calendar year furnish the insurer's board of directors a written statement of amounts received under or on account of the contract and amounts expended thereunder during such calendar year, including the emoluments received therefrom by the respective directors, officers, and other principal management personnel of the manager or producer, and with such classification of items and further detail as the insurer's board of directors may reasonably require.

(3) The department shall disapprove any such contract if it finds that it:

(a) Subjects the insurer to excessive charges; or

(b) Is to extend for an unreasonable length of time; or

(c) Does not contain fair and adequate standards of performance; or

(d) Contains other inequitable provision or provisions which impair the proper interests of policyholders or members of the insurer.

(4) This section does not apply as to contracts which were lawfully in force as of immediately prior to the effective date of this code.

**History.**—s. 645, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1628.255 Person with effective control cannot receive commission unless contract approved; penalties.—**

(1) No director, officer, or other person having effective control of a domestic insurer shall receive, and no such insurer shall pay to such person, a commission or other compensation with respect to particular risks insured by the insurer, unless such commission or other compensation is paid pursuant to a contract filed with and approved by the department.

(2) This section shall not be deemed to require approval of the contract or to prohibit payment of commissions to such an officer or director with respect to business written by him as an agent of the insurer prior to becoming such an officer or director and vested under the agency contract which was in force at the time such business was originally written.

(3) For the purposes of this section "effective control" shall mean ownership of 10 percent or more of company stock, or receipt of \$25,000 or more cumulatively in commissions in 1 calendar year.

(4) Violation of this section shall subject the insurer to loss of its certificate of authority as provided in s. 624.418 and the agent to loss of his license as provided in s. 626.621. Willful violation of this section shall, in addition to the above prescribed penalties, constitute a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 1, ch. 70-319; s. 651, ch. 71-136; s. 162, ch. 71-355; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1628.261 Notice of change of directors, officers.**—An insurer shall promptly give the department written notice of any change of personnel among the directors or principal officers of the insurer.

**History.**—s. 646, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1628.271 Home office and records; penalty for unlawful removal of records.—**

(1) Every domestic insurer shall have and maintain its principal place of business and home office in this state, and shall keep therein complete records of its assets, transactions, and affairs in accordance with such methods and systems as are customary or suitable as to the kind or kinds of insurance transacted.

(2) Every domestic insurer shall have and maintain its assets in this state, except as to:

(a) Real property and personal property appurtenant thereto lawfully owned by the insurer and located outside this state, and

(b) Such property of the insurer as may be customary, necessary, and convenient to enable and facilitate the operation of its branch offices, regional home offices and operations offices, located outside this state as referred to in s. 628.281.

(3) Removal of all or a material part of the records or assets of a domestic insurer from this state except pursuant to a plan of merger or consolidation approved by the department under this code or for such reasonable purposes and periods of time as may be approved by the department in writing in advance of such removal, or concealment of such records or assets or material part thereof from the department, is prohibited. Any person who removes or attempts to remove such records or assets or such material part thereof from the home office or other place of business or of safekeeping of the insurer in this state with the intent to remove the same from this state, or who conceals or attempts to conceal the same from the department, in violation of this subsection, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Upon any removal or attempted removal of such records or assets or upon retention of such records or assets or material part thereof outside this state, beyond the period therefor specified in the department's consent under which the records were so removed thereat, or upon concealment of or attempt to conceal records or assets in violation of this section, the department may institute delinquency proceedings against the insurer pursuant to the provisions of chapter 631.

(4) This section is subject to the exceptions provided for in s. 628.281.

**History.**—s. 647, ch. 59-205; ss. 13, 35, ch. 69-106; s. 652, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **§628.281 Exceptions to requirement that home office, records, assets be maintained in this state.—**

(1) The provisions of s. 628.271 shall not be deemed to prohibit or prevent an insurer from:

(a) Establishing and maintaining branch offices or regional home offices in other states where necessary or convenient to the transaction of its business and keeping therein the detailed records and assets customary and reasonably necessary for the servicing of its insurance in force and affairs in the territory served by such an office, as long as such records and assets are made readily available at such office for examination by the department at its request.

(b) Having, depositing or transmitting funds and assets of the insurer in or to jurisdictions outside of this state as reasonably and customarily required in the regular course of its business.

(c) Establishing and maintaining its principal operations offices, its usual operations records, and such of its assets as may be necessary or convenient for the purpose, in another state in which the insurer is authorized to transact insurance in order that

general administration of its affairs may be combined with that of an affiliated insurer or insurers, but subject to the following conditions:

1. That the department consents in writing to such removal of offices, records, and assets from Florida upon evidence satisfactory to it that the same will facilitate and make more economical the operations of the insurer, and will not unreasonably diminish the service or protection thereafter to be given the insurer's policyholders in this state and elsewhere;

2. That the insurer will continue to maintain in this state its principal corporate office or place of business, and maintain therein available to the inspection of the department complete records of its corporate proceedings and a copy of each financial statement of the insurer current within the preceding 5 years, including a copy of each interim financial statement prepared for the information of the insurer's officers or directors;

3. That upon the department's written request the insurer will with reasonable promptness produce at its principal corporate offices in this state for examination or for subpoena, its records or copies thereof relative to a particular transaction or transactions of the insurer as designated by the department in its request; and

4. That if at any time the department finds that the conditions justifying the maintenance of such offices, records, and assets outside of this state no longer exist, or that the insurer has willfully and knowingly violated any of the conditions stated in subparagraphs 2. and 3., the department may order the return of such offices, records, and assets to this state within such reasonable time, not less than 6 months, as may be specified in the order; and that for failure to comply with such order, as thereafter modified or extended, if any, the department shall suspend or revoke the insurer's certificate of authority.

(2) Section 628.271 does not apply as to domestic insurers which, as of immediately prior to the effective date of this code, had lawfully established, and thereafter maintain, their principal offices, records, and assets in another state.

**History.**—s. 648, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **§628.291 Unauthorized transactions in other states.—**

(1) No domestic insurer shall enter into a contract of insurance upon the life or person of a resident of a reciprocal state, or covering property or risks located in a reciprocal state, unless the insurer is authorized pursuant to the laws of such reciprocal state to do business therein, subject to the following exceptions:

(a) Contracts entered into where the prospective insured is personally present in the state in which the insurer is authorized to do business when he signs the application;

(b) Issuance of certificates under any lawfully transacted group life or group disability policy, where the master policy is entered into in a state in which the insurer is authorized to do business;

(c) Contracts made pursuant to a pension or re-



tirement plan of an employer when such contracts are applied for in a state where the employer is personally present or doing business and the insurer is authorized to do business;

(d) The renewal, reinstatement, conversion, or continuance in force with or without modification of contracts otherwise lawfully entered into and which were not originally entered into in violation of this section.

(2) The term "reciprocal state" as used in this section means a state the laws of which prohibit an insurer organized under the laws of that state from insuring the lives or property of persons resident or located in Florida, unless such insurer is authorized pursuant to the laws of this state to do business in this state.

(3) The department shall annually mail to every domestic insurer notice specifying the several reciprocal states.

**History.**—s. 649, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **§628.301 Membership in mutuals.—**

(1) Each policyholder of a domestic mutual insurer, other than of a reinsurance contract, is a member of the insurer with all rights and obligations of such membership, and the policy shall so specify.

(2) Any person, public or private corporation, board, association, firm, estate, trustee or fiduciary may be a member of a domestic mutual insurer. Any officer, stockholder, trustee or legal representative of any such corporation, board, association or estate may be recognized as acting for or on its behalf for the purpose of such membership, and shall not be personally liable upon any contract of insurance for acting in such representative capacity. A mutual insurer may issue policies of insurance covering property of this state, or of any county or municipality of this state, without contingent liability, when such policy contains a provision that the state or any such county or municipality insured under it may not participate in the profits of such insurer.

**History.**—s. 650, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **§628.311 Contingent liability of mutual members.—**

(1) Each member of a domestic mutual insurer shall, except as otherwise hereinafter provided with respect to nonassessable policies, have a contingent liability, pro rata and not one for another, for the discharge of its obligations, which contingent liability shall be expressed in the policy and be in such maximum amount as is specified in the insurer's certificate of incorporation.

(2) Termination of the policy of any such member shall not relieve the member of contingent liability for his proportion, if any, of the obligations of the insurer which accrued while the policy was in force.

(3) Unrealized contingent liability of members does not constitute an asset of the insurer in any determination of its financial condition.

**History.**—s. 651, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior

to that date.

#### **§628.321 Levy of contingent liability.—**

(1) If at any time the assets of a domestic mutual insurer are less than its liabilities and the minimum amount of surplus required to be maintained by it under this code for authority to transact the kinds of insurance being transacted, and the deficiency is not cured from other sources, its directors shall levy an assessment only upon its members who held policies providing for contingent liability at any time within the 12 months preceding the date notice of such assessment was mailed to them, and such members shall be liable to the insurer for the amount so assessed.

(2) The assessment shall be for such an amount as is required to cure such deficiency and to provide a reasonable amount of working funds above such minimum amount of surplus, but such working funds so provided shall not exceed 5 percent of the insurer's liabilities as of the date as of which the amount of such deficiency was determined.

(3) In levying an assessment on policies providing for contingent liability, the assessment shall be computed on a basis of premium earned on such policy.

(4) No member shall have an offset against any assessment for which he is liable, on account of any claim for unearned premium or loss payable.

(5) As to life insurance, any part of such an assessment upon a member which remains unpaid following notice of assessment, demand for payment, and lapse of a reasonable waiting period as specified in such notice, may, if approved by the department as being in the best interests of the insurer and its members, be secured by placing a lien upon the cash surrender values and accumulated dividends held by the insurer to the credit of such member.

**History.**—s. 652, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **§628.331 Enforcement of contingent liability.—**

(1) Any assessment made by an insurer under s. 628.321 is prima facie correct. The amount of such assessment to be paid by each member as determined by the insurer is likewise prima facie correct.

(2) The insurer shall notify each member of the amount of the assessment to be paid by written notice mailed to the address of the member last of record with the insurer. Failure of the member to receive the notice so mailed, within the time specified therein for the payment of the assessment or at all, shall be no defense in any action to collect the assessment.

(3) If a member fails to pay the assessment within the period specified in the notice, which period shall not be less than 20 days after mailing, the insurer may institute suit to collect the same.

**History.**—s. 653, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior

to that date.

**'628.341 Nonassessable policies; mutual insurers.—**

(1) While possessing surplus funds in amount not less than the paid-in capital stock required of a domestic stock insurer transacting like kinds of insurance, a domestic mutual insurer may, upon receipt of the department's order so authorizing, extinguish the contingent liability of its members as to all its policies in force and may omit provisions imposing contingent liability in all its policies currently issued so long as such surplus funds meet such requirement as to amount.

(2) A foreign or alien mutual insurer may issue nonassessable policies to its members in this state pursuant to its articles of incorporation and the laws of its domicile.

**History.**—s. 654, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**'628.351 Same; revocation of authority.—**The department shall revoke the authority of a domestic mutual insurer to issue policies without contingent liability if at any time the insurer's assets are less than the sum of its liabilities and the surplus required for such authority, or if the insurer, by resolution of its board of directors approved by a majority of its members, requests that the authority be revoked. During the absence of such authority the insurer shall not issue any policy without providing therein for the contingent liability of the policyholder, nor renew any policy which is renewable at the option of the insurer without endorsing the same to provide for such contingent liability. Such renewal or endorsement shall bear conspicuously on its face the provision for contingent liability of the policyholder.

**History.**—s. 655, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**'628.361 Participating policies.—**

(1) If provided in its certificate of incorporation, a domestic stock or domestic mutual insurer may issue any or all of its policies with or without participation in profits, savings, or unabsorbed portions of premiums, may classify policies issued on a participating and nonparticipating basis, and may determine the right to participate and the extent of participation of any class or classes of policies. Any such classification or determination shall be reasonable, and shall not unfairly discriminate as between policyholders within the same such classifications. A life insurer may issue both participating and nonparticipating policies only if the right or absence of right to participate is reasonably related to the premium charged.

(2) No dividend, otherwise earned, shall be made contingent upon the payment of renewal premium on any policy.

**History.**—s. 656, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior

to that date.

**'628.371 Dividends to stockholders.—**

(1) A domestic stock insurer shall not pay any cash dividend to stockholders except out of that part of its available and accumulated surplus funds which is derived from realized net operating profits on its business and realized capital gains. Such cash dividend payments to stockholders shall not exceed 10 percent of such surplus in any 1 year unless otherwise approved by the department. Nothing herein shall in any way limit, or be applicable to, cash dividend payments out of the insurer's net operating profits and realized capital gains derived during the immediately preceding calendar year.

(2) A stock dividend may be paid out of any available surplus funds in excess of the aggregate amount of surplus advanced to the insurer under s. 628.401.

(3) A dividend otherwise lawful may be payable out of the insurer's earned surplus even though its total surplus is then less than the aggregate of its past contributed surplus resulting from issuance of its capital stock at a price in excess of the par value thereof.

**History.**—s. 657, ch. 59-205; s. 1, ch. 70-68; s. 1, ch. 70-439; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**'628.381 Dividends to mutual policyholders.—**

(1) The directors of a domestic mutual insurer may from time to time apportion and pay or credit to its members dividends only out of that part of its surplus funds which represents net realized savings and net realized earnings in excess of the surplus required by law to be maintained.

(2) A dividend otherwise proper may be payable out of such savings and earnings even though the insurer's total surplus is then less than the aggregate of its contributed surplus.

**History.**—s. 658, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**'628.391 Illegal dividends; penalty.—**

(1) Any director of a domestic stock or mutual insurer who knowingly votes for or concurs in declaration or payment of a dividend to stockholders or members other than as authorized under s. 628.371 or s. 628.381 shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and shall be jointly and severally liable, together with other such directors likewise voting for or concurring, for any loss thereby sustained by creditors of the insurer to the extent of such dividend.

(2) Any stockholder receiving such an illegal dividend shall be liable in the amount thereof to the insurer.

(3) The department may revoke or suspend the certificate of authority of an insurer which has declared or paid such an illegal dividend.

**History.**—s. 659, ch. 59-205; ss. 13, 35, ch. 69-106; s. 653, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective

July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **§628.401 Borrowed surplus.—**

(1) A domestic stock or mutual insurer may borrow money to defray the expenses of its organization, provide it with surplus funds, or for any purpose of its business, upon a written agreement that such money is required to be repaid only out of the insurer's surplus in excess of that stipulated in such agreement. The agreement may provide for interest not exceeding 10 percent simple interest per annum. The interest shall or shall not constitute a liability of the insurer as to its funds other than such excess of surplus, as stipulated in the agreement. No commission or promotion expense shall be paid in connection with any such loan.

(2) Money so borrowed, together with the interest thereon if so stipulated in the agreement, shall not form a part of the insurer's legal liabilities except as to its surplus in excess of the amount thereof stipulated in the agreement, or be the basis of any setoff; but until repaid, financial statements filed or published by the insurer shall show as a footnote thereto the amount thereof then unpaid together with any interest thereon accrued but unpaid.

(3) Any such loan to a mutual insurer shall be subject to the department's approval. The insurer shall, in advance of the loan, file with the department a statement of the purpose of the loan and a copy of the proposed loan agreement. The department shall disapprove any proposed loan or agreement if it finds the loan is unnecessary or excessive for the purpose intended, or that the terms of the loan agreement are not fair and equitable to the parties, and to other similar lenders, if any, to the insurer, or that the information so filed by the insurer is inadequate.

(4) Any such loan to a mutual insurer or substantial portion thereof shall be repaid by the insurer when no longer reasonably necessary for the purpose originally intended. No repayment of such a loan shall be made by a mutual insurer unless in advance approved by the department.

(5) This section shall not apply to loans obtained by the insurer in ordinary course of business from banks and other financial institutions, nor to loans secured by pledge or mortgage of assets.

**History.**—s. 660, ch. 59-205; ss. 13, 35, ch. 69-106; s. 1, ch. 73-165; s. 3, ch. 76-168; s. 1, ch. 77-13; s. 1, ch. 77-457; s. 21, ch. 78-95.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **§628.411 Impairment of capital or assets.—**

(1) If a domestic stock insurer's capital (as represented by the aggregate par value of its outstanding capital stock) becomes impaired, or the assets of a mutual insurer are less than its liabilities and the minimum amount of surplus required to be maintained by it under this code for authority to transact the kinds of insurance being transacted, the department shall at once determine the amount of deficiency and serve notice upon the insurer to make good the deficiency within 90 days after service of such notice.

(2) The deficiency may be made good in cash or in assets eligible under part II of chapter 625 (investments) for the investment of the insurer's funds; or

by amendment of the insurer's certificate of authority to cover only such kind or kinds of insurance thereafter for which the insurer has sufficient paid-in capital (if a stock insurer) or surplus (if a mutual insurer) under this code; or, if a stock insurer, by reduction of the insurer's authorized capital stock through amendment of its certificate of incorporation, to an amount of paid-in capital stock not below the minimum required for the kinds of insurance thereafter to be transacted.

(3) After any such reduction of authorized capital stock the insurer shall have the right to require the return of the original certificate of stock held by each stockholder in exchange for new certificates to be issued in lieu thereof for such number of shares as the stockholder is entitled to in the proportion that the reduced capital bears to the original capital.

(4) If the deficiency is not made good and proof thereof filed with the department within such 90-day period, the insurer shall be deemed insolvent and the department shall institute delinquency proceedings against it under chapter 631 of this code; except that if such deficiency exists because of increased loss reserves required by the department, or because of disallowance by the department of certain assets or reduction of the value at which carried in the insurer's accounts, the department may, in its discretion and upon application and good cause shown, and if it finds that establishment or maintenance of such inadequate reserves or over-valued assets were not willful on the part of the insurer, extend for not more than an additional 60 days the period within which such deficiency may be so made good and such proof thereof so filed.

**History.**—s. 661, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **§628.421 Assessment of stockholders or members.—**

(1) Any insurer receiving the department's notice mentioned in s. 628.411(1):

(a) If a stock insurer, by resolution of its board of directors and subject to any limitations upon assessment contained in its certificate of incorporation, may assess its stockholders for amounts necessary to cure the deficiency and provide the insurer with a reasonable amount of surplus in addition. If any stockholder fails to pay a lawful assessment after notice given to him in person or by advertisement in such time and manner as approved by the department, the insurer may require the return of the original certificate of stock held by the stockholder, and in cancellation and in lieu thereof issue a new certificate for such number of shares as the stockholder may then be entitled to, upon the basis of the stockholder's proportionate interest in the amount of the insurer's capital stock as determined by the department to be remaining at the time of determination of amount of impairment under s. 628.411, after deducting from such proportionate interest the amount of such unpaid assessment. The insurer may pay for or issue fractional shares under this subsection.

(b) If a mutual insurer, shall levy such an assess-



ment upon members as is provided for under s. 628.321.

(2) Neither this section nor s. 628.411 shall be deemed to prohibit the insurer from curing any such deficiency through any lawful means other than those referred to in such sections.

**History.**—s. 662, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **628.431 Mutualization of stock insurers.—**

(1) A stock insurer other than a title insurer may become a mutual insurer under such plan and procedure as may be approved by the department.

(2) The department shall not approve any such plan, procedure or mutualization unless:

(a) It is equitable to stockholders and policyholders;

(b) It is subject to approval by the holders of not less than three-fourths of the insurer's outstanding capital stock having voting rights and by not less than two-thirds of the insurer's policyholders who vote on such plan in person, by proxy or by mail pursuant to such notice and procedure as may be approved by the department;

(c) If a life insurer, the right to vote thereon is limited to holders of policies other than term or group policies, and whose policies have been in force for more than 1 year;

(d) Mutualization will result in retirement of shares of the insurer's capital stock at a price not in excess of the fair market value thereof as determined by competent disinterested appraisers;

(e) The plan provides for the purchase of the shares of any nonconsenting stockholder in the same manner and subject to the same applicable conditions as provided by s. 607.247, as to rights of nonconsenting stockholders, with respect to consolidation or merger of private corporations;

(f) The plan provides for definite conditions to be fulfilled by a designated early date upon which such mutualization will be deemed effective; and

(g) The mutualization leaves the insurer with surplus funds reasonably adequate for the security of its policyholders and to enable it to continue successfully in business in the states in which it is then authorized to transact insurance, and for the kinds of insurance included in its certificates of authority in such states.

(3) This section shall not apply to mutualization under order of court pursuant to rehabilitation or reorganization of an insurer under chapter 631.

**History.**—s. 663, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95; s. 12, ch. 79-9.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **628.441 Converting mutual insurer.—**

(1) A mutual insurer may become a stock insurer under such plan and procedure as may be approved by the department.

(2) The department shall not approve any such plan or procedure unless:

(a) It is equitable to the insurer's members;

(b) It is subject to approval by vote of not less than three-fourths of the insurer's current members

voting thereon in person, by proxy or by mail at a meeting of members called for the purpose pursuant to such reasonable notice and procedure as may be approved by the department; if a life insurer, right to vote may be limited to members who hold policies other than term or group policies, and whose policies have been in force for not less than 1 year;

(c) The corporate equity of each policyholder in the insurer (other than as to unearned premiums, nonforfeiture rights, and benefit claims under his policy) is determinable under a fair formula approved by the department, which such equity shall be based upon not less than the insurer's entire surplus (after deducting contributed or borrowed surplus funds) plus a reasonable present equity in its reserves and in all nonadmitted assets;

(d) The policyholders entitled to participate in the purchase of stock or distribution of assets shall include all current policyholders and all existing persons who had been a policyholder of the insurer within 3 years prior to the date such plan was submitted to the department;

(e) The plan gives to each policyholder of the insurer as specified in paragraph (d) a preemptive right to acquire his proportionate part of all of the proposed capital stock of the insurer, within a designated reasonable period, and to apply upon the purchase thereof the amount of his equity in the insurer as determined under paragraph (c);

(f) Shares are so offered to policyholders at a price not greater than to be thereafter offered to others;

(g) The plan provides for payment to each policyholder not electing to apply his equity in the insurer for or upon the purchase price of stock to which preemptively entitled, of cash in the amount of not less than 50 percent of the amount of his equity not so used for the purchase of stock, and which cash payment together with stock so purchased, if any, shall constitute full payment and discharge of the policyholder's corporate equity in such mutual insurer; and

(h) The plan, when completed, would provide for the converted insurer paid-in capital stock in an amount not less than the minimum paid-in capital required of a domestic stock insurer transacting like kinds of insurance, together with surplus funds in amounts not less than one-half of such required capital.

**History.**—s. 664, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **628.451 Mergers and consolidations of stock insurers.—**

(1) A domestic stock insurer may merge or consolidate with one or more domestic or foreign stock insurers authorized to transact insurance in this state, by complying with the applicable provisions of the statutes of this state governing the merger or consolidation of stock corporations formed for profit, but subject to the special provisions of this section:

(a) Mergers or consolidations may be initially proposed at any meeting of the board of directors of a domestic stock insurer by the affirmative vote of two-thirds of the total number of directors of the

corporation, or at any meeting of the stockholders of the corporation by the affirmative vote of a majority of the total number of shares of stock outstanding and entitled to vote, provided the notice of such meeting shall set forth such proposal.

(b) The plan of merger or consolidation, proposed as required by paragraph (a) of this subsection, shall be submitted to a duly called meeting of the stockholders of record of each domestic stock insurer, and may become effective only if adopted at such meeting by the affirmative vote of 75 percent of the total number of shares of stock outstanding and entitled to vote. The notice of such meeting shall set forth in full the proposed plan of merger or consolidation.

(2) No such merger or consolidation shall be effectuated unless in advance thereof the plan and agreement therefor have been filed with the department and approved by it. The department shall give such approval unless it finds such plan or agreement:

- (a) Is contrary to law;
- (b) Is inequitable to the stockholders of any insurer involved; or
- (c) Would substantially reduce the security of and service to be rendered to policyholders of the domestic insurer in this state or elsewhere.

(3) No director, officer, agent or employee of any insurer party to such merger or consolidation shall receive any fee, commission, compensation or other valuable consideration whatsoever for in any manner aiding, promoting or assisting therein except as set forth in such plan or agreement.

(4) Any plan or proposal through which a stock insurer proposes to acquire a controlling stock interest in another stock insurer through an exchange of stock of the first insurer, issued by the insurer for the purpose, for such controlling stock of the second insurer is deemed to be a plan or proposal of merger of the second insurer into the first insurer for the purposes of this section and is subject to the applicable provisions hereof.

**History.**—s. 665, ch. 59-205; s. 1, ch. 61-5; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **1628.461 Acquisition of controlling stock.—**

(1) No person shall make a tender offer or exchange offer for 5 percent or more of the outstanding voting securities of a domestic stock insurance company or of a controlling company, enter into any agreement to exchange securities for 5 percent or more of the outstanding voting securities of a domestic stock insurance company or of a controlling company, or otherwise seek to acquire 5 percent or more of the outstanding voting securities of a domestic stock insurance company or of a controlling company, unless:

(a) Such person has filed with the department and sent to such insurer and controlling company a statement as specified in subsection (3) at least 60 days prior to the time any form of tender offer or exchange offer is to be furnished to securityholders, or at least 60 days prior to the proposed date of the acquisition of such securities if no such tender offer or exchange offer is involved; and

(b) The department has approved the proposed

offer or acquisition prior to the time any form of tender offer or exchange offer is made to securityholders, or prior to the acquisition of such securities if no such tender offer or exchange offer is involved, and such approval is in effect.

(2) This section shall not apply to any acquisition of voting securities of a domestic stock insurer or of a controlling company by any person who, on July 1, 1976, is the owner of a majority of such voting securities or who, on or after July 1, 1976, becomes the owner of a majority of such voting securities with the approval of the department pursuant to this section. It shall apply, however, whenever any domestic stock insurance company or controlling company shall make a tender offer, exchange offer, enter into an agreement to exchange securities for 5 percent or more of the voting stock, or otherwise seek to acquire 5 percent or more of the outstanding voting securities of any stock insurance company or controlling company.

(3) The statement to be filed with the department and furnished to the insurer and controlling company shall contain the following information and any such additional information as the department may deem necessary to determine the character, experience, ability, and other qualifications of such person for the protection of the policyholders and shareholders of such insurer and the public:

(a) The identity of, and the background information specified in subsection (4) on, each natural person by whom, or on whose behalf, the acquisition is to be made, and if the acquisition is to be made by, or on behalf of, a corporation, association, or trust, the identity of, and the background information specified in subsection (4) on, each director, officer, trustee, or other natural person performing duties similar to that of a director, officer, or trustee for the corporation, association, or trust;

(b) The source and amount of the funds or other consideration used, or to be used, in making the acquisition;

(c) Any plans or proposals which such persons may have made to liquidate such insurer, to sell its assets or merge or consolidate it with any person, or to make any other major change in its business or corporate structure or management; and any plans or proposals which such persons may have made to liquidate any controlling company of such insurer, to sell its assets or merge or consolidate it with any person, or to make any other major change in its business or corporate structure or management;

(d) The number of shares of such security which such person proposes to acquire and the terms of the offer or exchange, as the case may be; and

(e) Information as to any contracts, arrangements, or understandings with any party with respect to any securities of such insurer or controlling company, including, but not limited to, information relating to the transfer of any of the securities, option arrangements, puts or calls, or the giving or withholding of proxies, naming the party with whom such contract, arrangements, or understandings have been entered into and giving the details thereof.

(4)(a) The information as to the background and identity of each person, which information is re-

quired to be furnished pursuant to paragraph (3)(a), shall include:

1. Such person's occupations, positions of employment, and offices held during the past 10 years.

2. The principal business and address of any business, corporation, or other organization in which each such office was held, or in which such occupation or position of employment was carried on.

3. Whether such person was, at any time during such 10-year period, convicted of any crime other than a traffic violation.

4. Whether such person has been, during such 10-year period, the subject of any proceeding for the revocation of any license and, if so, the nature of such proceeding and the disposition thereof.

5. Whether, during such 10-year period, such person has been the subject of any proceeding under the Federal Bankruptcy Act or whether, during such 10-year period, any corporation, partnership, firm, trust, or association in which such person was a director, officer, trustee, partner, or other official has been subject to any such proceeding, either during the time in which such person was a director, officer, trustee, partner, or other official, or within 12 months thereafter.

6. Whether, during such 10-year period, such person has been enjoined, either temporarily or permanently, by a court of competent jurisdiction from violating any federal or state law regulating the business of insurance, securities, or banking, or from carrying out any particular practice or practices in the course of the business of insurance, securities, or banking, together with details as to any such event.

(b) Any corporation, association, or trust filing the statement required by this section shall give all required information as is within the knowledge of its directors, trustees, officers, or others performing functions similar to that of a director, officer, or trustee. A copy of the statement and any amendments thereto shall be sent by registered mail to the insurer at its principal office within the state and to any controlling company at its principal office. If any material change occurs in the facts set forth in the statement filed with the department and sent to such insurer or controlling company pursuant to this section, an amendment setting forth such changes shall be filed immediately with the department and sent immediately to such insurer and controlling company.

(5) The acquisition of voting securities shall be deemed approved unless the department, within 60 days after the statement required by subsection (1) has been filed, calls a public hearing to consider the matter. The department shall call and hold such public hearing if requested in writing to do so by the insurer or controlling company within such 60-day period and, if not so requested, may call and hold such public hearing in its discretion. If the domestic stock insurer and controlling company file an instrument in writing with the department waiving their right to request a public hearing, the department may, in its discretion, by order shorten the 60-day period and approve the acquisition.

(6) The person or persons filing the statement required by subsection (1) shall have the burden of proof. The department shall approve any such acqui-

sition if it finds, on the basis of the filed statement if there is no public hearing, or on the basis of the record made at a public hearing, that:

(a) Upon completion of the acquisition, the domestic stock insurer would be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

(b) The financial condition of the acquiring person will not jeopardize the financial stability of the insurer or prejudice the interests of its policyholders and will not prejudice the interests of any remaining shareholders who are unaffiliated with the acquiring person;

(c) Any plans or proposals which the acquiring person has made to liquidate the insurer, to sell its assets or to merge or consolidate it with any person, or to make any other major change in its business or corporate structure or management; or to liquidate any controlling company, to sell its assets or to merge or consolidate it with any person, or to make any major change in its business or corporate structure or management which would have an effect upon the insurer, are fair and free of prejudice to the policyholders and shareholders of the domestic stock insurer;

(d) The competence, experience, and integrity of those persons who would control the operation of the domestic stock insurer indicate that the acquisition is in the best interest of the policyholders and shareholders of such insurer, and in the public interest; and

(e) The natural persons whose backgrounds are required to be furnished pursuant to this section have such backgrounds as to indicate that it is in the best interests of the policyholders and shareholders of the domestic stock insurer, and in the public interest, to permit such persons to exercise control over such domestic stock insurer.

(7) No vote by the stockholder of record, or by any other person, of any security acquired in contravention of the provisions of this section shall be valid. Any acquisition of any security contrary to the provisions of this section shall be void. The Circuit Court for the county in which the principal office of such domestic stock insurer is located may, without limiting the generality of its authority, upon the petition of the domestic stock insurer or controlling company, order the issuance or entry of an injunction or other order to enforce the provisions of this section. There shall be a private right of action in favor of the domestic stock insurer or controlling company to enforce the provisions of this section. No demand upon the department to perform its functions shall be a prerequisite to any suit by the domestic stock insurer or controlling company against any other person, and in no case shall the department be deemed to be a necessary party to any action by such domestic stock insurer or controlling company to enforce the provisions of this section. Any person who makes or proposes any acquisition requiring the filing of a statement pursuant to this section, or who files such a statement, shall be deemed to have thereby designated the Insurance Commissioner and Treasurer or his assistant or deputy or another person in charge of his office as such person's agent for



service of process under this section, and shall thereby be deemed to have submitted himself to the administrative jurisdiction of the department and the jurisdiction of the Circuit Court.

(8) No approval of the department under this section shall constitute a recommendation by the department of any acquisition, tender offer, or exchange offer. It shall be unlawful for any person to represent that any such approval constitutes any such recommendation. Any person who violates the provisions of this subsection is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The statute of limitations for prosecution of offenses committed under this subsection shall be 5 years.

(9) The department is authorized to adopt, amend, or repeal rules and regulations necessary to implement the provisions of this section, pursuant to chapter 120.

(10) For the purposes of this section, the term "controlling company" means any corporation, trust, or association owning 25 percent or more of the voting securities of one or more domestic stock insurance companies.

**History.**—s. 666, ch. 59-205; ss. 13, 35, ch. 69-106; s. 1, ch. 70-67; s. 1, ch. 70-177; s. 1, ch. 70-439; s. 1, ch. 76-100; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **§628.471 Mergers and consolidations, mutual insurers.—**

(1) A domestic mutual insurer shall not merge or consolidate with a stock insurer.

(2) A domestic mutual insurer may merge or consolidate with another mutual insurer under the applicable procedures prescribed by the statutes of this state applying to corporations formed for profit, except as hereinbelow provided.

(3) The plan and agreement for merger or consolidation shall be submitted to and approved by at least two-thirds of the members of each mutual insurer voting thereon at meetings called for the purpose pursuant to such reasonable notice and procedure as has been approved by the department. If a life insurer, right to vote may be limited to members whose policies are other than term and group policies, and have been in effect for more than 1 year.

(4) No such merger or consolidation shall be effectuated unless in advance thereof the plan and agreement therefor have been filed with the department and approved by it. The department shall give such approval unless it finds such plan or agreement:

(a) Is inequitable to the policyholders of any domestic insurer involved; or

(b) Would substantially reduce the security of and service to be rendered to policyholders of the domestic insurer in this state and elsewhere.

**History.**—s. 667, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **§628.481 Bulk reinsurance; stock insurers.—**

(1) A domestic stock insurer may reinsure all or substantially all of its insurance in force or a major class thereof, with another insurer by an agreement

of bulk reinsurance; but no such agreement shall become effective unless filed with the department and approved by it in writing.

(2) The department shall approve such agreement unless it finds that it is inequitable to the stockholders of the domestic insurer or it would substantially reduce the protection or service to its policyholders.

**History.**—s. 668, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **§628.491 Same; mutual insurers.—**

(1) A domestic mutual insurer may reinsure all or substantially all its business in force, or all or substantially all of a major class thereof, with another insurer, stock or mutual, by an agreement of bulk reinsurance after compliance with this section. No such agreement shall become effective unless filed with the department and approved by it.

(2) The department shall approve such agreement if it finds it to be fair and equitable to each domestic insurer involved, and that such reinsurance if effectuated would not substantially reduce the protection or service to its policyholders.

(3) The plan and agreement for such reinsurance must be approved by vote of not less than two-thirds of each domestic mutual insurer's members voting thereon at meetings of members called for the purpose, pursuant to such reasonable notice and procedure as the department may approve. If a life insurer, right to vote may be limited to members whose policies are other than term or group policies, and have been in effect for more than 1 year.

(4) If for reinsurance of a mutual insurer in a stock insurer, the agreement must provide for payment in cash to each member of the insurer entitled thereto, as upon conversion of such insurer pursuant to s. 628.441, of his equity in the business reinsured as determined under a fair formula approved by the department, which equity shall be based upon such member's equity in the reserves, assets (whether or not admitted assets), and surplus, if any, of the mutual insurer to be taken over by the stock insurer.

**History.**—s. 669, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **§628.501 Mutual member's share of assets on liquidation.—**

(1) Upon any liquidation of a domestic mutual insurer, its assets remaining after discharge of its indebtedness, policy obligations, repayment of contributed or borrowed surplus, if any, and expenses of administration, shall be distributed to existing persons who were its members at any time within 5 years next preceding the date such liquidation was authorized or ordered, or date of last termination of the insurer's certificate of authority, whichever date is the earlier; except, that if the department has reason to believe that those in charge of the management of the insurer have caused or encouraged the reduction of the number of members of the insurer in anticipation of liquidation and for the purpose of reducing thereby the number of persons who may be

entitled to share in distribution of the insurer's assets, it may enlarge the 5 years' qualification period above provided for by such additional period as it may deem to be reasonable.

(2) The distributive share of each such member shall be in the proportion that the aggregate premiums earned by the insurer on the policies of the member during the combined periods of his membership bear to the aggregate of all premiums so earned on the policies of all such members. The insurer

may, and if a life insurer shall, make a reasonable classification of its policies so held by such members, and a formula based upon such classification, for determining the equitable distributive share of each such member. Such classification and formula shall be subject to the approval of the department.

**History.**—s. 670, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

## CHAPTER 629

## INSURANCE CODE: RECIPROCAL INSURERS

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**<sup>1</sup>629.011 "Reciprocal insurance" defined.—**  
 "Reciprocal insurance" is that resulting from an interexchange among persons, known as "subscribers," of reciprocal agreements of indemnity, the interexchange being effectuated through an "attorney in fact" common to all such persons.

**History.**—s. 671, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.  
<sup>1</sup>**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**<sup>1</sup>629.021 "Reciprocal insurer" defined; authorized.—**

(1) A "reciprocal insurer" means an unincorporated aggregation of subscribers operating individually and collectively through an attorney in fact to provide reciprocal insurance among themselves.

(2) A reciprocal insurer may be authorized to transact insurance in this state subject to the applicable provisions of this code.

**History.**—s. 672, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.  
<sup>1</sup>**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**<sup>1</sup>629.031 Scope of chapter; existing insurers.—**

(1) All authorized reciprocal insurers shall be governed by those sections of this chapter not expressly made applicable to domestic reciprocals.

(2) Existing authorized reciprocal insurers shall after the effective date of this code comply with the provisions of this chapter, and shall make such

amendments to their subscribers' agreement, power of attorney, policies and other documents and accounts and perform such other acts as may be required for such compliance.

**History.**—s. 673, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.  
<sup>1</sup>**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**<sup>1</sup>629.041 Insuring powers of reciprocals.—**

(1) A reciprocal insurer may, upon qualifying therefor as provided for by this code, transact any kind or kinds of insurance defined by this code, other than life or title insurances.

(2) Such an insurer may purchase reinsurance upon the risk of any subscriber, and may grant reinsurance as to any kind of insurance it is authorized to transact direct.

**History.**—s. 674, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.  
<sup>1</sup>**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**<sup>1</sup>629.051 Name; suits.—**A reciprocal insurer shall:

(1) Have and use a business name. The name shall include the word "reciprocal," or "interinsurer," or "interinsurance," or "exchange," or "underwriters," or "underwriting" but this requirement shall not apply as to any insurer holding a certificate of authority to transact insurance in this state immediately prior to the effective date of this code.

(2) Sue and be sued in its own name.

**History.**—s. 675, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.  
<sup>1</sup>**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**<sup>1</sup>629.061 Attorney.—**

(1) "Attorney," as used in this chapter, refers to the attorney in fact of a reciprocal insurer. The attorney may be an individual, firm or corporation.

(2) The attorney of a foreign or alien reciprocal insurer, which insurer is duly authorized to transact insurance in this state, shall not, by virtue of discharge of its duties as such attorney with respect to the insurer's transactions in this state, be thereby deemed to be doing business in this state within the meaning of any laws of this state applying to foreign firms or corporations.

(3) The office of the attorney shall be maintained at such place as is designated by the subscribers in the power of attorney.

**History.**—s. 676, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.  
<sup>1</sup>**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**<sup>1</sup>629.071 Surplus funds required.—**

(1) A domestic reciprocal insurer hereunder formed, if it has otherwise complied with the applicable provisions of this code, may be authorized to transact insurance if it has and thereafter maintains surplus funds as follows:

(a) To transact property insurance, surplus funds of not less than \$200,000;

(b) To transact casualty insurance (other than



workers' compensation), surplus funds of not less than \$200,000.

(2) In addition to surplus required to be maintained under subsection (1), the insurer shall have, when first so authorized, expendable surplus in amount as required of a like foreign reciprocal insurer under s. 624.408.

(3) A domestic reciprocal insurer may be authorized to transact additional kinds of insurance if it has otherwise complied with the provisions of this code therefor and possesses and so maintains surplus funds in amount equal to the minimum paid-in capital stock required of a stock insurer for authority to transact a like combination of kinds of insurance, subject to any special surplus requirements applicable under s. 624.408.

**History.**—s. 677, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 116, ch. 79-40.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **629.081 Organization of reciprocal insurer.—**

(1) Twenty-five or more persons domiciled in this state may organize a domestic reciprocal insurer and make application to the department for a certificate of authority to transact insurance.

(2) The proposed attorney shall fulfill the requirements of and shall execute and file with the department when applying for a certificate of authority, a declaration setting forth:

- (a) The name of the insurer;
- (b) The location of the insurer's principal office, which shall be the same as that of the attorney and shall be maintained within this state;
- (c) The kinds of insurance proposed to be transacted;
- (d) The names and addresses of the original subscribers;
- (e) The designation and appointment of the proposed attorney and a copy of the power of attorney;
- (f) The names and addresses of the officers and directors of the attorney, if a corporation, or its members, if a firm;
- (g) The powers of the subscribers' advisory committee; and the names and terms of office of the members thereof;
- (h) That all moneys paid to the reciprocal shall, after deducting therefrom any sum payable to the attorney, be held in the name of the insurer and for the purposes specified in the subscribers' agreement;
- (i) A copy of the subscribers' agreement;
- (j) A statement that each of the original subscribers has in good faith applied for insurance of a kind proposed to be transacted, and that the insurer has received from each such subscriber the full premium or premium deposit required for the policy applied for, for a term of not less than 6 months at an adequate rate theretofore filed with and approved by the department;
- (k) A statement of the financial condition of the insurer, a schedule of its assets, and a statement that the surplus as required by s. 629.071 is on hand; and
- (l) A copy of each policy, endorsement and appli-

cation form it then proposes to issue or use.

Such declaration shall be acknowledged by the attorney before an officer authorized to take acknowledgments.

**History.**—s. 678, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **629.091 Certificate of authority.—**

(1) The certificate of authority of a reciprocal insurer shall be issued to its attorney in the name of the insurer.

(2) The department may refuse, suspend or revoke the certificate of authority in addition to other grounds therefor, for failure of the attorney to comply with any provision of this code.

**History.**—s. 679, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **629.101 Power of attorney.—**

(1) The rights and powers of the attorney of a reciprocal insurer shall be as provided in the power of attorney given it by the subscribers.

(2) The power of attorney must set forth:

- (a) The powers of the attorney;
  - (b) That the attorney is empowered to accept service of process on behalf of the insurer in actions against the insurer upon contracts exchanged;
  - (c) The general services to be performed by the attorney;
  - (d) The maximum amount to be deducted from advance premiums or deposits to be paid to the attorney and the general items of expense in addition to losses, to be paid by the insurer; and
  - (e) Except as to nonassessable policies, a provision for a contingent several liability of each subscriber in a specified amount which amount shall be not less than one nor more than ten times the premium or premium deposit stated in the policy.
- (3) The power of attorney may:
- (a) Provide for the right of substitution of the attorney and revocation of the power of attorney and rights thereunder;
  - (b) Impose such restrictions upon the exercise of the power as are agreed upon by the subscribers;
  - (c) Provide for the exercise of any right reserved to the subscribers directly or through their advisory committee; and
  - (d) Contain other lawful provisions deemed advisable.

(4) The terms of any power of attorney or agreement collateral thereto shall be reasonable and equitable, and no such power or agreement shall be used or be effective in this state unless filed with the department.

**History.**—s. 680, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**629.111 Modifications.**—Modifications of the terms of the subscribers' agreement or of the power of attorney of a domestic reciprocal insurer shall be made jointly by the attorney and the subscribers'

advisory committee. No such modification shall be effective retroactively, nor as to any insurance contract issued prior thereto.

**History.**—s. 681, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **1629.121 Attorney's bond.—**

(1) Concurrently with the filing of the declaration provided for in s. 629.081, the attorney of a domestic reciprocal insurer shall file with the department a bond in favor of this state for the benefit of all persons damaged as a result of breach by the attorney of the conditions of his bond as set forth in subsection (2). The bond shall be executed by the attorney and by an authorized corporate surety, and shall be subject to the department's approval.

(2) The bond shall be in the penal sum of \$25,000, aggregate in form, conditioned that the attorney will faithfully account for all moneys and other property of the insurer coming into his hands, and that he will not withdraw or appropriate to his own use from the funds of the insurer any moneys or property to which he is not entitled under the power of attorney.

(3) The bond shall provide that it is not subject to cancellation unless 30 days' advance notice in writing of cancellation is given both the attorney and the department.

**History.**—s. 682, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1629.131 Deposit in lieu of bond.**—In lieu of the bond required under s. 629.121, the attorney may maintain on deposit through the office of the department a like amount in cash or in value of securities qualified for deposit under s. 625.52, and subject to the same conditions as the bond.

**History.**—s. 683, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1629.141 Action on bond.**—Action on the attorney's bond or to recover against any such deposit made in lieu thereof may be brought at any time by one or more subscribers suffering loss through a violation of its conditions, or by a receiver or liquidator of the insurer. Amounts recovered on the bond shall be deposited in and become part of the insurer's funds. The total aggregate liability of the surety shall be limited to the amount of the penalty of such bond.

**History.**—s. 684, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **1629.151 Service of process; judgment.—**

(1) Legal process shall be served upon a domestic reciprocal insurer by serving the Insurance Commissioner and Treasurer as the insurer's process agent under ss. 624.422 and 624.423.

(2) Any judgment based upon legal process so served shall be binding upon each of the insurer's subscribers as their respective interests may appear, but in an amount not exceeding their respective contingent liabilities, if any, the same as though person-

al service of process was had upon each such subscriber.

**History.**—s. 685, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1629.161 Contributions to insurer.**—The attorney or other parties may advance to a domestic reciprocal insurer upon reasonable terms such funds as it may require from time to time in its operations. Sums so advanced shall not be treated as a liability of the insurer, and, except upon liquidation of the insurer, shall not be withdrawn or repaid except out of the insurer's realized earned surplus in excess of its minimum required surplus. No such withdrawal or repayment shall be made without the advance approval of the department. This section does not apply as to bank loans or to loans made upon security.

**History.**—s. 686, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **1629.171 Annual statement.—**

(1) The annual statement of a reciprocal insurer shall be made and filed by its attorney.

(2) The statement shall be supplemented by such information as may be required by the department relative to the affairs and transactions of the attorney insofar as they relate to the reciprocal insurer.

**History.**—s. 687, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1629.181 Financial condition; method of determining.**—In determining the financial condition of a reciprocal insurer the department shall apply the following rules:

(1) It shall charge as liabilities the same reserves as are required of incorporated insurers issuing non-assessable policies on a reserve basis;

(2) The surplus deposits of subscribers shall be allowed as assets, except that any premium deposits delinquent for 90 days shall first be charged against such surplus deposit;

(3) The surplus deposits of subscribers shall not be charged as a liability;

(4) All premium deposits delinquent less than 90 days shall be allowed as assets;

(5) An assessment levied upon subscribers, and not collected, shall not be allowed as an asset;

(6) The contingent liability of subscribers shall not be allowed as an asset;

(7) The computation of reserves shall be based upon premium deposits other than membership fees and without any deduction for expenses and the compensation of the attorney.

**History.**—s. 688, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1629.191 Who may be subscribers.**—Individuals, partnerships, and corporations of this state may make application, enter into agreement for and hold

policies or contracts in or with and be a subscriber of any domestic, foreign, or alien reciprocal insurer. Any corporation now or hereafter organized under the laws of this state shall, in addition to the rights, powers, and franchises specified in its articles of incorporation, have full power and authority as a subscriber to exchange insurance contracts through such reciprocal insurer. The right to exchange such contracts is hereby declared to be incidental to the purposes for which such corporations are organized and to be as fully granted as the rights and powers expressly conferred upon such corporations. Any officer, representative, trustee, receiver, or legal representative of any such subscriber shall be recognized as acting for or on its behalf for the purpose of such contract but shall not be personally liable upon such contract by reason of acting in such representative capacity.

**History.**—s. 689, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **629.201 Subscribers' advisory committee.—**

(1) The advisory committee of a domestic reciprocal insurer exercising the subscribers' rights shall be selected under such rules as the subscribers adopt.

(2) Not less than two-thirds of such committee shall be subscribers other than the attorney, or any person employed by, representing, or having a financial interest in the attorney.

(3) The committee shall:

(a) Supervise the finances of the insurer;  
(b) Supervise the insurer's operations to such extent as to assure conformity with the subscribers' agreement and power of attorney;

(c) Procure the audit of the accounts and records of the insurer and of the attorney at the expense of the insurer; and

(d) Have such additional powers and functions as may be conferred by the subscribers' agreement.

**History.**—s. 690, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **629.211 Subscribers' liability.—**

(1) The liability of each subscriber, other than as to a nonassessable policy, for the obligations of the reciprocal insurer shall be an individual, several and proportionate liability, and not joint.

(2) Except as to a nonassessable policy, each subscriber shall have a contingent assessment liability, in the amount provided for in the power of attorney or in the subscribers' agreement, for payment of actual losses and expenses incurred while his policy was in force. Such contingent liability may be at the rate of not less than one nor more than ten times the premium or premium deposit stated in the policy, and the maximum aggregate thereof shall be computed in the manner set forth in s. 629.251.

(3) Each assessable policy issued by the insurer shall contain a statement of the contingent liability.

**History.**—s. 691, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior

to that date.

#### **629.221 Subscribers' liability; on judgment.—**

(1) No action shall lie against any subscriber upon any obligation claimed against the insurer until a final judgment has been obtained against the insurer and remains unsatisfied for 30 days.

(2) Any such judgment shall be binding upon each subscriber only in such proportion as his interests may appear and in amount not exceeding his contingent liability, if any.

**History.**—s. 692, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **629.231 Assessments.—**

(1) Assessments may from time to time be levied upon subscribers of a domestic reciprocal insurer liable therefor under the terms of their policies by the attorney upon approval in advance by the subscribers' advisory committee and the department; or by the department in liquidation of the insurer.

(2) Each subscriber's share of a deficiency for which an assessment is made, but not exceeding in any event his aggregate contingent liability as computed in accordance with s. 629.251, shall be computed by applying to the premium earned on the subscriber's policy or policies during the period to be covered by the assessment, the ratio of the total deficiency to the total premiums earned during such period upon all policies subject to the assessment.

(3) In computing the earned premiums for the purposes of this section, the gross premium received by the insurer for the policy shall be used as a base, deducting therefrom solely charges not recurring upon the renewal or extension of the policy.

(4) No subscriber shall have an offset against any assessment for which he is liable, on account of any claim for unearned premium or losses payable.

**History.**—s. 693, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**629.241 Time limit for assessments.—**Every subscriber of a domestic reciprocal insurer having contingent liability shall be liable for, and shall pay his share of any assessment, as computed and limited in accordance with this chapter, if:

(1) While his policy is in force or within 1 year after its termination, he is notified by either the attorney or the department of its intentions to levy such assessment, or

(2) If an order to show cause why a receiver, conservator, rehabilitator or liquidator of the insurer should not be appointed is issued while his policy is in force or within 1 year after its termination.

**History.**—s. 694, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**629.251 Aggregate liability.—**No one policy or subscriber as to such policy shall be assessed or charged with an aggregate of contingent liability as to obligations incurred by a domestic reciprocal insurer in any 1 calendar year in excess of the amount provided for in the power of attorney or in the sub-



scribers' agreement, computed solely upon premium earned on such policy during that year.

**History.**—s. 695, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **§629.261 Nonassessable policies.—**

(1) If a reciprocal insurer has a surplus of assets over all liabilities at least equal to the minimum paid-in capital stock required of a domestic stock insurer authorized to transact like kinds of insurance, upon application of the attorney and as approved by the subscribers' advisory committee the department shall issue its certificate authorizing the insurer to extinguish the contingent liability of subscribers under its policies then in force in this state, and to omit provisions imposing contingent liability in all policies delivered or issued for delivery in this state for so long as all such surplus remains unimpaired.

(2) Upon impairment of such surplus, the department shall forthwith revoke the certificate. Such revocation shall not render subject to contingent liability any policy then in force and for the remainder of the period for which the premium has theretofore been paid; but after such revocation no policy shall be issued or renewed without providing for contingent assessment liability of the subscriber.

(3) The department shall not authorize a domestic reciprocal insurer so to extinguish the contingent liability of any of its subscribers or in any of its policies to be issued, unless it qualifies to and does extinguish such liability of all its subscribers and in all such policies for all kinds of insurance transacted by it. Except, that if required by the laws of another state in which the insurer is transacting insurance as an authorized insurer, the insurer may issue policies providing for the contingent liability of such of its subscribers as may acquire such policies in such state, and need not extinguish the contingent liability applicable to policies theretofore in force in such state.

**History.**—s. 696, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§629.271 Distribution of savings.—**A reciprocal insurer may from time to time return to its subscribers any unused premiums, savings or credits accruing to their accounts. Any such distribution shall not unfairly discriminate between classes of risks, or policies, or between subscribers, but such distribution may vary as to classes of subscribers based upon the experience of such classes.

**History.**—s. 697, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§629.281 Subscribers' share in assets.—**Upon the liquidation of a domestic reciprocal insurer, its assets remaining after discharge of its indebtedness and policy obligations, the return of any contributions of the attorney or other persons to its surplus made as provided in s. 629.161, and the return of any unused premium, savings, or credits then standing on subscribers' accounts, shall be distributed to its

subscribers who were such within the 12 months prior to the last termination of its certificate of authority, according to such reasonable formula as the department may approve.

**History.**—s. 698, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **§629.291 Merger or conversion.—**

(1) A domestic reciprocal insurer, upon affirmative vote of not less than two-thirds of its subscribers who vote on such merger pursuant to due notice and the approval of the department of the terms therefor, may merge with another reciprocal insurer or be converted to a stock or mutual insurer.

(2) Such a stock or mutual insurer shall be subject to the same capital or surplus requirements and shall have the same rights as a like domestic insurer transacting like kinds of insurance.

(3) The department shall not approve any plan for such merger or conversion which is inequitable to subscribers, or which, if for conversion to a stock insurer, does not give each subscriber preferential right to acquire stock of the proposed insurer proportionate to his interest in the reciprocal insurer as determined in accordance with s. 629.281, and a reasonable length of time within which to exercise such right.

(4) Reinsurance of all or substantially all of the insurance in force of a domestic reciprocal insurer in another insurer shall be deemed to be a merger for the purposes of this section.

**History.**—s. 699, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **§629.301 Impaired reciprocals.—**

(1) If the assets of a domestic reciprocal insurer are at any time insufficient to discharge its liabilities, other than any liability on account of funds contributed by the attorney or others, and to maintain the required surplus, its attorney shall forthwith make up the deficiency or levy an assessment upon the subscribers for the amount needed to make up the deficiency; but subject to the limitation set forth in the power of attorney or policy.

(2) If the attorney fails to make up such deficiency or to make the assessment within 30 days after the department orders him to do so, or if the deficiency is not fully made up within 60 days after the date the assessment was made, the insurer shall be deemed insolvent and shall be proceeded against as authorized by this code.

(3) If liquidation of such an insurer is ordered, an assessment shall be levied upon the subscribers for such an amount, subject to limits as provided by this chapter, as the department determines to be necessary to discharge all liabilities of the insurer, exclusive of any funds contributed by the attorney or other persons, but including the reasonable cost of the liquidation.

**History.**—s. 700, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective

July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1629.401 Florida Insurance Exchange.—**

(1) There shall be created a Florida Insurance Exchange, subject to such rules as may be promulgated by the commissioner. The purposes of the exchange are:

- (a) To provide a facility for the underwriting of:
  1. Reinsurance of all kinds of insurance.
  2. Direct insurance of all kinds on risks located entirely outside the United States.
  3. Risks which shall be certified according to s. 626.920(1)(b) as being eligible for export according to s. 626.916(1)(a).

(b) To manage the facility authorized by this section, in accordance with rules promulgated by the commissioner.

(2) The operation of this subsection shall become effective only after a determination by the Insurance Commissioner and Treasurer that the exchange created by this section may operate in an economic and beneficial manner. A committee shall be appointed to write the constitution and bylaws of the Florida Insurance Exchange, to make such other recommendations as may be necessary to assure maximum coordination of the operations of the exchange with existing insurance industry operations, and to assure maximum economic benefits to the state from the operations of the exchange. The committee shall consist of 13 members, 6 to be appointed by the Insurance Commissioner and Treasurer, 2 each to be appointed by the Speaker of the House of Representatives and the President of the Senate, 1 each to be appointed by the minority leader of the House of Representatives and the minority leader of the Senate, and 1 to be the Insurance Commissioner and Treasurer or his designated representative. The chairman shall be elected by a majority of the committee. The committee shall transmit such proposed constitution and bylaws and such other recommendations to the Insurance Commissioner and Treasurer no later than 30 days prior to the commencement of a regular annual legislative session, and the Insurance Commissioner and Treasurer shall submit his recommendations to the Legislature no later than the first day of the regular annual legislative session. Subject to the disapproval of the constitution and bylaws by either house of the Legislature by resolution before the end of the regular annual legislative session, the exchange shall have full authority to function pursuant to its constitution and bylaws 60 days after the end of the session. The initial board of governors of the exchange shall consist of seven members, three appointed by the Insurance Commissioner and Treasurer, two by the Speaker of the House of Representatives and two by the President of the Senate, to serve until the first election pursuant to the constitution or bylaws.

(3) The constitution and bylaws of the exchange shall provide for, but not be limited to:

(a) The election of no less than 6 nor more than 13 governors, at least one-third of whom shall not be members of the exchange and who shall be public representatives.

(b) The location of the principal offices of the exchange and the principal offices of its members to be

within this state for the purpose of the transaction of the type of business described in subsection (1). A principal office shall be one where officers and qualified personnel who are engaged in the administration, underwriting, claims, policyholders' service, marketing, accounting, recordkeeping, and all supportive services shall be located.

(c) The submission by members and all applicants for membership on the exchange of such financial information as may be required by the commissioner.

(d) The establishment by the exchange of a security fund in such form and amount as approved by the commissioner.

(e) The voting power of members who are underwriting syndicates.

(f) The voting power and other rights granted under the provisions of the not-for-profit corporation law, chapter 617, to participate in the conduct and management of the affairs of the exchange, by brokers, agents, and intermediaries transacting business on the exchange, each of whom shall be considered "members" only under the provisions of such law.

(g) The rights and duties of exchange members, which may include, but shall not be limited to, the manner and form of conducting business, financial stability, dues, membership fees, mandatory arbitration, and all other matters necessary or appropriate to conduct any business permitted herein.

Any amendments to the constitution and bylaws shall be subject to the approval of the commissioner.

(4) The Florida Insurance Exchange formed under the provisions of this section shall not be subject to any state or local taxes or fees measured by income, premiums, or gross receipts, except that for purposes of taxation under s. 624.509 direct premiums written, procured, or received by a member or members through the exchange on risks located in Florida shall be construed to be written, procured, or received by the exchange, and the premium tax due on said premium shall be reported and paid by the exchange.

(5) The exchange shall reimburse the commissioner for any expenses incurred by him relating to the regulation of the exchange and its members.

(6) The insurance law and rules promulgated thereunder shall apply to the exchange, its members, and the insurance or reinsurance written through the exchange, except as may be exempted by the commissioner pursuant to rule. However, no such exemption shall be unfairly discriminatory or detrimental to the solvency of licensed insurers; no such exemption shall have the effect of allowing the exchange to participate in a practice contrary to the public welfare; no such exemption or application of the insurance law shall inhibit the viability, effectiveness or efficiency of the exchange; and no such exemption shall operate contrary to the purposes of the exchange set out in subsection (1). The commissioner may establish limitations on investments in members of the exchange. The investment in any member by brokers, agents, and intermediaries transacting business on the exchange, and the investment in any such broker, agent, or intermediary

by any member, directly or indirectly, all as defined by rule, shall in each case be limited in the aggregate to less than 20 percent, or such lesser amount as determined by the commissioner, of the total investment in such member, broker, agent, or intermediary, as the case may be.

(7) The performance of the contractual obliga-

tions of the exchange or its members entered into pursuant to subsection (1) shall not be covered by any of the Florida state security or guaranty funds.

**History.**—ss. 3, 4, ch. 79-394.

**Note.**—Section 4, chapter 79-394, provides that, if chapter 629 is repealed in accordance with the intent expressed in the Regulatory Reform Act of 1976, as amended by chapter 77-457, or as subsequently amended, it is the intent of the Legislature that chapter 79-394 shall also be repealed on the same date as is therein provided.



## CHAPTER 630

## INSURANCE CODE: ALIEN INSURERS; TRUSTEED ASSETS, DOMESTICATION

- 630.011 Scope of chapter.
- 630.021 Required deposit of assets.
- 630.031 Existing trusts.
- 630.041 Purpose and duration.
- 630.051 Trust agreement; approval; amendment.
- 630.061 Authority to execute trust agreement.
- 630.071 Requirements and contents of trust agreement.
- 630.081 Withdrawal of assets, in general.
- 630.091 Statement of trustee.
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- 630.121 Domestication of alien insurer; definitions.
- 630.131 Domestication procedure.
- 630.141 Domestication agreement; authorization, execution.
- 630.151 Same; approval.
- 630.161 Consummation of domestication; transfer of assets and deposits.

**630.011 Scope of chapter.**—This chapter applies only to the trustee assets of an alien insurer using Florida as a state of entry for transaction of insurance in the United States, and to the domestication of alien insurers in accordance with the procedures herein provided.

*History.*—s. 701, ch. 59-205.

**630.021 Required deposit of assets.**—

(1) An alien insurer may use Florida as a state of entry to transact insurance in the United States by making and maintaining in this state a deposit of assets in trust with a solvent bank or trust company approved by the department.

(2) The deposit, together with other trust deposits of the insurer held in the United States for the same purpose, shall be in amount not less than the deposits required of an alien insurer under s. 624.412 and shall consist of cash or securities eligible for the investment of the funds of domestic insurers under part II of chapter 625.

(3) Such a deposit may be referred to as "trustee assets."

(4) All trustee assets shall be continuously kept within the United States.

*History.*—s. 702, ch. 59-205; ss. 13, 35, ch. 69-106.

**630.031 Existing trusts.**—All trusts of trustee assets heretofore created and now existing shall be continued under the instruments creating them, unless inconsistent with the provisions of this chapter. No amendment of the deed of trust under which such assets are so held shall be effective unless approved by the department in accordance with the provisions of this chapter.

*History.*—s. 703, ch. 59-205; ss. 13, 35, ch. 69-106.

**630.041 Purpose and duration.**—The deposit required by s. 630.021 shall be for the benefit, security and protection of the policyholders, or policyhold-

ers and creditors, of the insurer in the United States. It shall be maintained as long as there is outstanding any liability of the insurer arising out of its insurance transactions in the United States.

*History.*—s. 704, ch. 59-205.

**630.051 Trust agreement; approval; amendment.**—

(1) The deposit referred to in s. 630.021 shall be made under a written trust agreement between the insurer and the trustee, consistent with the provisions of this chapter, and the agreement and any amendments thereto shall be authenticated in such form and manner as the department may designate or approve.

(2) The agreement shall not be effective until filed with and approved in writing by the department. If the department finds that the trust agreement is sufficient in form and in conformity with law, that the trustee or trustees are eligible as such, and that the trust agreement is adequate to protect the interests of the beneficiaries of the trust, it shall give its written approval thereof. If the department finds that any of the above-mentioned requisites do not exist, it shall refuse to approve the trust agreement.

(3) If after a trust agreement has become effective the department finds that the requisites for approval of the agreement no longer exist, it may withdraw its approval.

(4) A trust agreement may be amended, but no amendment shall be effective unless the agreement as so amended is found by the department to be consistent with the provisions of this chapter and the amendment is approved by it.

*History.*—s. 705, ch. 59-205; ss. 13, 35, ch. 69-106; s. 21, ch. 78-95.

**630.061 Authority to execute trust agreement.**—An alien insurer proposing to use Florida as a state of entry to transact business of insurance in the United States, whether or not it is then authorized to transact insurance in this state, is authorized to make and execute any trust agreement required by this chapter.

*History.*—s. 706, ch. 59-205.

**630.071 Requirements and contents of trust agreement.**—Trustee assets of an alien insurer held in this state under this chapter shall be subject to, and the trust agreement shall make provisions consistent with, the following conditions:

(1) Legal title to the trustee assets is vested in the trustee or trustees, and their successors lawfully appointed, in trust for the purposes and duration as stated in s. 630.041.

(2) Substitution of a new trustee or trustees in case of a vacancy by death, resignation or otherwise may be made, subject to the department's approval.

(3) All trustee assets shall at all times be maintained as a trust fund separate and distinct from all other assets.

(4) The trustee or trustees shall maintain a

record at all times sufficient to identify the assets of the trust.

(5) Withdrawal of or from the trustee assets shall be made only as provided in s. 630.081.

*History.*—s. 707, ch. 59-205; ss. 13, 35, ch. 69-106.

**630.081 Withdrawal of assets, in general.—**

(1) The trust agreement shall provide, in substance, that no withdrawals of trustee assets shall be made by the insurer or permitted by the trustee or trustees without the written authorization or approval of the department in advance thereof, except as follows:

(a) Any or all income, earnings, dividends or interest accumulations of the trustee assets may be paid over to the United States manager of the insurer upon request of the insurer or the manager.

(b) For substitution, coincidentally with such withdrawal, of other securities or assets of value at least equal in amount to those being withdrawn, if such substituted securities or assets are likewise such as are eligible for investment of the funds of domestic insurers under part II of chapter 625; and if such withdrawal is requested in writing by the insurer's United States manager pursuant to general or specific written authority previously given or delegated by the insurer's board of directors or other similar governing body, and a copy of such authority has been filed with the trustee or trustees.

(c) For the purpose of making deposits required by law in any state in which the insurer is or thereafter becomes an authorized insurer, for the protection of the insurer's policyholders or policyholders and creditors in such state or in the United States, if such withdrawal does not reduce the insurer's deposit in this state to an amount less than the minimum deposit required under s. 624.412(1)(a) and (b) of this code. The trustee or trustees shall transfer any assets so withdrawn and in the amount so required to be deposited in the other state direct to the depository required to receive such deposit in such other state, as certified in writing by the public official having supervision of insurance in the other state.

(d) For the purpose of transferring the trustee assets to an official liquidator, conservator or rehabilitator pursuant to the order of a court of competent jurisdiction.

(2) The department shall so authorize or approve withdrawal of only such assets as are in excess of the amount of assets required to be so held in trust under s. 630.021, or as may otherwise be consistent with the provisions of this chapter.

(3) If at any time the insurer becomes insolvent, or if its assets held in the United States are less in amount than as required under s. 624.412(1) of this code, upon determination thereof the department shall in writing order the trustee to suspend the right of the insurer or any other person to withdraw assets as otherwise authorized under (1)(a),(b) and (c) and the trustee shall comply with such order and until the further order of the department.

(4) In the case of withdrawal of trustee assets deposited in another state in which the insurer is authorized to do business, it shall be sufficient if the trust agreement requires similar written approval of the insurance supervisory official of such state in lieu of any required approval of the department. In

all such cases the insurer shall notify the department in writing of the nature and extent of such withdrawal.

*History.*—s. 708, ch. 59-205; ss. 13, 35, ch. 69-106.

**630.091 Statement of trustee.—**

(1) The trustee or trustees of trustee assets shall from time to time file with the department statements, in such form as it may designate and request in writing, certifying the character of such assets and the amounts thereof.

(2) If the trustee or trustees fail to file any such statement after request therefor and expiration of a reasonable time thereafter, the department may suspend or revoke the certificate of authority of the insurer.

*History.*—s. 709, ch. 59-205; ss. 13, 35, ch. 69-106.

**630.101 Examination of assets.**—The department may from time to time examine trustee assets of any insurer in accordance with the same conditions and procedures governing the examination of insurers in general under part II of chapter 624.

*History.*—s. 710, ch. 59-205; ss. 13, 35, ch. 69-106.

**630.111 Canadian insurers.**—The provisions of this chapter applicable to a United States manager shall, in the case of insurers domiciled in Canada, be deemed to refer to the president, vice president, secretary or treasurer of such a Canadian insurer.

*History.*—s. 711, ch. 59-205.

**630.121 Domestication of alien insurer; definitions.—**

(1) "Domestication" as used in ss. 630.131-630.161 means the reorganization of the United States branch of an alien insurer as the result of which a domestic insurer shall succeed to all the business and assets and assume all the liabilities of the United States branch of the alien insurer.

(2) "United States branch" means the business unit through which business is transacted within the United States by an alien insurer and the assets and liabilities of such insurer within the United States pertaining to such business.

(3) "Domestic insurer" as used in such sections means a stock insurer incorporated under the laws of this state.

*History.*—s. 712, ch. 59-205.

**630.131 Domestication procedure.—**

(1) Upon compliance with ss. 630.131-630.161 any alien insurer now or hereafter authorized to do business in this state which owns beneficially, directly or indirectly, all of the outstanding capital stock of a domestic insurer may, with the prior written approval of the department and subject to the final approval of the department, domesticate its United States branch, if entered through this state, by entering into an agreement in writing with the domestic insurer providing for the acquisition by the domestic insurer of all the liabilities of the United States branch for no consideration other than the assumption of such liabilities; except that the agreement may further provide for additional consideration payable by the issuance by the acquiring domestic insurer of shares of its capital stock.

(2) Such shares of capital stock of the acquiring domestic insurer, or voting trust certificates representing such shares, as are held among the trustee assets of the United States branch of the alien insurer or are held in a trust created by the alien insurer and of which the alien insurer is a beneficiary shall be deemed to be shares held beneficially, but indirectly, by an alien insurer.

(3) The acquisition of assets and assumption of liabilities of the United States branch by the domestic insurer shall be effected by the filing with the department of an instrument of transfer and assumption in form satisfactory to the department and executed by the alien insurer and the domestic insurer.

(4) A domestic insurer may either be authorized to transact insurance in this state prior to entering into such domestication agreement or may, if the department so approves, be authorized effective with the consummation of the domestication agreement in accordance with the provisions of s. 630.161.

**History.**—s. 713, ch. 59-205; ss. 13, 35, ch. 69-106.

**630.141 Domestication agreement; authorization, execution.—**

(1) The domestication agreement referred to in s. 630.131 shall be authorized, adopted, approved, signed and acknowledged by the alien insurer in accordance with the laws of the country under which it is organized.

(2) In the case of a domestic insurer the domestication agreement shall be approved, adopted and authorized by its board of directors and executed by its president or any vice president and attested by its secretary or assistant secretary under its corporate seal.

**History.**—s. 714, ch. 59-205.

**630.151 Same; approval.**—An executed counterpart of the domestication agreement, together with certified copies of the corporate proceedings of the domestic insurer and the alien insurer, approving, adopting and authorizing the execution of the domestication agreement, shall be submitted to the department for its approval. The department shall thereupon consider the agreement and if it finds that the same is in accordance with the provisions hereof and that the interest of policyholders and creditors of the United States branch of the alien insurer are not materially adversely affected it may approve the domestication agreement and authorize the consummation thereof in compliance with the

provisions of s. 630.161.

**History.**—s. 715, ch. 59-205; ss. 13, 35, ch. 69-106.

**630.161 Consummation of domestication; transfer of assets and deposits.—**

(1) Upon the filing with the department of a certified copy of the instrument of transfer and assumption pursuant to which a domestic insurer succeeds to the business and assets of the United States branch of an alien insurer and assumes all its liabilities as provided by ss. 630.131-630.161 the domestication of the United States branch shall be deemed to be effective and thereupon all the rights, franchise and interests of the United States branch in and to every species of property, real, personal and mixed, and things in action thereunto belonging shall be deemed as transferred to and vested in the domestic insurer and simultaneously therewith the domestic insurer shall be deemed to have assumed all of the liabilities of the United States branch.

(2) All deposits of the United States branch held by the department, or state officers or other state regulatory agencies pursuant to requirements of state laws, shall be deemed to be held as security that the domestic insurer will fully perform its assumption as direct liabilities of all the liabilities to policyholders or policyholders and creditors within the United States of the United States branch, and such deposits shall be deemed to be assets of the domestic insurer and shall be reported as such in the annual financial statements and other reports which the domestic insurer may be required to file. Upon the ultimate release by any such state officer or agency of any such deposits, the securities and cash constituting such released deposit shall be delivered and paid over to the domestic insurer as the lawful successor in interest to the United States branch.

(3) Contemporaneously with the consummation of the domestication of the United States branch, notwithstanding any provision of the statutes to the contrary, the department shall transfer to the insurer the securities deposited by the United States branch in compliance with the provisions of this law, and the department shall consent that the trustee of the trustee assets deposited by the United States branch in compliance with the provisions of this law shall withdraw from the trustee assets and transfer and deliver over to the domestic insurer all assets held by such trustee.

**History.**—s. 716, ch. 59-205; ss. 13, 35, ch. 69-106.



## CHAPTER 631

## INSURANCE CODE: INSURER INSOLVENCY; GUARANTY OF PAYMENT

PART I INSURER INSOLVENCY; REHABILITATION AND LIQUIDATION  
(ss. 631.001-631.397)PART II FLORIDA INSURANCE GUARANTY OF PAYMENTS  
(ss. 631.50-631.70)PART III LIFE AND HEALTH INSURANCE GUARANTY OF PAYMENTS  
(ss. 631.711-631.735)

## PART I

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REHABILITATION AND LIQUIDATION

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- 631.011 Definitions.
- 631.021 Jurisdiction of delinquency proceedings; venue; change of venue; exclusiveness of remedy; appeal.
- 631.031 Commencement of delinquency proceedings.
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**631.001 Title, construction, and purpose.—**

(1) Part I of chapter 631 may be cited as the "Insurers Rehabilitation and Liquidation Act."

(2) This part shall not be interpreted to limit the powers granted the Department of Insurance by other provisions of the law.

(3) This part shall be liberally construed to effect the purpose stated in subsection (4).

(4) The purpose of this part is the protection of the interests of insureds, creditors, and the public generally, through:

(a) Early detection of any potentially dangerous condition in an insurer and prompt application of appropriate corrective measures which are neither unduly harsh nor subject to unwarranted publicity needlessly damaging to the insurer;

(b) Enhanced efficiency and economy of liquidation through clarification and specification of the law to minimize legal uncertainty and litigation;

(c) Equitable apportionment of any unavoidable loss;

(d) Lessening the problems of interstate rehabilitation and liquidation by facilitating cooperation between states in the liquidation process and by extension of the scope of personal jurisdiction over debtors of the insurer outside this state.

*History.—*s. 1, ch. 70-27; s. 1, ch. 70-439.

**631.011 Definitions.—**For the purpose of this part:

(1) "Assets" as used in subsections (3)-(5) means only allowed assets as defined in chapter 625.

(2) "Liabilities" as used in subsections (3)-(5) means all liabilities, including those specifically required in s. 625.041.

(3) "Impairment of surplus" means that the surplus of a stock insurer, the additional surplus of a mutual or reciprocal insurer, or the additional net trust fund of a business trust insurer does not comply with the requirements of s. 624.408(3).

(4) "Impairment of capital" means that the minimum surplus required to be maintained in s. 624.408(3) has been dissipated and the insurer is not possessed of assets at least equal to all its liabilities together with its total issued and outstanding capital stock, if a stock insurer, or the minimum surplus or net trust fund required by s. 624.407, if a mutual, reciprocal, or business trust insurer.

(5) "Insolvency" means that all the assets of the insurer, if made immediately available, would not be sufficient to discharge all its liabilities; or that the insurer is unable to pay its debts as they become due in the usual course of business. When the context of any provision of this code so indicates, insolvency shall also include and be defined as "impairment of surplus" as defined in subsection (3) and "impairment of capital" as defined in subsection (4).

(6) "Insurer," in addition to persons so defined under s. 624.03, includes also persons purporting to be insurers or organizing, or holding themselves out as organizing, in this state for the purpose of becoming insurers and all insurers who have insureds resident in this state.

(7) "Delinquency proceedings" means any proceeding commenced against an insurer pursuant to this chapter for the purpose of liquidating, rehabilitating, reorganizing, or conserving such insurer, and any summary proceeding authorized by ss. 631.351-631.371.

(8) "State" is as defined in s. 624.08.

(9) "Foreign country" means territory not in any state.

(10) "Domiciliary state" means the state in which an insurer is incorporated or organized or, in the case of an insurer incorporated or organized in a foreign country, the state in which such insurer, having become authorized to do business in such state, has, at the commencement of delinquency proceedings, the largest amount of its assets held in trust and assets held on deposit for the benefit of its policyholders or policyholders and creditors in the United States, and any such insurer is deemed to be domiciled in such state.

(11) "Ancillary state" means any state other than a domiciliary state.

(12) "Reciprocal state" means any state other than this state in which in substance and effect the provisions of the Uniform Insurers Liquidation Act, as defined in s. 631.211, are in force, including the provisions requiring that the commissioner of insurance or equivalent insurance supervisory official be the receiver of a delinquent insurer.

(13) "General assets" means all property, real, personal, or otherwise, not specifically mortgaged, pledged, deposited, or otherwise encumbered for the security or benefit of specified persons or a limited class or classes of persons, and as to such specifically encumbered property the term includes all such property or its proceeds in excess of the amount necessary to discharge the sum or sums secured thereby. Assets held in trust and assets held on deposit for the security or benefit of all policyholders or all policyholders and creditors in the United States shall be deemed general assets.

(14) "Preferred claim" means any claim with respect to which the law of the state or of the United

States accords priority of payment from the general assets of the insurer.

(15) "Special deposit claim" means any claim secured by a deposit made pursuant to statute for the security or benefit of a limited class or classes of persons, but not including any general assets.

(16) "Secured claim" means any claim secured by mortgage, trust deed, pledge, deposit as security, escrow, or otherwise, but not including special deposit claim or claims against general assets. The term also includes claims which more than 4 months prior to the commencement of delinquency proceedings in the state of the insurer's domicile have become liens upon specific assets by reason of judicial process.

(17) "Receiver" means receiver, liquidator, rehabilitator, or conservator, as the context may require.

**History.**—s. 717, ch. 59-205; ss. 13, 35, ch. 69-106; s. 2, ch. 70-27; s. 1, ch. 70-439.

### **631.021 Jurisdiction of delinquency proceedings; venue; change of venue; exclusiveness of remedy; appeal.—**

(1) The circuit court shall have original jurisdiction of delinquency proceedings under this chapter and any court with jurisdiction is authorized to make all necessary or proper orders to carry out the purposes of this chapter.

(2) The venue of delinquency proceedings against a domestic insurer shall be in the circuit court in the judicial circuit of the insurer's principal place of business. The venue of such proceedings against foreign and alien insurers shall be in the circuit court of Leon County.

(3) At any time after the commencement of a proceeding under this chapter the department may apply to the court for an order changing the venue of, and removing the proceeding to, Leon County or to any other county of this state in which it deems that such proceeding may be most economically and efficiently conducted.

(4) Delinquency proceedings pursuant to this chapter shall constitute the sole and exclusive method of liquidating, rehabilitating, reorganizing, or conserving an insurer, and no court shall entertain a petition for the commencement of such proceedings unless the same has been filed in the name of the state on the relation of the department. The Florida Insurance Guaranty Association, Incorporated, shall be given reasonable written notice by the department of all hearings which pertain to an adjudication of insolvency of a member insurer.

(5) An appeal shall lie to the District Court of Appeal, First District, from an order granting or refusing rehabilitation, liquidation, or conservation, and from every order in delinquency proceedings having the character of a final order as to the particular portion of the proceedings embraced therein.

**History.**—s. 718, ch. 59-205; s. 29, ch. 63-559; ss. 13, 35, ch. 69-106; s. 8, ch. 77-227.

**631.031 Commencement of delinquency proceedings.**—The department shall commence any such proceedings by application to the court for an order directing the insurer to show cause why the department should not have the relief prayed for. On the return of such order to show cause, and after a full hearing, the court shall either deny the applica-

tion or grant the application, together with such other relief as the nature of the case and the interests of the policyholders, creditors, stockholders, members, subscribers, or public may require.

History.—s. 719, ch. 59-205; ss. 13, 35, ch. 69-106; s. 213, ch. 77-104.

#### 631.041 Injunctions.—

(1) Upon application by the department for such an order to show cause, or at any time thereafter, the court may without notice issue an injunction restraining the insurer, its officers, directors, stockholders, members, subscribers, agents and all other persons from the transaction of its business or the waste or disposition of its property until the further order of the court.

(2) The court may at any time during a proceeding under this chapter issue such other injunctions or orders as may be deemed necessary to prevent interference with the department or the proceeding, or waste of the assets of the insurer, or the commencement or prosecution of any actions, or the obtaining of preferences, judgments, attachments or other liens, or the making of any levy against the insurer or against its assets or any part thereof.

(3) Notwithstanding any other provision of law, no bond shall be required of the department as a prerequisite for the issuance of any injunction or restraining order pursuant to this section.

History.—s. 720, ch. 59-205; ss. 13, 35, ch. 69-106.

**631.051 Grounds for rehabilitation; domestic insurers.**—The department may petition for an order directing it to rehabilitate a domestic insurer or an alien insurer domiciled in this state on any one or more of the following grounds, that the insurer:

- (1) Is impaired or insolvent;
- (2) Has failed to comply with an order of the department to make good an impairment of capital or surplus or both;
- (3) Is found by the department to be in such condition or is using or has been subject to such methods or practices in the conduct of its business, as to render its further transaction of insurance presently or prospectively hazardous to its policyholders, creditors, stockholders, or the public;
- (4) Has failed, or its parent corporation, subsidiary, or affiliated person controlled by either the insurer or the parent corporation has failed, to submit its books, documents, accounts, records, and affairs pertaining to the insurer to the reasonable inspection or examination of the department or its authorized representative; or any individual exercising any executive authority in the affairs of the insurer or parent corporation, or subsidiary, or affiliated person has refused to be examined under oath by the department or its authorized representative, whether within this state or otherwise, concerning the pertinent affairs of the insurer, or parent corporation or subsidiary or affiliated person; or if examined under oath refuses to divulge pertinent information reasonably known to him; or officers, directors, agents, employees, or other representatives of the insurer or parent corporation, subsidiary, or affiliated person have failed to comply promptly with the reasonable requests of the department or its authorized representative for the purposes of, and during the conduct of, any such examination;

(5) Has concealed or removed records or assets or otherwise violated s. 628.271 or s. 628.281;

(6) Through its board of directors or governing body is deadlocked in the management of the insurer's affairs and that the members of a mutual, reciprocal, or any other type of organization or stockholders are unable to break the deadlock and that irreparable injury to the insurer, its creditors, its policyholders, its members or subscribers, or the public is threatened by reason thereof;

(7) Has transferred or attempted to transfer substantially its entire property or business, or has entered into any transaction the effect of which is to merge substantially its entire property or business into that of any other insurer or entity without having first obtained the written approval of the department under the provisions of s. 628.451 or s. 628.461, as the case may be;

(8) Has willfully violated its charter or certificate of incorporation or any law of this state;

(9) Is in such a position that control of it, whether by stock ownership or otherwise, and whether direct or indirect, is in one or more persons found by the department after notice and hearing to be dishonest or untrustworthy; or that the insurer has failed, upon order of the department and expiration of such reasonable time for such removal as the department shall specify in the order, to remove any person who in fact has executive authority, directly or indirectly, in the insurer, whether as an officer, director, manager, agent, employee, or otherwise, and if such person has been found by the department after notice and hearing, to be incompetent, dishonest, untrustworthy, or so lacking in insurance company managerial experience as to be hazardous to the insurance-buying public;

(10) Has been or is the subject of an application for the appointment of a receiver, trustee, custodian, or sequestrator of the insurer or its property otherwise than pursuant to the provisions of this code, but only if such an appointment has been made or is imminent;

(11) Has consented to such an order through a majority of its directors, stockholders, members, or subscribers;

(12) Has failed to pay a final judgment rendered against it in this state upon any insurance contract issued or assumed by it, within 60 days after the judgment became final, within 60 days after the time for taking an appeal has expired, or within 30 days after dismissal of an appeal before final determination, whichever date is the later;

(13) Has been the victim of embezzlement, wrongful sequestration, conversion, diversion, or encumbering of its assets; forgery or fraud affecting it; or other illegal conduct in, by, or with respect to it, which if established would threaten its solvency; or that the department has reasonable cause to so believe any of the foregoing has occurred or may occur;

(14) Is engaging in a systematic practice of reaching settlements with and obtaining releases from policyholders or third-party claimants and then unreasonably delaying payment of, or failing to pay, the agreed-upon settlements; or

(15) Within the previous 12 months has systematically attempted to compromise with creditors on



the ground that it is financially unable to pay its claims in full.

**History.**—s. 721, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 70-27; s. 1, ch. 70-439.

**631.061 Grounds for liquidation.**—The department may apply to the court for an order appointing it as receiver (if its appointment as receiver shall not be then in effect) and directing it to liquidate the business of a domestic insurer or of the United States branch of an alien insurer having trustee assets in this state, regardless of whether or not there has been a prior order directing it to rehabilitate such insurer, upon any of the grounds specified in s. 631.051, or if such insurer:

(1) Is or is about to become insolvent.

(2) Is an insolvent insurer and has commenced voluntary liquidation or dissolution, or attempts to commence or prosecute any action or proceeding to liquidate its business or affairs, or to dissolve its corporate charter, or to procure the appointment of a receiver, trustee, custodian, or sequestrator under any law except this code.

(3) Has not completed its organization and obtained a certificate of authority as an insurer within the time allowed therefor under any applicable law.

**History.**—s. 722, ch. 59-205; ss. 13, 35, ch. 69-106; s. 4, ch. 70-27.

**631.071 Grounds for conservation; foreign insurers.**—The department may apply to the court for an order appointing it as receiver or ancillary receiver, and directing it to conserve the assets within this state, of a foreign insurer upon any of the following grounds:

(1) Upon any of the grounds specified in s. 631.051 or s. 631.061, or

(2) Upon the ground that its property has been sequestered in its domiciliary sovereignty or in any other sovereignty.

**History.**—s. 723, ch. 59-205; ss. 13, 35, ch. 69-106.

**631.081 Same; alien insurers.**—The department may apply to the court for an order appointing it as receiver or ancillary receiver, and directing it to conserve the assets within this state, of any alien insurer upon any of the following grounds:

(1) Upon any of the grounds specified in s. 631.051 or s. 631.061;

(2) Upon the ground that the insurer has failed to comply, within the time designated by the department, with an order made by it to make good an impairment of its trustee funds; or

(3) Upon the ground that the property of the insurer has been sequestered in its domiciliary sovereignty or elsewhere.

**History.**—s. 724, ch. 59-205; ss. 13, 35, ch. 69-106.

**631.091 Grounds for ancillary liquidation; foreign insurers.**—The department may apply to the court for an order appointing it as ancillary receiver of and directing it to liquidate the business of a foreign insurer having assets, business or claims in this state upon the appointment in the domiciliary state of such insurer of a receiver, liquidator, conservator, rehabilitator, or other officer by whatever

name called for the purpose of liquidating the business of such insurer.

**History.**—s. 725, ch. 59-205; ss. 13, 35, ch. 69-106.

**631.101 Order of rehabilitation; termination.**—

(1) An order to rehabilitate a domestic insurer shall direct the department forthwith to take possession of the property of the insurer and to conduct the business thereof, and to take such steps toward removal of the causes and conditions which have made rehabilitation necessary as the court may direct.

(2) If at any time the department deems that further efforts to rehabilitate the insurer would be useless, it may apply to the court for an order of liquidation.

(3) The department, or any interested person upon due notice to the department, at any time may apply to the court for an order terminating the rehabilitation proceedings and permitting the insurer to resume possession of its property and the conduct of its business, but no such order shall be made or entered except when, after a hearing, the court has determined that the purposes of the proceeding have been fully accomplished.

**History.**—s. 726, ch. 59-205; ss. 13, 35, ch. 69-106.

**631.111 Order of liquidation; domestic insurers.**—

(1) An order to liquidate the business of a domestic insurer shall direct the department forthwith to take immediate possession of the property of the insurer, to marshal all assets of the insurer, to liquidate its business, to deal with the insurer's property and business in its own name or in the name of the insurer, as the court may direct, and to give notice to all creditors who may have claims against the insurer to present such claims.

(2) The order of liquidation shall authorize and direct the department to take immediate possession of all the property, assets, and estate, including, but not limited to, all offices maintained by the insurer and all rights of action, books, documents, papers, evidence of debt, and all other property of every kind whatsoever and wheresoever located belonging to the insurer, including, but not limited to, all bank accounts, stocks, bonds, debentures, mortgages, all premiums collected by premium finance companies or any person otherwise engaged in premium financing, agents, subagents, producing agents, brokers, solicitors, service representatives, or others and not paid to the insurer, furniture, fixtures, equipment, office supplies, and all real property of the insurer and to hold all such assets pending further orders of the court.

(3) The department may apply for and secure an order dissolving the corporate existence of a domestic insurer upon its application for an order of liquidation of such insurer or at any time after such order has been granted.

**History.**—s. 727, ch. 59-205; ss. 13, 35, ch. 69-106; s. 5, ch. 70-27; s. 1, ch. 70-439.

**631.121 Same; alien insurers.**—An order to liquidate the business of a United States branch of an alien insurer having trustee assets in this state shall be in the same terms as those prescribed for

domestic insurers, save and except only that the assets of the business of such United States branch shall be the only assets included therein.

*History.*—s. 728, ch. 59-205.

**631.131 Order of conservation or ancillary liquidation of foreign or alien insurers.—**

(1) An order to conserve the assets of a foreign or alien insurer shall require the department forthwith to take possession of the property of the insurer within this state and to conserve it, subject to the further direction of the court.

(2) An order to liquidate the assets in this state of a foreign insurer shall require the department forthwith to take possession of the property of the insurer within this state, to take all steps necessary to prevent wasting of the assets, to marshal all assets in accordance with s. 631.111(2), insofar as that subsection does not conflict with the rights of the domiciliary receiver, and to liquidate it subject to the orders of the court and with due regard to the rights and powers of the domiciliary receiver as provided in this chapter.

*History.*—s. 729, ch. 59-205; ss. 13, 35, ch. 69-106; s. 6, ch. 70-27; s. 1, ch. 70-439.

**631.141 Conduct of delinquency proceedings; domestic and alien insurers.—**

(1) Whenever under this chapter a receiver is to be appointed in delinquency proceedings for a domestic or alien insurer, the court shall appoint the department as such receiver. The court shall order the department forthwith to take possession of the assets of the insurer and to administer the same under the orders of the court.

(2) As a domiciliary receiver, the department shall be vested by operation of law with the title to all of the property, contracts and rights of action, and all of the books and records of the insurer, wherever located, as of the date of entry of the order directing it to rehabilitate or liquidate a domestic insurer or to liquidate the United States branch of an alien insurer domiciled in this state, and it shall have the right to recover the same and reduce the same to possession; except that ancillary receivers in reciprocal states shall have, as to assets located in their respective states, the rights and powers which are herein prescribed for ancillary receivers appointed in this state as to assets located in this state.

(3) The filing or recording of the order directing possession to be taken, or a certified copy thereof, in any office where instruments affecting title to property are required to be filed or recorded shall impart the same notice as would be imparted by a deed, bill of sale, or other evidence of title duly filed or recorded.

(4) The department as domiciliary receiver shall be responsible for the proper administration of all assets coming into its possession or control. The court may at any time require a bond from it or its agents if deemed desirable for the protection of such assets.

(5) Upon taking possession of the assets of an insurer, the domiciliary receiver shall, subject to the direction of the court, immediately proceed to conduct the business of the insurer or to take such steps as are authorized by this chapter for the purpose of

rehabilitating, liquidating, or conserving the affairs or assets of the insurer.

(6) In connection with delinquency proceedings, the department may appoint one or more special agents to act for it and it may employ such counsel, clerks, and assistants as it deems necessary. The compensation of the special agents, counsel, clerks, or assistants and all expenses of taking possession of the insurer and of conducting the proceedings shall be fixed by the receiver, subject to the approval of the court, and shall be paid out of the funds or assets of the insurer. Within the limits of duties imposed upon them, special agents shall possess all the powers given to and, in the exercise of those powers, shall be subject to all duties imposed upon the receiver with respect to such proceedings.

*History.*—s. 730, ch. 59-205; ss. 13, 35, ch. 69-106.

**631.152 Same; foreign insurers.—**

(1) Whenever under this chapter an ancillary receiver is to be appointed in delinquency proceedings for an insurer not domiciled in this state, the court shall appoint the department as ancillary receiver. The department shall file a petition requesting the appointment on the grounds set forth in s. 631.091:

(a) If it finds that there are sufficient assets of the insurer located in this state to justify the appointment of an ancillary receiver, or

(b) If ten or more persons resident in this state having claims against such insurer file a petition with the department requesting the appointment of such ancillary receiver.

(2) The domiciliary receiver for the purpose of liquidating an insurer domiciled in a reciprocal state shall be vested by operation of law with the title to all of the property, contracts and rights of action, and all of the books and records of the insurer located in this state, and it shall have the immediate right to recover balances due from local agents and to obtain possession of any books and records of the insurer found in this state. It shall also be entitled to recover the other assets of the insurer located in this state, except that upon the appointment of an ancillary receiver in this state, the ancillary receiver shall during the ancillary receivership proceedings have the sole right to recover such other assets. The ancillary receiver shall, as soon as practicable, liquidate from their respective securities those special deposit claims and secured claims which are proved and allowed in the ancillary proceedings in this state, and shall pay the necessary expenses of the proceedings. All remaining assets it shall promptly transfer to the domiciliary receiver. Subject to the foregoing provisions, the ancillary receiver and its agents shall have the same powers and be subject to the same duties with respect to the administration of such assets as a receiver of an insurer domiciled in this state.

(3) The domiciliary receiver of an insurer domiciled in a reciprocal state may sue in this state to recover any assets of such insurer to which it may be entitled under the laws of this state.

*History.*—s. 731, ch. 59-205; ss. 13, 35, ch. 69-106.

**631.161 Claims of nonresidents against domestic insurers.—**

(1) In a delinquency proceeding begun in this state against a domestic insurer, claimants residing in reciprocal states may file claims either with the ancillary receivers, if any, in their respective states, or with the domiciliary receiver. All such claims must be filed on or before the last date fixed for the filing of claims in the domiciliary delinquency proceedings.

(2) Controverted claims belonging to claimants residing in reciprocal states may either:

(a) Be proved in this state, or

(b) If ancillary proceedings have been commenced in such reciprocal states, may be proved in those proceedings. In the event a claimant elects to prove his claim in ancillary proceedings, if notice of the claim and opportunity to appear and be heard is afforded the domiciliary receiver of this state, as provided in s. 631.171 with respect to ancillary proceedings in this state, the final allowance of such claim by the courts in the ancillary state shall be accepted in this state as conclusive as to its amount and shall also be accepted as conclusive as to its priority, if any, against special deposits or other security located within the ancillary state.

History.—s. 732, ch. 59-205.

**631.171 Claims against foreign insurers.—**

(1) In a delinquency proceeding in a reciprocal state against an insurer domiciled in that state, claimants against such insurer who reside within this state may file claims either with the ancillary receiver, if any, appointed in this state, or with the domiciliary receiver. All such claims must be filed on or before the last date fixed for the filing of claims in the domiciliary delinquency proceedings.

(2) Controverted claims belonging to claimants residing in this state may either:

(a) Be proved in the domiciliary state as provided by the law of that state, or

(b) If ancillary proceedings have been commenced in this state, be proved in those proceedings. In the event that any such claimant elects to prove his claim in this state, he shall file his claim with the ancillary receiver and shall give notice in writing to the receiver in the domiciliary state, either by registered mail or by personal service at least 40 days prior to the date set for hearing. The notice shall contain a concise statement of the amount of the claim, the facts on which the claim is based, and the priorities asserted, if any. If the domiciliary receiver within 30 days after the giving of such notice shall give notice in writing to the ancillary receiver and to the claimant, either by registered mail or by personal service, of his intention to contest such claim, he shall be entitled to appear or to be represented in any proceeding in this state involving adjudication of the claim. The final allowance of the claim by the courts of this state shall be accepted as conclusive as to its amount and shall also be accepted as conclusive as to its priority, if any, against special deposits or other security located within this state.

History.—s. 733, ch. 59-205.

**631.181 Form of claim; notice; hearing.—**

(1) All claims against an insurer against which delinquency proceedings have been begun shall set forth in reasonable detail the amount of the claim, or the basis upon which such amount can be ascertained, the facts upon which the claim is based, and the priorities asserted, if any. All such claims shall be verified by the affidavit of the claimant, or someone authorized to act on his behalf and having knowledge of the facts, and shall be supported by such documents as may be material thereto.

(2) All claims filed in this state shall be filed with the receiver, whether domiciliary or ancillary, in this state, on or before the last date for filing as specified in this chapter.

(3) As soon as he has evaluated claims filed in the delinquency proceeding, the receiver shall report the claims to the circuit court, specifying in such report his recommendations with respect to the actions to be taken thereon. Upon receipt of such report, the court shall fix a time for hearing the claims so reported and direct that the receiver shall give such notice as the court shall determine to such persons as shall appear to the court to be interested therein. All such notices shall specify the time and place of the hearing and concisely state the amount and nature of the claim, the priorities asserted, if any, and the recommendation of the receiver with reference thereto.

(4) At the hearing, all persons interested shall be entitled to appear and the court shall enter an order allowing, allowing in part, or disallowing the claim. Any such order shall be deemed to be an appealable order.

History.—s. 734, ch. 59-205; ss. 13, 35, ch. 69-106; s. 7, ch. 70-27.

**631.191 Priority of certain claims.—**

(1) In a delinquency proceeding against an insurer domiciled in this state, claims owing to residents of ancillary states shall be preferred claims if like claims are preferred under the laws of this state. All such claims owing to residents or nonresidents shall be given equal priority of payment from general assets regardless of where such assets are located.

(2) In a delinquency proceeding against an insurer domiciled in a reciprocal state, claims owing to residents of this state shall be preferred if like claims are preferred by the laws of that state.

(3) The owners of special deposit claims against an insurer for which a receiver is appointed in this or any other state shall be given priority against their several special deposits in accordance with the provisions of the statutes governing the creation and maintenance of such deposits. If there is a deficiency in any such deposit so that the claims secured thereby are not fully discharged therefrom, the claimants may share in the general assets, but such sharing shall be deferred until general creditors, and also claimants against other special deposits who have received smaller percentages from their respective special deposits, have been paid percentages of their claims equal to the percentage paid from the special deposit.

(4) The owner of a secured claim against an insurer for which a receiver has been appointed in this or any other state may surrender his security and file his claim as a general creditor, or the claim may



be discharged by resort to the security, in which case the deficiency, if any, shall be treated as a claim against the general assets of the insurer on the same basis as claims of unsecured creditors. If the amount of the deficiency has been adjudicated in ancillary proceedings as provided in this chapter, or if it has been adjudicated by a court of competent jurisdiction in proceedings in which the domiciliary receiver has had notice and opportunity to be heard, such amounts shall be conclusive; otherwise the amount shall be determined in the delinquency proceeding in the domiciliary state.

History.—s. 735, ch. 59-205.

**631.201 Attachment and garnishment of assets.**—During the pendency of delinquency proceedings in this or any reciprocal state, no action or proceeding in the nature of an attachment, garnishment or execution shall be commenced or maintained in the courts of this state against the delinquent insurer or its assets. Any lien obtained by any such action or proceeding within 4 months prior to the commencement of any such delinquency proceeding or at any time thereafter shall be void as against any rights arising in such delinquency proceeding.

History.—s. 736, ch. 59-205.

**631.211 Uniform Insurers Liquidation Act.**—

(1) Subsections (2) to (13) inclusive, of s. 631.011, together with ss. 631.031, 631.041 and 631.141-631.211 constitute and may be referred to as the "Uniform Insurers Liquidation Act."

(2) The Uniform Insurers Liquidation Act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states that enact it. To the extent that its provisions when applicable conflict with other provisions of this chapter, the provisions of such act shall control.

History.—s. 737, ch. 59-205.

**631.221 Deposit of moneys collected.**—The moneys collected by the department in a proceeding under this chapter shall be from time to time deposited in one or more state or national banks, savings banks or trust companies, and in the case of the insolvency or voluntary or involuntary liquidation of any such depository which is an institution organized and supervised under the laws of this state, such deposits shall be entitled to priority of payment on an equality with any other priority given by the banking laws of this state. The department may in its discretion deposit such moneys or any part thereof in such a bank or trust company as a trust fund.

History.—s. 738, ch. 59-205; ss. 13, 35, ch. 69-106.

**631.231 Exemption from fees.**—The department shall not be required to pay any fee to any public officer in this state for filing, recording, issuing a transcript or certificate or authenticating any paper or instrument pertaining to the exercise by the department of any of the powers or duties conferred upon it under this chapter, whether or not such paper or instrument be executed by the department or its employees or attorneys of record and whether or not it is connected with the commencement of any action or proceeding by or against the

department, or with the subsequent conduct of such action or proceeding.

History.—s. 739, ch. 59-205; ss. 13, 35, ch. 69-106.

**631.241 Borrowing on pledge of assets.**—For the purpose of facilitating the rehabilitation, liquidation, conservation, or dissolution of an insurer pursuant to this chapter, the department may, subject to the approval of the court, borrow money and execute, acknowledge and deliver notes or other evidences of indebtedness therefor and secure the repayment of the same by the mortgage, pledge, assignment, transfer in trust, or hypothecation of any or all of the property, whether real, personal or mixed, of such insurer, and the department subject to the approval of the court shall have power to take any and all other action necessary and proper to consummate any such loan and to provide for the repayment thereof. The department shall be under no obligation in its official capacity to repay any loan made pursuant to this section.

History.—s. 740, ch. 59-205; ss. 13, 35, ch. 69-106.

**631.243 Termination of rehabilitation.**—If at any time the court finds, after hearing in open court, upon petition of the department or of the insurer or on its own motion, that the objectives of an order to rehabilitate a domestic insurer or an alien insurer domiciled in this state have been accomplished and that the insurer can be returned to its own management without further jeopardy to the insurer and its creditors, claimants, policyholders, and stockholders, and to the public, the court may, upon a full report and accounting by the department relative to the conduct of the insurer's affairs during the rehabilitation and to the insurer's current financial condition, terminate the rehabilitation and by order return the insurer and its assets and affairs to the insurer's management.

History.—s. 8, ch. 70-27; s. 1, ch. 70-439.

**631.251 Date rights fixed on liquidation.**—Except as provided in ss. 631.252 and 631.291, the rights and liabilities of the insurer and its creditors, policyholders, stockholders, members, subscribers and all other persons interested in its estate shall, unless otherwise directed by the court, be fixed as of the date on which the order directing the liquidation of the insurer is filed in the office of the clerk of the court which made the order, subject to the provisions of this chapter with respect to the rights of claimants holding contingent claims.

History.—s. 741, ch. 59-205; s. 9, ch. 70-27.

**631.252 Continuation of coverage.**—

(1) All insurance policies or similar contracts of coverage issued by the insurer shall continue in force until the earliest to occur of the following:

(a) Expiration of 30 days from the date of entry of the liquidation order, if the order so specifies;

(b) Normal expiration of the policy or contract coverage;

(c) Replacement of the coverage by the insured, or replacement of the policy or contract of coverage, with a policy or contract acceptable to the insured by the receiver with another insurer; or

(d) Termination of the coverage by the insured.

(2) A claim arising during such continuation of coverage shall be treated as if it arose immediately before the petition for liquidation.

(3) The 30-day coverage continuation period provided in subsection (1)(a) shall in no event be extended, and failure of actual notice to the policyholder of the insolvency of the insurer, of commencement of delinquency proceedings, or of expiration of the extension period shall not affect such expiration.

History.—s. 10, ch. 70-27.

#### 631.261 Voidable transfers.—

(1) Any transfer of, or lien upon, the property of an insurer which is made or created within 4 months prior to the granting of an order to show cause under this chapter with the intent of giving to any creditor a preference or of enabling him to obtain a greater percentage of his debt than any other creditor of the same class and which is accepted by such creditor having reasonable cause to believe that such preference will occur, shall be voidable.

(2) Every director, officer, employee, stockholder, member, subscriber, and any other person acting on behalf of such insurer who shall be concerned in any such act or deed and every person receiving thereby any property of such insurer or the benefit thereof shall be personally liable therefor and shall be bound to account to the department.

(3) The department as receiver in any proceeding under this chapter may avoid any transfer of or lien upon the property of an insurer which any creditor, stockholder, subscriber, or member of such insurer might have avoided and may recover the property so transferred unless such person was a bona fide holder for value prior to the date of the entering of an order to show cause under this chapter. Such property or its value may be recovered from anyone who has received it except a bona fide holder for value as herein specified.

History.—s. 742, ch. 59-205; ss. 13, 35, ch. 69-106.

#### 631.262 Transfers prior to petition.—

(1) Every transfer made or suffered and every obligation incurred by an insurer within 1 year prior to the filing of a successful petition in any delinquency proceeding under this chapter, upon a showing by the receiver that the same was incurred without fair consideration, or with actual intent to hinder, delay, or defraud either then existing or future creditors, shall be fraudulent and voidable. However, every such transfer or obligation incurred or suffered within 6 months prior to the filing of the above petition shall be presumed void and fraudulent, with the burden of proof upon the obligee or transferee to show otherwise. This subsection shall not apply to a person who in good faith is a purchaser, lienor, or obligee, for a present fair equivalent value, but any purchaser, lienor, or obligee who in good faith has given a valuable consideration less than fair for such transfer, lien, or obligation may retain the property, lien, or obligation as a security for repayment. The court may, on due notice, order any such transfer or obligation to be preserved for the benefit of the estate, and in that event the receiver shall succeed to and may enforce the rights of the purchaser, lienor, or obligee.

(2) Transfers shall be deemed to have been made

or suffered, or obligations incurred, when perfected according to the following criteria:

(a) A transfer of property other than real property shall be deemed to be made or suffered when it becomes so far perfected that no subsequent lien obtainable by legal or equitable proceedings on a simple contract could become superior to the rights of the transferee;

(b) A transfer of real property shall be deemed to be made or suffered when it becomes so far perfected that no subsequent bona fide purchaser from the insurer could obtain rights superior to the rights of the transferee;

(c) A transfer which creates an equitable lien shall not be deemed to be perfected if there are available means by which a legal lien could be created;

(d) Any transfer not perfected prior to the filing of a petition in a delinquency proceeding shall be deemed to be made immediately before the filing of a successful petition;

(e) Paragraphs (a) through (d) apply whether or not there are or were creditors who might have obtained any liens or persons who might have become bona fide purchasers.

(3) The transferor or obligor insurer shall record and preserve adequate official memoranda by corporate minutes which shall fully reflect all transactions involving transfers as contemplated by this section of real property or securities of any type and, in the case of all other property or assets, any transfer out of the insurer's ordinary course of business. Any person, firm, or corporation, or any officer, director, or employee thereof, who shall violate this provision shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or by a fine of not more than \$5,000. Each instance of such violation shall be considered a separate offense.

(4) The personal liability of the officers or directors of an insolvent insurer shall be subject to the provisions of chapter 607 and the penalties provided therein.

(5) Every transaction of the insurer with a reinsurer within 1 year prior to the filing of the petition shall be voidable upon a showing that such transaction was made without fair consideration or with intent to hinder, delay, or defraud either then existing or future creditors, notwithstanding the provisions of subsection (1).

History.—s. 11, ch. 70-27; s. 654, ch. 71-136; s. 13, ch. 79-9.

#### 631.263 Transfers after petition.—

(1) After the original petition is filed in any delinquency proceeding, a transfer of any of the real property of the insurer made to a person acting in good faith shall be valid against the receiver if made for a present fair equivalent value or, if not made for a present fair equivalent value, then to the extent of the present consideration actually paid therefor, for which amount the transferee shall have a lien on the property so transferred. The recording of a copy of the petition for, or order in, any delinquency proceeding with the clerk of the circuit court in the county where any real property in question is located is constructive notice of the commencement of a delinquency proceeding. The exercise by a court of the United States or any state with jurisdiction to authorize or effect a judicial sale of real property of

the insurer within any county in any state shall not be impaired by the pendency of such a proceeding unless the copy is recorded in the county prior to the consummation of the judicial sale.

(2) After the original petition for a delinquency proceeding has been filed and before an order of conservation, rehabilitation, or liquidation is granted:

(a) A transfer of any of the property of the insurer, other than real property, made to a person acting in good faith shall be valid against the receiver if made for a present fair equivalent value or, if not made for a present fair equivalent value, then to the extent of the present consideration actually paid therefor, for which amount the transferee shall have a lien on the property so transferred.

(b) A person indebted to the insurer or holding property of the insurer may, if acting in good faith, pay the indebtedness or deliver the property or any part thereof to the insurer or upon his order, with the same effect as if the petition were not pending.

(3) A person having actual knowledge of the pending delinquency proceeding shall be deemed not to act in good faith.

(4) A person asserting the validity of a transfer under this section shall have the burden of proof. Except as elsewhere provided in this section, any transfer by or in behalf of the insurer after the date of the appointment of a receiver as defined in s. 631.011(17) by any person other than the receiver shall not be valid against the receiver.

(5) Nothing in this section shall impair the negotiability of currency or negotiable instruments.

History.—s. 12, ch. 70-27.

#### **631.271 Priority of claims for compensation of employees and administrative expenses.—**

(1) Compensation actually owing to employees, other than officers and directors, of an insurer for services rendered within 3 months prior to the commencement of a proceeding against the insurer under this chapter, but not exceeding \$1,000 for each employee, shall be paid prior to the payment of any other debt or claim, and in the discretion of the department may be paid as soon as practicable after the proceeding has been commenced; except that at all times the department shall reserve such funds as will in its opinion be sufficient for the payment of all expenses of administration, which expenses shall have priority over all other debts and claims.

(2) Such priority shall be in lieu of any other similar priority which may be authorized by law as to wages or compensation of such employees.

History.—s. 743, ch. 59-205; ss. 13, 35, ch. 69-106; s. 13, ch. 70-27; s. 1, ch. 70-439.

#### **631.281 Offsets.—**

(1) In all cases of mutual debts or mutual credits between the insurer and another person in connection with any action or proceeding under this chapter, such credits and debts shall be set off and the balance only shall be allowed or paid, except as provided in subsection (2).

(2) No offset shall be allowed in favor of any such person where:

(a) The obligation of the insurer to such person would not at the date of the entry of any liquidation order or otherwise, as provided in s. 631.251, entitle

him to share as a claimant in the assets of the insurer.

(b) The obligation of the insurer to such person was purchased by or transferred to such person with a view of its being used as an offset.

(c) The obligation of such person is to pay an assessment levied against the members of a mutual insurer, or against the subscribers of a reciprocal insurer, or is to pay a balance upon the subscription to the capital stock of a stock insurer.

History.—s. 744, ch. 59-205.

#### **631.291 Allowance of certain claims.—**

(1) No claim based upon a contract of insurance, suretyship, or indemnity shall be allowed or paid from the assets of an insurer in process of liquidation unless the event causing the loss to, or creating the liability of, the obligee of the contract shall have occurred prior to the order of liquidation or pursuant to the provisions of s. 631.252.

(2)(a) Claims of a third party shall not be deemed contingent, but shall be fairly evaluated even though liability has not been established by the date set forth in subsection (1) if:

1. It may be reasonably inferred from the proof presented upon such claim that such person would be able to obtain a judgment upon such cause of action against such insured;

2. Such person shall furnish suitable proof, unless the court for good cause shown shall otherwise direct, that no further valid claim against such insurer arising out of his cause of action other than those already presented can be made;

3. The total liability of such insurer to all claimants arising out of the same act of its insured shall be no greater than its maximum liability would be were it not in liquidation; and

4. The filing of such claim shall constitute a release of the insured from liability to the claimant to the amount of the claim so filed or the claimant shall otherwise so agree.

(b) Nothing in this subsection shall be construed to deny the right of an insured to file a claim in order to secure for himself the benefits under a liability insurance policy.

(3) No judgment against such an insured or the insurer taken after the date of entry of the liquidation order and no judgment against an insured or the insurer taken by default, or by collusion, prior to the entry of the liquidation order shall be considered as evidence in the liquidation proceedings as to liability or the amount of damages. No judgment or order against an insured or the insurer entered within 4 months prior to the entry of the liquidation order shall be considered as evidence of liability or the amount of damages.

(4)(a) Claims not covered by the provisions of subsection (1) shall not be allowed or paid from the assets of an insurer in process of liquidation unless:

1. The event, whether an act or omission, occurred prior to the date of the order of liquidation;

2. The goods were delivered or services were rendered prior to the order of liquidation; or

3. The duty to perform under a contract matured prior to the order of liquidation.

(b) Nothing in this subsection shall be deemed to extinguish or limit any right the receiver may other-



wise have to cancel any contract or part thereof by virtue of any contractual provision or law of this state. It shall be the duty of every claimant under this subsection to mitigate and minimize any damage suffered as a result of a breach of contract upon entry of the order of liquidation. Recovery by any claimant under this subsection shall be limited to the actual damages suffered by virtue of a breach.

(5) The value of any security held by a secured creditor shall be determined under supervision of the court by:

(a) Converting the same into money according to the terms of the agreement pursuant to which the security was delivered to such creditor; or

(b) By agreement, arbitration, compromise, or litigation between the creditor and the receiver.

The amount so determined shall be credited upon the secured claim, and any deficiency shall be treated as an unsecured claim. If the claimant surrenders his security to the receiver, the entire claim shall be allowed as if unsecured.

*History.*—s. 745, ch. 59-205; ss. 13, 35, ch. 69-106; s. 14, ch. 70-27.

#### **631.301 Time to file claims.—**

(1) If upon the entry of an order of liquidation under this chapter or at any time thereafter during liquidation proceedings the insurer shall not be clearly solvent, the court shall, upon hearing after such notice it deems proper, make and enter an order adjudging the insurer to be insolvent.

(2) After the entry of the order of insolvency, regardless of any prior notice that may have been given to creditors, the department shall notify all persons who may have claims against such insurer to file such claims with it, at a place and within the time specified in the notice, or that such claims shall be forever barred. The time specified in the notice shall be as fixed by the court for filing of claims and which shall be not less than 6 months after the entry of the order of insolvency. The notice shall be given in such manner and for such reasonable period of time as may be ordered by the court.

*History.*—s. 746, ch. 59-205; ss. 13, 35, ch. 69-106.

#### **631.311 Report and petition for assessment.**

—Within 3 years after the date of the entry of an order of rehabilitation or liquidation of a domestic mutual insurer or a domestic reciprocal insurer, the department may make and file its report and petition to the court setting forth:

(1) The reasonable value of the assets of the insurer;

(2) The liabilities of the insurer to the extent thus far ascertained by the department;

(3) The aggregate amount of the assessment, if any, which the department deems reasonably necessary to pay all claims, the costs and expenses of the collection of the assessments and the costs and expenses of the delinquency proceedings in full;

(4) Any other information relative to the affairs or property of the insurer that the department deems material.

*History.*—s. 747, ch. 59-205; ss. 13, 35, ch. 69-106.

#### **631.321 Order and levy of assessment.—**

(1) Upon the filing and reading of the report and petition provided for in s. 631.311, the court, ex parte, may order the department to assess all members or subscribers of the insurer who may be subject to such an assessment, in such an aggregate amount as the court finds reasonably necessary to pay all valid claims as may be timely filed and proved in the delinquency proceedings, together with the costs and expenses of levying and collecting assessments and the costs and expenses of the delinquency proceedings in full. Any such order shall require the department to assess each such member or subscriber for his proportion of the aggregate assessment, according to such reasonable classification of such members or subscribers and formula as may be made by the department and approved by the court.

(2) The court may order additional assessments upon the filing and reading of any amendment or supplement to the report and petition referred to in subsection (1), if such amendment or supplement is filed within 3 years after the date of the entry of the order of rehabilitation or liquidation.

(3) After the entry of the order to levy an assessment upon members or subscribers of an insurer referred to in subsections (1) or (2), the department shall levy an assessment upon such members or subscribers in accordance with the order.

(4) The total of all assessments against any member or subscriber with respect to any policy, whether levied pursuant to this chapter or pursuant to any other provision of this code, shall be for no greater amount than that specified in the policy or policies of the member or subscriber and as limited under this code; except as to any policy which was issued at a rate of premium below the minimum rate lawfully permitted for the risk insured, in which event the assessment against any such policyholder shall be upon the basis of the minimum rate for such risk.

(5) No assessment shall be levied against any member or subscriber with respect to any nonassessable policy issued in accordance with this code.

*History.*—s. 748, ch. 59-205; ss. 13, 35, ch. 69-106.

#### **631.331 Assessment prima facie correct; notice; payment; proceedings to collect.—**

(1) Any assessment of a subscriber or member of an insurer made by the department pursuant to the order of court fixing the aggregate amount of the assessment against all members or subscribers and approving the classification and formula made by the department under s. 631.321(1) shall be prima facie correct.

(2) Each member or subscriber shall be notified of the amount of assessment to be paid by him by written notice mailed to the address of the member or subscriber last of record with the insurer. Failure of the member or subscriber to receive the notice so mailed, within the time specified therein or at all, shall be no defense in any proceeding to collect the assessment.

(3) If any such member or subscriber fails to pay the assessment within the period specified in the notice, which period shall not be less than 20 days after mailing, the department may obtain an order in the delinquency proceedings requiring the member or subscriber to show cause at a time and place

fixed by the court why judgment should not be entered against such member or subscriber for the amount of the assessment together with all costs, and a copy of the order and a copy of the petition therefor shall be served upon the member or subscriber within the time and in the manner designated in the order.

(4) If the subscriber or member after due service of a copy of the order and petition referred to in subsection (3) is made upon him:

(a) Fails to appear at the time and place specified in the order, judgment shall be entered against him as prayed for in the petition; or

(b) Appears in the manner and form required by law in response to the order, the court shall hear and determine the matter and enter a judgment in accordance with its decision.

(5) The department may collect any such assessment through any other lawful means.

*History.*—s. 749, ch. 59-205; ss. 13, 35, ch. 69-106.

#### **631.341 Notice of insolvency to policyholders by insurer, general agent, or agent.—**

(1) The receiver shall, immediately after appointment in delinquency proceedings against an insurer, give written notice of such proceedings to each general agent and licensed agent of the insurer in Florida. Each general agent and licensed agent of the insurer in Florida shall forthwith give written notice of such proceedings to all subagents, producing agents, brokers, solicitors, and service representatives writing business through such general agent or licensed agent, whether or not such subagents, producing agents, brokers, solicitors, and servicing representatives are licensed or permitted by the insurer and whether or not operating under a written agency contract.

(2) Unless, within 15 days subsequent to the date of such notice, all agents referred to in subsection (1) shall have either replaced or reinsured in a solvent authorized insurer the insurance coverages placed by or through such agent in the delinquent insurer, such agents shall then, by registered or certified mail, send to the last known address of any policyholder a written notice of the insolvency of the delinquent insurer.

(3) The license, permit, or certificate of authority of any person, firm, or corporation failing to comply with the provisions of this section shall be subject to revocation as otherwise provided by law.

(4) If such person, firm, or corporation is not licensed or permitted or the holder of a certificate of authority under any section of this code, then such person, firm, or corporation, or the officers and directors thereof, shall upon conviction, be subject to fine of not more than \$5,000 or imprisonment of not more than 1 year in the county jail or both, upon failure to comply with the provisions of this section.

*History.*—s. 750, ch. 59-205; s. 15, ch. 70-27.

#### **631.351 Summary proceedings.—**

(1) Upon the department filing a verified petition with any circuit judge of the proper judicial circuit as required in s. 631.021(2), which petition states that prima facie grounds exist for rehabilitation, liquidation, or conservation of an insurer under s. 631.051, s. 631.061, or s. 631.131, the department

shall be entitled to an ex parte hearing forthwith and an appropriate order from the judge or court in the interest of protecting the public and the insurer and its policyholders, claimants, and creditors. After a diligent effort to be heard by the judges of the circuit is made, and such judges or the court fail or refuse to hear such petition for any reason, the department shall then file a duplicate original of said petition and exhibits, if any, in the Circuit Court of Leon County, along with an affidavit which shall state that a diligent effort was made to obtain such initial hearing in the judicial circuit where such hearing was sought and that the request to be heard was refused or that a hearing was not granted and the reasons therefor, if known. Upon compliance with the above, and if said affidavit states that the department believes that irreparable harm will result to the public and the insurer and its policyholders, claimants, or creditors as a result of further delay, it may thereafter proceed summarily in accordance with the following provision: It may make and serve upon the insurer and any other persons involved such orders, other than seizure orders under ss. 631.361 and 631.371, as it deems reasonably necessary to correct, eliminate, or remedy such conduct, condition, or ground.

(2) Violation of any order issued by the department under this section by any person affected shall, upon conviction by a court, subject such person to being punished in the same manner as if in contempt of a court order, and punishment shall be as otherwise provided by law.

(3) Nothing in this section shall be construed to amend, modify, or limit any rights, powers, or authority of the department which exist by virtue of any other provision of this code.

*History.*—s. 16, ch. 70-27; s. 1, ch. 70-439; s. 214, ch. 77-104; s. 21, ch. 78-95.

#### **631.361 Seizure under court order.—**

(1) Upon filing by the department in any circuit court of this state of its verified petition alleging any ground for a formal delinquency proceeding against an insurer under this chapter, alleging that the interests of the insurer's policyholders, claimants, or creditors or the public will be endangered or jeopardized by delay, and setting forth the order deemed necessary by the department, the court may, ex parte and without notice or hearing, issue forthwith the requested order. The requested order may:

(a) Direct the department to take possession and control of all or part of the property, books, documents, accounts, and other records of the insurer and the premises occupied by it for transaction of its business; and

(b) Until further order of court, enjoin the insurer and its officers, directors, managers, agents, and employees from removal, concealment, or other disposition of its property, books, records, or accounts and from transaction of its business except with the department's written consent.

(2) The court's order shall be for such duration specified in the order as the court deems necessary to enable the department to ascertain the insurer's condition. Upon motion of any party or its own motion, the court may hold such hearings as it deems desirable after such notice as it deems appropriate, and may extend, shorten, or modify the terms of the

order. The court shall vacate the seizure order if the department fails to commence a formal proceeding under this chapter after having had a reasonable opportunity to do so, and a seizure order is automatically vacated by issuance of the court's order pursuant to formal delinquency proceedings under this chapter.

(3) Entry of a seizure order under this section shall not constitute an anticipatory breach of any contract of the insurer.

*History.*—s. 17, ch. 70-27; s. 1, ch. 70-439.

#### **631.371 Seizure under the department's order.—**

(1) Upon the department filing a verified petition with any circuit judge of the proper judicial circuit as required by s. 631.021(2), which states that it believes that the interest of policyholders, the insurer, claimants, creditors, or the public will be endangered or jeopardized and that prima facie grounds exist for rehabilitation, liquidation, or conservation of an insurer under ss. 631.051, 631.061, or s. 631.131 of this chapter, the department may request a seizure order and shall be entitled to an ex parte hearing forthwith and an appropriate seizure order from the judge or court in the interest of protecting the public and such insurer and its policyholders, claimants, or creditors. After a diligent effort is made to be heard by the judges of the circuit and such judges or the court fail or refuse to hear such petition for any reason, the department shall then file a duplicate original of said petition and exhibits, if any, in the circuit court of Leon County along with an affidavit which shall state that a diligent effort was made to obtain such initial hearing in the judicial circuit where such hearing was sought and that the request to be heard was refused or that a hearing was not granted and the reasons therefor, if known. Upon compliance with the above and if said affidavit further states that the department believes that irreparable harm will result to the public and the insurer and its policyholders, creditors, or claimants as a result of further delay, it may thereafter issue a seizure order on any ground that would justify court seizure under s. 631.361. Such seizure order may contain any or all the provisions of s. 631.361(1). The department shall retain possession and control until the order is vacated or is replaced by an order of court pursuant to subsection (2) or (3) or pursuant to a formal delinquency proceeding under this chapter.

(2) The department may, at any time after seizure under its order, report its actions to the proper court, and in the event that the insurer, for any reason, fails to avail itself of the judicial review provided for by law, then the department shall forthwith report its actions to the proper court. The department may request the court to substitute its order for the department's or it may seek any other order which it deems appropriate.

(3) Every law enforcement officer of this state authorized by law shall assist the department in making and enforcing any such seizure, and every such officer shall furnish it with such deputies, patrolmen, or officers as are necessary to assist it in

execution of its order.

(4) Entry of a seizure order under this section shall not constitute an anticipatory breach of any contract of the insurer.

*History.*—s. 18, ch. 70-27; s. 1, ch. 70-439; s. 21, ch. 78-95.

#### **631.391 Cooperation of officers and employees.—**

(1) Any officer, director, manager, trustee, agent, or adjuster of any insurer and any other person who possesses any executive authority over, or who exercises any control over, any segment of the insurer's affairs shall fully cooperate with the department in any proceeding under this chapter or any investigation preliminary or incidental to the proceeding. To cooperate includes, but is not limited to the following:

(a) To reply promptly in writing to any inquiry from the department requesting such a reply; and,

(b) Promptly to make available and deliver to the department any books, accounts, documents, other records, information, or property of or pertaining to the insurer and in his possession, custody, or control.

(2) No person shall obstruct or interfere with the department in the conduct of any delinquency proceeding or any preliminary investigation or incidental thereto.

(3) This section shall not prohibit any person from seeking legal relief from a court when aggrieved by the petition for liquidation or other delinquency proceedings or other orders.

(4) Any person referred to in subsection (1) who fails to cooperate with the department or any other person who obstructs or interferes with the department in the conduct of any delinquency proceedings or any investigation preliminary or incidental thereto, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, or by fine of not more than \$5,000.

*History.*—s. 19, ch. 70-27; s. 1, ch. 70-439; s. 655, ch. 71-136.

**631.395 Guaranty fund; orders of court.—**Any order of liquidation issued pursuant to s. 631.111 or s. 631.131 shall authorize and direct the department as receiver to coordinate the operation of the receivership with the operation of any insurance guaranty fund authorized to operate in this state. Such authorization shall include, but not be limited to, release of copies of any of the following:

(1) Claims files, records, or documents pertaining to claims on file with the insolvent insurer; and

(2) Insurance claims filed with the receiver.

*History.*—s. 20, ch. 70-27; s. 1, ch. 70-439.

#### **631.397 Use of certain marshaled assets.—**

(1) Within 120 days of a final determination of insolvency of an insurer by a court of competent jurisdiction of this state, the department, as receiver, shall apply to the court for approval of a proposal to disburse assets out of such insurer's marshaled assets, as such assets become available, to each association entitled thereto or, if there are no assets available for such disbursement, then for approval of such proposal as the receiver deems appropriate. For the purposes of this section, the term "association" includes the Florida Insurance Guaranty Association, Incorporated, and any entity or person per-



forming a function in another state similar to that performed in this state by the Florida Insurance Guaranty Association, Incorporated, provided the Florida Insurance Guaranty Association, Incorporated, is entitled to like payment under the laws of the association's state of domicile in respect to insolvent companies doing business in that state.

(2) Such proposal shall at least include provisions for:

(a) Reserving amounts for the payment of expenses of administration, the payment of claims of secured creditors to the extent of the value of the security held, and the payment of claims falling within the priorities established in this part.

(b) Disbursement of the other assets marshaled to date and subsequent disbursements of assets as they become available.

(c) Equitable allocation of disbursements to each association entitled thereto.

(d) The securing by the receiver, from each association entitled to disbursements pursuant to this section, of an agreement to return to the receiver such assets previously disbursed as may be required to pay claims of secured creditors and claims falling within the priorities established in this part, in accordance with such priorities; however, no bond shall be required of any such association.

(e) A full report to be made by each association to the receiver, which report shall account for all assets so disbursed to the association, all disbursements made therefrom, any interest earned by the association on such assets, and any other matter as the court may direct.

(3) The department's proposal shall provide for disbursements to each association in amounts at least equal to the claim payments made, and estimated to be made, by such association for which such association could assert a claim against the receiver, and shall provide that if the assets available for disbursement from time to time do not equal or exceed the amount of such claim payments made, or to be made, by each such association, then disbursements shall be in the amount of available assets.

(4) Notice of such application shall be given by the department to the associations in, and to the commissioners of insurance of, each of the states to which disbursement may be made. Such notice shall be made by certified mail, first class postage prepaid, at least 15 days prior to submission of such application to the court. Such notice shall be deemed to have been made when deposited in the mail.

(5) Action on the application may be taken by the court if notice has been given pursuant to subsection (4) and the department's proposal complies with subsection (2).

History.—s. 1, ch. 77-100; s. 241, ch. 79-400.

## PART II

### FLORIDA INSURANCE GUARANTY OF PAYMENTS

- 631.50 Title.
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- 631.52 Scope.
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- 631.62 Prevention of insolvencies.
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- 631.64 Recognition of assessments in rates.
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- 631.66 Immunity.
- 631.67 Stay of proceedings; reopening of default judgments.
- 631.68 Limitation; certain actions.
- 631.70 Attorney's fee.

**631.50 Title.**—Part II of chapter 631 shall be known and may be cited as the "Florida Insurance Guaranty Association Act."

History.—s. 1, ch. 70-20.

**631.51 Purposes.**—The purposes of this part are to:

(1) Provide a mechanism for the payment of covered claims under certain insurance policies to avoid excessive delay in payment and to avoid financial loss to claimants or policyholders because of the insolvency of an insurer;

(2) Assist in the detection and prevention of insurer insolvencies;

(3) Create a nonprofit corporation to administer and supervise the operation of such association; and

(4) Assess the cost of such protection among insurers.

History.—s. 2, ch. 70-20.

**631.52 Scope.**—This part shall apply to all kinds of direct insurance except life, title, surety, disability, credit, mortgage guaranty, surplus lines, ocean marine, and wet marine insurance.

History.—s. 3, ch. 70-20; s. 1, ch. 77-227.

**631.53 Construction.**—This part shall be liberally construed to effect the purposes set forth in s. 631.51, which shall constitute an aid and guide to interpretation.

History.—s. 4, ch. 70-20.

**631.54 Definitions.**—As used in this part:

(1) "Account" means any one of the four accounts created by s. 631.55.

(2) "Association" means the Florida Insurance Guaranty Association, Incorporated.

(3) "Department" means the Department of Insurance.

(4) "Covered claim" means an unpaid claim, including one of unearned premiums, which arises out of, and is within the coverage, and not in excess of, the applicable limits of an insurance policy to which this part applies, issued by an insurer, if such insurer becomes an insolvent insurer after October 1, 1970, and the claimant or insured is a resident of this state at the time of the insured event or the property from which the claim arises is permanently located in this state. "Covered claim" shall not include any

amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise. Member insurers shall have no right of subrogation against the insured of any insolvent member.

(5) "Insolvent insurer" means a member insurer authorized to transact insurance in this state, either at the time the policy was issued or when the insured event occurred, and against which an order of liquidation with a finding of insolvency has been entered by a court of competent jurisdiction if such order has become final by the exhaustion of appellate review.

(6) "Member insurer" means any person who writes any kind of insurance to which this part applies under s. 631.52, including the exchange of reciprocal or interinsurance contracts, and is licensed to transact insurance in this state.

(7) "Net direct written premiums" means direct gross premiums written in this state on insurance policies to which this part applies, less return premiums thereon and dividends paid or credited to policyholders on such direct business. "Net direct written premiums" does not include premiums on contracts between insurers or reinsurers.

(8) "Person" means individuals, children, firms, associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

(9) "Expenses in handling claims" means expenses, including, but not limited to, those which relate to the investigation, adjustment, defense, or settlement of specific claims under, or arising out of, a specific policy.

History.—s. 5, ch. 70-20; ss. 2, 4, ch. 77-227; s. 1, ch. 79-55.

#### 631.55 Creation of the association.—

(1) There is created a nonprofit corporation to be known as the "Florida Insurance Guaranty Association, Incorporated." All insurers defined as member insurers in s. 631.54(6) shall be members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under a plan of operation established and approved under s. 631.58 and shall exercise its powers through a board of directors established under s. 631.56. The corporation shall have all those powers granted or permitted nonprofit corporations, as provided in chapter 617.

(2) For the purposes of administration and assessment, the association shall be divided into four separate accounts:

- (a) The workers' compensation insurance account;
- (b) The auto liability account;
- (c) The auto physical damage account; and
- (d) The account for all other insurance to which this part applies.

History.—s. 6, ch. 70-20; s. 117, ch. 79-40.

#### 631.56 Board of directors.—

(1) The board of directors of the association shall consist of not less than five or more than nine persons serving terms as established in the plan of operation. The department shall approve and appoint to the board persons recommended by the member insurers. In the event the department finds that any recommended person does not meet the qualifica-

tions for service on the board, the department shall request the member insurers to recommend another person. Each member shall serve for a 4-year term and may be reappointed. Vacancies on the board shall be filled for the remaining period of the term in the same manner as initial appointments. If no members are selected by November 30, 1970, the department may appoint the initial members of the board of directors.

(2) In appointing members to the board, the department shall consider among other things whether all areas of insurance covered by this part are fairly represented.

(3) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors.

History.—s. 7, ch. 70-20.

#### 631.57 Powers and duties of the association.—

(1) The association shall:

(a) Be obligated to the extent of the covered claims existing:

1. Prior to the adjudication of insolvency and arising within 30 days after the determination of insolvency;

2. Before the policy expiration date if less than 30 days after the determination; or

3. Before the insured replaces the policy or causes its cancellation, if he does so within 30 days of the determination,

but such obligation shall include only that amount of each covered claim which is in excess of \$100 and is less than \$300,000, except that the association shall pay the full amount of any covered claim arising out of a workers' compensation policy. In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the obligation of the insolvent insurer under the policy from which the claim arises.

(b) Be deemed the insurer to the extent of its obligation on the covered claims, and, to such extent, shall have all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent. In no event shall the association be liable for any penalties or interest.

(2) The association may:

(a) Employ or retain such persons as are necessary to handle claims and perform other duties of the association;

(b) Borrow funds necessary to effect the purposes of this part in accord with the plan of operation;

(c) Sue or be sued; and

(d) Negotiate and become a party to such contracts as are necessary to carry out the purpose of this part.

(3)(a) To the extent necessary to secure the funds for the respective accounts for the payment of covered claims and also to pay the reasonable costs to administer the same, the department, upon certification of the board of directors, shall levy assessments in the proportion that each insurer's net direct written premiums in this state in the classes protected by the account bears to the total of said net direct written premiums received in this state by all such insurers for the preceding calendar year for the

kinds of insurance included within such account. Assessments shall be remitted to and administered by the board of directors in the manner specified by the approved plan. Each insurer so assessed shall have at least 30 days' written notice as to the date the assessment is due and payable. Every assessment shall be made as a uniform percentage applicable to the net direct written premiums of each insurer in the kinds of insurance included within the account in which the assessment is made. The assessments levied against any insurer shall not exceed in any one year more than 1 percent of that insurer's net direct written premiums in this state for the kinds of insurance included within such account during the calendar year next preceding the date of such assessments.

(b) If sufficient funds from such assessments, together with funds previously raised, are not available in any one year in the respective account to make all the payments or reimbursements then owing to insurers, the funds available shall be prorated and the unpaid portion shall be paid as soon thereafter as funds become available.

(c) Assessments shall be included as an appropriate factor in the making of rates.

(d) No state funds of any kind shall be allocated or paid to said association or any of its accounts.

(4) The department may exempt any insurer from an assessment if an assessment would result in such insurer's financial statement reflecting an amount of capital or surplus less than the sum of the minimum amount required by any jurisdiction in which the insurer is authorized to transact insurance.

(5) Any necessary and proper expenses incurred by an insurer in the investigation, adjustment, compromise, settlement, denial, or handling of claims assigned to it shall, upon proper verification under the rules of the association, entitle the insurer to reimbursement. Any insurer whose employee serves on the staff of the association may set off from its assessment any necessary and proper expenses incurred by the insurer resulting from said service of its employee. An insurer which ceases to engage in the business of writing property or casualty insurance policies in this state shall have no right to a refund of any assessment previously remitted.

*History.*—s. 8, ch. 70-20; s. 1, ch. 70-439; s. 3, ch. 77-227; s. 118, ch. 79-40.

#### **631.58 Plan of operation.—**

(1)(a) The association shall submit to the department a proposed plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the department.

(b) If the association fails to submit a suitable proposed plan of operation by December 30, 1970, or if at any time thereafter the association fails to submit suitable amendments to the plan, the department shall adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this part. Such rules shall continue in force until modified by the department or superseded by a plan submitted by the association and approved by the department.

(2) All member insurers shall comply with the plan of operation.

(3) The plan of operation shall:

(a) Establish the procedures whereby all the powers and duties of the association under s. 631.57 will be performed;

(b) Establish procedures for handling assets of the association;

(c) Establish the amount and method of reimbursing members of the board of directors under s. 631.56;

(d) Establish procedures by which claims may be filed with the association and acceptable forms of proof of covered claims. Notice of claims to the receiver or liquidator of the insolvent insurer shall be deemed notice to the association or its agent, and a list of such claims shall be periodically submitted to the association or similar organization in another state by the receiver or liquidator;

(e) Establish regular places and times for meetings of the board of directors;

(f) Establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors;

(g) Provide that any member insurer aggrieved by any final action or decision of the association may appeal to the department within 30 days after the action or decision;

(h) Establish the procedures whereby recommendations for the board of directors will be submitted to the department; and

(i) Contain additional provisions necessary or proper for the execution of the powers and duties of the association.

(4) The plan of operation may provide that any or all powers and duties of the association, except those under s. 631.57(2)(b) and (c) are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this association or its equivalent in two or more states. Such a corporation, association, or organization shall be reimbursed as a servicing facility would be reimbursed and shall be paid for its performance of any other functions of the association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the department, and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this part.

*History.*—s. 9, ch. 70-20; s. 163, ch. 71-355; s. 21, ch. 78-95.

#### **631.59 Duties and powers of Department of Insurance.—**

(1) The department shall:

(a) Notify the association of the existence of an insolvent insurer not later than 3 days after it receives notice of the determination of the insolvency; and

(b) Upon request of the board of directors, provide the association with a statement of the net direct written premiums of each member insurer.

(2) The department may:

(a) Require that the association notify the insureds of the insolvent insurer and any other interested parties of the determination of insolvency and of their rights under this part. Such notification



shall be by mail at their last known address, when available, but if sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation shall be sufficient.

(b) Suspend or revoke the certificate of authority to transact insurance in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the department may levy a fine on any member insurer which fails to pay an assessment when due. Such fine may not exceed 5 percent of the unpaid assessment per month, except that no fine shall be less than \$100 per month.

(c) Revoke the designation of any servicing facility if it finds claims are being handled unsatisfactorily.

History.—s. 10, ch. 70-20; s. 21, ch. 78-95.

#### 631.60 Effect of paid claims.—

(1) Any person recovering under this part shall be deemed to have assigned his rights under the policy to the association to the extent of his recovery from the association. Every insured or claimant seeking the protection of this part shall cooperate with the association to the same extent as such person would have been required to cooperate with the insolvent insurer. The association shall have no cause of action against the insured of the insolvent insurer for any sums it has paid out except such causes of action as the insolvent insurer would have had if such sums had been paid by the insolvent insurer. In the case of an insolvent insurer operating on a plan with assessment liability, payments of claims of the association shall not operate to reduce the liability of insureds to the receiver, liquidator, or statutory successor for unpaid assessments.

(2) The receiver, liquidator, or statutory successor of an insolvent insurer shall be bound by settlements of covered claims by the association or a similar organization in another state. The court having jurisdiction shall grant such claims priority equal to that to which the claimant would have been entitled in the absence of this part against the assets of the insolvent insurer. The expenses of the association or similar organization in handling claims shall be accorded the same priority as the liquidator's expenses.

(3) The association shall periodically file with the receiver or liquidator of the insolvent insurer statements of the covered claims paid by the association and estimates of anticipated claims on the association which shall preserve the rights of the association against the assets of the insolvent insurer.

(4) In the event chapter 70-20, Laws of Florida, is held to be constitutional, covered claims paid under chapter 71-970, Laws of Florida, shall not be recoverable under chapter 70-20.

History.—s. 11, ch. 70-20; s. 11, ch. 71-970.

#### 631.61 Nonduplication of recovery.—

(1) Any person having a claim against an insurer under any provision in an insurance policy other than a policy of an insolvent insurer which is also a covered claim, shall not be required to exhaust first his rights under such a policy. Any amount payable on a covered claim under this part shall be reduced

by the amount of any recovery under such insurance policy.

(2) Any person having a claim which may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the insured, except that if it is a first-party claim for damage to property with a permanent location, he shall seek recovery first from the association of the location of the property, and if it is a workers' compensation plan, he shall seek recovery first from the association of the residence of the claimant. Any recovery under this part shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent.

History.—s. 12, ch. 70-20; s. 119, ch. 79-40.

**631.62 Prevention of insolvencies.**—To aid in the detection and prevention of insurer insolvencies:

(1) It shall be the duty of the board of directors, upon majority vote, to notify the department of any information indicating any member insurer may be insolvent or in a financial condition hazardous to the policyholders or the public.

(2) The board of directors may, upon majority vote, request that the department order an examination of any member insurer which the board in good faith believes may be in a financial condition hazardous to the policyholders or the public. Within 30 days of the receipt of such request, the department shall begin such examination. The examination may be conducted as a National Association of Insurance Commissioners examination or may be conducted by such persons as the department designates. The cost of such examination shall be paid by the association and the examination report shall be treated as are other examination reports. In no event shall such examination report be released to the board of directors prior to its release to the public, but this shall not preclude the department from complying with subsection (3). The department shall notify the board of directors when the examination is completed. The request for an examination shall be kept on file by the department, but it shall not be open to public inspection prior to the release of the examination report to the public.

(3) It shall be the duty of the department to report to the board of directors when it has reasonable cause to believe that any member insurer, examined or being examined at the request of the board of directors, may be insolvent or in a financial condition hazardous to the policyholders or the public.

(4) The board of directors may, upon majority vote, make reports and recommendations to the department upon any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer. Such reports and recommendations shall not be considered public documents.

(5) The board of directors may, upon majority vote, make recommendations to the department for the detection and prevention of insurer insolvencies.

(6) The board of directors shall, at the conclusion of any insurer insolvency in which the association was obligated to pay covered claims, prepare a report on the history and causes of such insolvency, based

on the information available to the association, and submit such report to the department.

**History.**—s. 13, ch. 70-20.

**631.63 Examination of the association.**—The association shall be subject to examination and regulation by the department. The board of directors shall submit, not later than March 30 of each year, a financial report for the preceding calendar year in a form approved by the department.

**History.**—s. 14, ch. 70-20.

**631.64 Recognition of assessments in rates.**—The rates and premiums charged for insurance policies to which this part applies may include amounts sufficient to recoup a sum equal to the amounts paid to the association by the member insurer less any amounts returned to the member insurer by the association, and such rates shall not be deemed excessive because they contain an amount reasonably calculated to recoup assessments paid by the member insurer.

**History.**—s. 15, ch. 70-20.

**631.65 Prohibited advertisement, solicitation, etc.**—No person shall make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio station or television station, or in any other way, any advertisement, announcement, or statement which uses the existence of the insurance guaranty association for the purpose of sales, solicitation, or inducement to purchase any form of insurance covered under this part.

**History.**—s. 16, ch. 70-20.

**631.66 Immunity.**—There shall be no liability on the part of, and no cause of action of any nature shall arise against, any member insurer, the association or its agents or employees, the board of directors, or the department or its representatives for any action taken by them in the performance of their powers and duties under this part.

**History.**—s. 17, ch. 70-20.

**631.67 Stay of proceedings; reopening of default judgments.**—All proceedings in which the insolvent insurer is a party or is obligated to defend a party in any court or before any quasi-judicial body or administrative board in this state shall be stayed for up to 6 months, or such additional period from the date the insolvency is adjudicated, by a court of competent jurisdiction to permit proper defense by the association of all pending causes of action as to any covered claims arising from a judgment under any decision, verdict, or finding based on the default of the insolvent insurer or its failure to defend an insured. The association, either on its own behalf or on behalf of such insured, may apply to have such judgment, order, decision, verdict, or finding set aside by the same court or administrator that made

such judgment, order, decision, verdict, or finding, and shall be permitted to defend against such claim on the merits. If requested by the association, the stay of proceedings may be shortened or waived.

**History.**—s. 18, ch. 70-20; s. 18, ch. 71-970; s. 5, ch. 77-227.

**631.68 Limitation; certain actions.**—Notwithstanding any other provision of chapter 71-970, a covered claim as defined herein with respect to which settlement is not effected and suit is not instituted against the insured of an insolvent insurer or the association within 1 year after the deadline for filing claims, or any extension thereof, with the receiver of the insolvent insurer shall thenceforth be barred as a claim against the association.

**History.**—s. 19, ch. 71-970; s. 6, ch. 77-227.

**631.70 Attorney's fee.**—The provisions of s. 627.428 providing for an attorney's fee shall not be applicable to any claim presented to the association under the provisions of this part, except when the association denies by affirmative action, other than delay, a covered claim or a portion thereof.

**History.**—s. 7, ch. 77-227.

### PART III

#### LIFE AND HEALTH INSURANCE GUARANTY OF PAYMENTS

- 631.711 Short title.
- 631.712 Purpose; construction.
- 631.713 Application of part.
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- 631.715 Florida Life and Health Insurance Guaranty Association.
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- 631.724 Records of association.
- 631.725 Examination of the association; annual report.
- 631.726 Tax exemptions.
- 631.727 Immunity.
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- 631.729 Liability of insureds for unpaid assessments.
- 631.731 Liquidation, rehabilitation, or conservation proceedings; distributions.
- 631.732 Receiver's right to recover distributions made to controlling affiliate.
- 631.733 Stay of proceedings.
- 631.734 Reopening default judgments.
- 631.735 Prohibited advertisement of Florida Life and Health Insurance Guaranty Association Act in sale of insurance.

**631.711 Short title.**—This part may be cited as

the "Florida Life and Health Insurance Guaranty Association Act."

History.—s. 1, ch. 79-189.

**631.712 Purpose; construction.**—The purpose of this part is to protect policyowners, insureds, beneficiaries, annuitants, payees, and assignees of life insurance policies, health insurance policies, annuity contracts, and supplemental contracts, subject to certain limitations, against the failure of an insurer issuing such policies or contracts to perform its contractual obligations due to its impairment or insolvency, and this part shall be liberally construed to carry out its purpose.

History.—s. 2, ch. 79-189.

**631.713 Application of part.**—

(1) This part shall apply to direct life insurance policies, health insurance policies, annuity contracts, and supplemental contracts with or without life contingencies issued by persons licensed to transact such insurance in this state.

(2) This part shall not apply to:

(a) That portion or part of a variable life insurance contract or variable annuity contract not guaranteed by an insurer.

(b) That portion or part of any policy or contract under which the risk is borne by the policyholder.

(c) Any policy or contract or part thereof assumed by the impaired or insolvent insurer under a contract of reinsurance, other than reinsurance for which assumption certificates have been issued.

(d) Fraternal benefit societies as defined in s. 632.011.

(3) This part shall only apply to those delinquency proceedings occurring on or after October 1, 1979.

History.—ss. 3, 21, ch. 79-189.

**631.714 Definitions.**—As used in this part:

(1) "Account" means any of the three accounts created in s. 631.715.

(2) "Association" means the Florida Life and Health Insurance Guaranty Association created in s. 631.715.

(3) "Contractual obligation" means any obligation under covered policies.

(4) "Covered policy" means any policy or contract set out in s. 631.713.

(5) "Department" means the Department of Insurance.

(6) "Impaired insurer" means a member insurer deemed by the department to be potentially unable to fulfill its contractual obligations and not an insolvent insurer.

(7) "Insolvent insurer" means a member insurer authorized to transact insurance in this state, either at the time the policy was issued or when the insured event occurred, and against which an order of liquidation with a finding of insolvency has been entered by a court of competent jurisdiction, if such order has become final by the exhaustion of appellate review.

(8) "Member insurer" means any person licensed to transact in this state any kind of insurance as set out in s. 631.713.

(9) "Premium" means any direct gross insurance premium and any annuity consideration written on

covered policies, less return premium and consideration thereon and dividends paid or credited to policyholders on such direct business. "Premium" does not include premium and consideration on contracts between insurers and reinsurers.

(10) "Person" means any individual, corporation, partnership, association, or voluntary organization.

(11) "Resident" means any person who resides in this state at the time a member insurer is determined to be an impaired or insolvent insurer and to whom contractual obligations are owed by such impaired or insolvent member insurer.

History.—s. 4, ch. 79-189.

**631.715 Florida Life and Health Insurance Guaranty Association.**—

(1) There is created a nonprofit legal entity to be known as the Florida Life and Health Insurance Guaranty Association. All member insurers shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under the plan of operation established and approved under the provisions of s. 631.721 and shall exercise its powers through a board of directors established under the provisions of s. 631.716. For purposes of administration and assessment, the association shall maintain three accounts:

- (a) The health insurance account;
- (b) The life insurance account; and
- (c) The annuity account.

(2) The association shall come under the immediate supervision of the department and shall be subject to the applicable provisions of the insurance laws of this state.

History.—s. 5, ch. 79-189.

<sup>1</sup>Note.—This cross-reference was corrected by the editors to conform to the renumbering of sections in S.B. 403 (ch. 79-189) by Amendment 5. By apparent oversight, this cross-reference was not amended to reflect such renumbering.

**631.716 Board of directors.**—

(1) The board of directors of the association shall be comprised of not fewer than five nor more than nine member insurers, serving terms as established in the plan of operation. At all times at least one member of the board shall be a domestic insurer as defined in s. 624.06(1). The members of the board shall be elected by member insurers subject to the approval of the department. A vacancy on the board shall be filled for the remaining period of the term by a majority vote of the remaining board members, subject to the approval of the department. Prior to the selection of the initial board of directors and the organization of the association, the department shall give notice to all member insurers of the time and place of the organizational meeting. At the organizational meeting, each member insurer shall be entitled to one vote, in person or by proxy. If the board of directors is not elected within 60 days after notice of the organizational meeting, the department may appoint the initial members.

(2) In approving the election of members to the board, or in appointing members to the board, the department shall consider, among other things, whether all member insurers are fairly represented.

(3) Members of the board may be reimbursed from the assets of the association for expenses in-



curred by them as members of the board of directors, but members of the board shall not otherwise be compensated by the association for their services.

History.—s. 6, ch. 79-189.

**631.717 Powers and duties of the association.—**

(1) If a domestic insurer is an impaired insurer, the association may, subject to the approval of the impaired insurer and the department:

(a) Guarantee or reinsure, or cause to be guaranteed, assumed, or reinsured, any or all of the covered policies of the impaired insurer;

(b) Provide such moneys, pledges, notes, guarantees, or other means as are proper to effectuate paragraph (a) and assure payment of the contractual obligations of the impaired insurer pending action under paragraph (a); and

(c) Loan money to the impaired insurer.

(2) If a domestic insurer is an insolvent insurer, the association shall, subject to the approval of the department:

(a) Guarantee, assume, or reinsure or cause to be guaranteed, assumed, or reinsured the covered policies of the insolvent insurer,

(b) Assure payment of the contractual obligations of the insolvent insurer, and

(c) Provide such moneys, pledges, notes, guarantees, or other means as are reasonably necessary to discharge such duties.

(3) If a foreign or alien insurer is an insolvent insurer, the association shall, subject to the approval of the department:

(a) Guarantee, assume, or reinsure or cause to be guaranteed, assumed, or reinsured the covered policies of residents of this state;

(b) Assure payment of the contractual obligations of the insolvent insurer to residents of this state; and

(c) Provide such moneys, pledges, notes, guarantees, or other means as are reasonably necessary to discharge such duties.

However, this subsection shall not apply when the department has determined that the foreign or alien insurer's domiciliary jurisdiction or state of entry provides, by statute, protection substantially similar to that provided by this part for residents of this state.

(4)(a) In carrying out its duties under the provisions of subsections (2) and (3), the association may impose a lien on the premiums of any permanent policy or contract in connection with any guarantee, assumption, or reinsurance agreement made by it. Such lien may be enforced by a court of competent jurisdiction if the court:

1. Finds that the amounts which may be assessed under this part are less than the amounts needed to assure full and prompt performance of the insolvent insurer's contractual obligations, or that the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of policy or contract liens, to be in the public interest; and

2. Approves the specific policy liens or contract liens to be used.

(b) Before becoming obligated under the provisions of subsections (2) and (3), the association may

request that temporary moratoriums or liens be imposed on payments of cash values and policy loans in addition to any contractual provisions for deferral of cash or policy loan values. Such temporary moratoriums and liens may be imposed if they are approved by a court of competent jurisdiction.

(5) If the association fails to act within a reasonable period of time as provided in subsections (2) and (3), the department shall have the powers and duties of the association under this part with respect to insolvent insurers.

(6) The association may render assistance and advice to the department, upon its request, concerning rehabilitation, payment of claims, continuance of coverage, or the performance of other contractual obligations of any impaired or insolvent insurer.

(7) The association shall have standing to appear before any court in this state which has jurisdiction over an impaired or insolvent insurer to which the association is or may become obligated under this part. Such standing shall extend to all matters germane to the powers and duties of the association, including but not limited to, proposals for reinsuring or guaranteeing the covered policies of the impaired or insolvent insurer and the determination of the covered policies and contractual obligations.

(8)(a) Any person receiving benefits under this part shall be deemed to have assigned his rights under the covered policy to the association to the extent of the benefits received, whether the benefits are payments of contractual obligations or continuations of coverages. The association may require an assignment to it of such rights by any payee, policy or contract owner, beneficiary, insured, or annuitant as a condition precedent to the receipt of any rights or benefits conferred by this part upon such person. The association shall have subrogation rights against the assets of any insolvent insurer.

(b) The subrogation rights of the association under this subsection shall have the same priority against the assets of the insolvent insurer as those possessed by the person entitled to receive benefits under this part.

(9) The association's liability for the contractual obligations of the insolvent insurer shall be as great as, but no greater than, the contractual obligations of the insurer in the absence of such insolvency, unless such obligations are reduced as permitted by subsection (4), but the aggregate liability of the association shall not exceed \$100,000 in cash values, or \$300,000 for all benefits including cash values, with respect to any one life.

(10) The association may,

(a) Enter into such contracts as are necessary or proper to carry out the provisions and purposes of this part.

(b) Sue or be sued, including the taking of any legal actions necessary or proper for the recovery of any unpaid assessments under s. 631.718.

(c) Borrow money to effect the purposes of this part. Any notes or other evidence of indebtedness of the association not in default shall be legal investments for domestic insurers and may be carried as admitted assets.

(d) Employ or retain such persons as are neces-

sary to handle the financial transactions of the association and to perform such other functions as become necessary or proper under this part.

(e) Negotiate and contract with any liquidator, rehabilitator, conservator, or ancillary receiver to carry out the powers and duties of the association.

(f) Take such legal action as may be necessary to avoid payment of improper claims.

(g) Exercise, for the purposes of this part and to the extent approved by the department, the powers of a domestic life or health insurer, but in no case may the association issue insurance policies or annuity contracts other than those issued to satisfy the contractual obligations of the impaired or insolvent insurer.

History.—s. 7, ch. 79-189.

#### 631.718 Assessments.—

(1) For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers separately, for each of the accounts referred to in s. 631.715 at such time and for such amounts as the board finds necessary. Assessments shall be due not less than 30 days after written notice to the member insurers.

(2) There shall be three classes of assessments, as follows:

(a) Class A assessments shall be made by the board of directors for the purpose of meeting administrative costs and other general expenses and for examinations conducted under the authority of s. 631.723(5) which are not related to a particular impaired or insolvent insurer.

(b) Class B assessments shall be made by the board of directors for the purpose of carrying out the powers and duties of the association under s. 631.717 relating to an impaired or insolvent domestic insurer.

(c) Class C assessments shall be made by the board of directors for the purpose of carrying out the powers and duties of the association under s. 631.717 relating to an insolvent foreign or alien insurer.

(3)(a) The amount of any Class A assessment shall be determined by the board and may be made on a non-pro rata basis. Such assessment shall not be credited against future insolvency assessments and shall not exceed \$50 per member insurer in any 1 calendar year.

(b) Class B assessments for each account shall be made separately for each state in which the impaired or insolvent domestic insurer was authorized to transact insurance at any time, in the proportion that the premiums received on business in such state by the impaired or insolvent insurer on policies covered by such account for the last calendar year preceding the assessment in which the impaired or insolvent insurer received premiums bear to such premiums received in all such states for such calendar year by the impaired or insolvent insurer. The assessments against member insurers shall be in the proportion that the premiums received on business in each such state by each assessed member insurer on policies covered by each account for the calendar year preceding the assessment bear to such premiums received on business in each state for the calen-

dar year preceding assessment by all assessed member insurers.

(c) Class C assessments against member insurers for each account shall be in the proportion that the premiums received on business in this state by each assessed member insurer on policies covered by each account for the calendar year preceding the assessment bear to such premiums received on business in this state for the calendar year preceding the assessment by all assessed member insurers.

(d) The amount of any Class B or Class C assessment shall be allocated among the accounts in the proportion that the premiums received by the impaired or insolvent insurer on the policies covered by each account for the last calendar year preceding the assessment in which the impaired or insolvent insurer received premiums bear to the premiums received by such insurer in such calendar year on all covered policies.

(e) Assessments for funds to meet the requirements of the association with respect to an impaired or insolvent insurer shall not be made until necessary to implement the purposes of this part.

(f) Classification of assessments under subsection (2) and computation of assessments under this subsection shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible.

(4) The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. In the event an assessment against a member insurer is abated, or deferred in whole or in part, the amount by which such assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section.

(5) The total of all assessments upon a member insurer for each account shall not in any 1 calendar year exceed 1 percent of such insurer's premiums written in this state during the calendar year preceding the assessment on the policies covered by the account. If the maximum assessment, together with the other assets of the association in either account, does not provide in any 1 year in either account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds shall be assessed as soon thereafter as permitted by this part.

(6) Notwithstanding any provision to the contrary, no member insurer may be assessed in any 1 calendar year an amount greater than the amount which it paid to this state in the previous year as premium tax and corporate income tax on the business to which this part applies or 0.1 percent of written premium on such business in this state, whichever is greater.

(7) The board may, by an equitable method as established in the plan of operation, refund to member insurers, in proportion to the contribution of each insurer to an account, the amount by which the assets of such account exceed the amount the board finds is necessary to carry out during the coming year the obligations of the association with regard to

that account, including assets accruing from net realized gains and income from investments. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the association and for future losses if refunds are impractical.

(8) It shall be proper for any member insurer, in determining its premium rates and policyowner dividends as to any kind of insurance within the scope of this part, to consider the amount reasonably necessary to meet its assessment obligations under this part.

(9) The association shall issue to each insurer paying an assessment under this part, other than a Class A assessment, a certificate of contribution, in a form prescribed by the department, for the amount of the assessment so paid. All outstanding certificates shall be of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the insurer in its financial statement as an asset in such form and for such amount, if any, and period of time as the department may approve. However, any amount offset pursuant to s. 631.719 shall not be shown as an asset of the insurer on any of its financial statements.

**History.**—s. 8, ch. 79-189.

**Note.**—This cross-reference was corrected by the editors to conform to the renumbering of sections in S.B. 403 (ch. 79-189) by Amendment 5. By apparent oversight, this cross-reference was not amended to reflect such renumbering. See 1979 Senate Journal, p. 662.

#### **631.719 Premium or income tax credits for assessments paid.—**

(1) A member insurer may offset against its premium or income tax liability or liabilities to this state any assessment described in s. 631.718(9) to the extent of 20 percent of the amount of such assessment for each of the 5 calendar years following the year in which such assessment was paid. In the event a member insurer should cease doing business, all uncredited assessments may be credited against its premium or corporate income tax liability or liabilities for the year it ceases doing business.

(2) Any sums acquired by refund pursuant to s. 631.718(7) from the association which have theretofore been written off by contributing insurers and offset against premium or corporate income taxes as provided in subsection (1) above, and which are not needed for purposes of this part, shall be paid by the association to the department for deposit with the State Treasurer to the credit of the state General Revenue Fund.

**History.**—s. 9, ch. 79-189.

#### **631.721 Plan of operation.—**

(1)(a) The association shall submit to the department a proposed plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The proposed plan of operation and any amendments thereto shall become effective upon approval in writing by the department.

(b) If the association fails to submit a suitable proposed plan of operation within 180 days following October 1, 1979, or if at any time thereafter the association fails to submit suitable amendments to the plan, the department shall, after notice and hearing, adopt such reasonable rules as are necessary to effectuate the provisions of this part. Such rules shall

continue in force until modified by the department or superseded by a proposed plan submitted by the association and approved by the department.

(2) All member insurers shall comply with the approved plan of operation.

(3) The plan of operation shall, in addition to requirements enumerated elsewhere in this part:

(a) Establish procedures for handling the assets of the association.

(b) Establish the amount and method of reimbursing members of the board of directors under s. 631.716.

(c) Establish regular places and times for meetings of the board of directors.

(d) Establish procedures for keeping records of all financial transactions of the association, its agents, and the board of directors.

(e) Establish the procedures whereby selections for the board of directors shall be made and submitted to the department.

(f) Establish any additional procedures for assessments under s. 631.718.

(g) Contain additional provisions necessary or proper for the execution of the powers and duties of the association.

(4) The plan of operation may provide that any or all powers and duties of the association, except those under s. 631.717(10)(c) and s. 631.718, are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this association, or its equivalent, in two or more states. Such a corporation, association, or organization shall be reimbursed for any payments made on behalf of the association and shall be paid for its performance of any function of the association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the department and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this part.

**History.**—s. 10, ch. 79-189.

#### **631.722 Powers and duties of department.—**

(1) The department shall:

(a) Upon request of the board of directors, provide the association with a statement of the premiums in each of the appropriate states for each member insurer.

(b) When an impairment is declared and the amount of the impairment is determined, serve a demand upon the impaired insurer to make good the impairment within a reasonable time. Notice to the impaired insurer shall constitute notice to its shareholders, if any. The failure of the insurer to promptly comply with such demand shall not excuse the association from the performance of its powers and duties under this part.

(c) In any liquidation or rehabilitation proceeding involving a domestic insurer, be appointed as the liquidator or rehabilitator. If a foreign or alien member insurer is subject to a liquidation proceeding in its domiciliary jurisdiction or state of entry, the department shall be appointed conservator.

(2) The department may suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member in-



suror that fails to pay an assessment when due or fails to comply with the approved plan of operation of the association. As an alternative, the department may levy a forfeiture on any member insurer that fails to pay an assessment when due. Such forfeiture shall not exceed 5 percent of the unpaid assessment per month, but no forfeiture shall be less than \$100 per month.

(3) Any action of the board of directors or of the association may be appealed to the department by any member insurer if such appeal is taken within 30 days of the action being appealed. Any final action or order of the department shall be subject to judicial review in a court of competent jurisdiction.

(4) The liquidator, rehabilitator, or conservator of any impaired insurer may notify all interested persons of the effect of this part.

*History.*—s. 11, ch. 79-189.

**631.723 Prevention of insolvencies.**—To aid in the detection and prevention of insurer insolvencies or impairments:

(1) It shall be the duty of the department:

(a) To report to the board of directors when it has reasonable cause to believe from any examination, whether completed or in process, of any member insurer that such insurer may be an impaired or insolvent insurer.

(b) To furnish to the board of directors any available NAIC Early Warning Tests developed by the National Association of Insurance Commissioners. The board may use the information contained therein in carrying out its duties and responsibilities under this section. Such report and the information contained therein shall be kept confidential by the board of directors until such time as it is made public by the department or by any other lawful authority.

(2) The department may seek the advice and recommendations of the board of directors concerning any matter affecting the department's duties and responsibilities regarding the financial condition of member companies and companies seeking admission to transact insurance business in this state.

(3) The board of directors may, upon majority vote, make reports and recommendations to the department upon any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer or germane to the solvency of any company seeking to do an insurance business in this state. Such reports and recommendations shall be confidential and exempt from the provisions of s. 119.07(1).

(4) It shall be the duty of the board of directors, upon a majority vote, to notify the department of any information indicating any member insurer may be an impaired or insolvent insurer.

(5) The board of directors may, upon majority vote, request that the department order an examination of any member insurer which the board in good faith believes may be an impaired or insolvent insurer. Within 30 days of the receipt of such request, the department shall begin such examination. The examination may be conducted as a National Association of Insurance Commissioners examination or may be conducted by such persons as the Insurance Commissioner designates. The cost of such examination shall be paid by the association, and the exami-

nation report shall be treated in a manner similar to other examination reports. In no event shall such examination report be released to the board of directors prior to its release to the public, but this shall not preclude the department from complying with subsection (1). The department shall notify the board of directors when the examination is completed. The request for an examination shall be kept on file by the department, but it shall not be open to public inspection prior to the release of the examination report to the public.

(6) The board of directors may, upon majority vote, make recommendations to the department for the detection and prevention of insurer insolvencies.

(7) The board of directors shall, at the conclusion of any insurer insolvency proceeding in which the association was obligated to pay covered claims, prepare a report to the department containing such information in its possession relating to the history and causes of such insolvency. The board shall cooperate with the boards of directors of guaranty associations in other states in preparing a report on the history and causes for insolvency of a particular insurer, and may adopt by reference any report prepared by such other associations.

*History.*—s. 12, ch. 79-189.

**631.724 Records of association.**—Records shall be kept of all negotiations and meetings in which the association or its representatives discuss the activities of the association in carrying out its powers and duties under s. 631.717. Records of such negotiations or meetings shall be made public only upon the termination of a liquidation, rehabilitation, or conservation proceeding involving the impaired or insolvent insurer, upon the termination of the impairment or insolvency of the insurer, or upon the order of a court of competent jurisdiction. Nothing in this section shall limit the duty of the association to render a report of its activities under s. 631.725.

*History.*—s. 13, ch. 79-189.

*Note.*—This cross-reference was corrected by the editors to conform to the renumbering of sections in S.B. 403 (ch. 79-189) by Amendment 5. By apparent oversight, this cross-reference was not amended to reflect such renumbering.

**631.725 Examination of the association; annual report.**—The association shall be subject to examination and regulation by the department. The board of directors shall submit to the department, not later than May 1 of each year, a financial report for the preceding calendar year in a form approved by the department and a report of its activities during the preceding calendar year.

*History.*—s. 14, ch. 79-189.

**631.726 Tax exemptions.**—The association shall be exempt from payment of all fees and all taxes levied by this state or any of its subdivisions, except taxes levied on real property.

*History.*—s. 15, ch. 79-189.

**631.727 Immunity.**—There shall be no liability on the part of, and no cause of action of any nature shall arise against, any member insurer or its agents or employees, the association or its agents or employees, members of the board of directors, or the department or its representatives for any action tak-

en by them in the performance of their powers and duties under this part.

History.—s. 16, ch. 79-189.

**631.728 Extent of liability of association.—**

For the purpose of carrying out its obligations under this part, the association shall be deemed to be a creditor of the impaired or insolvent insurer to the extent of assets attributable to covered policies reduced by any amounts to which the association is entitled as subrogee pursuant to s. 631.717(8). Assets of the impaired or insolvent insurer attributable to covered policies shall be used to continue all covered policies and pay all contractual obligations of the impaired or insolvent insurer as required by this part. An asset attributable to covered policies, as used in this section, is that proportion of the assets which the reserves that should have been established for such policies bear to the reserves that should have been established for all policies of insurance written by the impaired or insolvent insurer.

History.—s. 13, ch. 79-189.

**631.729 Liability of insureds for unpaid assessments.—**No provision of this part shall be construed to reduce the liability for unpaid assessments of the insureds of an impaired or insolvent insurer operating under a plan with assessment liability.

History.—s. 13, ch. 79-189.

**631.731 Liquidation, rehabilitation, or conservation proceedings; distributions.—**

(1) Prior to the termination of any liquidation, rehabilitation, or conservation proceeding, the court may take into consideration the contributions of the respective parties, including the association, the shareholders and policyowners of the insolvent insurer, and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of such insolvent insurer. In such a determination, consideration shall be given to the welfare of the policyholders of the continuing or successor insurer.

(2) No distribution to stockholders, if any, of an impaired or insolvent insurer shall be made until and unless the total amount of valid claims of the association for funds expended in carrying out its powers and duties under s. 631.717 with respect to such insurer has been fully recovered by the association.

History.—s. 13, ch. 79-189.

**631.732 Receiver's right to recover distributions made to controlling affiliate.—**

(1) If an order for liquidation or rehabilitation of an insurer domiciled in this state has been entered, the receiver appointed under such order shall have a right to recover on behalf of the insurer, from any affiliate that controlled it, the amount of distributions, other than stock dividends paid by the insurer on its capital stock, made at any time during the 5 years preceding the petition for liquidation or rehabilitation, subject to the limitations of subsections (2), (3), and (4).

(2) No such dividend shall be recoverable if the

insurer shows that when paid the distribution was lawful and reasonable and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

(3) Any person who was an affiliate that controlled the insurer at the time the distributions were paid shall be liable up to the amount of distributions he received. Any person who was an affiliate that controlled the insurer at the time the distributions were declared shall be liable up to the amount of distributions he would have received if they had been paid immediately. If two persons are liable with respect to the same distributions, they shall be jointly and severally liable.

(4) The maximum amount recoverable under this section shall be the amount needed in excess of all other available assets of the insolvent insurer to pay the contractual obligations of the insolvent insurer.

(5) If any person liable under subsection (3) is insolvent, all its affiliates that controlled it at the time the dividend was paid shall be jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate.

History.—s. 13, ch. 79-189.

**631.733 Stay of proceedings.—**All proceedings in which the insolvent insurer is a party in any court in this state shall be stayed 60 days from the date an order of liquidation, rehabilitation, or conservation is final to permit proper legal action by the association on any matters germane to its powers or duties.

History.—s. 17, ch. 79-189.

**631.734 Reopening default judgments.—**As to judgment under any decision, order, verdict, or finding based on default, the association may apply to have such judgment set aside by the same court that made such judgment and shall be permitted to defend against such suit on the merits.

History.—s. 18, ch. 79-189.

**631.735 Prohibited advertisement of Florida Life and Health Insurance Guaranty Association Act in sale of insurance.—**No person shall make, publish, disseminate, circulate, or place before the public, or cause directly or indirectly to be made, published, disseminated, circulated, or placed before the public, in any newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio station or television station, or in any other way, any advertisement, announcement, or statement which uses the existence of the Insurance Guaranty Association of this state for the purpose of sales, solicitation, or inducement to purchase any form of insurance covered by the Florida Life and Health Insurance Guaranty Association Act. However, this section shall not apply to the Florida Life and Health Insurance Guaranty Association or any other entity which does not sell or solicit insurance.

History.—s. 19, ch. 79-189.

## CHAPTER 632

## INSURANCE CODE: FRATERNAL BENEFIT SOCIETIES

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- 632.011 "Fraternal benefit societies" defined.**  
 —Any incorporated society, order, or supreme lodge, without capital stock, including one exempted under the provisions of s. 632.051(1)(b) of this chapter, whether incorporated or not, conducted solely for the benefit of its members and their beneficiaries and not for profit, operated on a lodge system with ritualistic form of work, having a representative form of government, and which makes provision for the payment of benefits in accordance with this chapter, is hereby declared to be a "fraternal benefit society." When used in this chapter, the word "society," unless otherwise indicated, means "fraternal benefit society."
- History.**—s. 751, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.
- 632.021 "Lodge system" defined.**—A society having a supreme legislative or governing body and subordinate lodges or branches by whatever name known, into which members are elected, initiated, or admitted in accordance with its constitution, laws, ritual, and rules, which subordinate lodges or branches are required by the laws of the society to hold regular meetings at least once in each month, shall be deemed to be operating on the "lodge system."
- History.**—s. 752, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.
- 632.031 "Representative form of government" defined.**—A society shall be deemed to have a "representative form of government" when:  
 (1) It provides in its constitution or laws for a supreme legislative or governing body, composed of representatives elected either by the members or by delegates elected directly or indirectly by the members, together with such other members of such body as may be prescribed by the society's constitution and laws;  
 (2) The representatives elected constitute a majority in number and have not less than two-thirds of the votes nor less than the votes required to amend its constitution and laws;  
 (3) The meetings of the supreme legislative or governing body and the election of officers, representatives or delegates are held as often as once in 4 calendar years;  
 (4) Each insured member shall be eligible for



election to act or serve as a delegate to such meeting;

(5) The society has a board of directors charged with the responsibility for managing its affairs in the interim between meetings of its supreme legislative or governing body, subject to control by such body and having powers and duties delegated to it in the constitution or laws of the society;

(6) Such board of directors is elected by the supreme legislative or governing body, except in case of filling a vacancy in the interim between meetings of such body;

(7) The officers are elected either by the supreme legislative or governing body or by the board of directors; and

(8) The members, officers, representatives or delegates shall not vote by proxy.

**History.**—s. 753, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§632.041 Chapter exclusive; applicability of other laws.**—Except as herein provided, societies shall be governed by this chapter and shall be exempt from all other provisions of the insurance laws of this state, not only in governmental relations with the state, but for every other purpose. No law hereafter enacted shall apply to them, unless they be expressly designated therein.

**History.**—s. 754, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§632.051 Exempted societies.**—

(1) Nothing contained in this chapter shall be so construed as to affect or apply to:

(a) Grand or subordinate lodges of societies, orders or associations now doing business in this state which provide benefits exclusively through local or subordinate lodges;

(b) Orders, societies, or associations which admit to membership only persons engaged in one or more crafts or hazardous occupations, in the same or similar lines of business, insuring only their own members, their families, and descendants of members, and the ladies' societies or ladies' auxiliaries to such orders, societies, or associations;

(c) Domestic societies which limit their membership to employees of a particular city or town, designated firm, business house, or corporation and which provide for a death benefit of not more than \$400 or disability benefits of not more than \$350 to any person in any 1 year, or both; or

(d) Domestic societies or associations of a purely religious, charitable, or benevolent description, which provide for a death benefit of not more than \$400 or for disability benefits of not more than \$350 to any one person in any 1 year, or both.

(2) Any such society or association described in (1)(c) or (d), which provides for death or disability benefits for which benefit certificates are issued, and any such society or association included in (1)(d) which has more than 1,000 members, shall not be exempted from the provisions of this chapter, but shall comply with all requirements thereof.

(3) No society which, by the provisions of this section, is exempt from the requirements of this chapter, except any society described in (1)(b), shall

give or allow, or promise to give or allow, to any person any compensation for procuring new members.

(4) Every society which provides for benefits in case of death or disability resulting solely from accident, and which does not obligate itself to pay natural death or sick benefits shall have all of the privileges and be subject to all the applicable provisions and regulations of this chapter except that the provisions thereof relating to medical examination, valuations of benefit certificates, and incontestability, shall not apply to such society.

(5) The department may require from any society or association, by examination or otherwise, such information as will enable it to determine whether such society or association is exempt from the provisions of this chapter.

(6) Societies, exempted under the provisions of this section, shall also be exempt from all other provisions of the insurance laws of this state.

**History.**—s. 755, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§632.061 License required; expiration, renewal; fee.**—

(1) No fraternal benefit society shall transact business in this state unless authorized therefor under a subsisting license issued to the society by the department.

(2) Societies authorized to transact business in this state as of immediately prior to the effective date of this code may continue such business until May 31 next succeeding such effective date. The authority of such societies and of all societies hereafter licensed may thereafter be continued annually so long as the society is entitled thereto, upon written request therefor filed with the department on or before June 1, together with payment of the annual license tax provided for in s. 624.501(3) (filing, license, and miscellaneous fees). If not so continued by the society, the license shall expire as at midnight of such June 1.

(3) A duly certified copy of duplicate of the license shall be prima facie evidence that the licensee is a fraternal benefit society within the meaning of this chapter.

(4) Section 626.901 (representing or aiding unauthorized insurer prohibited), s. 626.902 (penalty for representing unauthorized insurer), and s. 626.903 (suits by unauthorized insurers prohibited) shall apply with respect to fraternal benefit societies not authorized or licensed to transact business in this state as required by this section; and such societies shall be deemed to be "insurers" for the purposes of such sections.

**History.**—s. 756, ch. 59-205; s. 3, ch. 61-105; s. 4, ch. 63-149; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§632.071 Foreign or alien society; admission.**—

(1) No foreign or alien society shall transact business in this state without a license issued by the department. Any such society may be licensed to

transact business in this state upon filing with the department:

(a) A duly certified copy of its charter or articles of incorporation;

(b) A copy of its constitution and laws, certified by its secretary or corresponding officer;

(c) A power of attorney to the department as prescribed in s. 632.501;

(d) A statement of its business under oath of its president and secretary or corresponding officers in a form prescribed by the department, duly verified by an examination made by the supervising insurance official of its home state or other state, territory, province or country, satisfactory to the department;

(e) A certificate from the proper official of its home state, territory, province, or country that the society is legally incorporated and licensed to transact business therein;

(f) Copies of its certificate forms; and

(g) Such other information as it may deem necessary; and upon showing that its assets are invested in accordance with the provisions of this chapter.

(2) Any foreign or alien society desiring admission to this state shall have the qualifications required of domestic societies organized under this chapter.

**History.**—s. 757, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **§632.081 Suspension, revocation, or refusal of license of foreign or alien society.—**

(1) When the department upon investigation finds that a foreign or alien society transacting or applying to transact business in this state:

(a) Has exceeded its powers;

(b) Has failed to comply with any of the provisions of this chapter;

(c) Is not fulfilling its contracts in good faith; or

(d) Is conducting its business fraudulently or in a manner hazardous to its members or creditors or the public;

it may suspend or refuse the license of the society to do business in this state until satisfactory evidence is furnished to it that such suspension or refusal should be withdrawn, or it may revoke the authority of the society to do business in this state.

(2) Nothing contained in this section shall be taken or construed as preventing any such society from continuing in good faith all contracts made in this state during the time such society was legally authorized to transact business herein.

**History.**—s. 758, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§632.091 Organization; incorporation.**—Seven or more citizens of the United States, a majority of whom are citizens of this state, who desire to form a fraternal benefit society, may make, sign, and acknowledge before some officer, competent to take acknowledgment of deeds, articles of incorporation, in which shall be stated:

(1) The proposed corporate name of the society, which shall not so closely resemble the name of any society or insurance company as to be misleading or confusing;

(2) The purposes for which it is being formed and the mode in which its corporate powers are to be exercised. Such purposes shall not include more liberal powers than are granted by this chapter, provided that any lawful, social, intellectual, educational, charitable, benevolent, moral, fraternal, or religious advantages may be set forth among the purposes of the society; and

(3) The names and residences of the incorporators and the names, residences, and official titles of all the officers, trustees, directors, or other persons who are to have and exercise the general control of the management of the affairs and funds of the society for the first year or until the ensuing election at which all such officers shall be elected by the supreme legislative or governing body, which election shall be held not later than 1 year from the date of the issuance of the permanent certificate.

**History.**—s. 759, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§632.101 Filing articles and documents; preliminary certificate.**—Such articles of incorporation, duly certified copies of the constitution, laws, and rules, copies of all proposed forms of certificates, applications therefor, and circulars to be issued by the society and a bond conditioned upon the return to the applicants of the advanced payments if the organization is not completed within 1 year, shall be filed with the department, which may require such further information as it deems necessary. The bond with sureties approved by the department shall be in such amount, not less than \$5,000 nor more than \$25,000 as required by the department. All documents filed are to be in the English language. If the purposes of the society conform to the requirements of this chapter and all provisions of the law have been complied with, the department shall so certify, retain, and file the articles of incorporation and furnish the incorporators a preliminary certificate authorizing the society to solicit members as hereinafter provided.

**History.**—s. 760, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§632.111 Time for completing organization.**—No preliminary certificate granted under the provisions of this section shall be valid after 1 year from its date or after such further period, not exceeding 1 year, as may be authorized by the department upon cause shown, unless the 500 applicants hereinafter required have been secured and the organization has been completed as herein provided. The articles of incorporation and all other proceedings thereunder shall become null and void in 1 year from the date of the preliminary certificate, or at the expiration of the extended period, unless the society shall have

completed its organization and received a certificate of authority to do business as hereinafter provided.

**History.**—s. 761, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§632.121 Initial solicitations and qualifications.**—Upon receipt of a preliminary certificate from the department, the society may solicit members for the purpose of completing its organization, shall collect from each applicant the amount of not less than one regular monthly premium in accordance with its table of rates as provided by its constitution and laws, and shall issue to each such applicant a receipt for the amount so collected. No society shall incur any liability other than for the return of such advance premium, nor issue any certificate, nor pay, allow, or offer or promise to pay or allow, any death or disability benefit to any person until:

(1) Actual bona fide applications for death benefits have been secured aggregating at least \$500,000 on not less than 500 lives;

(2) All such applicants for death benefits shall have furnished evidence of insurability satisfactory to the society;

(3) Certificates of examinations or acceptable declarations of insurability have been duly filed and approved by the chief medical examiner of the society;

(4) Ten subordinate lodges or branches have been established into which the 500 applicants have been admitted;

(5) There has been submitted to the department, under oath of the president or secretary, or corresponding officer of the society, a list of such applicants, giving their names, addresses, date each was admitted, name and number of the subordinate branch of which each applicant is a member, amount of benefits to be granted, and premiums therefor, and

(6) It shall have been shown to the department, by sworn statement of the treasurer, or corresponding officer of such society, that at least 500 applicants have each paid in cash at least one regular monthly premium as herein provided, which premiums in the aggregate shall amount to at least \$2,500, all of which shall be credited to the fund or funds from which benefits are to be paid and no part of which may be used for expenses. Such advance premiums shall be held in trust during the period of organization and if the society has not qualified for a certificate of authority within 1 year, as herein provided, the premiums shall be returned to the applicants.

**History.**—s. 762, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§632.131 Certificate of compliance; certified copy as evidence.**—The department may make such examination and require such further information as it deems advisable. Upon presentation of satisfactory evidence that the society has complied with all the provisions of law, it shall issue to the society a certificate to that effect and that the society is

authorized to transact business pursuant to the provisions of this chapter. The certificate shall be prima facie evidence of the existence of the society at the date of such certificate. The department shall cause a record of such certificate to be made. A certified copy of such record may be given in evidence with like effect as the original certificate.

**History.**—s. 763, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§632.141 Constitution and laws; general powers.**—

(1) Every society shall have the power to adopt a constitution and laws for the government of the society, the admission of its members, the management of its affairs, and the fixing and readjusting of the rates of its members from time to time. It shall have the power to change, alter, add to, or amend such constitution and laws.

(2) A society shall have such other powers as are necessary and incidental to carrying into effect the objects and purposes of the society.

**History.**—s. 764, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§632.151 Corporate powers retained.**—Any incorporated society authorized to transact business in this state at the time this chapter becomes effective may thereafter exercise all the rights, powers, and privileges prescribed in this chapter and in its charter or articles of incorporation as far as consistent with this chapter. A domestic society shall not be required to reincorporate.

**History.**—s. 765, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§632.161 Existing voluntary associations; may incorporate.**—

(1) After 1 year from the effective date of this chapter, no unincorporated or voluntary association shall be permitted to transact business in this state as a fraternal benefit society.

(2) Any domestic voluntary association now authorized to transact business in this state may incorporate and shall receive from the department a permanent certificate of incorporation as a fraternal benefit society when:

(a) It has completed its conversion to an incorporated society not later than 1 year from the effective date of this chapter;

(b) It has filed its articles of incorporation and has satisfied the other requirements described in ss. 632.091-632.131; and

(c) The department has made such examination and procured whatever additional information it deems advisable.

(3) Every voluntary association so incorporated shall incur the obligations and enjoy the benefits thereof the same as though originally incorporated, and such corporation shall be deemed a continuation of the original voluntary association. The officers thereof shall serve through their respective terms as provided in its original articles of association, but



their successors shall be elected and serve as provided in its articles of incorporation. Incorporation of a voluntary association shall not affect existing suits, claims, or contracts.

**History.**—s. 766, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§632.171 Articles of incorporation, constitution and laws; amendments; synopsis; certified copies as evidence.—**

(1) A domestic society may amend its articles of incorporation, constitution, or laws in accordance with the provisions thereof by action of its supreme legislative or governing body at any regular or special meeting thereof or, if its articles of incorporation, constitution, or laws so provide, by referendum. Such referendum may be held in accordance with the provisions of its articles of incorporation, constitution, or laws by the vote of the voting members of the society, by the vote of delegates or representatives of voting members or by the vote of local lodges or branches. No amendment submitted for adoption by referendum shall be adopted unless, within 6 months from the date of submission thereof, a majority of all of the voting members of the society shall have signified their consent to such amendment by one of the methods herein specified.

(2) No amendment to the articles of incorporation, constitution, or laws of any domestic society shall take effect unless approved by the department, which shall approve such amendment if it finds that it has been duly adopted and is not inconsistent with any requirement of the laws of this state or with the character, objects, and purposes of the society.

(3) Within 90 days from the approval thereof by the department, all such amendments, or a synopsis thereof, shall be furnished by the society to all members either by mail or by publication in full in the official organ of the society. The affidavit of any officer of the society or of anyone authorized by it to mail any amendments or synopsis thereof, stating facts which show that same have been duly addressed and mailed, shall be prima facie evidence that such amendments or synopsis thereof, have been furnished the addressee.

(4) Every foreign or alien society authorized to do business in this state shall file with the department a duly certified copy of all amendments of, or additions to, its articles of incorporation, constitution, or laws within 90 days after the enactment of same.

(5) Printed copies of the constitution or laws as amended, certified by the secretary or corresponding officer of the society, shall be prima facie evidence of the legal adoption thereof.

**History.**—s. 767, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§632.181 Waiver.**—The constitution and laws of the society may provide that no subordinate body, nor any of its subordinate officers or members shall

have the power or authority to waive any of the provisions of the laws and constitution of the society. Such provision shall be binding on the society and every member and beneficiary of a member.

**History.**—s. 768, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§632.191 Location of office; place of meeting; records in English language.—**

(1) The principal office of any domestic society shall be located in this state. The meetings of its supreme legislative or governing body may be held in any state, district, province, or territory wherein such society has at least five subordinate branches and all business transacted at such meetings shall be as valid in all respects as if such meetings were held in this state.

(2) The minutes of the proceedings of the supreme or governing body and of the board of directors or corresponding body of a society shall be in the English language.

**History.**—s. 769, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§632.201 Institutions.—**

(1) It shall be lawful for a society to create, maintain, and operate charitable, benevolent, or educational institutions for the benefit of its members and their families and dependents and for the benefit of children insured by the society. For such purpose it may own, hold, or lease personal property or real property located within or without this state, with necessary buildings thereon. Such property shall be reported in every annual statement, but shall not be allowed as an admitted asset of such society.

(2) Maintenance, treatment, and proper attendance in any such institution may be furnished free or a reasonable charge may be made therefor, but no such institution shall be operated for profit. The society shall maintain a separate accounting of any income and disbursements under this section and report them in its annual statement.

(3) No society shall own or operate funeral homes or undertaking establishments.

**History.**—s. 770, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§632.211 Qualifications for membership.—**

(1) A society may admit to benefit membership any person not less than 15 years of age, nearest birthday, who has furnished evidence of insurability acceptable to the society. Any such member who shall apply for additional benefits more than 6 months after becoming a benefit member shall furnish additional evidence of insurability acceptable to the society.

(2) Any person admitted prior to attaining the full age of 18 years shall be bound by the terms of the application and certificate and by all the laws and rules of the society and shall be entitled to all the rights and privileges of membership therein to the same extent as though the age of majority had been attained at the time of application. A society may also admit general or social members who shall have

no voice or vote in the management of its insurance affairs.

**History.**—s. 771, ch. 59-205; s. 3, ch. 76-168; s. 59, ch. 77-121; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**632.221 Member's share of deficiency.**—A society shall provide in its constitution or laws that if its reserves as to all or any class of certificates become impaired its board of directors or corresponding body may require that there shall be paid by the member to the society the amount of the member's equitable proportion of such deficiency as ascertained by its board, and that if the payment be not made, it shall stand as an indebtedness against the member's certificate and draw interest not to exceed 5 percent per annum compounded annually.

**History.**—s. 772, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **632.231 Benefits.**—

(1) A society authorized to do business in this state may provide only for the payment of:

- (a) Death benefits in any form;
- (b) Endowment benefits;
- (c) Annuity benefits;
- (d) Temporary or permanent disability benefits as a result of disease or accident;
- (e) Hospital, medical, or nursing benefits due to sickness or bodily infirmity or accident; and
- (f) Monument or tombstone benefits to the memory of deceased members not exceeding in any case the sum of \$300.

(2) Such benefits may be provided on the lives of members or upon application of a member, on the lives of a member's family, including the member, the member's spouse and minor children, in the same or separate certificates.

(3) No such benefits shall be provided in the form of group life insurance, group disability insurance, or blanket disability insurance.

**History.**—s. 773, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **632.241 Benefits on lives of children.**—

(1) A society also may provide for benefits on the lives of children under the minimum age for adult membership, but not greater than 18 years of age at time of application therefor, upon the application of some adult person, as its law or rules may provide, which benefits shall be in accordance with the provisions of s. 632.231(1) and (3). A society may, at its option, organize and operate branches for such children. Membership and initiation in local lodges shall not be required of such children, nor shall they have a voice in the management of the society.

(2) A society shall have power to provide for the designation and changing of designation of beneficiaries in the certificates providing for such benefits and to provide in all other respects for the regulation, government, and control of such certificates

and all rights, obligations, and liabilities incident thereto and connected therewith.

**History.**—s. 774, ch. 59-205; s. 3, ch. 76-168; s. 60, ch. 77-121; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **632.251 Nonforfeiture benefits; cash surrender values; certificate loans and other options.**—

(1) A society may grant paid-up nonforfeiture benefits, cash surrender values, certificate loans, and such other options as its laws may permit. As to certificates issued on and after the effective date of this chapter, a society shall grant at least one paid-up nonforfeiture benefit, except in the case of pure endowment, annuity, or reversionary annuity contracts, reducing term insurance contracts or contracts of term insurance of uniform amount of 15 years or less expiring before age 66.

(2) In the case of certificates other than those for which reserves are computed on the Commissioners' 1941 Standard Ordinary Mortality Table, the 1941 Standard Industrial Table, the Commissioners' 1958 Standard Ordinary Mortality Table, or the Commissioners' 1961 Standard Industrial Table, the value of every paid-up nonforfeiture benefit and the amount of any cash surrender value, loan or other option granted shall not be less than the excess, if any, of (a) over (b) as follows:

(a) The reserve under the certificate determined on the basis specified in the certificate; and

(b) The sum of any indebtedness to the society on the certificate, including interest due and accrued, and a surrender charge equal to 2½ percent of the face amount of the certificate, which, in the case of insurance on the lives of children, shall be the ultimate face amount of the certificate, if death benefits provided therein are graded.

(3) However, in the case of certificates issued on a substandard basis or in the case of certificates, the reserves for which are computed upon the American Men Ultimate Table of Mortality, the term of any extended insurance benefit granted including accompanying pure endowment, if any, may be computed upon the rates of mortality not greater than 130 percent of those shown by the mortality table specified in the certificate for the computation of the reserve.

(4) In the case of certificates for which reserves are computed on the Commissioners' 1941 Standard Ordinary Mortality Table, the 1941 Standard Industrial Table, or any more recent mortality table made applicable to life insurers, every paid-up nonforfeiture benefit and the amount of any cash surrender value, loan, or other option granted shall not be less than the corresponding amount ascertained in accordance with the provisions of the laws of this state applicable to life insurers issuing policies containing like insurance benefits based upon such tables.

**History.**—s. 775, ch. 59-205; s. 1, ch. 75-235; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **632.261 Beneficiaries.**—

(1) The member shall have the right at all times to change the beneficiary or beneficiaries in accordance with the constitution, laws, or rules of the society. Every society by its constitution, laws, or rules

may limit the scope of beneficiaries and shall provide that no beneficiary shall have or obtain any vested interest in the proceeds of any certificate until the certificate has become due and payable in conformity with the provisions of the insurance contract.

(2) A society may make provisions for the payment of funeral benefits to the extent of such portion of any payment under a certificate as might reasonably appear to be due to any person equitably entitled thereto by reason of having incurred expense occasioned by the burial of the member, but the portion so paid shall not exceed the sum of \$500.

(3) If, at the death of any member, there is no lawful beneficiary to whom the insurance benefits are payable, the amount of such benefits, except to the extent that funeral benefits may be paid as hereinbefore provided, shall be payable to the personal representative of the deceased member.

**History.**—s. 776, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§632.271 Benefits not attachable.**—No money or other benefit, charity, relief, or aid to be paid, provided or rendered by any society, shall be liable to attachment, garnishment, or other process, or to be seized, taken, appropriated, or applied by any legal or equitable process or operation of law to pay any debt or liability of a member or beneficiary, or any other person who may have a right thereunder, either before or after payment by the society.

**History.**—s. 777, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§632.281 No personal liability.**—The officers and members of the supreme, grand, or any subordinate body of a society shall not be personally liable for payment of any benefits provided by a society.

**History.**—s. 778, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

### **§632.291 Contract.**

(1) Every society authorized to do business in this state shall issue to each benefit member a certificate specifying the amount of benefits provided thereby. The certificate, together with any riders or endorsements attached thereto, the charter or articles of incorporation, the constitution and laws of the society, the application for membership, and declaration of insurability, if any, signed by the applicant, and all amendments to each thereof, shall constitute the agreement, as of the date of issuance, between the society and the member, and the certificate shall so state. A copy of the application for membership and of the declaration of insurability, if any, shall be endorsed upon or attached to the certificate.

(2) All statements purporting to be made by the member shall be representations and not warranties. Any waiver of this provision shall be void.

(3) Any changes, additions, or amendments to the charter or articles of incorporation, constitution, or laws duly made or enacted subsequent to the issuance of the certificate, shall bind the member and the beneficiaries, and shall govern and control the

agreement in all respects the same as though such changes, additions or amendments had been made prior to and were in force at the time of the application for membership, except that no change, addition, or amendment shall destroy or diminish benefits which the society contracted to give the member as of the date of issuance.

(4) Copies of any of the documents mentioned in this section, certified by the secretary or corresponding officer of the society, shall be received in evidence of the terms and conditions thereof.

**History.**—s. 779, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

### **§632.301 Standard provisions.**

(1) After 1 year from the effective date of this chapter, no life benefit certificate shall be delivered or issued for delivery in this state unless a copy of the form has been filed with the department.

(2) The certificate shall contain in substance the following standard provisions or, in lieu thereof, provisions which are more favorable to the member:

(a) Title on the face and filing page of the certificate clearly and correctly describing its form;

(b) A provision stating the amount of rates, premiums, or other required contributions, by whatever name known, which are payable by the insured under the certificate;

(c) A provision that the member is entitled to a grace period of not less than a full month (or 30 days at the option of the society) in which the payment of any premium after the first, may be made. During such grace period the certificate shall continue in full force, but in case the certificate becomes a claim during the grace period before the overdue payment is made, the amount of such overdue payment or payments may be deducted in any settlement under the certificate;

(d) A provision that the member shall be entitled to have the certificate reinstated at any time within 3 years from the due date of the premium in default, unless the certificate has been completely terminated through the application of a nonforfeiture benefit, cash surrender value or certificate loan, upon the production of evidence of insurability satisfactory to the society and the payment of all overdue premiums and any other indebtedness to the society upon the certificate, together with interest on such premiums and such indebtedness, if any, at a rate not exceeding 6 percent per annum compounded annually;

(e) Except in the case of pure endowment, annuity, or reversionary annuity contracts, reducing term insurance contracts, or contracts of term insurance of uniform amount of 15 years or less expiring before age 66, a provision that, in the event of default in payment of any premium after 3 full years' premiums have been paid or after premiums for a lesser period have been paid if the contract so provides, the society will grant, upon proper request not later than 60 days after the due date of the premium in default, a paid-up nonforfeiture benefit on the plan stipulated in the certificate, effective as of such due date, of such value as specified in this chapter. The certificate may provide, if the society's laws so specify or if the member shall so elect prior to the expira-



tion of the grace period of any overdue premium, that default shall not occur so long as premiums can be paid under the provisions of an arrangement for automatic premium loan as may be set forth in the certificate;

(f) A provision that one paid-up nonforfeiture benefit as specified in the certificate shall become effective automatically unless the member elects another available paid-up nonforfeiture benefit, not later than 60 days after the due date of the premium in default;

(g) A statement of the mortality table and rate of interest used in determining all paid-up nonforfeiture benefits and cash surrender options available under the certificate, and a brief general statement of the method used in calculating such benefits;

(h) A table showing in figures the value of every paid-up nonforfeiture benefit and cash surrender option available under the certificate for each certificate anniversary either during the first 20 certificate years or during the term of the certificate whichever is shorter;

(i) A provision that the certificate shall be incontestable after it has been in force during the lifetime of the member for a period of 2 years from its date of issue except for nonpayment of premiums, violation of the provisions of the certificate relating to military, aviation, or naval service and violation of the provisions relating to suspension or expulsion as substantially set forth in the certificate. At the option of the society, supplemental provisions relating to benefits in the event of temporary or permanent disability or hospitalization and provisions which grant additional insurance specifically against death by accident or accidental means, may also be excepted. The certificate shall be incontestable on the ground of suicide after it has been in force during the lifetime of the member for a period of 2 years from date of issue. The certificate may provide, as to statements made to procure reinstatement, that the society shall have the right to contest a reinstated certificate within a period of 2 years from date of reinstatement with the same exceptions as herein provided;

(j) A provision that in case the age or sex of the member or of any other person is considered in determining the premium and it is found at any time before final settlement under the certificate that the age or sex has been misstated, and the discrepancy and premium involved have not been adjusted, the amount payable shall be such as the premium would have purchased according to the correct age or sex; but if the correct age or sex was not insurable under the society's charter or laws, only the premiums paid to the society, less any payments previously made to the member, shall be returned or, at the option of the society, the amount payable under the certificate shall be such as the premium would have purchased at the correct age according to the society's promulgated rates and any extension thereof based on actuarial principles;

(k) A provision or provisions which recite fully, or which set forth the substance of, all sections of the charter, constitution, laws, rules, or regulations of the society, in force at the time of issuance of the certificate, the violation of which will result in the

termination of, or in the reduction of, the benefit or benefits payable under the certificate;

(l) If the constitution or laws of the society provide for expulsion or suspension of a member, any member so expelled or suspended, except for nonpayment of a premium or within the contestable period for material misrepresentations in such member's application for membership shall have the privilege of maintaining his insurance in force by continuing payment of the required premium; and

(3) Any of the foregoing provisions or portions thereof not applicable by reason of the plan of insurance or because the certificate is an annuity certificate may, to the extent inapplicable, be omitted from the certificate.

**History.**—s. 780, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§632.311 Prohibited provisions.**—After 1 year from the effective date of this chapter, no life benefit certificate shall be delivered or issued for delivery in this state containing in substance any of the following provisions:

(1) Any provision limiting the time within which any action at law or in equity may be commenced to less than 2 years after the cause of action accrues;

(2) Any provision by which the certificate purports to be issued or to take effect more than 6 months before the original application for the certificate was made, except in case of transfer from one form of certificate to another in connection with which the member is to receive credit for any reserve accumulation under the form of certificate from which the transfer is made; or

(3) Any provision for forfeiture of the certificate for failure to repay any loan thereon or to pay interest on such loan while the total indebtedness, including interest, is less than the loan value of the certificate.

**History.**—s. 781, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§632.321 Premiums defined.**—As used in this chapter "premiums" means premiums, rates, or other required contributions by whatever name known.

**History.**—s. 782, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§632.331 Accident and health insurance and total and permanent disability insurance certificates; filing and approval.**—

(1) No domestic, foreign, or alien society authorized to do business in this state shall issue or deliver in this state any certificate or other evidence of any contract of accident insurance or health insurance or of any total and permanent disability insurance contract unless and until the form thereof, together with the form of application and all riders or endorsements for use in connection therewith, shall have been filed with the department subject to its disapproval.

(2) The department shall have power, from time to time, to make, alter, and supersede reasonable

regulations prescribing the required, optional, and prohibited provisions in such contracts, and such regulations shall conform, as far as practicable, to the provisions of part VI of chapter 627 (disability insurance policies). Where the department deems inapplicable, either in part or in their entirety, the provisions of said part VI, it may prescribe the portions or summary thereof of the contract to be printed on the certificate issued to the member.

**History.**—s. 783, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**632.341 Reinsurance.**—A domestic society may, by a reinsurance agreement, cede any individual risk or risks in whole or in part to an insurer (other than another fraternal benefit society) having the power to make such reinsurance and authorized to do business in this state, or if not so authorized, one which is approved by the department; but no such society may reinsure substantially all of its insurance in force without the written permission of the department. It may take credit for the reserves on such ceded risks to the extent reinsured, but no credit shall be allowed as an admitted asset or as a deduction from liability, to a ceding society for reinsurance made, ceded, renewed, or otherwise becoming effective after the effective date of this chapter, unless the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding society under the contract or contracts reinsured without diminution because of the insolvency of the ceding society.

**History.**—s. 784, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **632.351 Funds.**—

(1) All assets shall be held, invested, and disbursed for the use and benefit of the society and no member or beneficiary shall have or acquire individual rights therein or become entitled to any apportionment or the surrender of any part thereof, except as provided in the contract.

(2) A society may create, maintain, invest, disburse, and apply any special fund or funds necessary to carry out any purpose permitted by the laws of such society.

(3) Every society, the admitted assets of which are less than the sum of its accrued liabilities and reserves under all of its certificates when valued according to standards required for certificates issued after one year from the effective date of this chapter, shall, in every provision of the laws of the society for payments by members of such society, in whatever form made, distinctly state the purpose of the same and the proportion thereof which may be used for expenses, and no part of the money collected for mortality or disability purposes or the net accretions thereto shall be used for expenses.

**History.**—s. 785, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior

to that date.

**632.361 Investments.**—A society shall invest its funds only in such investments as are authorized by the laws of this state for the investment of assets of life insurers and subject to the limitations thereon. Any foreign or alien society permitted or seeking to do business in this state which invests its funds in accordance with the laws of the state, district, territory, country, or province in which it is incorporated, shall be held to meet the requirements of this section for the investment of funds.

**History.**—s. 786, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**632.371 Annual statement.**—Reports shall be filed and synopses of annual statements shall be published in accordance with the provisions of this section.

(1) Every society transacting business in this state shall annually, on or before March 1, unless for cause shown such time has been extended by the department, file with the department a true statement of its financial condition, transactions, and affairs for the preceding calendar year and pay a fee for filing same, as provided in s. 624.501(4). The statement shall be in the general form and context as approved by the National Association of Insurance Commissioners for Fraternal Benefit Societies and as supplemented by additional information required by the department.

(2) A synopsis of its annual statement providing an explanation of the facts concerning the condition of the society thereby disclosed shall be printed and mailed to each benefit member of the society not later than June 1 of each year, or, in lieu thereof, such synopsis may be published in the society's official publication.

(3) The department shall deposit all fees received by it under this section to the credit of the Insurance Commissioner's Regulatory Trust Fund.

**History.**—s. 787, ch. 59-205; s. 18, ch. 65-269; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **632.381 Annual valuation of certificates.**—

(1) As a part of the annual statement required under s. 632.371, each society shall, on or before March 1, file with the department a valuation of its certificates in force on December 31 last preceding provided, the department may, in its discretion for cause shown, extend the time for filing such valuation for not more than 2 calendar months. Such report of valuation shall show, as reserve liabilities, the difference between the present midyear value of the promised benefits provided in the certificates of such society in force and the present midyear value of the future net premiums as the same are in practice actually collected, not including therein any value for the right to make extra assessments and not including any amount by which the present midyear value of future net premiums exceeds the present midyear value of promised benefits on individual certificates. At the option of any society, in lieu of the above, the valuation may show the new tabular

value. Such net tabular value as to certificates issued prior to 1 year after the effective date of this chapter shall be determined in accordance with the provisions of law applicable prior to the effective date of this chapter and as to certificates issued on or after 1 year from the effective date of this chapter shall not be less than the reserves determined according to the commissioners' reserve valuation method as hereafter defined. If the premium charged is less than the tabular net premium according to the basis of valuation used, an additional reserve equal to the present value of the deficiency in such premiums shall be set up and maintained as a liability. The reserve liabilities shall be properly adjusted in the event that the midyear or tabular values are not appropriate.

(2) Reserves according to the commissioners' reserve valuation method, for life insurance and endowment benefits of certificates providing for a uniform amount of insurance and requiring the payment of uniform premiums shall be the excess, if any, of the present value, at the date of valuation, of such future guaranteed benefits provided for by such certificates, over the then present value of any future modified net premiums therefor. The modified net premiums for any such certificate shall be such uniform percentage of the respective contract premiums for such benefits that the present value, at the date of issue of the certificate, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the certificate and the excess of (a) over (b), as follows:

(a) A net level premium equal to the present value, at the date of issue, of such benefits provided for after the first certificate year, divided by the present value, at the date of issue, of an annuity of one per annum payable on the first and each subsequent anniversary of such certificate on which a premium falls due; provided however, that such net level annual premium shall not exceed the net level annual premium on the 19-year premium whole life plan for insurance of the same amount at an age 1 year higher than the age at issue of such certificate; and

(b) A net 1-year term premium for such benefits provided for in the first certificate year.

(3) Reserves according to the commissioners' reserve valuation method for

(a) Life insurance benefits for varying amounts of benefits or requiring the payment of varying premiums,

(b) Annuity and pure endowment benefits,

(c) Disability and accidental death benefits in all certificates and contracts, and

(d) All other benefits except life insurance and endowment benefits shall be calculated by a method consistent with the principles of subsection (2) above.

(4) The present value of deferred payments due under incurred claims or matured certificates shall be deemed a liability of the society and shall be computed upon mortality and interest standards prescribed in the following subsection.

(5) Such valuation and underlying data shall be certified by a competent actuary or, at the expense of the society, verified by the actuary of the Department of Insurance of the state of domicile of the society.

(6) The minimum standards of valuation for certificates issued prior to 1 year from the effective date of this chapter shall be those provided by the law applicable immediately prior to the effective date of this chapter, but not lower than the standards used in the calculating of rates for such certificates.

(7) The minimum standard of valuation for certificates issued from and after the effective date of this act shall be 3.5 percent interest and the following tables:

(a) For certificates of life insurance—American Men Ultimate Table of Mortality, with Bowerman's or Davis' extension thereof, or, with the consent of the department, the Commissioners' 1941 Standard Ordinary Mortality Table, the 1941 Standard Industrial Mortality Table or the Commissioners' 1958 Standard Ordinary Mortality Table; provided, that for any category of such certificates, based on the last mortality table listed above, issued on female risks modified net premiums and present values, referred to in subsection (2), may be calculated according to an age not more than 3 years younger than the actual age of the insured;

(b) For annuity and pure endowment certificates, including life annuities and settlements available under optional modes of settlement in such certificates, but excluding any disability or accidental death benefits in such certificates—the 1937 Standard Annuity Mortality Table or the Annuity Mortality Table for 1949, Ultimate, or any modification of either of these tables approved by the department;

(c) For disability benefits issued in connection with life benefit certificates—Hunter's Disability Table; except, that for total and permanent disability benefits the Class Three Disability Table (1926) modified to conform to the contractual waiting period, or the tables of period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 Disability Study of the Society of Actuaries, with due regard to the type of benefit shall be used to compute the reserves. Any such table for active lives shall be combined with a mortality table permitted for calculating the reserves for life insurance certificates;

(d) For accidental death benefits issued in connection with life benefit certificates—the Intercompany Double Indemnity Mortality Table or the 1959 Accidental Death Benefits Table. Either table shall be combined with a mortality table permitted for calculating the reserves for life insurance certificates; and

(e) For noncancelable accident and health benefits—the Class Three Disability Table (1926) with conference modifications or, with the consent of the department, tables based upon the society's own experience.

However, any society may value its certificate in accordance with valuation standards authorized by the laws of this state for the valuation of policies issued by life insurance companies.

(8) The department may, in its discretion, accept other standards for valuation if it finds that the reserves produced thereby will not be less in the aggregate than reserves computed in accordance with the minimum valuation standard herein prescribed. The department may, in its discretion, vary the stand-



ards of mortality applicable to all certificates of insurance on substandard lives or other extra-hazardous lives by any society authorized to do business in this state. Whenever the mortality experience under all certificates valued on the same mortality table is in excess of the expected mortality according to such table for a period of 3 consecutive years, the department may require additional reserves when deemed necessary in its judgment on account of such certificates.

(9) Any society, with the consent of the insurance supervisory official of the state of domicile of the society and under such conditions, if any, which he may impose, may establish and maintain reserves on its certificates in excess of the reserves required thereunder, but the contractual rights of any insured member shall not be affected thereby.

**History.**—s. 788, ch. 59-205; s. 1, ch. 65-15; ss. 13, 35, ch. 69-106; s. 2, ch. 75-235; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§632.391 Annual statement; penalty for failure to file or to comply.**—A society neglecting to file the annual statement in the form and within the time provided by this section shall forfeit \$100 for each day during which such neglect continues, and, upon notice by the department to that effect, its authority to do business in this state shall cease while such default continues. The department shall deposit all sums collected by it under this section to the credit of the Insurance Commissioner's Regulatory Trust Fund.

**History.**—s. 789, ch. 69-205; s. 19, ch. 65-269; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§632.401 Examination of domestic societies.**—

(1) The department, or any person it may appoint, shall have the power of visitation and examination into the affairs of any domestic society, and it shall make such examination at least once in every 3 years. It may employ assistants for the purpose of such examination, and it, or any person it may appoint, shall have free access to all books, papers, and documents that relate to the business of the society.

(2) In making any such examination the department may summon and qualify as witnesses under oath and examine its officers, agents, and employees or other persons in relation to the affairs, transactions, and condition of the society.

(3) A summary of the report of the department and such recommendations or statements of the department as may accompany such report, shall be read at the first meeting of the board of directors or corresponding body of the society following the receipt thereof, and if directed so to do by the department, shall also be read at the first meeting of the supreme legislative or governing body of the society following the receipt thereof. A copy of the report, recommendations, and statements of the department shall be furnished by the society to each member of such board of directors or other governing body.

(4) The expense of each examination and of each valuation, including compensation and actual ex-

pense of examiners, shall be paid by the society examined or whose certificates are valued, upon statements furnished by the department.

**History.**—s. 790, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§632.411 Examination of foreign and alien societies.**—The department, or any person whom it may appoint, may examine any foreign or alien society transacting or applying for admission to transact business in this state. It may employ assistants and it, or any person it may appoint, shall have free access to all books, papers, and documents that relate to the business of the society. It may in its discretion accept, in lieu of such examination, the examination of the insurance department of the state, territory, district, province, or country where such society is organized. The compensation and actual expenses of the examiners making any examination or general or special valuation shall be paid by the society examined, or by the society whose certificate obligations have been valued, upon statements furnished by the department.

**History.**—s. 791, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§632.421 No adverse publications.**—Pending, during, or after an examination or investigation of a society, either domestic, foreign, or alien, the department shall make public no financial statement, report, or finding, nor shall it permit to become public any financial statement, report, or finding affecting the status, standing, or rights of any society, until a copy thereof shall have been served upon the society at its principal office and the society shall have been afforded a reasonable opportunity to answer any such financial statement, report or finding and to make such showing in connection therewith as it may desire.

**History.**—s. 792, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§632.431 Taxation.**—Every society organized or licensed under this chapter is hereby declared to be a charitable and benevolent institution, and all of its funds shall be exempt from all and every state, county, district, municipal, and school tax other than taxes on real estate and office equipment, and other than the fees and licenses provided for in this chapter and the annual license tax provided for in s. 624.501.

**History.**—s. 793, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§632.441 Licensing of agents.**—

(1) Agents of societies shall be licensed as for life insurance agents in accordance with the applicable provisions of part I of chapter 626 (Licensing Procedures Law). All sums collected by the department for, or in connection with, such licensing shall be deposited by it in, or to the credit of, the same funds

provided for in part IV of chapter 624, as apply in the case of similar sums collected by it under part I of chapter 626 for or in connection with the licensing of life insurance agents.

(2) The term "agent" as used in this section means any authorized or acknowledged agent of a society who acts as such in the solicitation, negotiation, or procurement or making of a life insurance, accident, and health insurance or annuity contract; except that the term "agent" shall not include:

(a) Any regular salaried officer or employee of a licensed society who devotes substantially all of his services to activities other than the solicitation of fraternal insurance contracts from the public, and who receives for the solicitation of such contracts no commission or other compensation directly dependent upon the amount of business obtained; or

(b) Any agent or representative of a society who devotes, or intends to devote, less than 50 percent of his time to the solicitation and procurement of insurance contracts for such society. Any person who in the preceding calendar year has solicited and procured life insurance contracts on behalf of any society in an amount of insurance in excess of \$50,000 or, in the case of any other kind or kinds of insurance which the society might write, on the persons of more than 25 individuals and who has received or will receive a commission or other compensation therefor, shall be presumed to be devoting, or intending to devote, 50 percent of his time to the solicitation or procurement of insurance contracts for such society.

(3) A fraternal benefit society shall be deemed to be an "insurer" within the intent of such part I of chapter 626 and for the purposes of this section.

**History.**—s. 794, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**632.442 Registration.**—Every society shall on forms prescribed by the Department of Insurance register on or before March 1 of each year the names of and residence address of each agent or representative who devotes or intends to devote less than 50 percent of his time to the solicitation and procurement of insurance contracts for such society, as provided in s. 632.441(2)(b), and shall within 30 days of termination of employment notify the Department of Insurance of such termination. Any such agent employed subsequent to March 1 filing shall be registered with the Department of Insurance within 10 days of such employment.

**History.**—s. 1, ch. 63-85; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**632.451 Agent license required.**—

(1) Any person who in this state acts as insurance agent for a society without having authority so to do by virtue of a license issued and in force pursuant to the provisions of this chapter shall, except as provided in s. 632.441(2), be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) No society doing business in this state shall pay any commission or other compensation to any

person for any services in obtaining in this state any new contract of life, accident or health insurance, or any new annuity contract, except to a licensed insurance agent of such society and except an agent exempted under s. 632.441(2).

**History.**—s. 795, ch. 59-205; s. 656, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**632.461 Agent's qualifications.**—The department shall not issue or permit to exist a license as agent of a fraternal benefit society as to an individual not qualified therefor as follows:

- (1) Must be a resident of and in this state;
- (2) Must be trustworthy;
- (3) Must be competent to act as an agent of such a society; and

(4) Must take and successfully pass any written examination required as a prerequisite to such licensing under s. 632.471 and part I of chapter 626.

**History.**—s. 796, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**632.471 Examination for agent's license.**—

(1) Any examination for a fraternal agent's license shall include questions relative only to fraternal insurance, the types of certificates, policies, or contracts in general proposed to be solicited under the license, and the laws of this state which relate to the activities of the proposed licensee as a fraternal insurance agent.

(2) No such examination for license shall be required as to any fraternal insurance agent who was duly licensed as such in this state immediately prior to the effective date of this code, and under laws then in force.

**History.**—s. 797, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**632.481 Misrepresentation.**—

(1) No person shall cause or permit to be made, issued or circulated in any form:

(a) Any misrepresentation or false or misleading statement concerning the terms, benefits, or advantages of any fraternal insurance contract now issued or to be issued in this state, or the financial condition of any society;

(b) Any false or misleading estimate or statement concerning the dividends or shares of surplus paid or to be paid by any society on any insurance contract; or

(c) Any incomplete comparison of an insurance contract of one society with an insurance contract of another society or insurer for the purpose of inducing the lapse, forfeiture, or surrender of any insurance contract. A comparison of insurance contracts is incomplete if it does not compare in detail:

1. The gross rates, and the gross rates less any dividend or other reduction allowed at the date of the comparison; and

2. Any increase in cash values, and all the benefits provided by each contract for the possible duration thereof as determined by the life expectancy of the insured;

or if it omits from consideration:

3. Any benefit or value provided in the contract;
4. Any differences as to amount or period of rates; or
5. Any differences in limitations or conditions or provisions which directly or indirectly affect the benefits.

In any determination of the incompleteness or misleading character of any comparison or statement, it shall be presumed that the insured had no knowledge of any of the contents of the contract involved.

(2) Any person who violates any provision of such violation, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and shall in addition, be liable for a civil penalty in the amount of 3 times the sum received by such violator as compensation or commission, which penalty may be sued for and recovered by any person or society aggrieved for his or its own use and benefit in accordance with the provisions of civil practice.

**History.**—s. 798, ch. 59-205; s. 657, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **632.491 Discrimination and rebates.—**

(1) No society doing business in this state shall make or permit any unfair discrimination between insured members of the same class and equal expectation of life in the premiums charged for certificates of insurance, in the dividends or other benefits payable thereon, or in any other of the terms and conditions of the contracts it makes.

(2) No society, by itself, or any other party, and no agent or solicitor, personally, or by any other party, shall offer, promise, allow, give, set off, or pay, directly or indirectly, any valuable consideration or inducement to, or for insurance, on any risk authorized to be taken by such society, which is not specified in the certificate. No member shall receive or accept, directly or indirectly, any rebate of premium, or part thereof, or agent's or solicitor's commission thereon, payable on any certificate or receive or accept any favor or advantage or share in the dividends or other benefits to accrue on, or any valuable consideration or inducement not specified in the contract of insurance.

**History.**—s. 799, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **632.501 Service of process.—**

(1) Every society authorized to do business in this state shall appoint in writing the insurance commissioner and treasurer and each successor in office to be its true and lawful attorney upon whom all lawful process in any action or proceeding against it shall be served, and shall agree in such writing that any lawful process against it which is served on said attorney shall be of the same legal force and validity as if served upon the society, and that the authority shall continue in force so long as any liability remains outstanding in this state. Copies of such appointment, certified by the department, shall be deemed sufficient evidence thereof and shall be admitted in evidence with the same force and effect as

the original thereof might be admitted.

(2) Service shall only be made upon the insurance commissioner and treasurer, or if absent, upon the person in charge of his office. It shall be made in duplicate and shall constitute sufficient service upon the society. When legal process against a society is served upon the insurance commissioner and treasurer, he shall forthwith forward one of the duplicate copies by registered mail, prepaid, directed to the secretary or corresponding officer. No such service shall require a society to file its answer, pleading, or defense in less than 30 days from the date of mailing the copy of the service to a society. Legal process shall not be served upon a society except in the manner herein provided.

**History.**—s. 800, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **632.511 Consolidations and mergers.—**

(1) A domestic society may consolidate or merge with any other society by complying with the provisions of this section. It shall file with the department:

(a) A certified copy of the written contract containing in full the terms and conditions of the consolidation or merger;

(b) A sworn statement by the president and secretary or corresponding officers of each society showing the financial condition thereof on a date fixed by the department but not earlier than December 31 next preceding the date of the contract;

(c) A certificate of such officers, duly verified by their respective oaths, that the consolidation or merger has been approved by a two-thirds vote of the supreme legislative or governing body of each society; and

(d) Evidence that at least 60 days prior to the action of the supreme legislative or governing body of each society, the text of the contract has been furnished to all members of each society either by mail or by publication in full in the official organ of each society.

(2) The affidavit of any officer of the society or of anyone authorized by it to mail any notice or document, stating that such notice or document has been duly addressed and mailed, shall be prima facie evidence that such notice or document has been furnished the addressees.

(3) If the department finds that the contract is in conformity with the provisions of this section, that the financial statements are correct, and that the consolidation or merger is just and equitable to the members of each society, it shall approve the contract and issue its certificate to such effect. Upon such approval, the contract shall be in full force and effect unless any society which is a party to the contract is incorporated under the laws of any other state. In such event the consolidation or merger shall not become effective unless and until it has been approved as provided by the laws of such state and a certificate of such approval filed with the department or, if the laws of such state contain no such provision, then the consolidation or merger shall not become effective unless and until it has been approved by the insurance supervisory official of such



state and a certificate of such approval filed with the department.

**History.**—s. 801, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**'632.521 Same; effect.**—Upon the consolidation or merger becoming effective as provided in s. 632.511, all the rights, franchises, and interests of the consolidated or merged societies in and to every species of property, real, personal, or mixed, and things in action thereunto belonging shall be vested in the society resulting from or remaining after the consolidation or merger without any other instrument; except that conveyances of real property may be evidenced by proper deeds, and the title to any real estate or interest therein, vested under the laws of this state in any of the societies consolidated or merged, shall not revert or be in any way impaired by reason of the consolidation or merger, but shall vest absolutely in the society resulting from, or remaining after, such consolidation or merger.

**History.**—s. 802, ch. 59-205; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**'632.531 Conversion into mutual life insurer.**—Any domestic fraternal benefit society may be converted and licensed as a mutual life insurer by compliance with the applicable requirements of chapter 628, if such plan of conversion has been approved by the department. Such plan shall be prepared in writing setting forth in full the terms and conditions thereof. The board of directors shall submit the plan to the supreme legislative or governing body of such society at any regular or special meeting thereof, by giving a full, true, and complete copy of the plan with the notice of such meeting. The notice shall be given as provided in the laws of the society for the convocation of a regular or special meeting of such body, as the case may be. The affirmative vote of two-thirds of all members of such body shall be necessary for the approval of the agreement. No such conversion shall take effect unless and until approved by the department, which may give such approval if it finds that the proposed change is in conformity with the requirements of law and not prejudicial to the certificate holders of the society.

**History.**—s. 803, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**'632.541 Injunction; liquidation; receivership of domestic society.**—

(1) When the department upon investigation finds that a domestic society:

- (a) Has exceeded its powers;
- (b) Has failed to comply with any provision of this chapter;
- (c) Is not fulfilling its contracts in good faith;
- (d) Has a membership of less than 400 after an existence of 1 year or more; or
- (e) Is conducting business fraudulently or in a manner hazardous to its members, creditors, the

public, or the business;

it shall notify the society of its findings, state in writing the reasons for its dissatisfaction, and require the society to show cause on a date named why it should not be enjoined from carrying on any business until the violation complained of shall have been corrected, or why an action in quo warranto should not be commenced against the society.

(2) If on such date the society does not present good and sufficient reasons why it should not be so enjoined, or why such action should not be commenced, the department may present the facts relating thereto to the Department of Legal Affairs which shall, if it deems the circumstances warrant, commence an action to enjoin the society from transacting business or in quo warranto. The court shall thereupon notify the officers of the society of a hearing. If after a full hearing it appears that the society should be so enjoined or liquidated or a receiver appointed, the court shall enter the necessary order.

(3) No society so enjoined shall have the authority to do business until:

(a) The department finds that the violation complained of has been corrected;

(b) The costs of such action have been paid by the society if the court finds that the society was in default as charged;

(c) The court has dissolved its injunction; and

(d) The department has reinstated the society's license.

(4) If the court orders the society liquidated, it shall be enjoined from carrying on any further business, whereupon the receiver of the society shall proceed at once to take possession of the books, papers, money, and other assets of the society and, under the direction of the court, proceed forthwith to close the affairs of the society and to distribute its funds to those entitled thereto.

(5) No action under this section shall be recognized in any court of this state unless brought by the Department of Legal Affairs upon request of the Department of Insurance. Whenever a receiver is to be appointed for a domestic society, the court shall appoint the Department of Insurance as such receiver.

(6) The provisions of this section relating to hearing by the Department of Insurance, action by the Department of Legal Affairs at the request of the Department of Insurance, hearing by the court, injunction, and receivership shall be applicable to a society which voluntarily determines to discontinue business.

**History.**—s. 804, ch. 59-205; ss. 11, 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**'632.551 Injunction.**—No application or petition for injunction against any domestic, foreign, or alien society, or branch thereof, shall be recognized in any court of this state unless made by the Department of Legal Affairs upon request of the Department of Insurance.

**History.**—s. 805, ch. 59-205; ss. 11, 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective

July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§632.571 Other provisions applicable.**—In addition to the provisions heretofore contained or referred to in this chapter, other chapters and provisions of this code shall apply to fraternal benefit societies to the extent applicable and not in conflict with the express provisions of this chapter and the reasonable implications thereof, as follows:

- (1) Part I of chapter 624 (Scope of Code);
- (2) Part II of chapter 624 (Department of Insurance);
- (3) The following sections of part III of chapter 624 (Authorization of Insurers and General Requirements):

(a) Section 624.404 (Eligibility of insurers for certificate of authority);

- (b) Section 624.405 (Name of insurer);
- (4) Section 624.501 (Filing, license, and miscellaneous fees);
- (5) Part I of chapter 626 (Licensing Procedures Law);
- (6) Part VII of chapter 626 (Trade Practices and Frauds);
- (7) Section 627.424 (Minor may give acquittance);
- (8) Section 627.428 (Attorney's fee);
- (9) Section 627.479 (Prohibited policy plans);
- (10) Part I, chapter 631 (Insurer Insolvency; Rehabilitation and Liquidation).

**History.**—s. 807, ch. 59-205; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

## CHAPTER 633

## FIRE PREVENTION AND CONTROL

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- 633.01 State Fire Marshal; powers and duties.**—The head of the Department of Insurance shall be designated as State Fire Marshal and hereinafter shall enforce all laws and provisions of this chapter relating to:
- (1) Prevention of fires;
  - (2) Storage, sale, use, keeping, manufacture, handling, transportation or other disposition of combustibles, explosives, flammables, gunpowder, carbide, and crude petroleum or any of its products and may prescribe the material or receptacles and building to be used for such purpose;
  - (3) Installation and maintenance of fire alarm systems and fire-extinguishing equipment;
  - (4) Servicing, recharging, marking, and tagging of portable fire extinguishers and shall provide



standards of operation for those engaged in such activities;

(5) Construction, maintenance, and regulation of fire escapes;

(6) The means and adequacy of exits from all buildings in event of fire; and

(7) Suppression of arson and the investigation of fires.

**History.**—s. 1, ch. 20671, 1941; s. 1, ch. 65-216; s. 1, ch. 67-78; ss. 13, 35, ch. 69-106; s. 3, ch. 70-299; s. 5, ch. 71-271.  
cf.—s. 316.302 Transportation of hazardous materials, explosives, flammable liquids, radioactive materials, etc.

**633.02 Agents; powers and duties; compensation.**—The State Fire Marshal shall appoint such agents as may be necessary to carry out effectively the provisions of this chapter, who shall be reimbursed for traveling expenses as provided in s. 112.061, in addition to their salary, when traveling or making investigations in the performance of their duties. Such agents shall be at all times under the direction and control of the Fire Marshal, who shall fix their compensation, and all orders shall be issued in his name and by his authority.

**History.**—s. 2, ch. 20671, 1941; s. 1, ch. 57-102; s. 19, ch. 63-400; s. 4, ch. 67-78; ss. 13, 35, ch. 69-106; s. 3, ch. 70-299.

### 633.021 Definitions.—

(1) "Explosives" shall mean any chemical compound or mixture that has the property of yielding readily to combustion or oxidation upon the application of heat, flame or shock, and capable of producing an explosion and commonly used for that purpose, including but not limited to dynamite, nitroglycerin, trinitrotoluene, ammonium nitrate when combined with other ingredients to form an explosive mixture, blasting caps and detonators; but not including cartridges for firearms, and not including fireworks as defined in chapter 791.

(2) "Handling" shall mean touching, holding, taking up, moving, controlling or otherwise affecting with the hand or by any other agency. As used in ss. 633.05(2) and 633.081, its meaning and application shall be limited to handling having a direct relationship to transportation.

(3) "Highway" shall mean every way or place of whatever nature within the state open to the use of the public, as a matter of right, for purposes of vehicular traffic, and shall include public streets, alleys, roadways or driveways upon grounds of colleges, universities and institutions, and other ways open to travel by the public, notwithstanding that the same shall have been temporarily closed for the purpose of construction, reconstruction, maintenance or repair. It shall not include a roadway or driveway upon grounds owned by private persons.

(4) "Keeping" shall mean possessing, holding, retaining, maintaining or having habitually in stock for sale.

(5) "Manufacture" shall mean the compounding, combining, producing or making of anything, or the working of anything by hand, by machinery, or by any other agency into forms suitable for use.

(6) "Motor vehicle" shall mean every device propelled by power other than muscular in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices moved

or used exclusively upon stationary rails or tracks.

(7) "Private carrier" shall mean any motor vehicle, aircraft or vessel operating intrastate in which there is identity of ownership between freight and carrier.

(8) "Sale" shall mean the act of selling; the act whereby the ownership of property is transferred from one person to another for a sum of money or, loosely, for any consideration. It shall include delivery of merchandise with or without consideration.

(9) "Storing" shall mean accumulating, laying away or depositing for preservation or as a reserve fund in a store, warehouse, or other source from which supplies may be drawn or within which they may be deposited. The term as used in ss. 633.05(2) and 633.081 shall be limited in meaning and application to storage having a direct relationship to transportation.

(10) "Transportation" shall mean the conveying or carrying of property from one place to another by motor vehicle, aircraft or vessel subject to such limitations as set forth in s. 552.12, except as used in s. 633.05(2), in which only the motor vehicles, aircraft or vessels of the Armed Forces and other federal agencies are specifically exempted.

(11) "Use" shall mean application, employment; that enjoyment of property which consists of its employment, occupation, exercise or practice.

(12) A "fire protection system" consists of an automatic or manual sprinkler system designed to protect the interior or exterior of a building or structure from fire. Such systems shall include, but not be limited to, water sprinkler systems, water spray systems, foam-water sprinkler systems, foam-water spray systems, CO<sub>2</sub> systems, foam extinguishing systems, dry chemical systems, and Halon and other chemical and automatic alarm systems used for fire protection use. Such systems shall also include the overhead and underground water mains, fire hydrants and hydrant mains, standpipes and hose connections to sprinkler systems, sprinkler tank heaters, air lines, and thermal systems used in connection with sprinkler and automatic alarm systems, and tanks and pumps connected thereto.

(13) "Contractor" means one whose business includes the execution of contracts requiring the art, ability, experience, knowledge, science, and skill intelligently to lay out, fabricate, install, inspect, alter, repair, or service all types of fire protection systems, piping or tubing, and appurtenances and equipment pertaining thereto, including both overhead and underground water mains, fire hydrants and hydrant mains, standpipes and hose connections to sprinkler systems, sprinkler tank heaters, air lines and thermal systems used in connection with sprinkler and alarm systems, and tanks and pumps connected thereto.

(14) "Contracting" means engaging in business as a contractor.

(15) "Board" means the Florida Fire Safety Board.

(16) "Certificate" means a certificate of competency issued by the State Fire Marshal.

(17) "Certification" means the act of obtaining or

holding a certificate of competency from the State Fire Marshal.

**History.**—s. 2, ch. 65-216; s. 6, ch. 71-271; s. 2, ch. 75-240.

**633.03 Investigation of fire; reports.**—The State Fire Marshal shall investigate the cause, origin, and circumstances of every fire occurring in this state wherein property has been damaged or destroyed where there is probable cause to believe that the fire was the result of carelessness or design. Report of all such investigations shall be made on approved forms to be furnished by the Fire Marshal.

**History.**—s. 3, ch. 20671, 1941; s. 4, ch. 67-78; ss. 13, 35, ch. 69-106; s. 3, ch. 70-299.

**633.05 Regulations.**—The State Fire Marshal shall make and promulgate all rules and regulations necessary to effectuate the enforcement of his powers and duties, including, but not limited to, the making and promulgation of rules and regulations for the:

- (1) Prevention of fires.
- (2) Storage, sale, use, keeping, manufacture, handling, transportation or other disposition of combustibles, explosives, flammables, gunpowder, carbide, and crude petroleum or any of its products, and may prescribe the material or receptacles and building to be used for such purpose.
- (3) Installation and maintenance of fire alarm systems and fire-extinguishing equipment.
- (4) Servicing, recharging, marking and tagging of portable fire extinguishers, and shall provide standards of operation for those engaged in such activities.
- (5) Construction, maintenance, and regulation of fire escapes.
- (6) Means and adequacy of exits from all buildings in event of fire.
- (7) Suppression of arson and the investigation of fires.
- (8) Establishment of uniform fire safety standards for state-owned and state-leased buildings and for all hospitals, nursing homes, rest homes, correctional facilities, public schools, public lodging establishments, public food-service establishments, elevators, migrant labor camps, and self-service gasoline stations, of which standards the State Fire Marshal shall be the final administrative interpreting authority. With respect to public schools, the State Fire Marshal shall utilize the fire safety standards that have been adopted by the State Board of Education.

(a) In state-owned and-leased buildings, community colleges, and public schools, all deficiencies of uniform fire safety standards shall be reported to the State Fire Marshal by the inspecting agencies, and said deficiencies shall be corrected within a reasonable period and within the budget limitation of the agency. All deficiencies which will require extensive renovation or sizable expenditures of moneys shall be reported to the Legislature by the responsible agency for its review and budgeting. Priority shall be given to the more serious deficiencies.

(b) The State Fire Marshal shall cause the uniform fire safety standards to be revised and republished as the need arises. He shall determine the method of distribution and may charge an amount not to exceed the amount reasonably calculated to

cover the cost of production and distribution.

(c) This subsection shall apply to the establishment of uniform fire safety standards only and shall not affect the responsibility for conducting fire safety inspections or enforcing fire safety laws.

**History.**—s. 5, ch. 20671, 1941; ss. 1, 2, ch. 29711, 1955; s. 4, ch. 65-216; s. 2, ch. 67-78; ss. 13, 35, ch. 69-106; s. 3, ch. 70-299; s. 8, ch. 71-271; s. 13, ch. 75-151; s. 4, ch. 76-252.

**633.051 Procedures for adoption of regulations.**—

(1) Said regulations authorized in s. 633.05 to be made and promulgated by the State Fire Marshal shall be such as are reasonably necessary for the protection of the health, welfare and safety of the public and of persons possessing, handling and using such materials and products, and shall be in substantial conformity with generally accepted standards of safety concerning such several subject matters. In the making and promulgation of such regulations, the State Fire Marshal shall give consideration to rules and standards of safety of reputable national institutes, organizations, or bureaus in relation to any of said materials and products, and which rules and standards have been adopted by such organizations as result of demonstrated credible experience.

(2) The provisions of this section and s. 633.05 are cumulative and shall not be construed as repealing or affecting any other law of this state particularly relating to the regulation of any of the materials or products described herein.

**History.**—s. 5, ch. 65-216; s. 3, ch. 67-78; ss. 10, 13, 35, ch. 69-106; ss. 2, 3, ch. 70-299; s. 21, ch. 78-95.

**633.061 License or permit required of organizations and individuals servicing, recharging, repairing, testing, inspecting, or installing fire extinguishers and systems.**—

(1) It shall be unlawful for any organization or individual to engage in the business of servicing, repairing, recharging, testing, inspecting, or installing any fire extinguisher or system in this state except in conformity with the provisions of this chapter. Each organization or individual engaging in such activity must be possessed of a valid and subsisting license issued by the State Fire Marshal. All fire extinguishers and systems required by the State Fire Marshal's rules and regulations must be serviced by an organization or individual licensed under the provisions of this chapter. A further requirement, in the case of multiple locations where such servicing or recharging is taking place, is that each licensee maintaining more than one place of business where actual work is carried on shall possess an additional license, as herein set forth, for each location. Licensees shall be limited as to specific type of work performed dependent upon the class of license held. Licenses and fees therefor are required for the following:

(a) Class A ..... \$55  
To service, recharge, repair, install, or inspect all types of fire extinguishers and systems, including recharging carbon dioxide units; and to conduct hydrostatic tests on all types of fire extinguishers, including carbon dioxide units.

(b) Class B ..... \$45  
To service, recharge, repair, install, or inspect all types of fire extinguishers and systems, including

recharging carbon dioxide units and conducting hydrostatic tests on water, water chemical, and dry chemical types of extinguishers only.

(c) Class C ..... \$40  
To service, recharge, repair, install, or inspect all types of fire extinguishers and systems, except recharging carbon dioxide units; and to conduct hydrostatic tests of water, water chemical, and dry chemical types of fire extinguishers only.

(2) Each individual actually performing the work of servicing, recharging, repairing, installing, testing, or inspecting fire extinguishers and systems must be possessed of a valid and subsisting permit issued by the State Fire Marshal. Permittees shall be limited as to specific type of work performed dependent upon the class of permit held. Permits and fees therefor are required for the following:

(a) Class 1 ..... \$5  
Servicing, recharging, repairing, installing, or inspecting all types of fire extinguishers and systems, including carbon dioxide units, and conducting hydrostatic tests on all types of fire extinguishers, including carbon dioxide units.

(b) Class 2 ..... \$5  
Servicing, recharging, repairing, installing, or inspecting all types of fire extinguishers and systems, including carbon dioxide units, and conducting hydrostatic tests on water, water chemical, and dry chemical types of fire extinguishers only.

(c) Class 3 ..... \$5  
Servicing, recharging, repairing, installing, or inspecting all types of fire extinguishers and systems except recharging of carbon dioxide units; also conducting hydrostatic tests on water, water chemical, and dry chemical types of fire extinguishers only.

(3)(a) Said licenses and permits shall be issued by the State Fire Marshal for each license year beginning January 1 and expiring the following December 31. No permit shall be renewed after January 1, 1981, unless the permitholder has successfully completed a continuing education course for fire extinguisher technicians offered by the State Fire College or an equivalent course approved by the State Fire Marshal. The State Fire Marshal shall adopt rules providing a schedule which permitholders shall follow in completing such courses. Each permitholder shall successfully complete an additional continuing education course at least once in every 5-year period following successful completion of the initial continuing education course. The forms of such licenses and permits and applications therefor shall be prescribed by the State Fire Marshal; except that, in addition to such other information and data as that officer shall determine is appropriate and required for said forms, there shall be included in said forms the following matters:

(b) Each of such applications shall be in such form as to provide that the data and other information set forth therein shall be sworn to by the applicant or, if a corporation, by an officer thereof. Application for a permit shall include the name of the licensee employing such permittee, and the permit issued in pursuance thereof shall also set forth the name of such licensee. A permit shall be valid solely for use by the holder thereof in his employment by the licensee named therein.

(c) A license of any class shall not be issued by the State Fire Marshal until:

1. The applicant has submitted to the State Fire Marshal evidence of registration as a Florida corporation or evidence of compliance with the Fictitious Name Statute, s. 865.09;

2. The State Fire Marshal or a person designated by him has by inspection determined that the applicant possesses the equipment required for the class of license sought. The State Fire Marshal shall give an applicant a reasonable opportunity to correct any deficiencies discovered by inspection;

3. The applicant has submitted to the State Fire Marshal proof of insurance providing coverage for comprehensive general liability for bodily injury and property damage, products liability, completed operations, and contractual liability. The State Fire Marshal shall adopt rules providing for the amounts of such coverage, but such amounts shall not be less than \$300,000 for Class A licenseholders, \$200,000 for Class B licenseholders, and \$100,000 for Class C licenseholders, and providing that an insurer providing such coverage shall notify the State Fire Marshal of any change in coverage;

4. The person who signed the application successfully completes a prescribed training course offered by the State Fire College or an equivalent course approved by the State Fire Marshal. This subparagraph shall not apply to any holder of or applicant for a permit under paragraph (d), or a business organization or a governmental entity seeking initial licensure or renewal of an existing license solely for the purpose of inspecting, servicing, repairing, recharging, and maintaining fire extinguishers used and located on the premises of and owned by such organization or entity; and

5. The person who signed the application has passed, with a grade of at least 70 percent, a written and practical examination testing his knowledge of the National Fire Protection Association pamphlet 10, 1970 edition, and testing his ability to perform the tasks required of holders of the class of license sought. Such examinations shall be developed and administered by the State Fire Marshal. This subparagraph shall not apply to any holder of or applicant for a permit under paragraph (d), or a business organization or a governmental entity seeking initial licensure or renewal of an existing license solely for the purpose of inspecting, servicing, repairing, recharging, and maintaining fire extinguishers used and located on the premises of and owned by such organization or entity.

(d) No permit of any class shall be issued to a person for the first time by the State Fire Marshal until the applicant has:

1. Submitted a nonrefundable filing fee in the amount of \$10;

2. Successfully completed a training course offered by the State Fire College or an equivalent course approved by the State Fire Marshal; and

3. Passed with a grade of at least 70 percent a written and practical examination testing his knowledge of the National Fire Protection Association pamphlet 10, 1970 edition, and testing his ability to inspect, repair, service, test, refill, and recharge such equipment as is necessary for the class of permit



sought. Such examination shall be developed and administered by the State Fire Marshal.

(4) The State Fire Marshal shall adopt rules providing for the time, place, and curriculum of each training course required by this section.

(5) Permittees must have a valid and subsisting permit upon their persons at all times while engaging in the servicing, recharging, repairing, testing, inspecting, or installing of fire extinguishers and systems, and all licensees and permittees must be able to produce said license or permit upon demand.

(6) The fees collected for any such licenses and permits and the filing fees for permit examination are hereby appropriated for the use of the State Fire Marshal in the administration of this chapter and shall be deposited in the State Fire Marshal's Trust Fund.

(7) The provisions of this chapter shall not apply to inspections by fire chiefs, fire inspectors, fire marshals, or insurance company inspectors.

(8) All fire extinguishers covered under this chapter and which are required by the State Fire Marshal's rules and regulations must be serviced, recharged, repaired, tested, inspected, and installed in compliance with the provisions of the National Fire Protection Association's pamphlet 10, 1970 edition; except that the test interval for aluminum shell extinguishers required by paragraph 5321 thereof shall be extended from 5 to 12 years, effective June 30, 1978.

(9) The State Fire Marshal shall adopt rules providing for the gradual elimination by July 1, 1983, of all inverting water type fire extinguishers. Such rules shall provide that when such an extinguisher becomes due for hydrostatic testing, it shall neither be tested nor recharged, but shall be replaced with an extinguisher of such type and size as is required by the State Fire Marshal or a local governing body having jurisdiction.

**History.**—s. 6, ch. 65-216; s. 4, ch. 67-78; ss. 13, 35, ch. 69-106; s. 1, ch. 71-141; s. 3, ch. 75-240; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 1, 8, ch. 78-141.

**633.065 Requirements for installation of fire protective equipment.**—The requirements for installation of fire protective equipment are as follows:

(1) Contractors of fire safety and fire protective equipment required by the State Fire Marshal's rules and regulations shall be licensed under s. 633.061.

(2) Equipment supplied shall be approved by a nationally recognized testing laboratory, such as Underwriters Laboratories, Inc., or Factory Mutual Laboratories, Inc., and installed in accordance with its procedures.

(3) Equipment shall be installed in accordance with the applicable standards of the National Fire Protection Association and procedures approved by said testing laboratory.

(4) Each piece of equipment supplied shall be guaranteed for a period of 1 year against defects in material or operation.

(5) The contractor shall furnish the user with operating instructions for all equipment installed, together with a diagram of the final installation.

(6) Each manufacturer or supplier of such equipment shall furnish the consumer with descriptive literature concerning equipment sold, together with

mechanical drawings and specifications for proper installation and use of the equipment.

**History.**—s. 4, ch. 75-240.

**633.071 Standard service tag required on all fire extinguishers and systems; serial number required on all portable fire extinguishers.**—

(1) The State Fire Marshal shall make and promulgate specifications as to the size, shape, color, and information and data contained thereon of service tags to be attached to all fire extinguishers and systems which are required by the State Fire Marshal's rules and regulations, whether they be portable, stationary, or on wheels when they are installed, serviced, repaired, tested, recharged, or inspected. It shall be unlawful to service, test, repair, inspect, install, or recharge any of the above fire extinguishing units without attaching one of these tags completed in detail, including the actual month work was performed, or to use a tag not meeting the specifications set forth by the State Fire Marshal.

(2) All portable fire extinguishers which are required by the State Fire Marshal's rules and regulations must be listed by Underwriters' Laboratories, Inc. or approved by Factory Mutual and carry an Underwriters' Laboratories or manufacturer's serial number. These listings, approvals, and serial numbers may be stamped on the manufacturer's identification and instructions plate or on a separate Underwriters' Laboratories or Factory Mutual plate soldered or attached to the extinguisher shell in some permanent manner.

**History.**—s. 7, ch. 65-216; s. 4, ch. 67-78; ss. 13, 35, ch. 69-106; s. 2, ch. 71-141.

**633.081 Inspection of buildings and equipment; orders concerning; fire safety coordinators and instructors.**—

(1) The State Fire Marshal and his agents shall, at any reasonable hour, when they deem it necessary, inspect any and all buildings, equipment, and vehicular equipment on premises within their jurisdiction. Whenever the State Fire Marshal or his agents find that any of the following conditions exist, they may order the same removed or remedied within a reasonable length of time:

(a) Any building or structure inspected that is in need of repair, in a dilapidated condition, or especially liable to fire from any other cause, and situated so as to endanger life or property.

(b) Any building or structure inspected that lacks sufficient fire escapes, alarm apparatus, or fire extinguishing equipment.

(c) Any building or structure inspected that contains combustible or explosive matter or flammable conditions dangerous to the safety of life or property.

(2) Every fire safety inspection required by law or by regulation of the State Fire Marshal shall be conducted by a person certified as having met the inspection training requirements set by the Division of State Fire Marshal of the Department of Insurance. The State Fire Marshal shall maintain current files on all persons certified by the division to make fire safety inspections.

**History.**—s. 6, ch. 20671, 1941; s. 8, ch. 65-216; s. 4, ch. 67-78; ss. 13, 35, ch. 69-106; s. 3, ch. 70-299; s. 14, ch. 75-151; s. 1, ch. 77-174; s. 2, ch. 79-352.

**Note.**—Former s. 633.06.

**633.082 Inspection of fire control systems.**—The State Fire Marshal shall have the right to inspect any fire control system during and after construction to determine that such system meets the standards set forth in the laws and rules of the state.

History.—s. 7, ch. 78-141.

**633.083 Sale or use of certain types of fire extinguishers prohibited; penalty.**—

(1)(a) In public buildings, public places, businesses where there is public occupancy, or any place where the public comes to transact business or seek entertainment, food, etc., it shall be unlawful to have for use any of the following types of fire extinguishers:

1. Carbon tetrachloride;
2. Chlorobromomethane;
3. Dibromodifluoromethane;
4. Dichlorodifluoromethane;
5. Azeotropic chloromethane;
6. 1,2 dibromo-2-chloro-1, 1,2 trifluoroethane;
7. 1,2 dibromo-2, 2-difluoroethane;
8. Methyl bromide;
9. Ethylene dibromide;
10. Hydrogen bromide;
11. Methylene bromide;
12. Bromodifluoromethane; and
13. Any other toxic or poisonous vaporizing liquid fire extinguishers.

(b) It is unlawful to offer for sale, sell, or give in this state any of the types of fire extinguishers listed in paragraph (a).

(2) It is unlawful for any person, directly or through an agent, to sell, offer for sale, or give in this state any make, type, or model of fire extinguisher, either new or used, unless such make, type, or model of extinguisher has first been tested and is currently approved or listed by Underwriters' Laboratories, Inc., Factory Mutual Laboratories, Inc. or other nationally recognized testing laboratory, and unless such extinguisher carries an Underwriters' Laboratories, Inc. or manufacturer's serial number. Such serial number shall be permanently stamped on the manufacturer's identification and instruction plate or on a separate plate permanently affixed to the extinguisher shell.

(3) A person who violates any of the provisions of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—ss. 1-3, ch. 70-417; s. 658, ch. 71-136; s. 2, ch. 78-141.

**633.085 Inspections of state buildings and premises; building plans to be approved.**—

(1) It shall be the duty of the State Fire Marshal and his agents to inspect, or cause to be inspected, each state-owned or state-leased building at least once annually for the purpose of ascertaining and causing to be corrected any conditions liable to cause fire or endanger life from fire and any violations of the fire safety standards for state-owned and state-leased buildings, the provisions of this chapter, or the rules or regulations adopted and promulgated pursuant thereto. The State Fire Marshal shall, within 7 days following an inspection, submit a report of such inspection to the head of the department of state government responsible for the building.

(2) The department head shall be responsible for ensuring that deficiencies noted in the inspection are corrected as soon as practicable.

(3) Each department shall, in its annual budget proposal, include requests for sufficient funds to correct any fire safety deficiencies noted by the State Fire Marshal.

(4) The plans for new construction or major alterations of any state-owned or state-leased building shall comply with the fire safety standards of the State Building Code.

History.—s. 15, ch. 75-151.

**633.101 Hearings; investigations; taking testimony, etc., by State Fire Marshal.**—

(1) The State Fire Marshal may in his discretion take or cause to be taken the testimony on oath of all persons whom he believes to be cognizant of any facts in relation to matters under investigation.

(2) If he shall be of the opinion that there is sufficient evidence to charge any person with an offense, he shall cause the arrest of such person and shall furnish to the prosecuting officer of any court having jurisdiction of said offense all information obtained by him, including a copy of all pertinent and material testimony taken, together with the names and addresses of all witnesses. In the conduct of such investigations, the Fire Marshal may request such assistance as may reasonably be given by such prosecuting officers and other local officials.

(3) The Fire Marshal may summon and compel the attendance of witnesses before him to testify in relation to any manner which is, by the provisions of this chapter, a subject of inquiry and investigation, and he may require the production of any book, paper or document deemed pertinent thereto by him, and may seize furniture and other personal property to be held for evidence.

(4) All persons so summoned and so testifying shall be entitled to the same witness fees and mileage as provided for witnesses testifying in the Circuit Courts of this state, and officers serving subpoenas or orders of the Fire Marshal shall be paid in like manner for like services in such courts, from the funds herein provided.

History.—s. 7, ch. 20671, 1941; s. 9, ch. 65-216; s. 4, ch. 67-78; ss. 13, 35, ch. 69-106; s. 3, ch. 70-299.

Note.—Former s. 633.08.

**633.111 State Fire Marshal to keep records of fires; reports of agents.**—

The State Fire Marshal shall keep in his office a record of all fires occurring in this state upon which he had caused an investigation to be made and all facts concerning the same. Such records, documents, papers, letters, maps, diagrams, tapes, photographs, films, sound recordings, and evidence shall be deemed confidential public records and not subject to public inspection under the provisions of s. 119.07(1) for so long as the State Fire Marshal deems reasonably necessary to complete the investigation to protect the person(s) investigated from unwarranted injury or to be in the public interest. Further, such documents, papers, letters, maps, diagrams, tapes, photographs, films, sound recordings, and evidence relative to the subject of an investigation shall not be subject to subpoena until opened for public inspection by the State

Fire Marshal, unless the State Fire Marshal consents; or after notice to the State Fire Marshal and a hearing, the court determines the State Fire Marshal would not be unnecessarily hindered by such a subpoena. Such records shall be made daily from the reports furnished him by his agents or others.

**History.**—s. 8, ch. 20671, 1941; s. 9, ch. 65-216; s. 4, ch. 67-78; ss. 13, 35, ch. 69-106; s. 3, ch. 70-299; s. 1, ch. 78-149.

**Note.**—Former s. 633.09.

**633.121 Fire chiefs, etc., as agents.**—When certified by the State Fire Marshal, the chiefs of fire departments and other fire department personnel, and personnel employed by local governments having no organized fire departments, may be designated by the State Fire Marshal as ex officio agents of the State Fire Marshal and shall make similar reports on forms to be furnished by the State Fire Marshal.

**History.**—s. 9, ch. 20671, 1941; s. 9, ch. 65-216; s. 4, ch. 67-78; ss. 13, 35, ch. 69-106; s. 3, ch. 70-299; s. 5, ch. 78-252.

**Note.**—Former s. 633.11.

**633.13 State Fire Marshal; authority of agents.**—The authority given the State Fire Marshal under this law may be exercised by his agents, either individually or in conjunction with any other state or local official charged with similar responsibilities.

**History.**—s. 1, ch. 21847, 1943; ss. 13, 35, ch. 69-106; s. 3, ch. 70-299.

**633.14 Agents; arrests, summonses, arms, etc.**—Agents of the State Fire Marshal shall have the same authority to serve summonses, make arrests, carry firearms and make searches and seizures, as the sheriff or his deputies, in the respective counties where such investigations, hearings or inspections may be held; and affidavits necessary to authorize any such arrests, searches or seizures may be made before any magistrate having authority under the law to issue appropriate processes.

**History.**—s. 1, ch. 21847, 1943; ss. 13, 35, ch. 69-106; s. 3, ch. 70-299.

**633.15 State Fire Marshal; rules and regulations; violation.**—This law, and all regulations prescribed by the State Fire Marshal hereunder, shall have the same force and effect in each and every incorporated town or city, as the ordinances of such respective municipalities, and shall be enforceable in the county courts in the same manner as such ordinances.

**History.**—s. 1, ch. 21847, 1943; ss. 13, 35, ch. 69-106; s. 3, ch. 70-299; s. 1, ch. 77-119.

**633.161 Cease and desist orders; notice to correct hazardous condition; notice of violation; penalties.**—

(1) Whenever the State Fire Marshal shall have reason to believe that any person is or has been violating any provisions of this chapter or any rules or regulations adopted and promulgated pursuant thereto, he or his deputy may issue and deliver to such person an order to cease and desist such violation or to correct such hazardous condition.

(2) Any person who violates or fails to comply with any order under subsection (1) shall be guilty of

a misdemeanor and be punished as provided for in s. 633.171.

**History.**—s. 10, ch. 65-216; s. 4, ch. 67-78; ss. 13, 35, ch. 69-106; s. 3, ch. 71-141; s. 21, ch. 78-95.

**633.162 Suspension or revocation of license or permit.**—The violation of any of the provisions of this chapter or any rules and regulations adopted and promulgated pursuant thereto or failure or refusal to comply with any order to correct or cease and desist order entered pursuant to s. 633.161 by any person possessed of a license or permit shall be cause for revocation or suspension of such license or permit by the State Fire Marshal after such officer shall determine that person is guilty of such violation. An order of suspension shall state the period of time of such suspension, which period shall not be in excess of 1 year from the date of such order. An order of revocation may be entered for a period of not exceeding 2 years. Such order shall effect revocation of license or permit then held by said person, and during such period of time no license or permit shall be issued said person. If, during the period between the beginning of proceedings and entry of an order of suspension or revocation by the State Fire Marshal, a new license or permit has been issued the person so charged, any order of suspension or revocation shall operate effectively with respect to said new license or permit held by such person.

**History.**—s. 4, ch. 71-141; s. 21, ch. 78-95.

**633.163 Administrative fines for violation of cease and desist or corrective order.**—If any person violates a cease and desist or corrective order, the State Fire Marshal may impose a civil penalty not to exceed \$250 for each offense or suspend or revoke the license or permit issued to such person. The State Fire Marshal may allow the licensee or permittee a reasonable period, not to exceed 30 days, within which to pay to the State Fire Marshal the amount of the penalty so imposed. If the licensee or permittee fails to pay the penalty in its entirety to the State Fire Marshal at his office in Tallahassee within the period so allowed, the licenses or permits of the licensee or permittee shall stand revoked upon expiration of such period.

**History.**—s. 5, ch. 71-141; s. 21, ch. 78-95.

**633.171 Penalty for violations of law, rules and regulations, or order to cease and desist or failure to comply with corrective order.**—

(1) The violation of any provision of this law, or any order, rule, or regulation of the State Fire Marshal or order to cease and desist or to correct conditions issued hereunder, shall constitute a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) It shall constitute a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084 to intentionally or willfully:

(a) Render a fire extinguisher or system, which is required by the State Fire Marshal's rules and regulations, inoperative except during such time as said extinguisher or system is being serviced, tested, repaired, or recharged.

(b) Obliterate the serial number on a fire extinguisher for purposes of falsifying service records.



(c) Improperly service, recharge, repair, test, or inspect a fire extinguisher or system.

(d) Use the permit number of another person.

(e) Hold a permit and allow another person to use said permit number.

(f) Use, or permit the use of, any license by any individual or organization other than the one to whom the license is issued.

**History.**—s. 1, ch. 21847, 1943; s. 11, ch. 65-216; ss. 13, 35, ch. 69-106; s. 659, ch. 71-136; s. 7A, ch. 71-141; s. 3, ch. 78-141.

**Note.**—Former s. 633.16.

**633.175 Investigation of fraudulent insurance claims and crimes; immunity of insurance companies supplying information.—**

(1) The State Fire Marshal or an agent appointed pursuant to s. 633.02 may request any insurance company investigating a claim under an insurance policy or contract with respect to the fire loss of any real or personal property to release any information in the insurance company's possession relative to that loss. The insurance company shall release the available information to and cooperate with any official authorized to request such information pursuant to this section. The information shall include, but not be limited to:

(a) Any insurance policy relevant to a loss under investigation and any application for such a policy.

(b) Any policy premium payment records.

(c) The history of any previous claims made by the insured with the reporting company.

(d) Material relating to the investigation of the loss, including statements of any person, proof of loss, and other relevant evidence.

(2) If an insurance company has reason to suspect that a fire loss to its insured's real or personal property was caused by incendiary means, the company shall notify the State Fire Marshal and shall furnish him with all relevant material acquired by the company during the course of its investigation. The insurer shall also cooperate with and take such action as may be requested of it by the State Fire Marshal or an agent appointed pursuant to s. 633.02. Such company shall also permit any person to inspect its records pertaining to the policy and to the loss if such person is authorized to do so by law or by an appropriate court order.

(3) In the absence of fraud or malice, no insurance company or person who furnishes information on its behalf shall be liable for damages in a civil action or subject to criminal prosecution for any oral or written statement made or any other action taken that is necessary and required by the provisions of this section.

(4) Official, departmental, or agency personnel receiving any information pursuant to this section shall hold the information in confidence until such time as the release of the information is required pursuant to a criminal or civil proceeding, except that such officials may discuss such matters with other officials if such discussion is necessary to enable the orderly and efficient conduct of the investigation.

(5) Any official described in subsection (1) may be required to testify as to any information in his possession regarding an insurance loss in any civil action in which any person seeks recovery under a

policy against an insurance company for an insurance loss.

(6) No person shall intentionally refuse to release any information requested pursuant to this section.

(7) Any person willfully violating the provisions of this section shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 2, ch. 78-149.

**633.18 State Fire Marshal; hearings, investigations, subpoenas, etc.**—Any agent designated by the State Fire Marshal for such purposes, may hold hearings, sign and issue subpoenas, administer oaths, examine witnesses, receive evidence, and require by subpoena the attendance and testimony of witnesses and the production of such accounts, records, memoranda or other evidence, as may be material for the determination of any complaint or conducting any inquiry or investigation under this law. In case of disobedience to a subpoena, the State Fire Marshal or his agent may invoke the aid of any court of competent jurisdiction in requiring the attendance and testimony of witnesses and the production of accounts, records, memoranda or other evidence and any such court may in case of contumacy or refusal to obey a subpoena issued to any person, issue an order requiring the person to appear before the State Fire Marshal's agent or produce accounts, records, memoranda or other evidence, as so ordered, or to give evidence touching any matter pertinent to any complaint or the subject of any inquiry or investigation, and any failure to obey such order of the court shall be punished by the court as a contempt thereof.

**History.**—s. 1, ch. 21847, 1943; s. 12, ch. 65-216; ss. 13, 35, ch. 69-106; s. 3, ch. 70-299.

**Note.**—Former s. 633.17.

**633.30 Standards for firefighting; definitions.**—As used in this chapter:

(1) "Firefighter" means any person initially employed as a full-time professional firefighter by any employing agency, as defined herein, whose primary responsibility is the prevention and extinguishment of fires, the protection of life and property, and the enforcement of municipal, county, and state fire prevention codes, as well as of any law pertaining to the prevention and control of fires.

(2) "Employing agency" means any municipality or county, the state, or any political subdivision of the state, including authorities and special districts, employing firefighters as defined in subsection (1).

(3) "Department" means the Department of Insurance.

<sup>1</sup>(4) "Council" means the Firefighters Standards and Training Council.

(5) "Division" means the Division of State Fire Marshal of the Department of Insurance.

**History.**—ss. 1, 17, ch. 69-323; ss. 18, 35, ch. 69-106; s. 1, ch. 70-110; s. 1, ch. 75-151; s. 4, ch. 78-323.

**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

Note.—Former s. 163.470.

### **1633.31 Firefighters Standards and Training Council.—**

(1) There shall be within the Department of Insurance a Firefighters Standards and Training Council of nine members appointed by and serving at the pleasure of the State Fire Marshal with the confirmation of the Senate. Two members shall be fire chiefs, two members shall be firefighters who are not officers, and two members shall be firefighter officers who are not fire chiefs. The remaining three members shall be citizens of the state. To be eligible for appointment as a fire chief member, fire officer member, or firefighter member, such person shall have had at least 10 years' experience in the firefighting profession.

(2) Terms of the appointed members shall be 4 years, except that the terms of the first appointments shall be 1 year for one member, 2 years for one member, 3 years for two members, and 4 years for two members, but a member shall hold office until a successor is appointed and qualifies. No appointive member shall serve beyond the time he ceases to hold the office or employment by reason of which he was eligible for appointment to the council. Vacancies shall be filled in the manner of the original appointment for the remaining time of the term.

(3) The State Fire Marshal, in making his appointments, shall take into consideration representation by geography, population, and other relevant factors, in order that the membership on the council will be apportioned to give representation to the state at large rather than to a particular area.

(4) Membership on the council shall not disqualify a member from holding any other public office or being employed by a public entity, except that no member of the Legislature shall serve on the council. The Legislature finds that the council serves a state, county, and municipal purpose and that service on the council is consistent with a member's principal service in a public office of employment.

(5) Effective July 1, 1975, the members of the advisory council of the Florida State Fire College shall serve as additional members of the Fire Fighters Standards and Training Council for the remainder of their terms.

History.—s. 1, ch. 70-110; ss. 1, 3, ch. 75-151; s. 3, ch. 77-107; s. 4, ch. 78-323.

Note.—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

Note.—Former s. 163.471.

### **1633.32 Organization; meetings.—**

(1) The council, at its first meeting, shall elect to 1-year terms its chairman and other officers.

(2) The council shall hold at least 4 regular meetings each year at the call of the chairman or upon the written request by three members of the council. A majority of the members of the council constitutes a quorum.

(3) Members of the council shall serve without compensation but shall be entitled to be reimbursed for per diem and travel expenses as provided by s. 112.061.

(4) The council shall make an annual report of its activities to the State Fire Marshal and include in

such report its recommendations for appropriate legislation.

History.—s. 1, ch. 70-110; ss. 1, 4, ch. 75-151; s. 9, ch. 77-320; s. 4, ch. 78-323.

Note.—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

Note.—Former s. 163.472.

### **1633.33 Special powers; firefighter training.—**

The council shall have special powers in connection with the employment and training of firefighters to:

(1) Recommend, for adoption by the division, uniform minimum standards for the employment and training of firefighters.

(2) Recommend, for adoption by the division, minimum curriculum requirements for schools operated by or for any employing agency for the specific purpose of training firefighter recruits or firefighters.

(3) Consult and cooperate with any employing agency, university, college, community college, the Florida State Fire College, or other educational institution concerning the development of firefighter training schools and programs of courses of instruction, including, but not limited to, education and training in the areas of fire science, fire technology, fire administration, and all allied and supporting fields.

(4) Make or support studies on any aspect of firefighting education and training or recruitment.

(5) Make recommendations concerning any matter within its purview pursuant to this part.

History.—ss. 7, 17, ch. 69-323; s. 1, ch. 70-110; s. 70, ch. 72-221; ss. 1, 5, ch. 75-151; s. 4, ch. 78-323.

Note.—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

Note.—Former s. 163.480.

### **633.34 Firefighters; qualifications for employment.—**Any person initially employed as a firefighter must:

(1) Be a high school graduate or the equivalent, as the term may be determined by the division.

(2) Not have been convicted of a felony or of a misdemeanor involving moral turpitude, as the term is defined by law.

(3) Have his fingerprints on file with the division or an agency designated by the division.

(4) Have a good moral character as determined by investigation under procedure established by the division.

(5) Be in good physical condition as determined by a medical examination as prescribed by the division.

History.—ss. 8, 17, ch. 69-323; s. 1, ch. 70-110; ss. 1, 6, ch. 75-151; s. 1, ch. 77-116.

Note.—Former s. 163.490.

cf.—s. 112.011 Felons; removal of disqualifications for employment, exceptions.

### **633.35 Firefighters training program established.—**

(1) The division shall establish a firefighter training program administered by such agencies and institutions as it approves and shall issue, or authorize the issuance of, a certificate of completion to any person satisfactorily completing the training program.

(2) The division shall issue a certificate of compliance to any person satisfactorily complying with the training program established in subsection (1) and

the qualifications for employment in s. 633.34. No person shall be employed as a regular or permanent firefighter as defined by the employing agency until he has obtained such certificate of compliance.

(3) The division may issue a certificate to any person who has received training in another state when the division has determined that such training was at least equivalent to that required by the division for approved firefighter education and training programs in this state and when such person has satisfactorily complied with all other requirements of this part.

**History.**—ss. 9, 17, ch. 69-323; s. 1, ch. 70-110; ss. 1, 6, ch. 75-151.  
**Note.**—Former s. 163.495.

**633.36 Reimbursement of employing agency by the division.**—The division shall, subject to the availability of funds, reimburse an employing agency in an amount equivalent to 50 percent of the salary, if any, and allowable living expenses of recruit trainees in attendance at approved training programs.

**History.**—ss. 10, 17, ch. 69-323; s. 1, ch. 70-110; ss. 1, 6, ch. 75-151.  
**Note.**—Former s. 163.500.

**633.37 Payment of tuition by employing agency.**—An employing agency is authorized to pay part or all of the costs of tuition of trainees in attendance at approved training programs.

**History.**—s. 11, ch. 69-323; s. 1, ch. 75-151.  
**Note.**—Former s. 163.505.

**633.38 Inservice training and promotion; participation, grants.**—

(1)(a) The division shall by rules and regulations prescribe curricula and standards for advanced and specialized training courses and training in addition to those prescribed in ss. 633.34 and 633.35.

(b) The standards provided by this section shall not bind any employing agency as to the requirements it may have for promoting personnel.

(2) Fire departments or any fire service participating under the provisions of this section shall adhere to the standards and procedures established by the division.

(3) Institutions and employing agencies offering approved programs of inservice or advanced training may receive grants from the division, subject to the availability of funds, not to exceed 50 percent of the cost of offering approved training courses.

**History.**—ss. 12, 17, ch. 69-323; s. 1, ch. 70-110; ss. 1, 6, ch. 75-151.  
**Note.**—Former s. 163.510.

**633.39 Gifts and grants.**—The division may accept for any of its purposes and functions any donations of property and grants of money from any governmental unit, public agency, institution, person, firm, or corporation. Such moneys shall be deposited, disbursed, and administered in a trust fund as provided by law.

**History.**—ss. 13, 17, ch. 69-323; s. 1, ch. 70-110; ss. 1, 6, ch. 75-151.  
**Note.**—Former s. 163.515.

**633.40 Fire protection study, report, recommendations.**—The division shall make a comprehensive study of fire protection throughout the state. There shall be a detailed study of all state, county, and municipal laws and ordinances which regulate real property, personal property, and personal pro-

tection of the citizens of the state relating to fire protection, together with a study of the level of fire protection provided by the agencies establishing such laws or ordinances.

**History.**—ss. 14, 17, ch. 69-323; s. 1, ch. 70-110; ss. 1, 7, ch. 75-151; s. 10, ch. 77-320.

**Note.**—Former s. 163.520.

**633.41 Saving clause.**—Firefighters employed on the effective date of this part are not required to meet the provisions of ss. 633.34 and 633.33 as a condition of tenure or continued employment; nor shall their failure to fulfill such requirements make them ineligible for any promotional examination for which they are otherwise eligible or affect in any way any pension rights to which they may be entitled on the effective date of this part.

**History.**—s. 15, ch. 69-323; s. 1, ch. 75-151.  
**Note.**—Former s. 163.525.

**633.42 Additional standards authorized.**—Nothing herein shall be construed to preclude an employing agency from establishing qualifications and standards for hiring, training, or promoting firefighters that exceed the minimum set by the department.

**History.**—ss. 16, 17, ch. 69-323; s. 1, ch. 75-151.  
**Note.**—Former s. 163.530.

**633.43 Florida State Fire College established.**—There is hereby established a state institution to be known as the Florida State Fire College, to be located at or near Ocala, Marion County. The institution shall be operated by the Division of State Fire Marshal of the Department of Insurance.

**History.**—s. 3, ch. 25097, 1949; ss. 18, 35, ch. 69-106; ss. 1, 8, ch. 75-151.  
**Note.**—Former s. 163.532.

**633.44 Purpose of fire college.**—The purposes of ss. 633.43-633.49 and of the Florida State Fire College shall be:

(1) To provide professional and volunteer firemen with needful professional instruction and training at a minimum of cost to them and to their employers.

(2) To develop new methods and practices of firefighting and fire prevention.

(3) To assist the state and county, municipal, and other local governments of this state and their agencies and officers in their investigation and determination of the causes of fires.

(4) To provide testing facilities for testing firefighting equipment.

(5) To disseminate useful information on fires, firefighting and fire prevention and other related subjects, to fire departments and others interested in such information.

(6) To do such other needful or useful things necessary to the promotion of public safety in the field of fire hazards and fire prevention work.

It is hereby declared by the Legislature that the above purposes are legitimate state functions and are designed to promote public safety.

**History.**—s. 4, ch. 25097, 1949; s. 1, ch. 75-151; s. 242, ch. 79-400.  
**Note.**—Former s. 163.533.



**633.45 Division of State Fire Marshal; powers, duties.—**

(1) The Division of State Fire Marshal of the Department of Insurance shall:

(a) Establish uniform minimum standards for the employment and training of firefighters.

(b) Establish minimum curriculum requirements for schools operated by or for any employing agency for the specific purpose of training firefighter recruits or firefighters.

(c) Approve institutions and facilities for school operation by or for any employing agency for the specific purpose of training firefighters and firefighter recruits.

(d) Issue certificates of competency to persons who, by reason of experience and completion of basic inservice training, advanced education, or specialized training, are especially qualified for particular aspects or classes of firefighter duties.

(e) Establish minimum training qualifications for persons serving as firesafety coordinators for their respective departments of state government and certify all persons who satisfy such qualifications.

(f) Establish a uniform lesson plan to be followed by firesafety instructors in the training of state employees in firesafety and emergency evacuation procedures.

(g) Have complete jurisdiction over, and complete management and control of, the Florida State Fire College and be invested with full power and authority to make all rules and regulations necessary for the governance of said institution.

(h) Appoint a superintendent of the Florida State Fire College and such other instructors, experimental helpers, and laborers as may be necessary and remove the same as in its judgment and discretion may be best, fix their compensation, and provide for their payment.

(i) Have full management, possession, and control of the lands, buildings, structures, and property belonging to the Florida State Fire College.

(j) Provide for the courses of study and curriculum of the Florida State Fire College.

(k) Make rules and regulations for the admission of trainees to the Florida State Fire College.

(l) Visit and inspect the Florida State Fire College and every department thereof and provide for the proper keeping of accounts and records thereof.

(m) Make and prepare all necessary budgets of expenditures for the enlargement, proper furnishing, maintenance, support, and conduct of the Florida State Fire College.

(n) Select and purchase all property, furniture, fixtures, and paraphernalia necessary for the Florida State Fire College.

(o) Build, construct, change, enlarge, repair, and maintain any and all buildings or structures of the Florida State Fire College that may at any time be necessary for said institution and purchase and acquire all lands and property necessary for same, of every nature and description whatsoever.

(p) Care for and maintain the Florida State Fire College and do and perform every other matter or thing requisite to the proper management, maintenance, support, and control of said institution, neces-

sary or requisite to carry out fully the purpose of this act and for raising it to, and maintaining it at, the proper efficiency and standard as required in and by the provisions of ss. 633.43-633.49.

(2) The division, subject to the limitations and restrictions elsewhere herein imposed, may:

(a) Adopt rules and regulations for the administration of ss. 633.30-633.49 pursuant to chapter 120.

(b) Adopt a seal and alter the same at its pleasure.

(c) Sue and be sued.

(d) Acquire any real or personal property by purchase, gift, or donation, and have water rights.

(e) Exercise the right of eminent domain to acquire any property and lands necessary to the establishment, operation, and expansion of the Florida State Fire College.

(f) Make contracts and execute necessary or convenient instruments.

(g) Undertake by contract or contracts, or by its own agent and employees, and otherwise than by contract, any project or projects, and operate and maintain such projects.

(h) Accept grants of money, materials, or property of any kind from a federal agency, private agency, county, city, town, corporation, partnership, or individual upon such terms and conditions as the grantor may impose.

(i) Perform all acts and do all things necessary or convenient to carry out the powers granted herein and the purposes of ss. 633.30-633.49.

(3) The title to all property referred to in ss. 633.43-633.49, however acquired, shall be vested in the department and shall only be transferred and conveyed by it.

**History.**—ss. 5, 9, ch. 25097, 1949; ss. 18, 35, ch. 69-106; ss. 1, 9, ch. 75-151; s. 1, ch. 77-174.

**Note.**—Former s. 163.534.

**633.46 Fees.**—The division may fix and collect admission fees and other fees that it may deem necessary to be charged for training given. All fees so collected shall be deposited in the General Revenue Fund unallocated.

**History.**—s. 6, ch. 25097, 1949; s. 1, ch. 61-515; ss. 18, 35, ch. 69-106; ss. 1, 10, ch. 75-151.

**Note.**—Former s. 163.535.

**633.47 Procedure for making expenditures.**

—No moneys shall be spent for and on behalf of said institution except upon a written voucher drawn by the division, stating the nature of said expenditures and the person to whom the same shall be made payable, which voucher shall be submitted to the Comptroller of the state, and audited for approval by him, and upon such approval, the Comptroller shall draw a warrant upon the State Treasurer for the payment thereof, filing the original voucher in his office; and such warrant or warrants shall be countersigned by the Governor.

**History.**—s. 7, ch. 25097, 1949; ss. 18, 35, ch. 69-106; ss. 1, 10, ch. 75-151.

**Note.**—Former s. 163.536.

**633.48 Superintendent of college.**—The division may employ a superintendent for the Florida State Fire College, who shall be especially trained and qualified in firefighting, fire prevention and fire experimental work, and may employ on the recom-

mendations of said superintendent such other instructors, experimental helpers and laborers as may be necessary to the proper conduct of said institution; and may proceed with the erection and detailed operation of said institution under ss. 633.43-633.49.

**History.**—s. 10, ch. 25097, 1949; s. 3, ch. 57-401; ss. 18, 35, ch. 69-106; ss. 1, 10, ch. 75-151.

**Note.**—Former s. 163.538.

**633.49 Buildings, equipment, etc.; use.**—The division shall have the power to prescribe and shall make the necessary rules and regulations for the use of buildings, equipment and other facilities of the Florida State Fire College when they are not in use for the purposes set forth in ss. 633.43-633.49.

**History.**—s. 11, ch. 25097, 1949; ss. 18, 35, ch. 69-106; ss. 1, 10, ch. 75-151.

**Note.**—Former s. 163.539.

**633.511 Florida Fire Safety Board; creation; membership.**—

(1) The Florida Fire Safety Board is hereby created consisting of five members who are citizens and residents of this state. One shall be the State Fire Marshal or his designated appointee who shall be an administrative employee of said marshal; one shall be an administrative officer from a building department representing an incorporated municipality or a county; one shall be an administrative officer from a fire department representing an incorporated municipality or a county; and two shall be contractors.

(2)(a) To be eligible for appointment, each contractor shall personally hold a current certificate of competency and a current license issued by the State Fire Marshal, together with an unexpired occupational license to operate as a contractor issued by an incorporated municipality or a county; be actively engaged in such business and have been so engaged for a period of not less than 5 consecutive years before the date of his appointment; and be a citizen and resident of the state.

(b) The first two contractor members of the board need not hold a certificate of competency or a license issued by the State Fire Marshal.

(3) Within 30 days after the effective date of this act, the Governor shall appoint the members of the board. The State Fire Marshal's term on the board, or that of his designated administrative employee, shall coincide with the State Fire Marshal's term of office. Of the other four members of the board, one member shall be appointed for a term of 1 year, one member for a term of 2 years, one member for a term of 3 years, and one member for a term of 4 years. All terms expire on June 30 of the last year of the term. As the terms of members expire, the Governor shall appoint a member to fill the vacancy for a term of 4 years. Vacancies in the membership of the board for any cause shall be filled by appointment by the Governor for the balance of the unexpired term.

**History.**—ss. 6, 7, ch. 75-240; s. 4, ch. 78-323.

**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

**633.514 Board duties; meetings; officers; quorum; compensation; seal.**—

(1) The board shall act in an advisory capacity to the State Fire Marshal and shall meet regularly as the need presents itself. As soon as practicable after the effective date of this act, the board shall meet to

elect officers from its membership, whose terms shall expire on June 30 and annually thereafter. A majority of the board shall constitute a quorum. No member of the advisory board shall be paid a salary as such member, but each shall receive necessary expenses while attending advisory board meetings and reimbursement, including travel in performance of his duties, as provided in s. 112.061.

(2) The board shall adopt a seal for its use containing the words "Florida Fire Safety Board."

**History.**—s. 7, ch. 75-240.

**633.517 State Fire Marshal authority to adopt rules, administer oaths, and take testimony.**—

(1) The State Fire Marshal is authorized, with the advice of the board, to adopt rules and regulations to carry out the provisions of this act.

(2) The State Fire Marshal or his duly appointed hearing officer may administer oaths and take testimony about all matters within the jurisdiction of this act. Chapter 120 governs hearings conducted by or on behalf of the State Fire Marshal.

**History.**—s. 7, ch. 75-240.

**633.521 Certificate application and issuance; examination and investigation of applicant.**—

(1) To obtain a certificate, an applicant shall submit to the State Fire Marshal an application in writing, on a form provided by the State Fire Marshal containing the information prescribed, which shall be accompanied by the fee fixed herein, containing a statement that the applicant desires the issuance of a certificate.

(2)(a) Examinations shall be administered by the State Fire Marshal and held at times and places within the state as the State Fire Marshal determines, but there shall be at least two examinations a year. Each applicant shall take and pass an objective, written examination of his fitness for a certificate as a contractor of fire protection systems. The examination shall test the applicant's ability to design, lay out, fabricate, install, alter, and repair all types of fire protection systems and their appurtenances in compliance with applicable pamphlets of the National Fire Protection Association. It shall be an open-book examination consisting of multiple-choice, fill-in, true-false, or short-answer questions and may include or consist of diagrams, plans, or sketches in connection with which the applicant is required to demonstrate his knowledge of construction by answering questions keyed to such diagrams, plans, or sketches. All such examinations, of which there shall be at least two alternative versions, shall be prepared by an independent professional testing agency, subject to approval of the board.

(b) A passing grade on the examination is 70 percent, and such examinations shall be developed by an independent professional testing agency. The tests shall be prepared, administered, and scored in compliance with accepted professional testing standards.

(3) As a prerequisite to taking the examination, the applicant shall possess 4 years' proven experience in the employment of a contractor or educational equivalent thereto or a combination thereof. Within 30 days from the date of the examination, the

State Fire Marshal shall inform the applicant in writing whether he has qualified or not and, if the applicant has qualified, that he is ready to issue a certificate of competency, subject to compliance with the requirements of subsection (4).

(4) As a prerequisite to issuance of a certificate, the State Fire Marshal shall require the applicant to submit satisfactory evidence that he has obtained public liability and property damage insurance, or qualifies as a self-insurer, for the safety and welfare of the public in amounts and in a manner to be determined by the State Fire Marshal. Upon satisfaction of the requirements of subsections (1), (2), (3), and (4), the certificate shall be issued forthwith.

(5) If an applicant for an original certificate, after having been notified to do so, does not appear for examination within 1 year from the date of filing his application, the fee paid by him shall be forfeited. New applications for a certificate shall be accompanied by another application fee fixed by this act. Forfeiture of a fee may be waived by the State Fire Marshal for good cause.

(6) Any certificate holder who has not passed the examination for issuance of a certificate shall be required to take and pass such examination before July 1, 1980. Failure to pass such examination before July 1, 1980, shall preclude renewal of such certificate until the certificate holder passes such examination. However, this provision is not applicable to those certificate holders who can produce before July 1, 1979, satisfactory evidence of having been actively engaged in this occupation prior to June 30, 1978.

**History.**—ss. 9, 17, ch. 75-240; s. 3, ch. 76-168; s. 1, ch. 77-174; s. 1, ch. 77-457; ss. 4, 8, ch. 78-141.

#### **633.524 Certificate fees; use and deposit of collected funds.—**

(1) The initial application fee for a certificate shall be \$150. The annual renewal fee shall be \$75.

(2) All moneys collected by the State Fire Marshal pursuant to this act are hereby appropriated for the use of the State Fire Marshal in the administration of this act and shall be deposited in the State Fire Marshal's Trust Fund.

**History.**—ss. 8, 12, ch. 75-240; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 8, ch. 78-141.

#### **633.527 Records concerning applicant; extent of confidentiality.—**

(1) All information required by the board or State Fire Marshal of any applicant for certification shall be a public record, except financial information and examination grades which are confidential and shall not be discussed with anyone except members of the board and the State Fire Marshal's staff, but the applicant is entitled to see his examination papers and grades. An applicant may waive in writing the confidentiality of his examination for the purpose of discussion at meetings of the board or the State Fire Marshal.

(2) All examinations shall be retained for a period of 5 years from the date of the examination.

**History.**—s. 13, ch. 75-240; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 8, ch. 78-141.

**633.531 Certificate effective statewide; not transferable.**—When a certificate holder desires to engage in contracting in any area of the state, as a prerequisite therefor he shall only be required to exhibit to the local building official, tax collector, or other person in charge of the issuance of licenses and building permits in the area, evidence of holding a current certificate, accompanied by the fee for the occupational license and building permit required of other persons. The certificate shall not be transferable.

**History.**—s. 9, ch. 75-240; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 8, ch. 78-141.

#### **633.534 Issuance of certificate to individuals and business organizations.—**

(1) When an individual proposes to do business in his own name, certifications, when granted, shall be issued only to that individual.

(2) If the applicant proposing to engage in contracting is a business organization, such as a partnership, corporation, business trust, or other legal entity, the application shall state the name of the partnership and its partners, the name of the corporation and its officers and directors, the name of the business trust and its trustees, or the name of such other legal entity and its members and furnish evidence of statutory compliance if a fictitious name is used. Such application shall also show that the person applying for the examination is legally qualified to act for the business organization in all matters connected with its contracting business and that he has authority to supervise construction undertaken by such business organization. The certification, when issued upon application of a business organization, shall be in the name of such business organization, and the name of the qualifying individual or individuals shall be noted thereon.

(3)(a) At least one member or supervising employee of the business organization as designated to the State Fire Marshal by such organization shall be certified under this act in order for the business organization to hold a current certificate as a contractor. If any individual so certified on behalf of such business organization ceases to be affiliated with such business organization, he shall inform the State Fire Marshal as provided in paragraph (b). In addition, if such individual is the only certified individual affiliated with the business organization, the business organization shall notify the State Fire Marshal of the individual's termination and shall have a grace period of 60 days beyond the next examination in which to certify another person under the provisions of this act, failing which the certification of the business organization shall be revoked by the State Fire Marshal.

(b) The certified individual shall also inform the State Fire Marshal in writing when he proposes to engage in contracting in his own name or to affiliate with another business organization, and he or such new business organization shall supply the same information to the State Fire Marshal as required for applicants under this act.

(c) If a certificate holder changes his name, style, address, or employment from that which appears on his current certificate, he shall notify the State Fire Marshal of the change within 30 days after it occurs.

(d) After an investigation of the financial respon-



sibility, credit, and business reputation of the individual or the new business organization, and upon a favorable determination, the State Fire Marshal shall forthwith issue without charge or examination a new certificate in the individual's name or in the name of the new business organization, as provided above.

(e) In the event of the death of a sole proprietor or in the event a business organization has only one certificate holder and that person dies, the individual's estate or personal representative or the business organization, as the case may be, shall notify the State Fire Marshal of the individual's death, and shall have a grace period of 60 days beyond the next examination date in which to certify another person under the provisions of this chapter, failing which the certification of the business organization shall be revoked by the State Fire Marshal.

(f) The State Fire Marshal shall be responsible for approving the design and inspecting the construction of any system installed by a contractor operating under the grace period provided in paragraph (a) or paragraph (e).

(4) When the certified business organization makes application for an occupational license in any municipality or county of this state, the application shall be made with the tax collector in the name of the business organization, and the license, when issued, shall be issued to the business organization upon payment of the appropriate licensing fee and exhibition to the tax collector of a valid certificate issued by the board.

**History.**—s. 10, ch. 75-240; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 5, 8, ch. 78-141.

**633.537 Certificate; expiration; renewal; inactive status.**—Certificates shall expire annually at midnight on June 30. Failure to renew the certificate during June shall cause the certificate to become inoperative, and it is unlawful thereafter for any person to engage, offer to engage, or hold himself out as engaging, in contracting under the certificate unless the certificate is restored or reissued.

(1) A certificate which is inoperative because of failure to renew shall be restored on payment of the proper renewal fee if the application for restoration is made within 90 days after June 30. If the application for restoration is not made within the 90-day period, the fee for restoration shall be equal to the original application fee, and, in addition, the State Fire Marshal may require reexamination of the applicant.

(2) A person who holds a valid certificate from the State Fire Marshal may go on inactive status, during which time he shall not engage in contracting but may retain his certificate on an inactive basis on payment of an annual renewal fee not to exceed \$10 per year during the inactive period.

**History.**—s. 11, ch. 75-240; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 6, 8, ch. 78-141.

**633.541 Contracting without certificate prohibited; violations; penalty.**—

(1) It is unlawful for any person to engage in the business or act in the capacity of a contractor without having been duly certified and holding a current annual renewal certificate, except as hereinafter provided.

(2) Any person who violates any provision of this

act or commits any of the acts constituting cause for disciplinary action as herein set forth is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 14, ch. 75-240; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 8, ch. 78-141.

**633.547 Disciplinary action; suspension or revocation of certificate; administrative penalty.**—

(1) The State Fire Marshal may investigate the illegal action of any contractor certified under this act and hold hearings pursuant to chapter 120.

(2) The following acts constitute cause for disciplinary action:

(a) Willful or deliberate disregard and violation of the applicable building codes or laws of the state or any municipality or county thereof.

(b) Diversion of funds or property received for prosecution or completion of a specified construction project or operation when, as a result of the diversion, the contractor is, or will be, unable to fulfill the terms of his obligation or contract.

(c) Disciplinary action by any municipality or county, which action shall be reviewed by the State Fire Marshal before he takes any disciplinary action of his own.

(d) Failure in any material respect to comply with the provisions of this act.

(3) The State Fire Marshal is authorized to take the following disciplinary action:

(a) Suspend the certificate holder from all operations as a contractor during the period fixed by the State Fire Marshal, but he may permit the certificate holder to complete any contracts then incomplete.

(b) Revoke a certificate.

(c) Impose an administrative fine or penalty not to exceed \$500, which shall be recoverable by the State Fire Marshal only in an action at law.

(4) After suspension of the certificate on any grounds set forth in this act, the State Fire Marshal may remove the suspension on proof of compliance by the contractor with all conditions prescribed by him for removal of suspension or, in the absence of such conditions, in the sound discretion of the State Fire Marshal.

(5) After revocation of a certificate, the certificate shall not be renewed or reissued for at least 1 year after revocation, and then only on a showing of rehabilitation of the contractor.

(6) The lapse or suspension of a certificate by operation of law or by order of the State Fire Marshal or a court or its voluntary surrender by a certificate holder does not deprive the State Fire Marshal of jurisdiction to investigate or act in disciplinary proceedings against the certificate holder.

(7) The filing of a petition in bankruptcy, either voluntary or involuntary, or the making of a composition of creditors or the appointment of a receiver for the business of the certificate holder may be considered by the State Fire Marshal as just cause for suspension of a certificate.

**History.**—s. 15, ch. 75-240; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 8, ch. 78-141.

**633.549 Violations subject to injunction.—**

Any person who operates as a contractor without a current certificate or who violates any part of this act or any rule, decision, order, regulation, direction, demand, or requirement of the State Fire Marshal in relation thereto, or any part or provision thereof, may be enjoined by the courts of the state from any such violation or such unauthorized or unlawful contracting at the instance of the State Fire Marshal, the board, or any citizen or taxpayer of the state.

**History.**—s. 15, ch. 75-240; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 8, ch. 78-141.

**633.551 County and municipal powers; effect of chapter 75-240, Laws of Florida.—**

(1) Nothing in this act limits the power of a municipality or county to regulate the quality and character of work performed by contractors through a system of permits, fees, and inspections which are designed to secure compliance with, and aid in the implementation of, state and local building laws or to enforce other local laws for the protection of the public health and safety.

(2) Nothing in this act limits the power of a municipality or county to adopt any system of permits requiring submission to and approval by the municipality or county of plans and specifications for work to be performed by contractors before commencement of the work.

(3) Any official authorized to issue building or other related permits shall ascertain that the applicant contractor is duly certified before issuing the permit. The evidence shall consist only of the exhibition to him of current evidence of certification.

(4) The State Fire Marshal shall inform each county and municipal building department, prior to September 1 of each year, of the names of the certified contractors and the status of the certificates.

(5) Notwithstanding any provisions to the contrary in s. 235.31 relating to prequalification of bidders, any person holding a certificate shall be deemed qualified to participate in any project contemplated by this act.

**History.**—s. 16, ch. 75-240; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 8, ch. 78-141.

**633.554 Application of law regulating contracting and contractors.—**

(1)(a) This act applies to any contractor performing work for the state or any county or municipality. Officers of the state or any county or municipality are required to determine compliance with this act before awarding any contracts for construction, improvement, remodeling, or repair.

(b) The state or any county or municipality may require that bids submitted for construction, improvement, remodeling, or repair of public buildings be accompanied by evidence that the bidder holds a current certificate.

(2) The provisions of this act relating to certification and contracting as a fire protection systems contractor shall apply to those so engaged in the business of contracting for fire protection systems.

**History.**—ss. 5, 16, ch. 75-240; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 8, ch. 78-141.

**633.557 Exemption; property occupied or used by owner.—**

This act does not apply to owners of property who are building or improving farm out-buildings or one-family or two-family residences on such property which are for the occupancy or use of such owners and not offered for sale or to owners of property who are building or improving commercial buildings occupied by the owner and his business and not for general public or consumer use.

**History.**—s. 19, ch. 75-240; s. 3, ch. 76-168; s. 1, ch. 77-174; s. 1, ch. 77-457; s. 8, ch. 78-141.

## CHAPTER 634

## WARRANTY ASSOCIATIONS

PART I AUTOMOBILE INSPECTION AND WARRANTY ASSOCIATIONS  
(ss. 634.011-634.253)

## PART II HOME WARRANTY ASSOCIATIONS (ss. 634.301-634.329)

## PART III SERVICE WARRANTY ASSOCIATIONS (ss. 634.401-634.431)

## PART I

AUTOMOBILE INSPECTION AND  
WARRANTY ASSOCIATIONS

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**634.011 Definitions.**—As used in this act:

(1) "Automobile inspection and warranty association" or "association" means any corporation, sole proprietorship, or partnership (other than an authorized insurer) issuing automobile warranties as herein defined.

(2) "Insurer" means any property or casualty in-

surer duly authorized to transact such business in this state.

(3) "Automobile warranty" or "warranty" means any contract or agreement indemnifying the warranty holder against loss caused by failure of any mechanical or other component part of the automobile due to the defect in material or workmanship arising out of the ownership, operation, and use of such automobile; however, nothing in this act shall prohibit or affect the giving of usual performance guarantees by manufacturers or dealers in connection with the sale of automobiles.

(4) "Salesman" means any person employed or otherwise retained by an insurer or an automobile inspection and warranty association for the purpose of selling or issuing automobile warranties.

(5) "Rate" means the unit charge by which the measure of exposure in a warranty is multiplied to determine the premium.

(6) "Premium" means the consideration paid, or to be paid, to an insurer, or automobile inspection and warranty association for the issuance and delivery of any binder or warranty.

(7) "Department" means the Department of Insurance.

(8) "Net assets" means the amount by which the total assets of an association exceed the total liabilities of the association. For purposes of this definition, the term "total liabilities" shall not include the capital and surplus of an association.

(9)(a) "Stated capital" means, at any particular time, the sum of:

1. The par value of all shares of the association having a par value that have been issued and have not been canceled;

2. The amount of the consideration received by the association for all shares of the association without par value that have been issued, except such part of the consideration therefor as may have been allocated to capital surplus in a manner permitted by law; and

3. Such amounts, not included in subparagraphs 1. and 2., as have been transferred to stated capital of the association, whether upon the issue of shares as a share dividend or otherwise, minus all reductions from such sum as have been effected in a manner permitted by law.

(b) Irrespective of the manner of designation thereof by the laws under which a foreign corporation is organized, the stated capital of a foreign association shall be determined on the same basis and in the same manner as the stated capital of a domestic association, for the purpose of computing taxes on



qualification and other charges imposed by this act.

(10) "Surplus" means the excess of the net assets of an association over its stated capital.

(11) "Earned surplus" means the portion of the surplus of an association that is equal to the balance of its net profits, income, gains, and losses from the date of incorporation, or from the latest date on which a deficit in earned surplus was eliminated by an application of its capital surplus or stated capital or otherwise, after deducting subsequent distributions to shareholders and transfers to stated capital and capital surplus to the extent that such distributions and transfers are made out of earned surplus. "Earned surplus" shall also include any portion of surplus allocated to earned surplus in mergers, consolidations, or acquisitions of all or substantially all of the outstanding shares or of the property and assets of another corporation, domestic or foreign.

(12) "Capital surplus" means the entire surplus of an association other than its earned surplus.

(13) "Insolvent" means the inability of an association to pay its debts as they become due in the usual course of its business.

**History.**—s. 1, ch. 59-110; ss. 13, 35, ch. 69-106; s. 268, ch. 71-377; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 1, ch. 78-231.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§634.021 Powers of department; rules.**—The department shall administer this act and to that end it may adopt, promulgate, and enforce rules and regulations necessary and proper to effectuate any provisions of this act.

**History.**—s. 2, ch. 59-110; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§634.031 License required.**—

(1) No automobile inspection and warranty association shall transact, attempt to transact, or in any manner hold itself out as transacting such business in this state unless it is authorized therefor under a subsisting license issued to it by the department. The association shall pay to the department a license tax of \$100 for such license, for each license year or part thereof the license is in force.

(2) No automobile inspection and warranty association shall, from officers or by personnel or facilities in this state, solicit warranty applications or otherwise transact warranty sales in another state or country unless it holds a subsisting license issued to it by the department authorizing it to transact the same kind or kinds of warranty business in this state.

**History.**—s. 3, ch. 59-110; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 2, ch. 78-231.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§634.041 Qualifications for license.**—To qualify for and hold a license to issue warranty contracts in this state, an association shall be otherwise in compliance with this act, with related sections of the Insurance Code, and with its charter powers and shall comply with the following:

(1) The association shall be a solvent corporation formed under the laws of Florida or of another state,

district, territory, or possession of the United States and shall meet minimum requirements under this section.

(2) The association shall furnish the department with evidence satisfactory to it that the management of the association is competent and trustworthy and can successfully manage its affairs in compliance with law.

(3) The association shall make the deposit required under s. 634.052.

(4) No association shall be licensed to transact warranty business in this state which does not maintain reserves as required under this section and which does not maintain the ratio of liquid assets to the required reserves as required under this section.

(5) No association shall be licensed to transact warranty business in this state which, during the 3 years immediately preceding its application for a license, has violated any section of this part and which, after being informed of such violation, has failed to correct same; except that, if all other requirements are met, the department may nevertheless issue a license to such association upon the filing by the association of a sworn statement of all such warranty business written in violation of law, and upon payment to the department of a sum of money as an additional licensing fee equivalent to all the premium taxes and other state taxes and fees that would have been payable by the association if such business had been lawfully written by a licensed association under the laws of this state. This fee when collected shall be deposited to the credit of the Insurance Commissioner's Regulatory Trust Fund. The department may also request that, prior to licensing, the association be required to deposit with the department securities in addition to those required under s. 634.052.

(6) Before approving or disapproving the name, proposed name, emblem, or trademark of an association, the department shall notify every other licensed association whose name, trademark, or emblem might be adversely affected, allowing such associations 30 days after the date of notice within which to file objections to it. If a name, trademark, or emblem is so objected to, the department shall disapprove the name, trademark, or emblem, unless the department is of the opinion that the objections are not well founded.

(7) In order to obtain a license, an association commencing business in the state on and after October 1, 1978, shall have and maintain minimum net assets of \$300,000. In computing the net asset requirement, receivables from officers, directors, employees, salesmen, and affiliated companies shall be deducted from the net assets of the association in determining the net asset requirement.

(8) An association licensed prior to October 1, 1978, shall have and maintain minimum net assets as follows, in order to obtain a renewal license:

(a) As of October 1, 1978—\$100,000.

(b) As of October 1, 1979—\$150,000.

(c) As of October 1, 1980—\$200,000.

(d) As of October 1, 1981—\$300,000.

(9) An association shall be otherwise in compliance with this part.

(10) For those associations which do not obtain

contractual liability insurance, an unearned premium reserve equal to 40 percent of the gross premium charged shall be set up on each warranty contract issued. Such reserve shall be maintained until the expiration of the contract. Those contracts issued for a period in excess of 1 year shall adjust the unearned premium reserve annually according to the reserve table furnished by the department.

(11) An association shall not be required to set up an unearned premium reserve if it has purchased contractual liability insurance for 100 percent of its claim exposure. Such contractual liability insurance shall be obtained from an insurer that holds a certificate of authority to do business within the state.

(12) An association that purchases contractual liability insurance on the warranties that it issues shall provide the department with the claims statistics required to be filed by associations not purchasing such insurance.

(13) An association required to maintain the unearned premium reserve shall also maintain at all times unencumbered assets in an amount equal to the required reserve. Such assets shall be held in the form of cash or invested in securities for investments under s. 625.52.

(14) An association may adopt alternative reserve methods approved by the department.

(15) In addition to information called for and furnished with its annual statement, an association shall furnish to the department, as soon as reasonably possible, such information as to its transactions or affairs as the department may from time to time request in writing. All such information furnished pursuant to the department's request shall be verified by the oath of two executive officers of the association.

**History.**—s. 4, ch. 59-110; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 3, ch. 78-231.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **§634.052 Required deposit.—**

(1) To assure the faithful performance of its obligations to its members or subscribers, every automobile inspection and warranty association shall, prior to issuance of its license by the department, deposit with the department securities of the type eligible for deposit by insurers under s. 625.52, and having at all times a market value of not less than \$100,000; except as follows:

(a) Any association holding a license to do business in this state on or before July 1, 1978, which had previously deposited securities having a market value of at least \$50,000 shall, on or before October 1, 1978, deposit additional securities with a market value of at least \$25,000, and shall, on or before October 1, 1979, deposit additional securities having a market value of at least \$25,000.

(b) Any association which had filed a surety bond with the department when its license was obtained shall maintain the surety bond in the amount of \$50,000 and shall, on or before October 1, 1978, deposit securities with a market value of at least \$50,000, and shall, on or before October 1, 1979, deposit additional securities having a market value of at least \$50,000, at which time the surety bond may be canceled. The market value of an association's de-

posits with the department shall not be less than \$100,000 as of October 1, 1979.

(2) In addition to the deposits otherwise required pursuant to this section, the department may, after notice and hearing, require any association for good cause shown to deposit and maintain deposited in trust for the protection of the association's contract holders and creditors, for such time as the department deems necessary, securities eligible for such deposit under s. 625.52 having a value of not less than the amount which the department shall determine is necessary, which amount shall be neither less than \$100,000, nor more than \$500,000, depending on the association's obligation in this state.

(3) The state shall be responsible for the safekeeping of all securities deposited with the department under this act. Such securities shall not, on account of being in this state, be subject to taxation, but shall be held exclusively and solely to guarantee the association's faithful performance of its obligations to its members or subscribers.

(4) The depositing association shall, during its solvency, have the right to exchange or substitute other securities of like quality and value for securities so on deposit, to receive the interest and other income accruing on such securities, and to inspect the deposit at all reasonable times.

(5) Such deposit shall be maintained unimpaired as long as the association continues in business in this state. Whenever the association ceases to do business in this state and furnishes to the department proof satisfactory to it that it has discharged or otherwise adequately provided for all its obligations to its members or subscribers in this state, the department shall release the deposited securities to the parties entitled thereto, on presentation of the department's receipts for such securities.

**History.**—s. 5, ch. 59-110; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 4, ch. 78-231.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **§634.061 Application for and issuance of license.—**

(1) Application for license as an automobile inspection and warranty association shall be made to and filed with the department on printed forms as prescribed and furnished by it.

(2) In addition to information relative to its qualifications as called for under s. 634.041, the application shall show:

(a) Location of applicant's home office.  
(b) Name and residence address of each director or officer of applicant.

(c) Other pertinent information as required by the department.

(3) The application when filed shall be accompanied by:

(a) A copy of the applicant's articles of incorporation, certified by the public official having custody of the original and a copy of its bylaws certified by its secretary.

(b) A copy of the most recent financial statement of applicant, verified under the oath of at least two of its principal officers.

(c) License fee in the amount of \$100, as required under s. 634.031.

(4) Upon completion of the application for license, the department shall examine the same and make such further investigation of the applicant as it deems advisable. If it finds that the applicant is qualified therefor under this act, it shall issue to the applicant a license as an automobile inspection and warranty association. If the department does not so find, it shall refuse to issue the license. Any such notice of refusal shall be accompanied by refund of the annual license fee theretofore tendered in connection with the application.

**History.**—s. 6, ch. 59-110; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1634.071 License expiration, renewal.**—Each license as an automobile inspection and warranty association issued under this act shall expire on the September 30 next following date of issuance. If the association is then qualified therefor under this act, its license may be renewed annually upon its request therefor and payment to the department of license tax in the amount of \$100 in advance for each such license year.

**History.**—s. 7, ch. 59-110; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1634.081 Suspension, revocation of license for violations and special grounds.**—

(1) The department may, in its discretion, suspend, revoke, or refuse to renew the license of any automobile inspection and warranty association if it finds that the association has violated any lawful order of the department or any provision of this act.

(2) The department shall suspend or revoke an automobile inspection and warranty association's license if it finds that such association:

(a) Is in unsound condition, or in such condition, or using such methods and practices in the conduct of its business, as to render its further transaction of warranties in this state hazardous or injurious to its warranty holders or to the public.

(b) Has refused to be examined or to produce its accounts, records and files for examination, or if any of its officers have refused to give information with respect to its affairs or to perform any other legal obligation as to such examination, when required by the department.

(c) Has failed to pay any final judgment rendered against it in this state within 90 days after the judgment became final.

(d) With such frequency as to indicate its general business practice in this state, has without just cause refused to pay proper claims arising under its warranties, or without just cause compels warranty holders to accept less than the amount due them or to employ attorneys or to bring suit against the association to secure full payment or settlement of such claims.

(e) Is affiliated with and under the same general management or interlocking directorate or ownership as another automobile inspection and warranty association which transacts direct warranties in this state without having a license therefor.

(3) The department may, in its discretion, sus-

pend the license of any automobile inspection and warranty association as to which proceedings for receivership, conservatorship, rehabilitation, or other delinquency proceedings have been commenced in any state.

(4) Violation of this act by an insurer shall be grounds for suspension or revocation of the insurer's certificate of authority in this state.

(5) The department may, in its discretion, suspend or revoke an association's license if it finds that the ratio of gross premiums written to net assets exceeds 10 to 1 and if the association has less than \$1 million of net assets.

**History.**—s. 8, ch. 59-110; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95; s. 7, ch. 78-231.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1634.101 Order, notice of suspension or revocation of license; effect; publication.**—

(1) Suspension or revocation of an association's license shall be by the department's order mailed to the association by registered or certified mail. The department shall promptly also give notice of such suspension or revocation to the association's salesmen in this state of record in the department's office. The association shall not solicit or write any new warranties in this state during the period of any such suspension or revocation, nor after such revocation renew any business previously written.

(2) In its discretion the department may cause notice of any such revocation to be published in one or more newspapers of general circulation published in this state.

**History.**—s. 10, ch. 59-110; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1634.111 Duration of suspension; association's obligations during suspension period; reinstatement.**—

(1) Suspension of an association's license shall be for such period not to exceed 1 year, as is fixed by the department in the order of suspension, unless the department shortens or rescinds such suspension or the order upon which the suspension is based is modified, rescinded or reversed.

(2) During the period of suspension the association shall file its annual statement, pay fees, licenses and taxes as required under this chapter as if the license had continued in full force.

(3) Upon expiration of the suspension period (if within such period the license has not otherwise terminated) the association's license shall automatically reinstate unless the department finds that the causes of the suspension have not been removed, or that the association is otherwise not in compliance with the requirements of this chapter, and of which the department shall give the association notice not less than 30 days in advance of the expiration of the suspension period. If not so automatically reinstated the license shall be deemed to have expired as of the end of the suspension period or upon failure of the association to continue the license during the suspension period, whichever event first occurs.

(4) Upon reinstatement of the association li-



cense, or reinstatement of the certificate of authority of an insurer following suspension, the authority of its salesmen in this state to represent the association or insurer shall likewise reinstate. The department shall promptly notify the association or insurer and its salesmen in this state of record in its office of such reinstatement.

**History.**—s. 11, ch. 59-110; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **634.121 Filing, approval of forms, rate filings.—**

(1) No warranty form nor related form shall be issued or used in this state unless it has been filed with and approved by the department.

(2) Every such filing shall be made not less than 30 days in advance of issuance or use. At the expiration of 30 days from date of filing a form so filed shall be deemed approved unless prior thereto it has been affirmatively approved or disapproved by written order of the department. The department may extend by not more than an additional 15 days the period within which it may so affirmatively approve or disapprove any such form by giving notice of such extension before the expiration of the initial 30-day period. At the expiration of any such period as so extended and in the absence of prior affirmative approval or disapproval, any such form shall be deemed approved.

(3) In addition, each insurer and automobile inspection and warranty association shall file with the department the rate to be charged for each warranty and the premium, including all modifications of rates and premiums, to be paid by the warranty holder. Every filing shall state the proposed effective date thereon. Such filing shall be made not less than 30 days prior to its effective date.

(4) All warranty contracts shall contain a cancellation provision. Such contracts shall be cancellable by the purchaser within 60 days of purchase. The refund shall be 100 percent of the gross premium charged, less any claims paid on the contract and a reasonable administrative fee.

**History.**—s. 12, ch. 59-110; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 8, ch. 78-231.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **634.131 Tax on premiums and assessments.—**

(1) In addition to the license taxes provided for in this act for automobile inspection and warranty associations, and license taxes as provided in the Insurance Code as to insurers, each such association and insurer shall annually on or before March 1 file with the department its annual statement, in form as prescribed and furnished by the department, showing all warranty premiums or assessments received by it from warranty holders in this state, during the preceding calendar year, and shall pay to the state treasurer a tax in an amount equal to 2 percent of the gross amount of such premiums or assessments. Provided that the same exemptions and credits as set forth in ss. 624.512 and 624.514 of the Insurance Code allowed to insurers shall apply to insurers and

automobile inspection and warranty associations under this act.

(2) Premiums and assessments received by insurers and taxed under this section shall not be subject to any premium tax provided for in the Insurance Code.

(3) Premiums charged for warranties shall not be subject to state sales taxes.

(4) Any association or insurer neglecting to file the annual statement in the form and within the time provided by this section shall forfeit \$100 for each day during which the neglect continues, and, upon notice by the department to that effect, the authority of the association or insurer to do business in this state shall cease while such default continues. The department shall deposit all sums collected thereby under the provisions of this section to the credit of the Insurance Commissioner's Regulatory Trust Fund.

**History.**—s. 13, ch. 59-110; s. 2, ch. 61-119; s. 30, ch. 65-269; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 9, ch. 78-231.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**634.136 Office records required.**—Each licensed automobile inspection and warranty association, as a minimum requirement for permanent office records, shall maintain:

(1) A complete set of accounting records, including, but not limited to, a general ledger, cash receipts and disbursements journals, accounts receivable registers, and accounts payable registers.

(2) Memorandum journals showing the blank warranty forms issued to the association's salesmen and recording the delivery of the forms to the dealer.

(3) Memorandum journals showing the warranty forms received by the automobile dealers and indicating the disposition of the forms by the dealer.

(4) A detailed warranty register, in numerical order by warranty number, of warranties in force, which register shall include the following information: Warranty number, date of issue, issuing dealer, name of warranty holder, description of automobile, warranty period and mileage, gross premium, commission to salesmen, commission to dealer, and net premium.

(5) A detailed claims register, in numerical order by warranty number, which register shall include the following information: Warranty number, date of issue, date of claim, type of claim, issuing dealer, amount of claim, date claim paid, and, if applicable, disposition other than payment and reason therefor.

**History.**—s. 5, ch. 78-231.

**634.141 Examination of associations.**—Automobile inspection and warranty associations licensed under this act shall be subject to periodic examination by the department in the same manner and subject to the same terms and conditions as applies to insurers under part II of chapter 624 of the Insurance Code.

**History.**—s. 14, ch. 59-110; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior

to that date.

**1634.151 Service of process; appointment of commissioner as process agent.—**

(1) Each association applying for authority to transact business in this state, whether domestic or foreign, shall file with the department its appointment of the Insurance Commissioner and Treasurer and his successors in office, on a form as furnished by the department, as its attorney to receive service of all legal process issued against it in any civil action or proceeding in this state, and agreeing that process so served shall be valid and binding upon the association. The appointment shall be irrevocable, shall bind the association and any successor in interest as to the assets or liabilities of the association, and shall remain in effect as long as there is outstanding in this state any obligation or liability of the association resulting from its warranty transactions therein.

(2) At the time of such appointment of the Insurance Commissioner and Treasurer as its process agent the association shall file with the department designation of the name and address of the person to whom process against it served upon the Insurance Commissioner and Treasurer is to be forwarded. The association may change the designation at any time by a new filing.

**History.**—s. 15, ch. 59-110; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1634.161 Serving process.—**

(1) Service of process upon the Insurance Commissioner and Treasurer as process agent of the association shall be made by serving copies in triplicate of the process upon the Insurance Commissioner and Treasurer or upon his assistant, deputy, or other person in charge of his office. Upon receiving such service the Insurance Commissioner and Treasurer shall file one copy with the department, return one copy with his admission of service, and promptly forward one copy of the process by registered or certified mail to the person last designated by the association to receive the same, as provided under s. 634.151.

(2) Process served upon the Insurance Commissioner and Treasurer and copy thereof forwarded as in this section provided shall for all purposes constitute valid and binding service thereof upon the association.

**History.**—s. 16, ch. 59-110; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1634.171 Salesman to be registered.—**Every automobile inspection and warranty association or insurer shall on forms prescribed by the department register, on or before October 1 of each year, the name and business office address of each salesman employed by it and shall within 30 days after termination of the employment notify the department of such termination. At the time of annual registration, a \$20 filing fee for each registered salesman shall be paid by the warranty association or insurer to the department. Any salesman employed subse-

quent to the October 1 filing date shall be registered with the department within 10 days after such employment. No employee or salesman of an automobile inspection and warranty association or insurer shall directly or indirectly solicit or negotiate insurance contracts, or hold himself out in any manner to be an insurance agent or solicitor, unless so qualified and licensed therefor under the Insurance Code.

**History.**—s. 17, ch. 59-110; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 10, ch. 78-231.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1634.181 Grounds for compulsory refusal, suspension, or revocation of registration of salesmen.—**The department shall deny, suspend, revoke, or refuse to renew or continue the registration of any such salesman if it finds that as to the salesman, any one or more of the following applicable grounds exist:

(1) Material misstatement, misrepresentation, or fraud in registration.

(2) If the registration is willfully used, or to be used, to circumvent any of the requirements or prohibitions of this act.

(3) Willful misrepresentation of any warranty contract or willful deception with regard to any such contract, done either in person or by any form of dissemination of information or advertising.

(4) If in the adjustment of claims arising out of warranties, he has materially misrepresented to a warranty holder or other interested party the terms and coverage of a contract with intent and for the purpose of effecting settlement of such claim on less favorable terms than those provided in and contemplated by the contract.

(5) For demonstrated lack of fitness or trustworthiness to engage in the business of warranty.

(6) For demonstrated lack of adequate knowledge and technical competence to engage in the transactions authorized by the registration.

(7) Fraudulent or dishonest practices in the conduct of business under the registration.

(8) Misappropriation, conversion or unlawful withholding of moneys belonging to an association, insurer, or warranty holder or to others and received in conduct of business under the registration.

(9) For rebating, or attempt thereat, or for unlawfully dividing or offering to divide his commission with another.

(10) Willful failure to comply with, or willful violation of any proper order, rule, or regulation of the department, or willful violation of any provision of this act.

**History.**—s. 18, ch. 59-110; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1634.191 Grounds for discretionary refusal, suspension, revocation of registration of salesmen.—**The department may, in its discretion, deny, suspend, revoke, or refuse to renew or continue the registration of any salesman if it finds that as to the salesman any one or more of the following applicable grounds exist under circumstances for which such

denial, suspension, revocation, or refusal is not mandatory under s. 634.181:

(1) For any cause for which granting of the registration could have been refused had it then existed and been known to the department.

(2) Violation of any provision of this act or of any other law applicable to the business of warranties in the course of dealings under the registration.

(3) Has violated any lawful order or rule or regulation of the department.

(4) Failure or refusal, upon demand, to pay over to any association or insurer he represents or has represented any money coming into his hands belonging to the association or insurer.

(5) If in the conduct of business under the registration he has engaged in unfair methods of competition or in unfair or deceptive acts or practices, as such methods, acts, or practices are or may be defined under part VII of chapter 626, or has otherwise shown himself to be a source of injury or loss to the public or detrimental to the public interest.

(6) Conviction of a felony.

**History.**—s. 19, ch. 59-110; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**cf.**—s. 112.011 Felons; removal of disqualifications for employment, exceptions.

#### **§634.201 Refusal, suspension, or revocation of registration of salesmen.—**

(1) If any salesman is convicted by a court of a violation of this act, the registration of such individual shall thereby be deemed to be immediately revoked.

(2) If after an investigation, or upon other evidence, the department has reason to believe that there may exist any one or more grounds therefor, as such grounds are specified in ss. 634.181 and 634.191, the department may suspend, revoke, or refuse to renew or continue the registration of any salesman.

(3) The department's papers, documents, reports, or evidence relative to a hearing for revocation or suspension of a license pursuant to the provisions of this chapter and chapter 120 shall not be subject to subpoena without the department's consent, except for subpoenas issued pursuant to the hearing for revocation or suspension, until after the same shall have been published at the hearing, unless after notice to the department and hearing the court determines that the department would not be unnecessarily hindered or embarrassed by such subpoenas.

(4) Whenever it appears that any licensed insurance agent has violated the provisions of this act, the department may take such action relative thereto as is authorized by the Insurance Code as for a violation of the Insurance Code by such agent.

**History.**—s. 20, ch. 59-110; s. 27, ch. 63-512; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **§634.211 Administrative fine in lieu of suspension or revocation of registration.—**

(1) If the department finds that one or more grounds exist for the suspension, revocation, or refusal to renew or continue any registration issued

under this act, the department may, in its discretion, in lieu of such suspension, revocation, or refusal, on a first offense and except where such suspension, revocation, or refusal is mandatory, impose upon the registrant an administrative penalty in the amount of \$100, or if the department has found willful misconduct or willful violation on the part of the registrant, an administrative fine of \$500. The administrative penalty may, in the department's discretion, be augmented in amount by an amount equal to any commissions received by or accruing to the credit of the registrant in connection with any transaction as to which the grounds for suspension, revocation, or refusal related.

(2) The department may allow the registrant a reasonable period, not to exceed 30 days, within which to pay to the department the amount of the penalty so imposed. If the registrant fails to pay the penalty in its entirety to the department at its office at Tallahassee within the period so allowed, the registration of the registrant shall stand suspended, revoked, or renewal or continuation refused, as the case may be, upon expiration of such period.

**History.**—s. 21, ch. 59-110; s. 30, ch. 65-269; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **§634.221 Disposition of taxes and fees.—**All license taxes, taxes on premiums and assessments, registration fees, and administrative fines and penalties collected under this act from automobile inspection and warranty associations shall be deposited to the credit of the Insurance Commissioner's Regulatory Trust Fund.

**History.**—s. 22, ch. 59-110; s. 2, ch. 61-119; s. 20, ch. 65-269; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**cf.**—s. 624.523 Regulatory trust fund.

#### **§634.231 Insurance business not authorized.—**Nothing in this act shall be deemed to authorize any automobile inspection and warranty association to transact any business other than that of automobile warranty as herein defined; or otherwise to engage in the business of insurance unless such association is authorized therefor as an insurer under a certificate of authority issued by the department under the Insurance Code of this state.

**History.**—s. 23, ch. 59-110; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **§634.241 Fronting not permitted.—**No authorized insurer or licensed automobile inspection and warranty association shall act as a fronting company for any unauthorized insurer or unlicensed automobile inspection and warranty association. A fronting company is an authorized insurer or licensed automobile inspection and warranty association which by reinsurance or otherwise generally transfers to one or more unauthorized insurer or unlicensed automobile inspection and warranty associations sub-



stantially all of the risk of loss under warranties written by it in this state.

**History.**—s. 24, ch. 59-110; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**634.251 Penalty for violation.**—Any individual who knowingly makes a false or otherwise fraudulent application for license or registration under this act, or who knowingly violates any provision thereof, shall in addition to any applicable denial, suspension, revocation, or refusal to renew or continue any license or registration, be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Each instance of violation shall be considered a separate offense.

**History.**—s. 25, ch. 59-110; s. 660, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**634.2515 Penalty for selling warranty of a nonlicensed association.**—Any individual or entity who knowingly offers for sale or sells an auto warranty contract or service contract of an association which has failed to comply with the provisions of this act shall, in addition to any applicable denial, suspension, revocation, or refusal to renew or continue any license or registration, be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Each instance of violation shall be considered a separate offense.

**History.**—s. 6, ch. 78-231.

**634.252 Acquisition of controlling stock.**—No association or entity may merge, consolidate with another association, or acquire more than 5 percent of another association unless it has filed the appropriate documentation with the department in accordance with s. 628.451 or s. 628.461.

**History.**—s. 11, ch. 78-231.

**634.253 Dissolution or liquidation.**—Any dissolution or liquidation of a corporation subject to the provisions of this law shall be under the supervision of the Department of Insurance, which shall have all powers with respect thereto granted to it under the laws of the state with respect to the dissolution and liquidation of property and casualty companies pursuant to chapter 631.

**History.**—s. 12, ch. 78-231.

## PART II

### HOME WARRANTY ASSOCIATIONS

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**634.301 Definitions.**—As used in this part:

(1) "Home warranty association" or "association" means any corporation or any other organization, other than an authorized insurer, issuing home warranties as herein defined.

(2) "Insurer" means any property or casualty insurer duly authorized to transact such business in this state.

(3) "Home warranty" or "warranty" means any contract or agreement offered in connection with the sale of residential property whereby a person undertakes to indemnify the warranty holder against the cost of repair or replacement, or actually furnishes repair or replacement, of any structural component or appliance of a home, necessitated by wear and tear or inherent defect of any such structural component or appliance or necessitated by the failure of an inspection to detect the likelihood of any such loss. However, nothing in this part shall prohibit the giving of usual performance guarantees by either the builder of a home or the manufacturer or seller of an appliance, as long as no identifiable charge is made for such guarantee. Nothing in this part shall be construed as permitting the provision of indemnification against consequential damages arising from the failure of any structural component or appliance of a home, which practice shall constitute the transaction of insurance subject to all requirements of the Insurance Code. This part shall not apply to service contracts entered into between consumers and nonprofit organizations or cooperatives whose members consist of condominium associations and condominium owners which perform repairs and maintenance for appliances or maintenance of the residential property.

(4) "Structural component" means the roof, plumbing system, electrical system, foundation, basement, walls, ceilings, or floors of a home.

(5) "Contracting sales agent" means any person with whom an insurer or home inspection or warranty association has a contract and who is utilized by such insurer or association for the purpose of selling or issuing home warranties. The term shall include all employees of any insurer or association engaged directly in the sale or issuance of home warranties.

(6) "Premium" means the consideration received, or to be received, by an insurer or home warranty association for the issuance and delivery of any binder or warranty.

(7) "Department" means the Department of Insurance.

(8) "Person" shall include an individual, company, corporation, association, insurer, agent, and every other legal entity.

(9) "Insolvent" means the inability of a corporation to pay its debts as they become due in the usual course of its business.

(10) "Impaired" means having liabilities in excess of assets.

History.—s. 1, ch. 77-339; s. 1, ch. 78-255.

**634.302 Powers of department; rules.**—The department shall administer this part, and, to that end, it may adopt, promulgate, and enforce rules necessary and proper to effectuate any provisions of this part.

History.—s. 1, ch. 77-339.

**634.303 License required.**—

(1) No person in this state shall provide or offer to provide home warranties unless authorized therefor under a subsisting license issued by the department. The home warranty association shall pay to the department a license tax of \$200 for such license for each license year, or part thereof, the license is in force.

(2) An insurer, while authorized to transact property or casualty insurance in this state, may also transact a home warranty business without additional qualifications or authority, but shall be otherwise subject to the applicable provisions of this part.

History.—s. 1, ch. 77-339.

**634.304 Qualifications for license.**—The department shall not issue a license to any home warranty association unless the association is qualified therefor, as follows:

(1) Is a solvent corporation formed under the laws of Florida or of another state, district, territory, or possession of the United States.

(2) Furnishes the department with evidence satisfactory to it that the management of the association is competent and trustworthy and can successfully manage the association's affairs in compliance with law.

(3) Proposes to use and uses in its business a name, together with a trademark or emblem, if any, which is distinctive and not so similar to the name or trademark of any other association, corporation, or organization already doing business in this state as will tend to mislead or confuse the public.

(4) Makes the deposit or files the bond or letter of credit required under s. 634.305.

(5) Is otherwise in compliance with this part.

History.—s. 1, ch. 77-339.

**634.305 Required deposit, bond, or letter of credit.**—

(1) To assure the faithful performance of its obligations to its members or subscribers in the event of insolvency, every home warranty association shall, prior to the issuance of its license by the department, deposit with the department securities of the type eligible for deposit by insurers under s. 625.52, which securities shall have at all times a market value of not less than \$50,000 during the 2 calendar years immediately succeeding October 1, 1977, not less than \$75,000 during the next succeeding 2 calendar years, and not less than \$100,000 thereafter.

(2) In lieu of any deposit of securities required under subsection (1):

(a) The association may file with the department a surety bond in like amount. The bond shall be one issued by an authorized surety insurer, shall be for the same purpose as the deposit in lieu of which it is filed, and shall be subject to the department's approval. No such bond shall be canceled or be subject to cancellation unless at least 30 days' advance notice thereof in writing is filed with the department.

(b) The association may file with the department an irrevocable letter of credit in like amount. The irrevocable letter of credit shall be issued by a national or state banking association located inside or outside the state, shall be for the same purpose as the deposit in lieu of which it is filed, and shall be subject to the department's approval.

(3) Securities, bonds, and letters of credit posted by an association pursuant to this section shall be for the benefit of, and subject to action thereon in the event of insolvency of any association or insurer by, any person or persons sustaining an actionable injury due to the failure of the association faithfully to perform its obligations to its warranty holders.

(4) The state shall be responsible for the safekeeping of all securities deposited with the department under this part. Such securities shall not, on account of being in this state, be subject to taxation, but shall be held exclusively and solely to guarantee the association's faithful performance of its obligations to its members or subscribers.

(5) The depositing association shall, during its solvency, have the right to exchange or substitute other securities of like quality and value for securities so on deposit, to receive the interest and other income accruing to such securities, and to inspect the deposit at all reasonable times.

(6) Such deposit, bond, or letter of credit shall be maintained unimpaired as long as the association continues in business in this state. Whenever the association ceases to do business in this state and furnishes the department proof satisfactory to the department that it has discharged or otherwise adequately provided for all its obligations to its members or subscribers in this state, the department shall release the deposited securities to the parties

entitled thereto, on presentation of the department's receipts for such securities, or shall release any bond or letter of credit filed with it in lieu of such deposit.

History.—s. 1, ch. 77-339.

**634.306 Application for and issuance of license.—**

(1) Application for license as a home warranty association shall be made to and filed with the department on printed forms prescribed and furnished by it.

(2) In addition to information relative to its qualifications as required under s. 634.304, the application shall show:

- (a) The location of applicant's home office.
- (b) The name and residence address of each director or officer of applicant.
- (c) Such other pertinent information as may be required by the department.

(3) The application when filed shall be accompanied by:

(a) A copy of the applicant's articles of incorporation, certified by the public official having custody of the original, and a copy of the applicant's bylaws, certified by the applicant's secretary.

(b) A copy of the most recent financial statement of the applicant, verified under oath of at least two of its principal officers.

(c) A license fee in the amount of \$200, as required under s. 634.303.

(4) Upon completion of the application for license, the department shall examine the same and make such further investigation of the applicant as it deems advisable. If it finds that the applicant is qualified therefor, the department shall issue to the applicant a license as a home warranty association. If the department does not so find, it shall refuse to issue the license and shall give the applicant written notice of such refusal, setting forth the grounds therefor. Any such notice of refusal shall be accompanied by refund of the annual license fee tendered in connection with the application. The department shall act upon any such application within a reasonable period of time after its completion.

History.—s. 1, ch. 77-339.

**634.307 License expiration; renewal.—**Each license as a home warranty association issued under this part shall expire on September 30 next following the date of issuance. If the association is then qualified therefor under the provisions of this part, its license may be renewed annually, upon its request and upon payment to the department of the license tax in the amount of \$200, in advance, for each such license year.

History.—s. 1, ch. 77-339.

**634.308 Grounds for suspension or revocation of license.—**

(1) The license of any home warranty association may be revoked or suspended, or the department may refuse to renew any such license, if it is determined that:

(a) The association has violated any lawful order of the department or any provision of this part.

(b) The association has not maintained a funded unearned premium reserve account equal to a mini-

mum of 25 percent of the premiums received by it from all warranty contracts in force.

(2) The license of any home warranty association shall be suspended or revoked if it is determined that such association:

(a) Is in unsound condition or is in such condition or using such methods and practices in the conduct of its business as to render its further transaction of warranties in this state hazardous or injurious to its warranty holders or to the public.

(b) Has refused to be examined or to produce its accounts, records, and files for examination, or if any of its officers have refused to give information with respect to its affairs or have refused to perform any other legal obligation as to such examination, when required by the department.

(c) Has failed to pay any final judgment rendered against it in this state within 60 days after the judgment became final.

(d) Has, with such frequency as to indicate its general business practice in this state, and without just cause, refused to pay proper claims arising under its warranties or, without just cause, compels warranty holders to accept less than the amount due them or to employ attorneys or to bring suit against the association to secure full payment or settlement of such claims.

(e) Is affiliated with, and under the same general management, interlocking directorate, or ownership as, another home warranty association which transacts direct warranties in this state without having a license therefor.

(f) Has issued warranty contracts providing coverage for a period in excess of 18 months or has renewed a warranty contract.

(3) The department may, pursuant to s. 120.60, in its discretion and without advance notice or hearing thereon, immediately suspend the license of any home warranty association if it finds that one or more of the following circumstances exist:

- (a) The association is insolvent or impaired.
- (b) The reserve account required by paragraph (1)(b) is not maintained.

(c) Proceedings for receivership, conservatorship, rehabilitation, or other delinquency proceedings regarding the association have been commenced in any state.

(d) The financial condition or business practices of the association otherwise pose an imminent threat to the public health, safety, or welfare of the residents of this state.

(4) Violation of this part by an insurer shall be grounds for suspension or revocation of the insurer's certificate of authority in this state.

History.—s. 1, ch. 77-339; s. 2, ch. 78-255.

**634.309 Procedure to suspend or revoke license.—**Except when a hearing is expressly not required under s. 634.308 or s. 120.60, no order suspending or revoking a home warranty association's license shall be effective unless made after notice and hearing pursuant to chapter 120.

History.—s. 1, ch. 77-339.



**634.310 Order, notice of suspension or revocation of license; effect; publication.—**

(1) Suspension or revocation of a home warranty association's license shall be by order mailed to the association by registered or certified mail. The department shall promptly also give notice of such suspension or revocation to the association's contracting sales agents in this state, of record in the department's office. The association shall not solicit or write any new warranties in this state during the period of any such suspension or revocation.

(2) In its discretion, the department may cause notice of any such revocation or suspension to be published in one or more newspapers of general circulation published in this state.

*History.—s. 1, ch. 77-339.*

**634.311 Duration of suspension; association's obligations during suspension period; reinstatement.—**

(1) Suspension of a home warranty association's license shall be for such period, not to exceed 1 year, as is fixed in the order of suspension, unless such suspension, or the order upon which the suspension is based, is modified, rescinded, or reversed.

(2) During the period of suspension, the association shall file its annual statement and pay fees, licenses, and taxes as required under this part as if the license had continued in full force.

(3) Upon expiration of the suspension period, if within such period the license has not otherwise terminated, the association's license shall automatically be reinstated, unless it is determined, upon notice and hearing, that the causes of the suspension have not been removed or that the association is otherwise not in compliance with the requirements of this part.

(4) Upon reinstatement of the association's license, or reinstatement of the certificate of authority of an insurer, following suspension, the authority of the association's contracting sales agents in this state to represent the association or insurer shall likewise be reinstated. The department shall promptly notify the association and its contracting sales agents in this state, of record in its office, of such reinstatement.

*History.—s. 1, ch. 77-339.*

**634.312 Filing, approval of forms.—**

(1) No warranty form or related form shall be issued or used in this state unless it has been filed with and approved by the department.

(2) Every such filing shall be made not less than 30 days in advance of issuance or use. At the expiration of 30 days from date of filing, a form so filed shall be deemed approved unless prior thereto it has been affirmatively approved or disapproved by written order of the department.

(3) The department shall not approve any such form unless the warranty contract is limited in duration to no more than 18 months and is not subject to renewal.

*History.—s. 1, ch. 77-339.*

**634.313 Tax on premiums and assessments; annual statement; reports.—**

(1) In addition to paying the license taxes provided for in this part for home warranty associations and license taxes provided in the Insurance Code as to insurers, each such association and each such insurer shall, annually on or before March 1, file with the department its annual statement, in the form prescribed by the department, showing all premiums or assessments received by it in connection with the issuance of warranties in this state during the preceding calendar year and using accounting principles which will enable the department to ascertain whether the reserve required by s. 634.308(1)(b) has been maintained. Further, each association and each insurer shall pay to the State Treasurer a tax in an amount equal to 2 percent of the amount of such premiums or assessments so received; however, the same exemptions and credits as set forth in ss. 624.512 and 624.514 of the Insurance Code allowed to insurers shall apply to insurers and home warranty associations under this part.

(2) Premiums and assessments received by insurers and taxed under this section shall not be subject to any premium tax provided for in the Insurance Code.

(3) Any association or insurer neglecting to file the annual statement in the form and within the time provided by this section shall forfeit \$100 for each day during which such neglect continues, and, upon notice by the department to that effect, its authority to do business in this state shall cease while such default continues. The department shall deposit all sums collected by it under this section to the credit of the Insurance Commissioner's Regulatory Trust Fund.

(4) In addition to an annual statement, the department may require of licensees, under oath and in the form prescribed by it, such additional regular or special reports as it may deem necessary to the proper supervision of licensees under this part.

*History.—s. 1, ch. 77-339; s. 243, ch. 79-400.*

**634.314 Examination of associations.—**Home warranty associations licensed under this part shall be subject to periodic examinations by the department, in the same manner and subject to the same terms and conditions as apply to insurers under part II of chapter 624 of the Insurance Code.

*History.—s. 1, ch. 77-339.*

**634.315 Service of process; appointment of Insurance Commissioner as process agent.—**

(1) Each association, whether domestic or foreign, applying for authority to transact business in this state shall file with the department, on a form furnished by the department, its appointment of the Insurance Commissioner and Treasurer, and his successors in office, as its attorney to receive service of all legal process issued against it in any civil action or proceeding in this state, and agree that process so served shall be valid and binding upon the association. The appointment shall be irrevocable, shall bind the association and any successor in interest as to the assets or liabilities of the association, and shall remain in effect as long as there are outstanding in this state any obligations or liability of the associa-

tion resulting from its warranty transactions therein.

(2) At the time of appointment of the Insurance Commissioner and Treasurer as its process agent, the association shall file with the department a designation of the name and address of the person to whom process against it, served upon the Insurance Commissioner and Treasurer, is to be forwarded. The association may change the designation at any time by a new filing.

History.—s. 1, ch. 77-339.

#### **634.316 Serving process.—**

(1) Service of process upon the Insurance Commissioner and Treasurer as process agent of the home warranty association shall be made by serving copies in triplicate of the process upon the Insurance Commissioner and Treasurer or upon his assistant, deputy, or other person in charge of his office. Upon receiving such service, the Insurance Commissioner and Treasurer shall file one copy with the department, return one copy with his admission of service, and promptly forward one copy of the process by registered or certified mail to the person last designated by the association to receive the same, as provided under s. 634.315.

(2) Process served upon the Insurance Commissioner and Treasurer, and any copy thereof forwarded as provided in this section, shall for all purposes constitute valid and binding service upon the association.

History.—s. 1, ch. 77-339.

**634.317 Registration required.**—No person shall solicit, negotiate, advertise, or effectuate home warranty contracts in this state unless such person is registered as a contracting sales agent or is utilized by a contracting sales agent.

History.—s. 1, ch. 77-339.

**634.318 Contracting sales agents to be registered.**—Every home warranty association or insurer shall, on forms prescribed by the department, register, on or before October 1 of each year, the name and business address of each contracting sales agent utilized by it in Florida and shall, within 30 days after termination of the contract, notify the department of such termination. At the time of said annual registration, a \$20 filing fee for each contracting sales agent shall be paid by the warranty association or insurer to the department. Any contracting sales agent utilized subsequent to the October 1 filing date shall be registered with the department within 10 days after such utilization. No employee or contracting sales agent of a home warranty association or insurer shall directly or indirectly solicit or negotiate insurance contracts, or hold himself out in any manner to be an insurance agent or solicitor, unless so qualified and licensed therefor under the Insurance Code.

History.—s. 1, ch. 77-339; s. 3, ch. 78-255.

#### **634.319 Reporting and accounting for funds.—**

(1) All funds belonging to insurers, home warranty associations, or others, received by a contracting sales agent in transactions under his registration

shall be trust funds so received by such agent in a fiduciary capacity, and the agent, in the applicable regular course of business, shall account for and pay the same to the insurer, association, warranty holder, or other person entitled thereto.

(2) Any contracting sales agent who, not being entitled thereto, diverts or appropriates such funds or any portion thereof to his own use shall upon conviction be guilty of larceny, punishable as provided in s. 812.021.

History.—s. 1, ch. 77-339.

**634.320 Grounds for compulsory refusal, suspension, or revocation of registration of contracting sales agents.**—The department shall deny, suspend, revoke, or refuse to renew or continue the registration of any contracting sales agent if it is found that, as to the agent, any one or more of the following applicable grounds exist:

(1) Material misstatement, misrepresentation, or fraud in registration.

(2) The registration is willfully used, or to be used, to circumvent any of the requirements or prohibitions of this part.

(3) Willful misrepresentation of any warranty contract or willful deception with regard to any such contract, done either in person or by any form of dissemination of information or advertising.

(4) In the adjustment of claims arising out of warranties, he has materially misrepresented to a warranty holder or other interested party the terms and coverage of a contract, with the intent and for the purpose of effecting settlement of such claim on less favorable terms than those provided in and contemplated by the contract.

(5) For demonstrated lack of fitness or trustworthiness to engage in the business of warranty.

(6) For demonstrated lack of adequate knowledge and technical competence to engage in the transactions authorized by the registration.

(7) Fraudulent or dishonest practices in the conduct of business under the registration.

(8) Misappropriation, conversion, or unlawful withholding of moneys belonging to an association, insurer, or warranty holder, or to others, and received in the conduct of business under the registration.

(9) For rebating, or attempting to rebate, or for unlawfully dividing, or offering to divide, his commission with another.

(10) Willful failure to comply with, or willful violation of, any proper order or rule of the department or willful violation of any provision of this part.

History.—s. 1, ch. 77-339.

**634.321 Grounds for discretionary refusal, suspension, or revocation of registration of contracting sales agents.**—The department may, in its discretion, deny, suspend, revoke, or refuse to renew or continue the registration of any contracting sales agent if it is found, after notice and hearing thereon as provided in s. 634.322, that as to the agent any one or more of the following applicable grounds exist under circumstances for which such denial, suspension, revocation, or refusal is not mandatory under s. 634.320:

(1) Any cause for which granting of the registra-

tion could have been refused had it then existed and been known to the department.

(2) Violation of any provision of this part, or of any other law applicable to the business of warranties, in the course of dealings under the registration.

(3) Violation of any lawful order or rule of the department.

(4) Failure or refusal to pay over, upon demand, to any home warranty association or insurer he represents or has represented any money coming into his hands, belonging to the association or insurer.

(5) In the conduct of business under the registration, he has engaged in unfair methods of competition or in unfair or deceptive acts or practices, as such methods, acts, or practices are or may be defined under part VII of chapter 626 of the Insurance Code, or has otherwise shown himself to be a source of injury or loss to the public or detrimental to the public interest.

(6) Conviction of a felony.

History.—s. 1, ch. 77-339.

**634.322 Procedure for refusal, suspension, or revocation of registration of contracting sales agents.—**

(1) If any contracting sales agent is convicted by a court of a violation of any provision of this part, the registration of such individual shall thereby be deemed to be immediately revoked without any further procedure relative thereto by the department.

(2) As to a registration denied, suspended, or revoked by the department, the person aggrieved thereby shall have the right to a hearing thereon pursuant to chapter 120.

(3) If, after an investigation or upon other evidence, the department has reason to believe that there may exist any one or more grounds for the suspension or revocation of, or refusal to renew or continue, the registration of any contracting sales agent, as such grounds are specified in ss. 634.320 and 634.321, the department may proceed to suspend, revoke, or refuse to renew or continue the registration, as the case may be.

(4) Whenever it appears that any licensed insurance agent has violated the provisions of this part, the department may take such action relative thereto as is authorized by the Insurance Code as for a violation of the Insurance Code by such agent.

History.—s. 1, ch. 77-339.

**634.323 Administrative fine in lieu of suspension or revocation of registration.—**

(1) If, pursuant to procedures provided for in this part, it is found that one or more grounds exist for the suspension or revocation of, or refusal to renew or continue, any registration issued under this part, on a first offense, and except when such suspension, revocation, or refusal is mandatory, an order may be entered imposing upon the registrant, in lieu of such suspension, revocation, or refusal, an administrative penalty for each violation in the amount of \$100 or, in the event of willful misconduct or willful violation on the part of the registrant, an administrative fine of \$500. The administrative penalty may be augmented in amount by an amount equal to any commissions received by or accruing to the credit of the registrant in connection with any transaction to

which the grounds for suspension, revocation, or refusal related.

(2) The order may allow the registrant a reasonable period, not to exceed 30 days, within which to pay to the department the amount of the penalty so imposed. If the registrant fails to pay the penalty in its entirety to the department at its office in Tallahassee within the period so allowed, the registration of the registrant shall stand suspended or revoked, or renewal or continuation may be refused, as the case may be, upon expiration of such period and without any further proceedings.

History.—s. 1, ch. 77-339; s. 244, ch. 79-400.

**634.324 Disposition of taxes and fees.—**All license taxes, taxes on premiums and assessments, registration fees, and administrative fines and penalties collected under this part from home warranty associations and contracting sales agents shall be deposited to the credit of the Insurance Commissioner's Regulatory Trust Fund.

History.—s. 1, ch. 77-339.

**634.325 Insurance business not authorized.—**Nothing in this part shall be deemed to authorize any home warranty association to transact any business other than that of home warranty as herein defined or otherwise to engage in the business of insurance, unless such association is authorized therefor as an insurer under a certificate of authority issued by the department under the Insurance Code of this state.

History.—s. 1, ch. 77-339.

**634.326 Fronting not permitted.—**No authorized insurer or licensed home warranty association shall act as a fronting company for any unauthorized insurer or unlicensed home warranty association. A "fronting company" is an authorized insurer or licensed home warranty association which, by reinsurance or otherwise, generally transfers to one or more unauthorized insurers or unlicensed home warranty associations substantially all of the risk of loss under warranties written by it in this state.

History.—s. 1, ch. 77-339.

**634.327 Applicability to warranty on new home.—**This part shall not apply to any program offering a warranty on a new home which is underwritten by an insurer licensed to do business in the state when the insurance policy underwriting such program has been filed with and approved by the Department of Insurance as required by law.

History.—s. 1, ch. 77-339.

**634.328 Penalty for violation.—**Any individual who knowingly makes a false or otherwise fraudulent application for license or registration under this part, or who knowingly violates any provision hereof, shall, in addition to any applicable denial, suspension, or revocation of, or refusal to renew or continue, any license or registration, be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Each instance of violation shall be considered a separate offense.

History.—s. 1, ch. 77-339.



**634.329 Dissolution or liquidation.**—Any dissolution or liquidation of a corporation subject to the provisions of this part shall be under the supervision of the department, which shall have all powers with respect thereto granted to it under the laws of this state with respect to the dissolution and liquidation of property and casualty insurance companies pursuant to chapter 631.

History.—s. 4, ch. 78-255.

### PART III

#### SERVICE WARRANTY ASSOCIATIONS

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**634.401 Definitions.**—As used in this part:

(1) "Service warranty association" or "association" means any person, other than an authorized insurer, issuing service warranties.

(2) "Service warranty" means any warranty,

guaranty, extended warranty, or extended guaranty, contract agreement, or other written promise under the terms of which there is an undertaking to indemnify against the cost of repair or replacement of a consumer product in return for the payment of a segregated charge by the consumer; however, a maintenance service contract under the terms of which there is no provision for such indemnification and automobile and home warranties subject to regulation under parts I and II of this chapter are expressly excluded from this definition.

(3) "Indemnify" means to undertake repair or replacement of a consumer product, in return for the prepayment of a segregated premium, when such consumer product suffers operational failure.

(4) "Consumer product" means tangible personal property primarily used for personal, family, or household purposes.

(5) "Warrantor" means any person engaged in the sale of service warranties and deriving not more than 50 percent of its gross income from the sale of service warranties.

(6) "Warranty seller" means any person engaged in the sale of service warranties and deriving more than 50 percent of its gross income from the sale of service warranties.

(7) "Insurer" means any property or casualty insurer duly authorized to transact such business in this state.

(8) "Sales representative" means any person utilized by an insurer or service warranty association for the purpose of selling or issuing service warranties and includes any individual possessing a certificate of competency who has the power to legally obligate the insurer or service warranty association or who merely acts as the qualifying agent to qualify the association in instances where a state statute or local ordinance requires a certificate of competency to engage in a particular business. However, in the case of service warranty associations selling service warranties from five or more business locations, the store manager or other person in charge of each such location shall be considered the sales representative.

(9) "Premium" means the consideration received or to be received by an insurer or service warranty association for the issuance and delivery of a service warranty.

(10) "Department" means the Department of Insurance.

(11) "Person" includes an individual, company, corporation, association, insurer, agent, and any other legal entity.

(12) "Insolvent" means unable to pay debts as they become due in the usual course of business.

(13) "Gross written premiums" means the total amount of premiums, inclusive of commissions, for which the association is obligated under service warranties issued in this state.

(14) "Net assets" means the amount by which the total assets of an association exceed the total liabilities of the association. For purposes of this definition, the term "total liabilities" shall not include the capital and surplus of an association.

(15) "Gross income" means the total amount of revenue received in connection with business-related activity.

(16) "Impaired" means having liabilities in excess of assets.

History.—s. 5, ch. 78-255.

**634.402 Powers of department; rules.**—The department shall administer this part, and to that end it may adopt and enforce rules necessary and proper to effectuate any provision of this part.

History.—s. 5, ch. 78-255.

**634.403 License required.**—

(1) No person in this state shall provide or offer to provide service warranties unless authorized therefor under a subsisting license issued by the department. The service warranty association shall pay to the department a license fee of \$200 for such license for each license year, or part thereof, the license is in force.

(2) An insurer, while authorized to transact property or casualty insurance in this state, may also transact a service warranty business without additional qualifications or authority, but shall be otherwise subject to the applicable provisions of this part.

History.—s. 5, ch. 78-255.

**634.404 Qualifications for license.**—The department shall not issue a license to any service warranty association unless the association:

(1) Is a solvent association.

(2) Furnishes the department with evidence satisfactory to it that the management of the association is competent and trustworthy and can successfully manage the association's affairs in compliance with law.

(3) Proposes to use and uses in its business a name, together with a trademark or emblem, if any, which is distinctive and not so similar to the name or trademark of any other person already doing business in this state as will tend to mislead or confuse the public.

(4) Makes the deposit or files the bond or letter of credit required under s. 634.405.

(5) Is formed under the laws of Florida or another state, district, territory, or possession of the United States, if the association is other than a natural person.

History.—s. 5, ch. 78-255.

**634.405 Required deposit, bond, or letter of credit.**—

(1) To assure the faithful performance of its obligations to its members or subscribers in the event of insolvency, each service warranty association shall, prior to the issuance of its license by the department and during such time as the association may have premiums in force in this state, deposit and maintain securities of the type eligible for deposit by insurers under s. 625.52, which securities shall have at all times a market value as follows:

(a) *Warrantors.*—

1. Any warrantor which has transacted no service warranty business in this state prior to June 14, 1978, shall, prior to the issuance of its license and before receiving any premiums, place in trust with the department an initial amount of \$50,000.

2. A warrantor which has less than \$300,000 of

gross written premiums shall place in trust with the department an amount equal to 50 percent of the gross premiums in force or \$50,000, whichever is less.

3. A warrantor which has more than \$300,000 but less than \$750,000 of gross written premiums in this state shall place in trust with the department an amount not less than \$75,000.

4. A warrantor which has \$750,000 or more of gross written premiums in this state shall place in trust with the department an amount equal to \$100,000.

5. All warrantors, upon receipt of written notice from the department, shall have 30 calendar days in which to make additional deposits.

(b) *Warranty sellers.*—

1. A warranty seller licensed after June 14, 1978, shall, prior to the issuance of its license, place in trust with the department an amount not less than \$100,000.

2. Any warranty seller licensed under part II of this chapter prior to June 14, 1978, shall be required to deposit an amount equal to \$75,000 by October 1, 1978, and \$100,000 by October 1, 1979.

(2) In lieu of any deposit of securities required under subsection (1) and subject to the department's approval, the service warranty association may file with the department a surety bond issued by an authorized surety insurer or an irrevocable letter of credit from a state or federally chartered bank located in this state. The letter of credit or bond shall be for the same purpose as the deposit in lieu of which it is filed. The department shall not approve any bond or letter of credit under the terms of which the protection afforded against insolvency is not equivalent to the protection afforded by those securities provided for in subsection (1). When a letter of credit or bond is deposited in lieu of the required securities, no warranties may be written which provide coverage for a time period beyond the duration of such letter of credit or bond.

(3) Securities, bonds, and letters of credit posted by an association pursuant to this section shall be for the benefit of and subject to action thereon, in the event of insolvency or impairment of any association or insurer, by any person or persons sustaining an actionable injury due to the failure of the association to faithfully perform its obligations to its warranty holders.

(4) The state shall be responsible for the safekeeping of all securities deposited with the department under this part. Such securities shall not, on account of being in this state, be subject to taxation, but shall be held exclusively and solely to guarantee the association's faithful performance of its obligations to its members or subscribers.

(5) The depositing association shall, during its solvency, have the right to exchange or substitute other securities of like quality and value for securities on deposit, to receive the interest and other income accruing to such securities, and to inspect the deposit at all reasonable times.

(6) Such deposit, bond, or letter of credit shall be maintained unimpaired as long as the association continues in business in this state. Whenever the association ceases to do business in this state and

furnishes the department proof satisfactory to the department that it has discharged or otherwise adequately provided for all its obligations to its members or subscribers in this state, the department shall release the deposited securities to the parties entitled thereto, on presentation of the department's receipts for such securities, or shall release any bond or letter of credit filed with it in lieu of such deposit.

*History.*—s. 5, ch. 78-255.

#### **634.406 Financial requirements.—**

(1) An association licensed under this part shall maintain a funded, unearned premium reserve account equal to a minimum of 25 percent of the gross written premiums. In the case of multi-year contracts offered by associations having net assets of less than \$500,000 and for which premiums are collected in advance for coverage in a subsequent year, 100 percent of the premiums for such subsequent years shall be placed in the funded, unearned premium reserve account.

(2) No warrantor shall allow its gross written premiums to exceed a 7 to 1 ratio to net assets.

(3) No warranty seller shall allow its gross written premiums to exceed a 5 to 1 ratio to net assets.

*History.*—s. 5, ch. 78-255.

#### **634.407 Application for and issuance of license.—**

(1) Application for license as a service warranty association shall be made to, and filed with, the department on printed forms as prescribed and furnished by it.

(2) In addition to information relative to its qualifications as required under s. 634.404, the department may require that the application show:

(a) The location of applicant's home office.

(b) The name and residence address of each director or officer of the applicant.

(c) Such other pertinent information as may be required by the department.

(3) The department may require that the application, when filed, be accompanied by:

(a) A copy of the applicant's articles of incorporation, certified by the public official having custody of the original, and a copy of the applicant's bylaws, certified by the applicant's secretary.

(b) A copy of the most recent financial statement of the applicant, verified under oath of at least two of its principal officers.

(c) A license fee in the amount of \$200, as required under s. 634.403.

(4) Upon completion of the application for license, the department shall examine the same and make such further investigation of the applicant as it deems advisable. If it finds that the applicant is qualified therefor, the department shall issue to the applicant a license as a service warranty association. If the department does not find the applicant to be qualified, it shall refuse to issue the license and shall give the applicant written notice of such refusal, setting forth the grounds therefor. Any such notice of refusal shall be accompanied by refund of the annual

license fee tendered in connection with the application.

*History.*—s. 5, ch. 78-255.

**634.408 License expiration; renewal.—**Each license issued to a service warranty association under this part shall expire on September 30 next following the date of issuance. If the association is then qualified therefor under the provisions of this part, its license may be renewed annually, upon its request, and upon payment to the department of the license fee in the amount of \$200 in advance for each such license year.

*History.*—s. 5, ch. 78-255.

#### **634.409 Grounds for suspension or revocation of license.—**

(1) The license of any service warranty association may be revoked or suspended, or the department may refuse to renew any such license, if it is determined that the association has violated any lawful order of the department or any provision of this part.

(2) The license of any service warranty association shall be suspended or revoked if it is determined that such association:

(a) Is in an unsound condition, or is in such condition, or using such methods and practices in the conduct of its business, as would render its further transaction of service warranties in this state hazardous or injurious to its warranty holders or to the public.

(b) Has refused to be examined or to produce its accounts, records, and files for examination, or if any of its officers have refused to give information with respect to its affairs or have refused to perform any other legal obligation as to such examination, when required by the department.

(c) Has failed to pay any final judgment rendered against it in this state within 60 days after the judgment became final.

(d) Has, with such frequency as to indicate its general business practice in this state, and without just cause, refused to pay proper claims arising under its service warranties, or, without just cause, has compelled warranty holders to accept less than the amount due them, or to employ attorneys, or to bring suit against the association to secure full payment or settlement of such claims.

(e) Is affiliated with and under the same general management or interlocking directorate or ownership as another service warranty association which transacts direct warranties in this state without having a license therefor.

(3) The department may, pursuant to s. 120.60, in its discretion and without advance notice or hearing thereon, immediately suspend the license of any service warranty association if it finds that one or more of the following circumstances exist:

(a) The association is insolvent or impaired.

(b) The reserve account required by s. 634.406(1) is not maintained.

(c) Proceedings for receivership, conservatorship, rehabilitation, or other delinquency proceedings regarding the association have been commenced in any state.

(d) The financial condition or business practices



of the association otherwise pose an imminent threat to the public health, safety, or welfare of the residents of this state.

(4) Violation of this part by an insurer shall be grounds for suspension or revocation of the insurer's certificate of authority in this state.

History.—s. 5, ch. 78-255.

**634.410 Procedure to suspend or revoke license.**—Unless a hearing is expressly not required under s. 634.409 or s. 120.60, an order suspending or revoking a service warranty association's license shall be effective only after notice and hearing pursuant to chapter 120.

History.—s. 5, ch. 78-255.

**634.411 Order; notice of suspension or revocation of license; effect; publication.**—

(1) Suspension or revocation of a service warranty association's license shall be by order of the department mailed to the association by registered or certified mail. The department shall also promptly give notice of such suspension or revocation to the association's sales representatives in this state which are of record in the department's office. The association shall not solicit or write any new service warranties in this state during the period of any such suspension or revocation.

(2) In its discretion, the department may cause notice of any such revocation or suspension to be published in one or more newspapers of general circulation published in this state.

History.—s. 5, ch. 78-255.

**634.412 Duration of suspension; association's obligations during suspension; reinstatement.**—

(1) Suspension of a service warranty association's license shall be for such period, not to exceed 1 year, as is fixed in the order of suspension, unless such suspension or the order upon which the suspension is based is modified, rescinded, or reversed.

(2) During the period of suspension, the association shall file its annual statement and pay fees, licenses, and taxes as required under this part as if the license had continued in full force.

(3) Upon expiration of the suspension period, if within such period the license has not otherwise terminated, the association's license shall automatically be reinstated, unless it is determined, upon notice and hearing, that the causes of the suspension have not been removed, or that the association is otherwise not in compliance with the requirements of this part.

(4) Upon reinstatement of the association's license, or upon reinstatement of the certificate of authority of an insurer, following suspension, the authority of the association's sales representatives in this state to represent the association or insurer shall likewise be reinstated. The department shall promptly notify the association and its sales representatives in this state, which are of record in its office, of such reinstatement.

History.—s. 5, ch. 78-255.

**634.413 Administrative fine in lieu of suspension or revocation.**—If, upon notice and hearing as provided for in s. 634.410, the department finds that one or more grounds exist for the discretionary revocation or suspension of a certificate of authority issued under this part, the department may, in lieu of such suspension or revocation, impose a fine upon the insurer or service warranty association in an amount not to exceed \$1,000 per violation; however, if it is found that an insurer or service warranty association has knowingly and willfully violated a lawful rule or order of the department or a provision of this part, the department may impose a fine upon the insurer or association in an amount not to exceed \$10,000 for each violation.

History.—s. 5, ch. 78-255.

**634.414 Filing; approval of forms.**—

(1) No service warranty form or related form shall be issued or used in this state unless it has been filed with and approved by the department.

(2) Each filing shall be made not less than 30 days in advance of its issuance or use. At the expiration of 30 days from date of filing, a form so filed shall be deemed approved unless prior thereto it has been affirmatively disapproved by written order of the department.

(3) Each service warranty contract shall contain a cancellation provision. In the event the contract is canceled by the warranty holder, return of premium shall be based upon 90 percent of unearned pro-rata premium less any claims that have been paid. In the event the contract is canceled by the association, return of premium shall be based upon 100 percent of unearned pro-rata premium.

History.—s. 5, ch. 78-255.

**634.415 Tax on premiums and assessments; annual statement; reports; quarterly statements.**—

(1) In addition to the license fees provided in this part for service warranty associations and license taxes as provided in the Insurance Code as to insurers, each such association and insurer shall, annually on or before March 1, file with the department its annual statement, in the form prescribed by the department, showing all premiums or assessments received by it in connection with the issuance of service warranties in this state during the preceding calendar year and using accounting principles which will enable the department to ascertain whether the financial requirements set forth in s. 634.406 have been satisfied. If, after notice and hearing as provided for in chapter 120, the department demonstrates that the income derived from the license fees provided for herein is insufficient to pay the costs of administering this part, the department may impose a premium tax of not more than 0.5 percent of the gross written premiums of all service warranty associations licensed to do business in this state.

(2) Premiums and assessments received by insurers shall be subject to any premium tax provided for in the Insurance Code.

(3) Any association or insurer neglecting to file the annual statement in the form and within the time provided by this section shall forfeit \$100 for each day during which such neglect continues, and,

upon notice by the department to that effect, its authority to do business in this state shall cease while such default continues. The department shall deposit all sums collected by it under this section to the credit of the Insurance Commissioner's Regulatory Trust Fund.

(4) In addition to an annual statement, the department may require of licensees, under oath and in the form prescribed by it, quarterly statements or special reports which it deems necessary to the proper supervision of licensees under this part.

History.—s. 5, ch. 78-255.

**634.416 Examination of associations.**—Service warranty associations licensed under this part shall be subject to periodic examination by the department, in the same manner and subject to the same terms and conditions that apply to insurers under part II of chapter 624.

History.—s. 5, ch. 78-255.

**634.417 Service of process; appointment of Insurance Commissioner and Treasurer as process agent.**—

(1) Each service warranty association applying for authority to transact business in this state, whether domestic or foreign, shall file with the department, on a form furnished by the department, its appointment of the Insurance Commissioner and Treasurer, and his successors in office, as its attorney to receive service of all legal process issued against it in any civil action or proceeding in this state, and shall agree that process so served shall be valid and binding upon the association. The appointment shall be irrevocable, shall bind the association and any successor in interest as to the assets or liabilities of the association, and shall remain in effect as long as there are outstanding in this state any obligations or liabilities of the association resulting from its warranty transactions therein.

(2) At the time of appointment of the Insurance Commissioner and Treasurer as its process agent, the association shall file with the department a designation of the name and address of the person to whom process against it, served upon the Insurance Commissioner and Treasurer, is to be forwarded. The association may change the designation at any time by a new filing.

History.—s. 5, ch. 78-255.

**634.418 Serving process.**—

(1) Service of process upon the Insurance Commissioner and Treasurer as process agent of the service warranty association shall be made by serving copies of the process in triplicate upon the Insurance Commissioner and Treasurer or upon his assistant, deputy, or other person in charge of his office. Upon receiving such service, the Insurance Commissioner and Treasurer shall file one copy with the department, return one copy with his admission of service, and promptly forward one copy of the process by registered or certified mail to the person last designated by the association to receive the same, as provided under s. 634.417.

(2) Process served upon the Insurance Commissioner and Treasurer, and any copy thereof forwarded as provided in this section, shall for all purposes

constitute valid and binding service upon the association.

History.—s. 5, ch. 78-255.

**634.419 Registration required.**—No person shall solicit, negotiate, advertise, or effectuate service warranty contracts in this state unless such person is registered as a sales representative or acts under the supervision of a sales representative. Sales representatives shall be responsible for the actions of persons under their supervision.

History.—s. 5, ch. 78-255.

**634.420 Sales representatives to be registered.**—Each service warranty association or insurer shall, on forms prescribed by the department, register, on or before October 1 of each year, the name and business address of each sales representative utilized by it in Florida and shall, within 30 days after termination of the contract, notify the department of such termination. At the time of said annual registration, a \$20 filing fee for each sales representative shall be paid by the service warranty association or insurer to the department. Any sales representative utilized subsequent to the October 1 filing date shall be registered with the department within 10 days after such utilization. No employee or sales representative of a service warranty association or insurer shall directly or indirectly solicit or negotiate insurance contracts, or hold himself out in any manner to be an insurance agent or solicitor, unless so qualified and licensed therefor under the Insurance Code.

History.—s. 5, ch. 78-255.

**634.421 Reporting and accounting for funds.**—

(1) All funds belonging to insurers, service warranty associations, or others received by a sales representative in transactions under his registration shall be trust funds so received by such agent in a fiduciary capacity, and the agent in the applicable regular course of business shall account for and pay the same to the insurer, association, warranty holder, or other person entitled thereto.

(2) Any sales representative who, not being entitled thereto, diverts or appropriates such funds or any portion thereof to his own use is guilty of larceny, punishable as provided in s. 812.021.

History.—s. 5, ch. 78-255.

**634.422 Grounds for compulsory refusal, suspension, or revocation of registration of sales representatives.**—The department shall deny, suspend, revoke, or refuse to renew or continue the registration of any sales representative if it is found that, as to the representative, any one or more of the following applicable grounds exist:

(1) Material misstatement, misrepresentation, or fraud in registration.

(2) The registration is willfully used, or to be used, to circumvent any of the requirements or prohibitions of this part.

(3) Willful misrepresentation of any service warranty contract or willful deception with regard to any such contract, done either in person or by any

form of dissemination of information or advertising.

(4) In the adjustment of claims arising out of warranties, he has materially misrepresented to a service warranty holder or other interested party the terms and coverage of a contract with the intent and for the purpose of effecting settlement of such claim on less favorable terms than those provided in and contemplated by the contract.

(5) Demonstrated lack of fitness or trustworthiness to engage in the business of service warranty.

(6) Demonstrated lack of adequate knowledge and technical competence to engage in the transactions authorized by the registration.

(7) Fraudulent or dishonest practices in the conduct of business under the registration.

(8) Misappropriation, conversion, or unlawful withholding of moneys belonging to an association, insurer, or warranty holder, or to others and received in the conduct of business under the registration.

(9) Rebating, or attempting to rebate, or unlawfully dividing, or offering to divide, his commission with another.

(10) Willful failure to comply with, or willful violation of, any proper order or rule of the department, or willful violation of any provision of this part.

History.—s. 5, ch. 78-255.

**634.423 Grounds for discretionary refusal, suspension, or revocation of registration of sales representatives.**—The department may deny, suspend, revoke, or refuse to renew or continue the registration of any sales representative if it is found, after notice and hearing thereon as provided in s. 634.424, that as to the representative any one or more of the following applicable grounds exist under circumstances for which such denial, suspension, revocation, or refusal is not mandatory under s. 634.422:

(1) Any cause for which granting of the registration could have been refused had it then existed and been known to the department.

(2) Violation of any provision of this part, or of any other law applicable to the business of service warranties, in the course of dealings under the registration.

(3) Violation of any lawful order or rule of the department.

(4) Failure or refusal to pay over, upon demand, to any service warranty association or insurer he represents or has represented any money coming into his hands belonging to the association or insurer.

(5) In the conduct of business under the registration, he has engaged in unfair methods of competition or in unfair or deceptive acts or practices, as such methods, acts, or practices are or may be defined under part VII of chapter 626, or has otherwise shown himself to be a source of injury or loss to the public or detrimental to the public interest.

(6) Conviction of a felony.

History.—s. 5, ch. 78-255.

**634.424 Procedure for refusal, suspension, or revocation of registration of sales representatives.**—

(1) If any sales representative is convicted by a

court of a violation of any provision of this part, the registration of such individual shall thereby be deemed to be immediately revoked without any further procedure relative thereto by the department.

(2) As to a registration denied, suspended, or revoked by the department, the person aggrieved thereby shall have the right to a hearing thereon pursuant to chapter 120.

(3) If, after an investigation or upon other evidence, the department has reason to believe that there may exist any one or more grounds for the suspension, revocation, or refusal to renew or continue the registration of any sales representative, as such grounds are specified in ss. 634.422 and 634.423, the department may proceed to suspend, revoke, or refuse to renew or continue the registration, as the case may be.

(4) Whenever it appears that any licensed insurance agent has violated the provisions of this part, the department may take such action relative thereto as is authorized by the Insurance Code as for a violation of the Insurance Code by such agent.

History.—s. 5, ch. 78-255.

**634.425 Duration of suspension or revocation.**—

(1) The department shall, in its order suspending a registration, specify the period during which the suspension is to be in effect, but such period shall not exceed 1 year. The registration shall remain suspended during the period so specified, subject to any rescission or modification of the order by the department prior to expiration of the suspension period. A registration which has been suspended shall not be reinstated except upon request for such reinstatement, but the department shall not grant such reinstatement if it finds that the circumstance or circumstances for which the registration was suspended still exist or are likely to recur.

(2) No person whose registration has been revoked by the department shall have the right to apply for another registration within 2 years from the effective date of such revocation or, if judicial review of such revocation is sought, within 2 years from the date of final court order or decree affirming the revocation. The department, however, shall not grant a new registration if it finds that the circumstance or circumstances for which the previous registration was revoked still exist or are likely to recur.

(3) If registrations as to the same person have been revoked at two separate times, the department shall not thereafter grant or issue any registration as to such person.

(4) During the period of suspension, or after revocation of the registration, the former registrant shall not engage in or attempt to profess to engage in any transaction or business for which a registration is required under this part.

History.—s. 5, ch. 78-255.

**634.426 Administrative fine in lieu of suspension or revocation of registration.**—

(1) If, pursuant to procedures provided for in this part, it is found that one or more grounds exist for the suspension, revocation, or refusal to renew or continue any registration issued under this act, on a first offense and except where such suspension, revo-



cation, or refusal is mandatory, an order may be entered imposing upon the registrant, in lieu of such suspension, revocation, or refusal, an administrative penalty for each violation in the amount of \$100, or in the event of willful misconduct or willful violation on the part of the registrant, an administrative fine of \$500 for each violation. The administrative penalty may be augmented by an amount equal to any commissions received by or accruing to the credit of the registrant in connection with any transaction to which the grounds for suspension, revocation, or refusal are related.

(2) The order may allow the registrant a reasonable period, not to exceed 30 days, within which to pay to the department the amount of the penalty so imposed. If the registrant fails to pay the penalty in its entirety to the department at its office in Tallahassee within the period so allowed, the registration of the registrant shall stand suspended or revoked or renewal or continuation may be refused, as the case may be, upon expiration of such period and without any further proceedings.

*History.*—s. 5, ch. 78-255.

**634.427 Disposition of taxes and fees.**—All license fees, taxes on premiums and assessments, registration fees, and administrative fines and penalties collected under this part from service warranty associations and sales representatives shall be deposited to the credit of the Insurance Commissioner's Regulatory Trust Fund.

*History.*—s. 5, ch. 78-255.

**634.428 Insurance business not authorized.**—Nothing in this part shall be deemed to authorize any service warranty association to transact any business other than that of service warranty as herein defined, or otherwise to engage in the business of insurance unless such association is authorized

therefor as an insurer under a certificate of authority issued by the department under the Insurance Code.

*History.*—s. 5, ch. 78-255.

**634.429 Fronting not permitted.**—No authorized insurer or licensed service warranty association shall act as a fronting company for any unauthorized insurer or unlicensed service warranty association. A fronting company is an authorized insurer or licensed service warranty association which, by reinsurance or otherwise, generally transfers to one or more unauthorized insurers or unlicensed service warranty associations substantially all of the risk of loss under warranties written by it in this state.

*History.*—s. 5, ch. 78-255.

**634.430 Dissolution or liquidation.**—Any dissolution or liquidation of an association subject to the provisions of this part shall be under the supervision of the department, which shall have all powers with respect thereto granted to it under the laws of the state with respect to the dissolution and liquidation of property and casualty companies pursuant to chapter 631.

*History.*—s. 5, ch. 78-255.

**634.431 Penalty for violation.**—Except as otherwise provided in this part, any person who knowingly makes a false or otherwise fraudulent application for license or registration under this part, or who knowingly violates any provision hereof, in addition to being subject to any applicable denial, suspension, revocation, or refusal to renew or continue any license or registration, is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Each instance of violation shall be considered a separate offense.

*History.*—s. 5, ch. 78-255.

## CHAPTER 635

## MORTGAGE GUARANTY INSURANCE

- 635.011 Definitions.
- 635.021 Authority to transact business.
- 635.031 Additional limitations.
- 635.041 Contingency reserve.
- 635.051 Licensing of mortgage guaranty insurance agents.
- 635.061 Premium cost.
- 635.071 Filings, approval of forms, rate filings.
- 635.081 Administration and enforcement.

**635.011 Definitions.**—In this act unless the context or subject matter otherwise requires:

(1) "Mortgage guaranty insurance" means a form of casualty or surety insurance insuring lenders against:

(a) Financial loss by reason of nonpayment of principal, interest, and other sums agreed to be paid under the terms of any note, bond, or other evidence of indebtedness secured by a mortgage, deed of trust, or other instrument constituting a lien or charge on real estate which contains a residential building or a building designed to be occupied for industrial or commercial purposes.

(b) Financial loss by reason of nonpayment of rent and other sums agreed to be paid under the terms of a written lease for the possession, use, or occupancy of real estate, provided such real estate is designed to be occupied for industrial or commercial purposes.

(2) "Contingency reserve" means an additional premium reserve established for the protection of policyholders against the effect of adverse economic cycles.

(3) "Department" means the Department of Insurance.

**History.**—s. 1, ch. 59-182; ss. 13, 35, ch. 69-106; s. 1, ch. 71-151; s. 269, ch. 71-377.

**635.021 Authority to transact business.**—Mortgage guaranty insurance may be transacted by a stock casualty insurer or a stock surety insurer holding a certificate of authority for the transaction of insurance in this state.

**History.**—s. 2, ch. 59-182.

**635.031 Additional limitations.**—In addition to laws otherwise applicable, mortgage guaranty insurers shall be subject to the following limitations:

(1) No such insurer shall retain risk as to any one subject of insurance in any amount exceeding 10 percent of its surplus as to policyholders. In determining amount of risk retained, applicable reinsurance in any assuming insurer authorized to transact insurance in this state or approved by the department shall be deducted from the total direct risk insured.

(2) Mortgage guaranty insurance shall be written with respect to real estate loans only on those loans which a bank, a savings and loan association, or an insurance company regulated by this state or an agency of the federal government could make.

**History.**—s. 3, ch. 59-182; s. 1, ch. 63-428; s. 1, ch. 65-494; ss. 13, 35, ch. 69-106; s. 2, ch. 71-151.

#### 635.041 Contingency reserve.—

(1) Each mortgage guaranty insurer shall establish a special contingency reserve out of net premiums (gross premiums less premiums returned to policyholders) remaining after establishment of the unearned premium reserve. To such contingency reserve the insurer shall contribute an amount equal to 50 percent of such remaining premiums.

(2) Subject to the department's approval, the contingency reserve shall be available for loss payments only when the insurer's incurred losses in any one calendar year exceed the rate formula expected losses by 10 percent of the corresponding earned premiums.

(3) In event of release of the contingency reserve for payment of losses, as approved by the department, the contributions required under subsection (1), shall be treated on a first-in-first-out basis.

(4) The contingency reserve pertaining to a particular insurance policy shall be maintained (subject to prior payment of losses therefrom as provided in subsection (3)) for the term of the policy.

**History.**—s. 4, ch. 59-182; ss. 13, 35, ch. 69-106.

#### 635.051 Licensing of mortgage guaranty insurance agents.—

(1) Agents of mortgage guaranty insurers shall be licensed, and be subject to the same qualifications and requirements, as apply to general lines agents under the laws of this state, except:

(a) That no particular preliminary specialized education or training shall be required of an applicant for such an agent's license if, as part of the application for license, the insurer guarantees that the applicant will receive the necessary training to enable him properly to hold himself out to the public as a mortgage guaranty insurance agent, and if the department, in its discretion, accepts such guaranty;

(b) The agent's license shall be a limited license, limited to the handling of mortgage guaranty insurance only; and

(c) An examination may be required of an applicant for such a license in the discretion of the department.

(2) Any general lines agent shall qualify to represent a mortgage guaranty insurer without additional examination.

(3) The department shall charge and collect the same applicable license taxes and fees for or in connection with such application and license as apply to general lines agents. The department shall deposit such license taxes and fees in such funds and for such uses as is provided by laws applicable to like license taxes and like fees in the case of general lines agents.

**History.**—s. 5, ch. 59-182; ss. 13, 35, ch. 69-106.

**635.061 Premium cost.**—The premium cost of mortgage guaranty insurance shall not be deemed

for any purpose to constitute a part of the cost of or interest upon any mortgage loan.

**History.**—s. 6, ch. 59-182.

**635.071 Filings, approval of forms, rate filings.—**

(1) No policy form or related form shall be issued or used in this state unless it has been filed with and approved by the department as provided by laws applicable to casualty or surety insurance.

(2) In addition, each insurer shall file with the department the rate to be charged and the premium including all modifications of rates and premiums to

be paid by the policyholder.

**History.**—s. 7, ch. 59-182; ss. 13, 35, ch. 69-106.

**635.081 Administration and enforcement.—**

The department shall have the same powers of administration and enforcement of the provisions of this act, and to make rules and regulations for the effectuation of any provisions of this act, as it has with respect to casualty or surety insurers in general under the insurance laws of this state.

**History.**—s. 8, ch. 59-182; ss. 13, 35, ch. 69-106.



## CHAPTER 637

## NONPROFIT CORPORATIONS—PROFESSIONAL SERVICE PLANS

## PART I NONPROFIT OPTOMETRIC SERVICE CORPORATIONS

(ss. 637.011-637.161)

## PART II NONPROFIT PHARMACEUTICAL SERVICE CORPORATIONS

(ss. 637.171-637.321)

## PART I

NONPROFIT OPTOMETRIC SERVICE  
CORPORATIONS

- 637.011 Optometric service plan corporations.
- 637.021 Incorporation.
- 637.031 Contracts.
- 637.041 License.
- 637.051 Charter, bylaws, contracts, rates; amendments, approval by Department of Insurance.
- 637.061 Annual reports or statements.
- 637.071 Examination.
- 637.081 Acquisition costs.
- 637.091 Investments and funds.
- 637.101 Review of dispute.
- 637.111 Dissolution or liquidation.
- 637.121 Revocation of license.
- 637.131 Licenses and taxes.
- 637.141 Regulation of employees or representatives of optometric service corporations.
- 637.151 Preexisting service plan corporations.
- 637.161 Penalties.

**637.011 Optometric service plan corporations.—**

(1) Any 30 or more persons wishing to form a corporation for the purpose of establishing, maintaining and operating a nonprofit optometric service plan or plans in the state whereby optometric service or care may be provided in whole or in part by the said corporation, or by optometrists participating in such service plan or plans, to such of the public as become subscribers to said plan or plans under a contract or contracts with such corporation may become incorporated under laws of Florida governing the incorporation of benevolent or charitable associations and similar corporations not for profit, and any such corporation heretofore or hereafter incorporated, whose charter or certificate of incorporation has or shall have the consent or approval of the Department of Insurance of the state, shall be governed by this chapter and subject to regulation and supervision by the department and to all provisions of the Laws of Florida applicable to health or disability insurance, except as otherwise provided by this chapter. The term "optometric service plan" as used in this chapter includes the contracting for the payment of fees toward, or the furnishing of, professional services or ophthalmic materials authorized or permitted to be furnished by a duly licensed doctor of optometry.

(2) Every corporation licensed under provisions

of this chapter is hereby declared to be a charitable and benevolent institution.

**History.**—s. 1, ch. 67-352; ss. 13, 35, ch. 69-106.

**637.021 Incorporation.—**

(1) Any nonprofit optometric service plan corporation shall be incorporated under the provisions of the laws of the state governing the incorporation of benevolent or charitable associations and similar corporations not for profit, except when such provisions are in conflict with the provisions of this chapter, and every charter or certificate of such corporation shall have endorsed thereon or annexed thereto the consent of the Department of Insurance of the state.

(2) The directors of every such optometric service plan corporation must at all times include representatives of the licensed optometrists and the general public.

(3) At least a majority of the directors of every such optometric service plan corporation must at all times be licensed optometrists.

**History.**—s. 2, ch. 67-352; ss. 13, 35, ch. 69-106.

**637.031 Contracts.**—The rates charged by such corporation to the subscribers for optometric care shall at all times be subject to the approval of the Department of Insurance of the state.

**History.**—s. 3, ch. 67-352; ss. 13, 35, ch. 69-106.

**637.041 License.—**

(1) No corporation subject to the provisions of this chapter shall issue contracts to subscribers until the Department of Insurance has, by formal certificate or license, authorized it to do so. Application for such certificate of authority or license shall be made on forms to be supplied by the department and containing such information as it shall deem necessary.

(2) Each application for such certificate of authority or license, as a part thereof, shall be accompanied by copies of the following documents, duly certified to by at least two of the executive officers of such corporation:

(a) Charter or certificate of incorporation, with all amendments thereto.

(b) Bylaws, with all amendments thereto.

(c) Proposed contracts between the corporation and any party for the furnishing of or the payment in whole or in part for optometric services furnished the subscribers by duly licensed optometrists.

(d) Proposed contracts to be issued to subscribers to the plan showing the benefits to which they are entitled, together with a table of the rates charged, or proposed to be charged, to subscribers for each form of such contract.

(e) Financial statement of the corporation, which shall include the amounts of each contribution paid or agreed to be paid to the corporation having working capital, the name or names of each contributor, and the terms of each contribution.

(3)(a) The Department of Insurance shall issue a certificate of authority or license to each applicant upon the payment of the fees provided for in s. 624.501 and upon being satisfied as to the following:

1. That the applicant has been organized bona fide for the purpose of establishing, maintaining, and operating a nonprofit optometric service plan.

2. That each contract executed or proposed to be executed by the applicant and the optometrist obligates, or will when executed obligate, each optometrist thereto to render the service or accept payment for the service to which each subscriber may be entitled under the terms of the contract issued to the subscriber.

3. That each contract issued or proposed to be issued to subscribers to the plan is in a form approved by the department and that the rates charged or proposed to be charged for each form of such contract and benefits to be provided are fair and reasonable.

4. That no contributions to the funds of the corporation for working capital are repayable by the corporation except out of earned income over and above operating expenses and optometric expenses and such reserve as the department may deem adequate.

5. That the amount of money actually received by the applicant upon the terms specified in subparagraph 4., for working capital, is sufficient to carry all acquisition costs and operating expenses for a period of at least 3 months from the date of the issuance of the certificate of authority or license.

(b) Such certificate of authority or license shall be effective until revoked by the department as hereinafter provided, and any corporation to which such certificate of authority or license has been issued shall, until revocation thereof, be authorized to issue contracts, in the form or forms filed with the department, to the persons who may become subscribers.

*History.*—s. 4, ch. 67-352; ss. 13, 35, ch. 69-106.

**637.051 Charter, bylaws, contracts, rates; amendments, approval by Department of Insurance.**—No corporation subject to the provisions of this chapter shall amend its charter or certificate of incorporation, its bylaws, the terms and provisions of contracts executed or to be executed with optometrists, or the terms and provisions of contracts issued or proposed to be issued to subscribers until such proposed amendments have been first submitted to and approved by the Department of Insurance; nor shall any change be made in the table of rates charged or proposed to be charged to subscribers for any form of contract issued or to be issued until such proposed charge has been submitted to and approved by the Department of Insurance. Upon the adoption of any amendment or change, and following its approval by the department, such corporation shall file a copy thereof with the insurance department duly

certified by at least two of the executive officers of such corporation.

*History.*—s. 5, ch. 67-352; ss. 13, 35, ch. 69-106.

**637.061 Annual reports or statements.**—Every corporation subject to the provisions of this chapter shall annually on or before March 1, file in the office of the Department of Insurance a statement verified by at least two of the principal officers of said corporation showing its condition on December 31 next preceding, which shall be in such form and contain such matters as the Department of Insurance shall prescribe.

*History.*—s. 6, ch. 67-352; ss. 13, 35, ch. 69-106.

**637.071 Examination.**—The Department of Insurance, any agent or examiner of the department, or any other person whom the department appoints shall have the power of visitation and examination into the affairs of any such corporation and free access to all of the books, papers, and documents that relate to the business of the corporation, and may summon and qualify witnesses under oath and examine its officers, agents, and employees or other persons in relation to the affairs, transactions, and condition of the corporation. The corporation whose affairs are examined shall pay to the Department of Insurance the traveling and other expenses of examination pursuant to s. 624.320.

*History.*—s. 7, ch. 67-352; ss. 13, 35, ch. 69-106.

**637.081 Acquisition costs.**—All acquisition costs in connection with the solicitation of subscribers to such service plan or plans shall at all times be subject to the approval of the Department of Insurance.

*History.*—s. 8, ch. 67-352; ss. 13, 35, ch. 69-106.

**637.091 Investments and funds.**—The funds of any corporation subject to the provisions of this chapter shall be invested only in securities permitted by the laws of the state for the investment of assets of life insurance companies.

*History.*—s. 9, ch. 67-352.

**637.101 Review of dispute.**—Any dispute arising between a corporation subject to the provisions of this chapter and any optometrist with whom such corporation has a contract as provided herein may be submitted to the Department of Insurance for its decision with respect thereto.

*History.*—s. 10, ch. 67-352; ss. 13, 35, ch. 69-106; s. 21, ch. 78-95.

**637.111 Dissolution or liquidation.**—Any dissolution or liquidation of a corporation subject to the provisions of this chapter shall be under the supervision of the Department of Insurance, which shall have all powers with respect thereto granted to it under the laws of the state with respect to the dissolution and liquidation of life insurance companies.

*History.*—s. 11, ch. 67-352; ss. 13, 35, ch. 69-106.

**637.121 Revocation of license.**—Whenever the Department of Insurance shall have reason to believe that any corporation subject to the provisions of this chapter is being operated for profit or fraudulently conducted or is not complying with the provi-

sions of this chapter, it shall be authorized to suspend or revoke the certificate of authority or license theretofore granted and may at any time thereafter institute or cause to be instituted the necessary proceedings under the laws of the state relating to the dissolution of insurance companies, and any dissolution or liquidation of a corporation subject to the provisions of this chapter shall be under the supervision of the Department of Insurance.

**History.**—s. 12, ch. 67-352; ss. 13, 35, ch. 69-106; s. 21, ch. 78-95.

#### **637.131 Licenses and taxes.—**

(1) Every corporation licensed under this chapter, its representatives, and all of its properties and funds shall be exempt from all taxes and license fees; provided, that such corporation shall be subject to the same license fees and premium receipt taxes imposed by general law upon and against and payable by fraternal benefit societies operating under the provisions of chapter 632, and with respect to the computation of such premium receipt taxes and for the purpose of this provision only, the "rates" paid by subscribers as provided herein shall be construed as "premiums" and the "contract" provided herein shall be construed as "policy."

(2) If the charter or certificate of incorporation specifies among its purposes the establishment, maintenance, and operation of an optometric service plan, it shall be referred to the Department of Insurance, and such charter or certificate shall not be filed until the consent of the Department of Insurance shall be endorsed thereon and annexed thereto.

**History.**—s. 13, ch. 67-352; ss. 13, 35, ch. 69-106.  
cf.—s. 212.08 Sales, rental, storage, use tax; specified exemptions.

#### **637.141 Regulation of employees or representatives of optometric service corporations.—**

Every representative or employee of any corporation subject to the provisions of this chapter who sells or writes certificates for optometric service for said corporation shall be registered by said corporation with the Department of Insurance. Said registration shall be on forms prescribed by the Department of Insurance and shall show such information as may be requested by it. Said registration shall be made on or before the date of employment by said corporation of said representative or employee. In addition to the foregoing described registration, the corporation shall pay to the Department of Insurance a permit fee of \$6 for each such representative or employee and a like amount October 1 of each year thereafter; provided, that said permit fee shall be only \$3 in case the said representative or employee is not employed prior to April 1 of the then current year. No such permit shall be transferable from one person or corporation to another, and such permit shall be revocable by the Department of Insurance for cause.

**History.**—s. 14, ch. 67-352; ss. 13, 35, ch. 69-106; s. 21, ch. 78-95; s. 167, ch. 79-164.

**637.151 Preexisting service plan corporations.—**No nonprofit corporation organized under the laws of this state prior to July 11, 1967, to operate an optometric service plan or plans in the state or any of the counties thereof, whose charter or certificate of incorporation has, prior to July 11, 1967, been approved or consented to by the insurance com-

missioner of the state, shall be required to incorporate or reincorporate as provided herein, but every such corporation desiring to operate such a plan or plans statewide shall file with the insurance commissioner its acceptance of part I of this chapter within 6 months from July 1, 1967, and every such corporation so accepting part I shall continue and shall have all the powers, authority and exemptions of part I and be subject to all the provisions thereof; provided, however, that the provisions of part I of this chapter shall not apply to organized nonprofit corporations herein defined and heretofore existing whose charter and bylaws have not been filed with, or which have not received a certificate of authority or license from, the insurance commissioner of the state prior to July 11, 1967, nor to such corporations which are now in operation and have heretofore operated within the confines of a single county.

**History.**—s. 15, ch. 67-352.  
cf.—s. 212.08 Sales, rental, storage, use tax; specified exemptions.

#### **637.161 Penalties.—**

(1) Any person or corporation engaging in the business of operating a nonprofit optometric service plan without first having procured a license from the Department of Insurance, as required by this part, and any person or corporation violating any of the provisions of this part shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Any person making any willfully false statements in any written documents required by any section of this chapter to be filed with the Department of Insurance or any examiner at any investigation or hearing conducted by said Department of Insurance or examiner shall be guilty of perjury.

**History.**—s. 16, ch. 67-352; ss. 13, 35, ch. 69-106; s. 661, ch. 71-136.

## **PART II**

### **NONPROFIT PHARMACEUTICAL SERVICE CORPORATIONS**

- 637.171 Pharmaceutical service plan corporations.
- 637.181 Incorporation.
- 637.191 Contracts.
- 637.201 License.
- 637.211 Charter, bylaws, contracts, rates; amendments, approval by Department of Insurance.
- 637.221 Annual reports or statements.
- 637.231 Examination.
- 637.241 Acquisition costs.
- 637.251 Investments and funds.
- 637.261 Review of dispute.
- 637.271 Dissolution or liquidation.
- 637.281 Revocation of license.
- 637.291 Licenses and taxes.
- 637.301 Regulation of employees or representatives of pharmaceutical service corporations.
- 637.311 Preexisting service plan corporation.
- 637.321 Penalties.

#### **637.171 Pharmaceutical service plan corporations.—**

(1) Any 30 or more persons wishing to form a



corporation for the purpose of establishing, maintaining, and operating a nonprofit pharmaceutical service plan or plans in this state whereby pharmaceutical service or care may be provided in whole or in part by the said corporation, or by pharmacists participating in such service plan or plans, to such of the public as become subscribers to said plan or plans under a contract or contracts with such corporation may become incorporated under laws of Florida governing the incorporation of benevolent or charitable associations and similar corporations not for profit, and any such corporation heretofore or hereafter incorporated, whose charter or certificate of incorporation has or shall have the consent or approval of the Department of Insurance of the state, shall be governed by this chapter and subject to regulation and supervision by the Department of Insurance and to all provisions of the laws of Florida applicable to health or disability insurance, except as otherwise provided by this chapter. The term "pharmaceutical service plan" as used in this chapter includes the contracting for the payment of fees toward, or the furnishing of, professional services and pharmaceutical products authorized or permitted to be furnished or dispensed by a duly licensed pharmacist.

(2) Every corporation licensed under provisions of this chapter is hereby declared to be a charitable and benevolent institution.

*History.*—s. 1, ch. 67-587; ss. 13, 35, ch. 69-106.

#### **637.181 Incorporation.—**

(1) Any nonprofit pharmaceutical service plan corporation shall be incorporated under the provisions of the laws of the state governing the incorporation of benevolent or charitable associations and similar corporations not for profit, except when such provisions are in conflict with the provisions of this chapter, and every charter or certificate of such corporation shall have endorsed thereon or annexed thereto the consent of the Department of Insurance.

(2) The directors of such pharmaceutical service plan corporation must at all times include representatives of the licensed pharmacists and the general public.

(3) At least a majority of the directors of every such pharmaceutical service plan corporation must at all times be licensed pharmacists.

*History.*—s. 2, ch. 67-587; ss. 13, 35, ch. 69-106.

**637.191 Contracts.**—The rates charged by such corporation to the subscribers for pharmaceutical care shall at all times be subject to the approval of the Department of Insurance of the state.

*History.*—s. 3, ch. 67-587; ss. 13, 35, ch. 69-106.

#### **637.201 License.—**

(1) No corporation subject to the provisions of this chapter shall issue contracts to subscribers until the Department of Insurance has, by formal certificate or license, authorized it to do so. Application for such certificate of authority or license shall be made on forms to be supplied by the Department of Insurance and containing such information as it shall deem necessary.

(2) Each application for such certificate of authority or license, as a part thereof, shall be accom-

panied by copies of the following documents, duly certified to by at least two of the executive officers of such corporation:

(a) Charter or certificate of incorporation, with all amendments thereto.

(b) Bylaws, with all amendments thereto.

(c) Proposed contracts between the corporation and any party for the furnishing of or the payment in whole or in part for pharmaceutical services and pharmaceutical products furnished or dispensed to the subscribers by duly licensed pharmacists.

(d) Proposed contracts to be issued to subscribers to the plan showing the benefits to which they are entitled, together with a table of the rates charged, or proposed to be charged, to subscribers for each form of such contract.

(e) Financial statement of the corporation which shall include the amounts of each contribution paid or agreed to be paid to the corporation having working capital, the name or names of each contributor, and the terms of each contribution.

(3)(a) The Department of Insurance shall issue a certificate of authority or license to each applicant upon the payment of the fees provided for in s. 624.501 and upon being satisfied as to the following:

1. That the applicant has been organized bona fide for the purpose of establishing, maintaining, and operating a nonprofit pharmaceutical service plan.

2. That each contract executed or proposed to be executed by the applicant and the pharmacist obligates, or will when executed obligate, each pharmacist thereto to render the service or accept payment for the service to which each subscriber may be entitled under the terms of the contract issued to the subscriber.

3. That each contract issued or proposed to be issued to subscribers to the plan is in a form approved by the Department of Insurance and that the rates charged or proposed to be charged for each form of such contract and benefits to be provided are fair and reasonable.

4. That no contributions to the funds of the corporation for working capital are repayable by the corporation except out of earned income over and above operating expenses and pharmaceutical expenses and such reserve as the Department of Insurance may deem adequate.

5. That the amount of money actually received by the applicant upon the terms specified in subparagraph 4., for working capital, is sufficient to carry all acquisition costs and operating expenses for a period of at least 3 months from the date of the issuance of the certificate of authority or license.

(b) Such certificate of authority or license shall be effective until revoked by the Department of Insurance as hereinafter provided, and any corporation to which such certificate of authority or license has been issued shall, until revocation thereof, be authorized to issue contracts, in the form or forms filed with the Department of Insurance, to the persons who may become subscribers.

*History.*—s. 4, ch. 67-587; ss. 13, 35, ch. 69-106.

**637.211 Charter, bylaws, contracts, rates; amendments, approval by Department of Insurance.**—No corporation subject to the provisions of this chapter shall amend its charter or certificate of incorporation, its bylaws, the terms and provisions of contracts executed or to be executed with pharmacists, or the terms and provisions of contracts issued or proposed to be issued to subscribers until such proposed amendments have been first submitted to and approved by the Department of Insurance; nor shall any change be made in the table of rates charged or proposed to be charged to subscribers for any form of contract issued or to be issued until such proposed charge has been submitted to and approved by the Department of Insurance. Upon the adoption of any amendment or charge, and following its approval by the Department of Insurance, such corporation shall file a copy thereof with the Department of Insurance, duly certified by at least two of the executive officers of such corporation.

**History.**—s. 5, ch. 67-587; ss. 13, 35, ch. 69-106.

**637.221 Annual reports or statements.**—Every corporation subject to the provisions of this chapter shall annually on or before March 1, file in the office of the Department of Insurance a statement verified by at least two of the principal officers of said corporation showing its condition on December 31 next preceding, which shall be in such form and shall contain such matters as the Department of Insurance shall prescribe.

**History.**—s. 6, ch. 67-587; ss. 13, 35, ch. 69-106.

**637.231 Examination.**—The Department of Insurance, any agent or examiner of the department, or any other person whom the department appoints shall have the power of visitation and examination into the affairs of any such corporation and free access to all of the books, papers and documents that relate to the business of the corporation, and may summon and qualify witnesses under oath and examine its officers, agents, and employees or other persons in relation to the affairs, transactions and condition of the corporation. The corporation whose affairs are examined shall pay to the Department of Insurance the traveling and other expenses of examination pursuant to s. 624.320.

**History.**—s. 7, ch. 67-587; ss. 13, 35, ch. 69-106.

**637.241 Acquisition costs.**—All acquisition costs in connection with the solicitation of subscribers to such service plan or plans shall at all times be subject to the approval of the Department of Insurance.

**History.**—s. 8, ch. 67-587; ss. 13, 35, ch. 69-106.

**637.251 Investments and funds.**—The funds of any corporation subject to the provisions of this chapter shall be invested only in securities permitted by the laws of the state for the investment of assets of life insurance companies.

**History.**—s. 9, ch. 67-587.

**637.261 Review of dispute.**—Any dispute arising between a corporation subject to the provisions of this chapter and any pharmacist with whom such corporation has a contract as provided herein may

be submitted to the Department of Insurance for its decision with respect thereto.

**History.**—s. 10, ch. 67-587; ss. 13, 35, ch. 69-106; s. 21, ch. 78-95.

**637.271 Dissolution or liquidation.**—Any dissolution or liquidation of a corporation subject to the provisions of this chapter shall be under the supervision of the Department of Insurance, which shall have all powers with respect thereto granted to it under the laws of the state with respect to the dissolution and liquidation of life insurance companies.

**History.**—s. 11, ch. 67-587; ss. 13, 35, ch. 69-106.

**637.281 Revocation of license.**—Whenever the Department of Insurance shall have reason to believe that any corporation subject to the provisions of this chapter is being operated for profit or fraudulently conducted or is not complying with the provisions of this chapter, it shall be authorized to suspend or revoke the certificate of authority or license theretofore granted and may at any time thereafter institute or cause to be instituted the necessary proceedings under the laws of the state relating to the dissolution of insurance companies, and any dissolution or liquidation of a corporation subject to the provisions of this chapter shall be under the supervision of the Department of Insurance.

**History.**—s. 12, ch. 67-587; ss. 13, 35, ch. 69-106; s. 21, ch. 78-95.

**637.291 Licenses and taxes.**—

(1) Every corporation licensed under this chapter, its representatives, and all of its properties and funds shall be exempt from all taxes and license fees; provided, that such corporation shall be subject to the same license fees and premium receipt taxes imposed by general law upon and against and payable by fraternal benefit societies operating under the provisions of chapter 632, and with respect to the computation of such premium receipt taxes and for the purpose of this provision only, the "rates" paid by subscribers as provided herein shall be construed as "premiums" and the "contract" provided herein shall be construed as "policy."

(2) If the charter or certificate of incorporation specifies among its purposes the establishment, maintenance, and operation of a pharmaceutical service plan, it shall be referred to the Department of Insurance, and such charter or certificate shall not be filed until the consent of the Department of Insurance shall be endorsed thereon and annexed thereto.

**History.**—s. 13, ch. 67-587; ss. 13, 35, ch. 69-106.

cf.—s. 212.08 Sales, rental, storage, use tax; specified exemptions.

**637.301 Regulation of employees or representatives of pharmaceutical service corporations.**—Every representative or employee of any corporation subject to the provisions of this chapter who sells or writes certificates for pharmaceutical service for said corporation shall be registered by said corporation with the Department of Insurance. Said registration shall be on forms prescribed by the Department of Insurance and shall show such information as may be requested by the department. Said registration shall be made on or before the date of employment by said corporation of said representative or employee. In addition to the foregoing described registration, the corporation shall pay to the

department a permit fee of \$6 for each such representative or employee and a like amount October 1 of each year thereafter; provided, that said permit fee shall be only \$3 in case the said representative or employee is not employed prior to April 1 of the then current year. No such permit shall be transferable from one person or corporation to another, and such permit shall be revocable by the department for cause.

**History.**—s. 14, ch. 67-587; ss. 13, 35, ch. 69-106; s. 21, ch. 78-95; s. 168, ch. 79-164.

**637.311 Preexisting service plan corporation.**—No nonprofit corporation organized under the laws of this state prior to August 4, 1967, to operate a pharmaceutical service plan or plans in the state or any of the counties thereof, whose charter or certificate of incorporation has, prior to August 4, 1967, been approved or consented to by the Insurance Commissioner of the state, shall be required to incorporate or reincorporate as provided herein, but every such corporation desiring to operate such a plan or plans statewide shall file with the Insurance Commissioner its acceptance of part II of this chapter within 6 months from July 1, 1967, and every such corporation so accepting part II shall continue and shall have all the powers, authority, and exemptions of part II of this chapter and be subject to all the provisions thereof; provided, however, that

the provisions of this part shall not apply to organized nonprofit corporations herein defined and heretofore existing whose charter and bylaws have not been filed with, or which have not received a certificate of authority or license from, the Insurance Commissioner of the state prior to August 4, 1967, nor to such corporations which are now in operation and have heretofore operated within the confines of a single county.

**History.**—s. 15, ch. 67-587.

cf.—s. 212.08 Sales, rental, storage, use tax; specified exemptions.

**637.321 Penalties.**—

(1) Any person or corporation engaging in the business of operating a nonprofit pharmaceutical service plan without first having procured a license from the Department of Insurance, as required by this part, and any person or corporation violating any of the provisions of this part, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Any person making any willfully false statements in any written documents required by any section of this chapter to be filed with the Department of Insurance or any examiner at any investigation or hearing conducted by said Department of Insurance or examiner shall be guilty of perjury.

**History.**—s. 16, ch. 67-587; ss. 13, 35, ch. 69-106; s. 662, ch. 71-136.



## CHAPTER 638

## AMBULANCE SERVICE CONTRACTS

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**638.011 Declaration of policy.**—It shall be deemed contrary to public policy if any person receives, holds, controls, or manages funds or proceeds received from the sale of or from a contract to sell preneed ambulance service, whether the payments for same are made outright or on an installment basis, prior to the need of the service by persons so purchasing it, or for whom it is purchased, unless such person holds, controls, or manages such funds, subject to the limitations and regulations prescribed by the following sections.

*History.*—s. 1, ch. 61-387.

**638.021 Definitions.**—As used in this act:

(1) "Ambulance service association" or "association" means any person (other than an authorized insurer) issuing ambulance service contracts as herein defined.

(2) "Insurer" means any property or casualty in-

surer duly authorized to transact such business in this state.

(3) "Ambulance service contract" or "preneed ambulance service contract" means any contract or agreement whereby, for an agreed premium or specified consideration paid in advance or by installments, any person undertakes to compensate or indemnify the contract or agreement holder for any type ambulance service or undertakes to provide any type ambulance service on a preneed basis.

(4) "Salesman" means any person employed or otherwise retained by an insurer or ambulance service association for the purpose of selling or issuing ambulance service contracts.

(5) "Department" means the Department of Insurance.

(6) "Person" includes an individual, insurer, company, association, organization, Lloyds, society, reciprocal insurer or interinsurance, exchange, partnership, syndicate, business trust, corporation, agent, general agent, broker, solicitor, service representative, adjuster and every legal entity.

*History.*—s. 2, ch. 61-387; ss. 13, 35, ch. 69-106; s. 270, ch. 71-377.

**638.031 Powers of department; rules.**—The Department of Insurance shall administer this act and to that end it may adopt, promulgate, and enforce rules and regulations necessary and proper to effectuate any provisions of this act.

*History.*—s. 3, ch. 61-387; ss. 13, 35, ch. 69-106.

**638.041 Certificate of authority required.**—

(1) No person shall receive, hold, control, or manage any funds tendered as payment on any ambulance service contract until such person is possessed of a certificate of authority, or renewal thereof, issued by the Department of Insurance under the circumstances hereinafter stated. An original certificate of authority shall expire on March 1 succeeding its issuance, and annually thereafter, or before March 1, a renewal thereof shall be issued under conditions herein set forth.

(2) An insurer while authorized to transact property or casualty insurance in this state may transact an ambulance service contract business without additional qualification or authority, but otherwise subject to the applicable provisions of this act.

*History.*—s. 4, ch. 61-387; ss. 13, 35, ch. 69-106.

**638.051 Certificate of authority; annual statement; renewal.**—

(1) An application to the Department of Insurance for a certificate of authority shall be accompanied by the statement and other matters described below and by the deposit required by s. 638.081. Annually thereafter on or before March 1, such person shall file said statement, as of January 1 of the calendar year in which it is filed, and such other information and data which may be required by the Department of Insurance.

(2) Such statement shall be in such form as shall evidence to the department the following:

(a) The types of ambulance service contracts pro-

posed to be written; and if a person is bound upon the effective date of this act by any ambulance service contract, or if the statement accompanies an application for a renewal of a certificate of authority, an itemization of all outstanding ambulance service contracts, the dates upon which such contracts were entered, the names of all parties involved in such contracts or having any right thereunder, the amount paid in on each contract, and if payments are not completed, the amounts intended to be paid on each contract.

(b) Name and address of place of business of person offering to write ambulance service contracts.

(c) That such person offering the statement had sufficient funds available during the calendar year to perform his obligations under his contracts; and that he has complied with this act and any rules and regulations of the department.

(d) Such other information as may be considered necessary by the department in order for it to meet its responsibilities under this act.

(3) Any statement presented shall be certified by an independent certified public accountant, except that any insurer required to file statements under chapter 624 may include therein any statement of business written under this act.

(4) The fee payable to the department for issuance of the original certificate and each annual renewal thereof shall be \$100, which sum shall accompany each application for original certificate and thereafter each annual statement.

(5) Upon the department's being satisfied that the statement and matters which may accompany it meet the requirements of this act and of its rules and regulations, it shall issue to such person said certificate of authority or renewal thereof.

History.—s. 5, ch. 61-387; ss. 13, 35, ch. 69-106.

**638.061 Capital funds required.**—Any person applying for his original certificate of authority in this state after the effective date of this act or continuing such original certificate of authority, shall possess and thereafter maintain unimpaired paid-in capital or paid-in capital stock (if a stock association) or unimpaired surplus (if a foreign mutual or foreign reciprocal association) or a net trust fund (if a business trust association) in amount not less than \$25,000, and shall possess when first so authorized such additional surplus as is required under s. 638.071.

History.—s. 6, ch. 61-387.

**638.071 Special surplus requirements.**—In addition to the paid-in capital funds required in s. 638.061, any person hereafter applying for an initial certificate of authority in this state shall possess a surplus of \$20,000, which after the issuance of its initial certificate of authority such person may use the special surplus required under this section in the normal course of business only.

History.—s. 7, ch. 61-387.

**638.081 Required deposit or bond.**—

(1) To assure the faithful performance of its obligations to its members or subscribers every ambulance service association shall, prior to issuance of its license by the Department of Insurance, deposit with the department securities of the type eligible

for deposit by insurers under s. 625.52, of the Insurance Code, and having at all times a market value of not less than \$20,000; except that any such association doing such a business in this state on or before April 1, 1961, shall on or before October 1, 1961, so deposit such securities in the value of not less than \$10,000, and on or before October 1, 1962, so deposit additional such securities having a value of not less than \$10,000, in order to bring its total deposit of securities to a value of not less than \$20,000 not later than October 1, 1962.

(2) In lieu of any deposit of securities required under subsection (1), the association may file with the department a surety bond in like amount. The bond shall be one issued by an authorized surety insurer, shall be for the same purpose as the deposit in lieu of which it is filed, and shall be subject to the department's approval. No such bond shall be canceled or subject to cancellation unless at least 30 days' advance notice thereof in writing is filed with the department.

(3) The state shall be responsible for the safekeeping of all securities deposited with the department under this act. Such securities shall not, on account of being in this state, be subject to taxation, but shall be held exclusively and solely to guarantee the association's faithful performance of its obligations to its members or subscribers.

(4) The depositing association shall, during its solvency, have the right to exchange or substitute other securities of like quality and value for securities so on deposit, to receive the interest and other income accruing on such securities, and to inspect the deposit at all reasonable times.

(5) Such deposit or bond shall be maintained unimpaired as long as the association continues in business in this state. Whenever the association ceases to do business in this state and furnishes to the department proof satisfactory to it that it has discharged or otherwise adequately provided for all its obligations to its members or subscribers in this state, the department shall release the deposited securities to the parties entitled thereto, on presentation of the department's receipts for such securities, or release any bond filed with it in lieu of such deposit.

History.—s. 8, ch. 61-387; ss. 13, 35, ch. 69-106.

**638.091 Suspension, revocation of certificate of authority for violations and special grounds.**—

(1) The department may, in its discretion, suspend, revoke or refuse to renew the certificate of authority of any ambulance service association if it finds that the association has violated any lawful order of the department or any provision of this act.

(2) The department shall suspend or revoke an ambulance service association's certificate of authority if it finds that such association:

(a) Is in unsound condition, or in such condition, or using such methods and practices in the conduct of its business, as to render its further transaction of contracts in this state hazardous or injurious to the public.

(b) Has refused to be examined or to produce its accounts, records and files for examination, or if any of its officers have refused to give information with respect to its affairs or to perform any other legal

obligation as to such examination, when required by the department.

(c) Has failed to pay any final judgment rendered against it in this state within 90 days after the judgment became final.

(d) With such frequency as to indicate its general business practice in this state, has without just cause refused to pay proper claims arising under its contracts, or without just cause compels contract holders to accept less than the amount due them or to employ attorneys or to bring suit against the association to secure full payment or settlement of such claims.

(e) Is affiliated with and under the same general management or interlocking directorate or ownership as another ambulance service association which transacts direct contracts in this state without having a license therefor.

(3) The department may, in its discretion, suspend the certificate of authority of any ambulance service association as to which proceedings for receivership, conservatorship, rehabilitation, or other delinquency proceedings have been commenced in any state.

(4) Violation of this act by an insurer shall be grounds for suspension or revocation of the insurer's certificate of authority in this state.

*History.*—s. 9, ch. 61-387; ss. 13, 35, ch. 69-106; s. 21, ch. 78-95.

#### **638.111 Order, notice of suspension or revocation of certificate of authority; effect; publication.—**

(1) The department shall promptly give notice of suspension or revocation of an association's certificate of authority to the association's salesmen in this state of record in the department's office. The association shall not solicit or write any new contracts in this state during the period of any such suspension or revocation, nor after such revocation renew any business previously written.

(2) In its discretion the department may cause notice of any such revocation to be published in one or more newspapers of general circulation published in this state.

*History.*—s. 11, ch. 61-387; ss. 13, 35, ch. 69-106; s. 21, ch. 78-95.

#### **638.121 Duration of suspension; association's obligations during suspension period; reinstatement.—**

(1) Suspension of an association's certificate of authority shall be for such period not to exceed 1 year, as is fixed by the department in the order of suspension, unless the department shortens or rescinds such suspension or the order upon which the suspension is based is modified, rescinded or reversed.

(2) During the period of suspension the association shall file its annual statement, pay fees, licenses and taxes as required under this chapter as if the certificate of authority has continued in full force.

(3) Upon expiration of the suspension period (if within such period the certificate of authority has not otherwise terminated) the association's certificate of authority shall automatically reinstate unless the department finds that the causes of the suspension have not been removed, or that the association is otherwise not in compliance with the require-

ments of this chapter, and of which the department shall give the association notice not less than 30 days in advance of the expiration of the suspension period. If not so automatically reinstated the certificate of authority shall be deemed to have expired as of the end of the suspension period or upon failure of the association to continue the certificate of authority during the suspension period, whichever event first occurs.

(4) Upon reinstatement of the certificate of authority of an insurer or association following suspension, the authority of its salesmen in this state to represent the association or insurer shall likewise reinstate. The department shall promptly notify the association or insurer and its salesmen in this state of record in its office of such reinstatement.

*History.*—s. 12, ch. 61-387; ss. 13, 35, ch. 69-106.

#### **638.131 Filing, approval of forms, rate filings.—**

(1) No contract form nor related form shall be issued or used in this state unless it has been filed with and approved by the department.

(2) Every such filing shall be made not less than 30 days in advance of issuance or use. At the expiration of 30 days from date of filing a form so filed shall be deemed approved unless prior thereto it has been affirmatively approved or disapproved by written order of the department. The department may extend by not more than an additional 15 days the period within which it may so affirmatively approve or disapprove any such form by giving notice of such extension before the expiration of the initial 30-day period. At the expiration of any such period as so extended and in the absence of prior affirmative approval or disapproval, any such form shall be deemed approved.

(3) In addition, each insurer or ambulance service association shall file with the department the rate to be charged for each contract and the premium, including all modifications of rates and premiums, to be paid by the contract holder. Every filing shall state the proposed effective date thereon. Such filing shall be made not less than 30 days prior to its effective date.

*History.*—s. 13, ch. 61-387; ss. 13, 35, ch. 69-106.

#### **638.141 Tax on premiums and assessments.—**

(1) In addition to the taxes provided for in this act for ambulance service associations, and license taxes as provided in the insurance code as to insurers, each such association and insurer shall annually on or before March 1 file with the department its annual statement, in form as prescribed and furnished by the department, showing all premiums or assessments received by it from contract holders in this state, during the preceding calendar year, and shall pay to the state treasurer a tax in an amount equal to 2 percent of the gross amount of such premiums or assessments. Provided that the same exemptions and credits as set forth in ss. 624.512 and 624.514 of the Insurance Code allowed to insurers shall apply to insurers and ambulance service associations under this act.



(2) Premiums and assessments received by insurers and taxed under this section shall not be subject to any premium tax provided for in the Insurance Code.

**History.**—s. 14, ch. 61-387; s. 30, ch. 65-269; ss. 13, 35, ch. 69-106.

**638.151 Examination of associations.**—Ambulance service associations licensed under this act shall be subject to periodic examination by the department in the same manner and subject to the same terms and conditions as applies to insurers under part II of chapter 624 of the Insurance Code.

**History.**—s. 15, ch. 61-387; ss. 13, 35, ch. 69-106.

**638.161 Service of process; appointment of commissioner as process agent.**—

(1) Each association applying for authority to transact business in this state, whether domestic or foreign, shall file with the department its appointment of the insurance commissioner and treasurer and his successors in office, on a form as furnished by the department, as its attorney to receive service of legal process issued against it in any civil action or proceeding in this state, and agreeing that process so served shall be valid and binding upon the association. The appointment shall be irrevocable, shall bind the association and any successor in interest as to the assets or liabilities of the association, and shall remain in effect as long as there is outstanding in this state any obligation or liability of the association resulting from its contract transactions therein.

(2) At the time of such appointment of the insurance commissioner and treasurer as its process agent the association shall file with the department designation of the name and address of the person to whom process against it served upon the insurance commissioner and treasurer is to be forwarded. The association may change the designation at any time by a new filing.

**History.**—s. 16, ch. 61-387; ss. 13, 35, ch. 69-106.

**638.171 Serving process.**—

(1) Service of process upon the insurance commissioner and treasurer as process agent of the association shall be made by serving copies in triplicate of the process upon him or upon his assistant, deputy, or other person in charge of his office. Upon receiving such service the insurance commissioner and treasurer shall file one copy with the department, return one copy with his admission of service, and promptly forward one copy of the process by registered or certified mail to the person last designated by the association to receive the same, as provided under s. 638.161.

(2) Process served upon the insurance commissioner and treasurer and copy thereof forwarded as in this section provided shall for all purposes constitute valid and binding service thereof upon the association.

**History.**—s. 17, ch. 61-387; ss. 13, 35, ch. 69-106.

**638.181 Salesmen to be registered.**—Every ambulance service association or insurer shall on forms prescribed by the department register on or before October 1 of each year, the name and business office address of each salesman employed by it, and shall within 30 days after termination of the employ-

ment notify the department of such termination. Any salesman employed subsequent to the October 1 filing date shall be registered with the department within 10 days after such employment. No employee or salesman of an ambulance service association or insurer shall directly or indirectly solicit or negotiate insurance contracts, or hold himself out in any manner to be an insurance agent or solicitor, unless so qualified and licensed therefor under the Insurance Code.

**History.**—s. 18, ch. 61-387; ss. 13, 35, ch. 69-106.

**638.191 Grounds for compulsory refusal, suspension, or revocation of registration of salesmen.**—The department shall deny, suspend, revoke, or refuse to renew or continue the registration of any such salesman if it finds that as to the salesman, any one or more of the following applicable grounds exist:

(1) Material misstatement, misrepresentation or fraud in registration.

(2) If the registration is willfully used, or to be used, to circumvent any of the requirements or prohibitions of this act.

(3) Willful misrepresentation or willful deception with regard to any contract, done either in person or by any form of dissemination of information or advertising.

(4) If in the adjustment of claims arising out of any contract, he has materially misrepresented to a contract holder or other interested party the terms and coverage of a contract with intent and for the purpose of effecting settlement of such claim on less favorable terms than those provided in and contemplated by the contract.

(5) For demonstrated lack of fitness or trustworthiness to engage in the business of ambulance service contracts.

(6) For demonstrated lack of adequate knowledge and technical competence to engage in the transactions authorized by the registration.

(7) Fraudulent or dishonest practices in the conduct of business under the registration.

(8) Misappropriation, conversion, or unlawful withholding of moneys belonging to an association, insurer, or contract holder or to others, and received in conduct of business under the registration.

(9) For rebating, or attempt thereat, or for unlawfully dividing or offering to divide his commission with another.

(10) Willful failure to comply with, or willful violation of, any proper order, rule, or regulation of the department, or willful violation of any provision of this act.

**History.**—s. 19, ch. 61-387; ss. 13, 35, ch. 69-106; s. 21, ch. 78-95.

**638.201 Grounds for discretionary refusal, suspension, revocation of registration of salesmen.**—The department may, in its discretion, deny, suspend, revoke, or refuse to renew or continue the registration of any salesman if it finds that as to the salesman any one or more of the following applicable grounds exist under circumstances for which such denial, suspension, revocation, or refusal is not mandatory under s. 638.191:

(1) For any cause for which granting of the registration could have been refused had it then existed

and been known to the department.

(2) Violation of any provision of this act or of any other law applicable to the business of ambulance service contracts in the course of dealings under the registration.

(3) Has violated any lawful order or rule or regulation of the department.

(4) Failure or refusal, upon demand, to pay over to any association or insurer he represents or has represented any money coming into his hands belonging to the association or insurer.

(5) If in the conduct of business under the registration, he has engaged in unfair methods of competition or in unfair or deceptive acts or practices, as such methods, acts, or practices are or may be defined under part VII of chapter 626 of the Insurance Code, or has otherwise shown himself to be a source of injury or loss to the public or detrimental to the public interest.

(6) Conviction of a felony.

**History.**—s. 20, ch. 61-387; ss. 13, 35, ch. 69-106; s. 21, ch. 78-95.  
cf.—s. 112.011 Felons; removal of disqualifications for employment, exceptions.

#### **638.211 Refusal, suspension, or revocation of registration of salesmen.—**

(1) If any salesman is convicted by a court of a violation of this act, the registration of such individual shall thereby be deemed to be immediately revoked.

(2) If after an investigation, or upon other evidence, the department has reason to believe that there may exist any one or more grounds therefor, as such grounds are specified in ss. 638.191 and 638.201, the department may suspend, revoke, or refuse to renew or continue the registration of any salesman.

(3) The department's papers, documents, reports, or evidence relative to a hearing for revocation or suspension of a license pursuant to the provisions of this chapter and chapter 120 shall not be subject to subpoena without the department's consent, except for subpoenas issued pursuant to the hearing for revocation or suspension, until after the same shall have been published at the hearing, unless after notice to the department and hearing the court determines that the department would not be unnecessarily hindered or embarrassed by such subpoenas.

(4) Whenever it appears that any licensed insurance agent has violated the provisions of this act, the department may take such action relative thereto as is authorized by the Insurance Code as for a violation of the Insurance Code by such agent.

**History.**—s. 21, ch. 61-387; s. 28, ch. 63-512; ss. 13, 35, ch. 69-106; s. 21, ch. 78-95.

#### **638.221 Administrative fine in lieu of suspension or revocation of registration.—**

(1) If the department finds that one or more grounds exist for the suspension, revocation, or refusal to renew or continue any registration issued under this act, the department may, in its discretion, in lieu of such suspension, revocation, or refusal, on a first offense and except where such suspension, revocation, or refusal is mandatory, impose upon the registrant an administrative penalty in the amount of \$100, or if the department has found willful misconduct or willful violation on the part of the regis-

trant, an administrative fine of \$500. The administrative penalty may, in the department's discretion, be augmented in amount by an amount equal to any commissions received by or accruing to the credit of the registrant in connection with any transaction as to which the grounds for suspension, revocation, or refusal related.

(2) The department may allow the registrant a reasonable period, not to exceed 30 days, within which to pay to the department the amount of the penalty so imposed. If the registrant fails to pay the penalty in its entirety to the department at its office at Tallahassee within the period so allowed, the registration of the registrant shall stand suspended, revoked, or renewal or continuation refused, as the case may be, upon expiration of such period.

**History.**—s. 22, ch. 61-387; s. 2, ch. 61-119; s. 30, ch. 65-269; ss. 13, 35, ch. 69-106; s. 21, ch. 78-95.

**638.231 Disposition of taxes and fees.**—All license fees, taxes on premiums and assessments, registration fees, and administrative fines and penalties collected under this act from ambulance service associations shall be deposited to the credit of the Insurance Commissioner's Regulatory Trust Fund.

**History.**—s. 23, ch. 61-387; s. 21, ch. 65-269.  
cf.—s. 624.523 Insurance Commissioner's Regulatory Trust Fund.

**638.241 Insurance business not authorized.**—Nothing in this act shall be deemed to authorize any ambulance service association to transact any business other than that of ambulance service contracts as herein defined; or otherwise to engage in the business of insurance unless such association is authorized therefor as an insurer under a certificate of authority issued by the department under the Insurance Code of this state.

**History.**—s. 24, ch. 61-387; ss. 13, 35, ch. 69-106.

**638.251 Fronting not permitted.**—No authorized insurer or ambulance service association shall act as a fronting company for any unauthorized insurer or ambulance service association. A "fronting company" is an authorized insurer or ambulance service association which by reinsurance or otherwise generally transfers to one or more unauthorized insurer or ambulance service associations substantially all of the risk of loss under contracts written by it in this state.

**History.**—s. 25, ch. 61-387.

**638.261 Certain ambulance service associations' relations with funeral directors prohibited.—**

(1) No ambulance service association shall permit any funeral director or undertaker, or any member of his immediate family, to directly or indirectly by association or incorporation to act as its representative, adjuster, claim agent, special claim agent, salesman, or agent for such association in soliciting, negotiating, or effecting ambulance service contracts on any plan or of any nature issued by such association or in collecting premiums from holders of any such contracts.

(2) No ambulance service association shall affix, or permit to be affixed, advertising matter of any kind or character of any funeral director or undertaker to any ambulance service contracts or circu-

late or permit to be circulated any such advertising matter with such contracts, or attempt in any manner or form to influence contract holders of the association to employ the services of any particular funeral director or undertaker.

(3) No ambulance service association shall maintain an office or place of business, or permit its agent to maintain an office or place of business, in the office, establishment or place of business of any funeral director or undertaker in this state.

**History.**—s. 26, ch. 61-387.

**638.271 Penalty for violation.**—Any person

who knowingly makes a false or otherwise fraudulent application for certificate of authority or registration under this act, or who knowingly violates any provision of this act, shall, in addition to any applicable denial, suspension, revocation, or refusal to renew or continue any certificate or registration, be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Each instance of violation shall be considered a separate offense.

**History.**—s. 27, ch. 61-387; s. 663, ch. 71-136.



## CHAPTER 639

## BURIAL INSURANCE AND CONTRACTS

- 639.06 Declaration of policy.
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- 639.08 Forms and rules.
- 639.09 Certificate of authority required.
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**639.06 Declaration of policy.**—It shall be deemed contrary to public policy if any person receives, holds, controls, or manages funds or proceeds received from the sale of or from a contract to sell, burial supplies and equipment and funeral services, or any one or combination of them, where payments for same are made either outright or on an installment basis, prior to the demise of the person or persons so purchasing them, or for whom they are purchased, unless such person holds, controls or manages such funds, subject to the limitations and regulations prescribed by this chapter.

**History.**—s. 2, ch. 28211, 1953; s. 1, ch. 65-393.

**639.07 Definitions.**—As used in this chapter:

- (1) "Persons" means and shall include:
  - (a) Natural persons, partnerships, firms, associations, and corporations, including agents and employees thereof, residing in or doing business in the state, which persons must be authorized and licensed by the laws of this state to engage in the profession of funeral directing when such person holds a license to operate a funeral home, chapel, mortuary, or funeral establishment; or
  - (b) Persons who are engaged in the preneed sale of burial supplies, but who are not authorized and licensed under Part IV of chapter 559 to engage in such sale.
- (2) "Preneed funeral service contract" means any contract, other than a contract of insurance, under which, for a specified consideration paid in advance in a lump sum or by installments, a person promises, upon the death of a beneficiary named or implied in the contract, to furnish funeral services or burial supplies and equipment.
- (3) "Funeral service or services" as used in this chapter shall mean those services normally performed by funeral directors including the sale of burial supplies and equipment, but shall not include those services normally performed by a cemetery,

including the sale by the cemetery of lands or interests therein, services incidental thereto, markers, memorials, monuments, equipment, crypts or vaults constructed or to be constructed in a mausoleum or columbarium or affixed to the real property.

(4) "Department" means the Department of Insurance.

(5) "Preneed burial supply or services contract" means any contract under which, for specified consideration, paid in advance in a lump sum or by installments, a person promises, upon the death of beneficiary named or implied in the contract, to furnish burial supplies or services.

**History.**—s. 1, ch. 28211, 1953; ss. 2, 3, ch. 65-393; ss. 13, 35, ch. 69-106; s. 271, ch. 71-377; s. 1, ch. 77-438; s. 245, ch. 79-400.

**639.08 Forms and rules.**—The administration and enforcement of the provisions of this act are vested in the department which is hereby directed to prepare and furnish all forms necessary under this chapter, including forms for applications for certificates of authority, for renewals thereof, for annual statements, for other required reports, and for preneed funeral service contracts and preneed burial supply contracts. It is directed to promulgate such rules, within the standards of this act, considered by it to be necessary to effectuate the purposes of this chapter.

**History.**—s. 3, ch. 28211, 1953; s. 24, ch. 57-1; s. 4, ch. 65-393; ss. 13, 35, ch. 69-106; s. 2, ch. 77-438.

**639.09 Certificate of authority required.**—No person shall receive, hold, control, or manage any funds tendered as payment on any preneed funeral service contract or preneed burial supply contract until such person is possessed of a certificate of authority, or renewal thereof, issued by the department under the circumstances hereinafter stated. An original certificate of authority shall expire on March 1 succeeding its issuance, and annually thereafter, on or before March 1, a renewal thereof shall be issued under conditions herein set forth.

**History.**—s. 4, ch. 28211, 1953; s. 24, ch. 57-1; s. 5, ch. 65-393; ss. 13, 35, ch. 69-106; s. 3, ch. 77-438.

**639.10 Certificate of authority; annual statement; renewal.**—

(1) An application to the department for a certificate of authority shall be accompanied by the statement and other matters described below. Annually thereafter on or before March 1, such person shall file said statement, as of January 1 of the calendar year in which it is filed, and such other information and data which may be required by the department.

(2) Such statement shall be in such form as shall evidence to the department the following:

(a) The types of preneed funeral service contracts or preneed burial supply contracts proposed to be written and, if a person is bound upon the effective date of this act by any preneed funeral service contract or any preneed burial supply contract or if the statement accompanies an application for a renewal of a certificate of authority, an itemization of all outstanding preneed funeral service contracts or

preneed burial supply contracts, the dates upon which such contracts were entered, the names of all parties involved in such contracts or having any right thereunder, the amount paid in on each contract, and, if payments are not completed, the amounts intended to be paid on each contract.

(b) The name and address of the place of business of the person offering to write preneed funeral service contracts or preneed burial supply contracts.

(c) That the person offering the statement:

1. Had sufficient funds available during the calendar year to perform his obligations under his contract;

2. Has maintained 100 percent of the funds received under contracts issued by himself as herein after described;

3. Has disbursed all interest, dividends, or accretions which have been earned by said funds, in accordance with this act and rules promulgated thereunder; and

4. Has complied with this act and any rules of the department.

(d) Such other information as may be considered necessary by the department in order for it to meet its responsibilities under this act.

(3) If such person is an individual, said statement shall be sworn by him; if a firm or association, by all members thereof; and if a corporation, by the president and secretary thereof.

(4) The fee payable to the department for issuance of the original certificate and each annual renewal thereof shall be \$50, which sum shall accompany each application for original certificate and, thereafter, each annual statement. Said fee shall be payable to the Insurance Commissioner's Regulatory Trust Fund.

(5) Upon the department's being satisfied that the statement and matters which may accompany it meet the requirements of this act and of its rules and regulations and if upon investigation by the department it appears that the principals, including directors, officers, stockholders, employees and agents of such person are of good moral character and have a reputation for fair dealing in business matters, it shall issue to such person said certificate of authority or renewal thereof.

**History.**—s. 5, ch. 28211, 1953; ss. 6, 7, ch. 65-393; ss. 13, 35, ch. 69-106; s. 4, ch. 77-438; s. 169, ch. 79-164; s. 246, ch. 79-400.  
cf.—s. 624.523 Insurance Commissioner's Regulatory Trust Fund.

#### **639.11 Disposition of proceeds received on contracts.—**

(1) All of the funds paid to or collected by any person for the preneed sale of, or from a preneed contract to sell, funeral services or burial supplies shall, within 30 days after receipt thereof by such person, be deposited in this state under the terms of a trust instrument entered into with a national or state bank having trust powers or a trust company. Said trust agreement shall be submitted to the Department of Insurance for approval and filing.

(2) Delivery of funeral merchandise or burial supplies prior to death of the person for whom they are purchased shall not constitute performance or fulfillment, either wholly or in part, of any preneed funeral service contract or preneed burial supply contract entered into after July 1, 1977.

(3) At reasonable times, the trustee shall disburse income on, and appreciation of, trust funds to persons certified under this act to issue or write preneed funeral service or burial supply contracts. Such disbursement of income and appreciation shall be made in accordance with the terms of the trust instrument and the preneed contract. The trustee shall make regular valuations of assets it holds in trust. Any person who withdraws appreciation in the value of trust, other than the pro rata portion of such appreciation which may be withdrawn upon the death of a contract beneficiary or upon cancellation of a preneed funeral service or burial supply contract, shall be required to make additional deposits from his own funds to restore the aggregate value of assets to the value of funds deposited in trust, but excluding from the funds deposited those funds paid out upon preneed funeral service or burial supply contracts which such person has fully performed or which have been otherwise withdrawn, as provided for in this act.

**History.**—s. 6, ch. 28211, 1953; s. 8, ch. 65-393; s. 5, ch. 77-438; s. 247, ch. 79-400.

#### **639.13 Cancellation of, or default on, contracts.—**

(1) Upon the termination by cancellation or default of a preneed funeral service or preneed burial supply contract, the contract purchaser may demand from a person authorized under this chapter to have authority to issue or write such contract a refund of the entire amount actually paid on such contract. Such refund shall be made within 30 days after receipt by the person issuing or writing such contract of the contract purchaser's written request. The seller of a preneed funeral service or preneed burial supply contract may not cancel said contract unless the purchaser is in default.

(2) No preneed funeral service or preneed burial supply contract shall restrict any contract purchaser who is receiving public assistance from making his contract irrevocable in accordance with rules of the Department of Health and Rehabilitative Services.

**History.**—s. 8, ch. 28211, 1953; s. 10, ch. 65-393; s. 6, ch. 77-438; s. 1, ch. 78-276.

**639.14 Payment of funds upon death of named beneficiary.—**Disbursements of funds discharging any preneed funeral service or preneed burial supply contract shall be made by the trustee to the person issuing or writing such contract upon receipt of a certified photostatic copy of the death certificate of the contract beneficiary and evidence satisfactory to the trustee that the preneed funeral service or preneed burial supply contract has been fully performed. In the event of any contract default by the contract purchaser, or in the event the contract service and supplies are not provided or are not desired by the heirs or personal representative of the contract beneficiary, the trustee shall return, within 30 days after its receipt of a written request therefor, all funds paid on the contract to the contract purchaser or to his assigns, heirs, or personal representative.

**History.**—s. 9, ch. 28211, 1953; s. 11, ch. 65-393; s. 7, ch. 77-438; s. 2, ch. 78-276.

**639.15 Examinations and investigations.—**

The department shall have the power, and is required from time to time as it may deem necessary, but at least once every year, to examine the business of any person writing preneed funeral service contracts or preneed burial supply contracts in the same manner as is provided for examination of insurance companies. Such examinations shall be at the expense of the person examined and shall be made by the department's designated representative or examiner. The written reports of all such examinations, when completed, shall be filed in the office of the department, and when so filed shall constitute public records. Any such person being examined shall produce, upon request, all records of the company. The department's designated representative may at any time examine into the records and affairs of any such person, whether in connection with a formal examination or not.

**History.**—s. 10, ch. 28211, 1953; s. 12, ch. 65-393; ss. 13, 35, ch. 69-106; s. 8, ch. 77-438; s. 3, ch. 78-276.

**639.16 Revocation of certificate and liquidation proceedings.—**

(1) Whenever the department shall determine that a person holding a certificate of authority to issue preneed funeral service contracts or preneed burial supply contracts:

(a) Has not maintained the funds received from contracts in the unimpaired state, and disbursed income on, and appreciation of, trust or escrowed funds, as described in s. 639.11,

(b) Has failed to cancel a contract, upon proper request, and refund that portion of the amount paid on the contract as required by s. 639.13,

(c) Has not secured the release, upon the death of a beneficiary, of the entire amount received on a contract as required by s. 639.14,

(d) Has refused to produce records in connection with his business, or

(e) Has otherwise failed to comply with the provisions of this chapter or any rule or regulation promulgated by the department in pursuance of this chapter, and

if such person shall omit to correct any such failure, refusal, or violation within 30 days after written notice from the department to effect such correction, the department may institute revocation of licensure proceedings or file a complaint in the circuit court of Leon County setting forth the relevant facts and praying for issuance of an order to show cause why the business and affairs of such person should not be liquidated and a receiver appointed by the court to accomplish such purpose.

(2) Upon application for such rule to show cause, the court may, in its discretion, issue an injunction restraining defendant from transacting further business until further order of the court.

(3) Upon return of such order to show cause, the court shall hear and try the issues forthwith. If the court shall determine that the person so charged as defendant in such proceeding has not been guilty of the omission, failure or violation alleged in the complaint by the department, the court shall dismiss such complaint. On the other hand, if the court shall determine that the charges of the department are

supported by the evidence, it may enter an order directing the liquidation of such business of said person and shall appoint a receiver who shall, under such conditions as may be prescribed by the court, take into his possession the assets of said person for the purpose of liquidation.

(4) In any such order of liquidation, or in any order or orders thereafter entered, the court shall provide for notice to creditors, filing of claims, and all other details necessary and essential to an estate in receivership.

**History.**—s. 11, ch. 28211, 1953; s. 13, ch. 65-393; ss. 11, 13, 35, ch. 69-106; s. 9, ch. 77-438.

**639.17 Penalty.—Any person, as defined herein:**

(1) Who:

(a) Shall receive, hold, manage, or control any funds or proceeds realized from the writing and issuing of a preneed funeral service contract or a preneed burial supply contract, as defined herein; or

(b) Shall disburse such funds or proceeds

in any manner other than as required by this act, or

(2) Who has violated any of the provisions of this chapter or the rules and regulations promulgated hereunder

shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 12, ch. 28211, 1953; s. 14, ch. 65-393; s. 664, ch. 71-136; s. 10, ch. 77-438; s. 248, ch. 79-400.

**639.18 False, fraudulent, and deceptive advertising and selling practices.—**

No person or his agent or employees holding a certificate of authority under the provisions of this chapter may make any false or misleading representation with respect to the nature, quality, value, or cost of a funeral service which is the subject matter of a preneed funeral service contract or a preneed burial supply contract. For the purpose of this chapter a false, fraudulent, or deceptive practice shall include, but not be limited to, a representation that the funeral services or supplies being offered have a value in excess of that price at which such funeral services or supplies are being offered to the public at large or any substantial group thereof.

**History.**—s. 15, ch. 65-393; s. 11, ch. 77-438.

**639.19 Legislative intent.—**It is the legislative intent that the provisions of this chapter shall be construed as a limitation upon the manner in which a licensed funeral director holding a license to operate a funeral establishment under the provisions of chapter 470 is permitted to accept funds in prepayment of funeral services to be performed in the future, to the end that at all times members of the public may have an opportunity to arrange and pay for funerals for themselves and their families in advance of need while at the same time providing all possible safeguards whereunder such prepaid funds cannot be dissipated, whether intentionally or not, so as to be available for the payment of funeral services arranged for. Further, it is the legislative intent that no person may offer or sell, or negotiate for the sale of, a preneed funeral service contract



through anyone who is not licensed to make funeral arrangements or plan details of funeral services in accordance with the provisions of chapter 470, as well as the provisions of this chapter. Further, it is the legislative intent that persons offering or selling, or negotiating for the sale of, a preneed funeral service contract shall be subject to all of the provisions of chapter 470 regulating the ethics and conduct of funeral directors and funeral establishments in this state. However, it shall not be deemed to constitute solicitation as prohibited by Chapter 470 when a person so authorized by the provisions of this law responds to an inquiry precipitated by advertisements by news media or mail relating to making preneed funeral service contracts.

**History.**—s. 16, ch. 65-393; s. 12, ch. 77-438.

**639.20 Provisions not applicable to cemeteries holding certificate of authority under Flori-**

**da Cemetery Act.**—The provisions of this chapter shall not be applicable to person holding a certificate of authority to operate a cemetery under the provisions of part IV, chapter 559, as pertains to any transaction coming within the purview of said Cemetery Act.

**History.**—s. 17, ch. 65-393.

**639.21 Acceptability of burial supplies.**—

Each person who engages in preneed sales of burial supplies shall determine, and notify the purchaser in writing prior to the completion of the contract, that the merchandise being considered for purchase will be accepted in the cemetery of the purchaser's choice. Failure to comply with this part shall nullify the agreement, and all moneys paid in shall be returned.

**History.**—s. 13, ch. 77-438.

## CHAPTER 641

## HEALTH CARE SERVICE PROGRAMS

## PART I HOSPITAL AND MEDICAL SERVICE PLANS (ss. 641.01-641.165)

## PART II HEALTH MAINTENANCE ORGANIZATIONS (ss. 641.17-641.39)

## PART I

HOSPITAL AND MEDICAL  
SERVICE PLANS

- 641.01 Definition or scope.
- 641.02 Incorporation.
- 641.03 Contracts.
- 641.04 License.
- 641.05 Charter, bylaws, contracts, rates; amendments, approval by Department of Insurance.
- 641.06 Annual reports or statements.
- 641.07 Examination.
- 641.08 Acquisition costs.
- 641.09 Investments and funds.
- 641.10 Review of dispute.
- 641.11 Dissolution or liquidation.
- 641.12 Revocation of license.
- 641.13 Licenses and taxes.
- 641.14 Regulation of employees or representatives.
- 641.15 Preexisting service plan corporations.
- 641.16 Penalties.
- 641.165 Hospital and medical and surgical service plans and health maintenance organizations; discrimination on basis of sickle-cell trait prohibited.

**641.01 Definition or scope.**—Any five or more persons wishing to form a corporation for the purpose of establishing, maintaining, and operating a nonprofit medical, surgical or hospital service plan or plans in the state, whereby medical, surgical, or hospital service or care may be provided in whole or in part by the said corporation, or by physicians, surgeons, or hospitals participating in such service plan or plans, to such of the public as become subscribers to said plan or plans under a contract or contracts with such corporation, may become incorporated under laws of Florida governing the incorporation of benevolent or charitable associations and similar corporations not for profit. Any such corporation heretofore or hereafter incorporated, the charter or certificate of incorporation of which has or shall have the consent or approval of the Department of Insurance, shall be governed by this law and subject to regulation and supervision by the Department of Insurance and all provisions of the laws of Florida applicable to health, sick, or accident insurance, except as otherwise provided by this chapter. The term "medical or surgical service plan" as used in this law includes the contracting for the payment of fees toward, or furnishing of, professional services authorized or permitted to be furnished by a duly licensed doctor of medicine. "Health maintenance

organizations" as defined in ss. 641.17-641.38 shall organize under, and be subject to, ss. 641.17-641.38.

**History.**—s. 1, ch. 22826, 1945; s. 1, ch. 25394, 1949; s. 1, ch. 69-92; ss. 13, 35, ch. 69-106; s. 24, ch. 72-264; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**641.02 Incorporation.**—

(1) Any nonprofit medical, surgical, or hospital service plan corporation shall be incorporated under the provisions of the laws of the state governing the incorporation of benevolent or charitable associations and similar corporations not for profit, except when in conflict with the provisions of this law, and every charter or certificate of such corporation shall have endorsed thereon or annexed thereto the consent of the Department of Insurance.

(2) The directors of every such medical and surgical service and hospital service plan corporation and of every such hospital service plan corporation must at all times include representatives of the following groups: Licensed physicians participating in such medical or surgical service plan, directors, trustees, administrators or superintendents of established hospitals or corporations operating hospitals designated in s. 641.01; the general public, exclusive of physicians and hospital representatives.

(3) At least a majority of the directors of every such medical and surgical service plan corporation must at all times be licensed physicians and/or surgeons.

**History.**—s. 2, ch. 22826, 1945; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**641.03 Contracts.**—

(1) Any corporation subject to the provisions of the law may contract for or secure the rendering of service to any of its subscribers only by hospitals maintained by the state or any of its political subdivisions, by any other regularly operated and recognized hospital, by any hospital approved by the Department of Insurance, and/or by licensed physicians and surgeons.

(2) The rates charged by such corporation to the subscribers for medical, surgical, or hospital care shall at all times be subject to the approval of the Department of Insurance.

(3) All rates of payments made by such corporation pursuant to the contracts provided for in subsection (1) shall be approved by the Department of Insurance.

**History.**—s. 3, ch. 22826, 1945; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective

July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **1641.04 License.—**

(1) No corporation subject to the provisions of this law shall issue contracts to subscribers until the Department of Insurance has, by formal certificate or license, authorized it to do so. Application for such certificate of authority or license shall be made on forms to be supplied by the Department of Insurance, containing such information as it shall deem necessary.

(2) Each application for such certificate of authority or license, as a part thereof, shall be accompanied by copies of the following documents, duly certified to by at least two of the executive officers of such corporation:

(a) Charter or certificate of incorporation, with all amendments thereto.

(b) Bylaws with all amendments thereto.

(c) Proposed contracts between the corporation and any party for the furnishing of, or the payment in whole or in part for, medical or surgical services furnished the subscribers by duly licensed physicians or surgeons, and for the furnishing of hospital service to the subscribers.

(d) Proposed contracts to be issued to subscribers to the plan showing the benefits to which they are entitled, together with a table of the rates charged, or proposed to be charged, to subscribers for each form of such contract.

(e) Financial statement of the corporation which shall include the amounts of each contribution paid or agreed to be paid to the corporation having working capital, the name or names of each contributor and the terms of each contribution.

(3) The Department of Insurance shall issue a certificate of authority or license to each applicant upon the payment of the fees provided for in s. 624.501 and upon being satisfied as to the following:

(a) That the applicant has been organized bona fide for the purpose of establishing, maintaining and operating a nonprofit medical, surgical, or hospital service plan.

(b) That each contract executed or proposed to be executed by the applicant and the physician, surgeon, or hospital obligates, or will when executed, obligate each physician, surgeon, or hospital thereto, to render the service, or accept payment for the service, to which each subscriber may be entitled under the terms of the contract issued to the subscriber.

(c) That each contract issued or proposed to be issued to subscribers to the plan is in a form approved by the Department of Insurance and that the rates charged or proposed to be charged for each form of such contract and benefits to be provided, are fair and reasonable.

(d) That no contributions to the funds of the corporation for working capital are repayable by the corporation except out of earned income over and above operating expenses and medical, surgical, or hospital expenses and such reserve as the Department of Insurance may deem adequate.

(e) That the amount of money actually received by the applicant upon the terms specified in paragraph (d), for working capital, is sufficient to carry all acquisition costs and operating expenses for a

period of at least 3 months from the date of the issuance of the certificate of authority or license.

(4) Such certificate of authority or license shall be effective until revoked by the Department of Insurance as hereinafter provided, and any corporation to which such certificate of authority or license has been issued, until revocation thereof, shall be authorized to issue contracts, in the form or forms filed with the Department of Insurance, to the persons who may become subscribers.

**History.**—s. 4, ch. 22826, 1945; ss. 22, ch. 65-269; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **1641.05 Charter, bylaws, contracts, rates; amendments, approval by Department of Insurance.—**

No corporation subject to the provisions of this law shall amend its charter or certificate of incorporation, its bylaws, the terms and provisions of contracts executed or to be executed with hospitals, physicians, or surgeons, and the terms and provisions of contracts issued or proposed to be issued to subscribers until such proposed amendments have been first submitted to and approved by the Department of Insurance; nor shall any change be made in the table of rates charged or proposed to be charged to subscribers for any form of contract issued or to be issued until such proposed charge has been submitted to and approved by the department upon the adoption of any amendment or change, and following its approval by the department such corporation shall file a copy thereof with the department duly certified by at least two of the executive officers of such corporation.

**History.**—s. 5, ch. 22826, 1945; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1641.06 Annual reports or statements.**—Every corporation subject to the provisions of this law shall annually, on or before March 1, file in the office of the Department of Insurance a statement verified by at least two of the principal officers of said corporation showing its condition on December 31 then next preceding, which shall be in such form and shall contain such matters as the Department of Insurance shall prescribe.

**History.**—s. 6, ch. 22826, 1945; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1641.07 Examination.**—The Department of Insurance, any examiner of the department, or any other person whom the Department of Insurance shall appoint shall have the power of visitation and examination into the affairs of any such corporation and free access to all of the books, papers and documents that relate to the business of the corporation, and may summon and qualify witnesses under oath and to examine its officers, agents, employees, or other persons in relation to the affairs, transactions and condition of the corporation. The corporation whose affairs are examined shall pay to the Depart-



ment of Insurance the traveling and other expenses of examination pursuant to s. 624.320.

**History.**—s. 7, ch. 22826, 1945; s. 18, ch. 63-400; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§641.08 Acquisition costs.**—All acquisition costs in connection with the solicitation of subscribers to such service plan or plans shall at all times be subject to the approval of the Department of Insurance.

**History.**—s. 8, ch. 22826, 1945; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§641.09 Investments and funds.**—The funds of any corporation subject to the provisions of this law shall be invested only in securities permitted by the laws of the state for the investment of assets of life insurance companies.

**History.**—s. 9, ch. 22826, 1945; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

cf.—s. 340.21 Relating to investments.

**§641.10 Review of dispute.**—Any dispute arising between a corporation subject to the provisions of this law and any hospital, physician, or surgeon with whom such corporation has a contract as provided herein, may be submitted to the Department of Insurance of the state for its decision with respect thereto.

**History.**—s. 10, ch. 22826, 1945; s. 29, ch. 63-512; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§641.11 Dissolution or liquidation.**—Any dissolution or liquidation of a corporation subject to the provisions of this law shall be under the supervision of the Department of Insurance, which shall have all powers with respect thereto granted to it under the laws of the state with respect to the dissolution and liquidation of life insurance companies.

**History.**—s. 11, ch. 22826, 1945; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§641.12 Revocation of license.**—Whenever the Department of Insurance shall have reason to believe that any corporation subject to the provisions of this law is being operated for profit or fraudulently conducted, or is not complying with the provisions of this law, it shall be authorized to suspend or revoke the certificate of authority or license theretofore granted, and may at any time thereafter institute or cause to be instituted the necessary proceedings under the laws of the state, looking to the dissolution of insurance companies, and any dissolution or liquidation of a corporation subject to the provisions of this law shall be under the supervision of the Department of Insurance.

**History.**—s. 12, ch. 22826, 1945; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective

July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

### **§641.13 Licenses and taxes.**—

(1) No corporation licensed under this law, its representatives, or any of its properties or funds shall be exempt from any license fees or taxes, except as provided in chapter 624 for domestic insurance companies. With respect to the computation of such taxes, and for the purpose of this provision only, the rates paid by subscribers as provided herein shall be construed as "premiums," and the "contract" provided herein shall be construed as "policy."

(2) If the charter or certificate of incorporation specifies among its purposes the establishment, maintenance, and operation of a medical, surgical, or hospital service plan, it shall be referred to the Department of Insurance and such charter or certificate shall not be filed until the consent of the Department of Insurance shall be endorsed thereon and annexed thereto.

**History.**—s. 13, ch. 22826, 1945; s. 2, ch. 69-92; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§641.14 Regulation of employees or representatives.**—Every representative or employee of any corporation subject to the provisions of this law who sells or writes certificates for hospital service or contracts with hospitals for said corporation shall be registered by said corporation with the Department of Insurance. Said registration shall be on forms prescribed by the Department of Insurance and shall show such information as may be requested by the department. Said registration shall be made on or before the date of employment by said corporation of said representative or employee. In addition to the foregoing described registration, the corporation shall pay to the Department of Insurance a permit fee of \$6 for each such representative or employee and a like amount October 1 of each year thereafter; provided, that said permit fee shall be only \$3 in case the said representative or employee is not employed prior to April 1 of the then current year. No such permit shall be transferable from one person or corporation to another and shall be revocable by the Department of Insurance for cause.

**History.**—s. 14, ch. 22826, 1945; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

cf.—s. 624.523 Insurance Commissioner's Regulatory Trust Fund.

**§641.15 Preexisting service plan corporations.**—No nonprofit corporation organized under the laws of this state prior to the effective date of this law, to operate a medical, surgical, or hospital plan or plans in the state or any of the counties thereof, whose charter or certificate of incorporation has, prior to the effective date of this law, been approved or consented to by the insurance commissioner of the state, shall be required to incorporate or reincorporate as provided herein, but every such corporation desiring to operate such a plan or plans statewide shall file with the insurance commissioner its acceptance of this law within 6 months from June 11,

1945, and every such corporation so accepting this law shall continue and shall have all the powers, authority and exemptions of this law, and be subject to all the provisions thereof; provided, however, the provisions of this law shall not apply to organized nonprofit corporations herein defined and heretofore existing whose charter and bylaws have not been filed with, or has not received a certificate of authority or license from, the insurance commissioner of the state prior to the effective date of this law, nor to such corporations which are now in operation and have heretofore operated within the confines of a single county.

**History.**—s. 15, ch. 22826, 1945; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **641.16 Penalties.—**

(1) Any person or corporation engaging in the business of operating a nonprofit medical, surgical, or hospital service plan without first having procured a license from the Department of Insurance, as required by this law, and any person or corporation violating any of the provisions of this law, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Any person making any willfully false statements in any written documents required by any section of this law to be filed with the Department of Insurance or any examiner at any investigation or hearing conducted by said Department of Insurance or examiner shall be guilty of perjury.

**History.**—s. 16, ch. 22826, 1945; ss. 13, 35, ch. 69-106; s. 665, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**cf.**—s. 837.012 Perjury not in an official proceeding  
s. 837.02 Perjury in official proceedings.

#### **641.165 Hospital and medical and surgical service plans and health maintenance organizations; discrimination on basis of sickle-cell trait prohibited.—**

(1) No hospital, medical, or surgical service plan or health maintenance organization regulated under this chapter shall refuse to issue and deliver any individual or group hospital, medical, or surgical service or health care service contract in this state which plan or organization is currently issuing for delivery in this state and which affords benefits and coverage for any service authorized or permitted to be furnished by a hospital, medical, or surgical plan or a health maintenance organization solely because the person to be covered by the contract has the sickle-cell trait.

(2) No service contract issued by a hospital, medical, or surgical service plan or by a health maintenance organization for delivery in this state shall carry a higher rate or charge solely because the person covered by the contract has the sickle-cell trait.

**History.**—s. 2, ch. 78-35.

**Note.**—Also published at s. 641.39.

### **PART II**

#### **HEALTH MAINTENANCE ORGANIZATIONS**

##### **641.17 Short title.**

- 641.18 Declaration of legislative intent, findings and purposes.
- 641.19 Definitions.
- 641.20 Health maintenance organizations authorized.
- 641.21 Application for certificate.
- 641.22 Issuance of certificate of authority.
- 641.23 Revocation of certificate of authority.
- 641.24 Denial and revocation proceedings; Department of Health and Rehabilitative Services participation.
- 641.25 Administrative fine in lieu of revocation.
- 641.26 Annual report.
- 641.27 Examination by the department.
- 641.28 Liability of officers.
- 641.29 Fees.
- 641.30 Construction and relationship to other laws.
- 641.31 Health maintenance contracts.
- 641.32 Acceptable payments.
- 641.33 Certain words prohibited in name of organization.
- 641.34 Open enrollment.
- 641.35 Investment of funds.
- 641.36 Promulgation of rules and regulations.
- 641.37 Penalty.
- 641.38 Operational health maintenance organizations; issuance of certificate.
- 641.39 Hospital and medical and surgical service plans and health maintenance organizations; discrimination on basis of sickle-cell trait prohibited.

**641.17 Short title.**—Sections 641.17-641.38 shall be known and may be cited as the "Health Maintenance Organization Act."

**History.**—s. 1, ch. 72-264; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

#### **641.18 Declaration of legislative intent, findings and purposes.—**

(1) Faced with the continuation of mounting costs of health care, coupled with the state's interest in high quality care, the Legislature has determined that there is a need to explore alternative methods for the delivery of health care services, with a view toward achieving greater efficiency and economy in providing these services.

(2) Health maintenance organizations, consisting of prepaid health care plans, are developing rapidly in many communities. Through these organizations, structured in various forms, health care services are provided directly to a group of people who make regular premium payments.

(3) These plans, when properly operated, emphasize effective cost and quality controls. At the present time, there is no effective way to evaluate or control the quality of health care services provided by these organizations in Florida, or to determine their financial or actuarial stability.

(4) It shall be the policy of this state to:

(a) Eliminate legal barriers to the organization, promotion, and expansion of comprehensive prepaid health care plans;

(b) Prescribe regulations for the fiscal aspects of such health care plans by the Department of Insurance.

ance and for the quality of health care by the Department of Health and Rehabilitative Services; and

(c) Recognize that prepaid comprehensive health care plans shall be exempt from operation of the insurance laws of this state except in the manner and to the extent set forth in ss. 641.17-641.38.

(5) Although it is the intent of this act to provide an opportunity for the development of health maintenance organizations, there is no intent to impair the present system for the delivery of health services.

**History.**—s. 2, ch. 72-264; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**641.19 Definitions.**—As used in ss. 641.17-641.38:

(1) "Department" means the Department of Insurance or a person properly designated to act in its place.

(2) "Health maintenance organization" means any organization authorized under ss. 641.17-641.38 which:

(a) Provides, either directly or through arrangements with others, health care services to persons enrolled with such organization, on a prepaid per capita or prepaid aggregate fixed sum basis;

(b) Provides, either directly or through arrangements with other persons, corporations, institutions, associations, or entities, those health care services which subscribers might reasonably require in order to be maintained in good health;

(c) Provides physician services directly through physicians who are either employees or partners of such organization or under arrangements with a physician or any group of physicians.

(3) "Minimum services" shall include, but not be limited to, emergency care, inpatient hospital and physician care, ambulatory diagnostic treatment, and preventive health care services.

(4) "Comprehensive health care services" means services, medical equipment, and supplies furnished by a provider which may include, but are not limited to, medical, surgical, and dental care; psychological, optometric, optic, chiropractic, podiatric, nursing, physical therapy and pharmaceutical services; health education, preventive medical, rehabilitative, and home health services; inpatient and outpatient hospital services, extended care, nursing home care, convalescent institutional care, laboratory and ambulance services, appliances, drugs, medicines and supplies; and any other care, service, or treatment of disease, the correction of defects, or the maintenance of the physical and mental well-being of human beings.

(5) "Health maintenance contract" means any contract entered into by a health maintenance organization authorized under ss. 641.17-641.38 with a subscriber or group of subscribers to provide comprehensive health care services in exchange for a prepaid per capita or prepaid aggregate fixed sum.

(6) "Subscriber" means an individual who has contracted, or on whose behalf a contract has been entered into, with a health maintenance organization for health care services.

(7) "Entity" means any legal entity with continuing existence, including but not limited to, corpora-

tions, associations, trusts, and partnerships.

(8) "Provider" means any physician, hospital, or other institution, organization, or person that furnishes health care services and who is licensed or otherwise authorized to practice in the state.

**History.**—s. 3, ch. 72-264; s. 1, ch. 76-33; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**641.20 Health maintenance organizations authorized.**—Any entity qualified under the provisions of ss. 641.17-641.38, upon obtaining a certificate of authority as required in ss. 641.17-641.38, may operate a health maintenance organization.

**History.**—s. 4, ch. 72-264; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**641.21 Application for certificate.**—Before any entity may operate a health maintenance organization, it must obtain a certificate of authority from the department. Each application to the department for such certificate shall be on such form as the department shall prescribe and shall set forth or be accompanied by the following:

(1) A copy of the basic organizational document of the applicant, if any, such as the articles of incorporation, articles of association, partnership agreement, trust agreement, or other applicable document, and all amendments thereto;

(2) A copy of the bylaws, rules and regulations, or similar form of document, if any, regulating the conduct of the affairs of the applicant;

(3) A list of the names, addresses, and official capacity with the organization of the persons who are to be responsible for the conduct of the health maintenance organization's affairs, including all members of the governing body, the officers and directors, in the case of a corporation, and the partners or associates in the case of a partnership or association. Such persons shall fully disclose to the department and the governing body of the health maintenance organization the extent and nature of any contracts or arrangements between them and the health maintenance organization, including any possible conflicts of interest;

(4) A statement generally describing the health maintenance organization, its operations, the location of the facilities at which comprehensive health care services will be regularly available to subscribers, the type of health care personnel engaged to provide the comprehensive health care services, and the quantity of personnel of each type;

(5) Forms of all health maintenance contracts the applicant proposes to offer the subscribers, showing the benefits to which they are entitled, together with a table of the rates charged, or proposed to be charged, for each form of such contract;

(6) A statement describing with reasonable certainty the geographic area or areas to be served by the health maintenance organization;

(7) A statement of the assets and liabilities of the entity.

**History.**—s. 5, ch. 72-264; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.



to that date.

**1641.22 Issuance of certificate of authority.**—The department shall issue a certificate of authority within 60 days of the filing of the application to any entity filing an application in conformity with s. 641.21, upon payment of the prescribed fees and upon being satisfied that:

(1) Such entity proposes to establish and operate a bona fide health maintenance organization having the capability to provide comprehensive health care services in the geographic area proposed. In this connection, the department shall receive, as a condition precedent to the issuance of any certificate of authority, a report from the Department of Health and Rehabilitative Services favorably recommending the establishment of the health maintenance organization, with sufficient documentary evidence to establish the need for the health maintenance organization's services in the area proposed.

(2) Based upon accounting procedures acceptable to it, the proposed health care delivery plan is actuarially sound and the health maintenance organization has adequate working capital. These requirements may be satisfied by a finding of the department that the health maintenance organization has made acceptable arrangements to provide all health care services offered.

(3) The terms of the contracts such entity proposes to offer to subscribers will in fact assure that the comprehensive health care services required by such subscribers will be rendered under reasonable standards of quality of care, as certified by the Department of Health and Rehabilitative Services.

(4) The procedures for offering comprehensive health care services and offering and terminating contracts to subscribers will not unfairly discriminate on the basis of age, sex, race, health, or economic status. However, this section shall not prohibit reasonable underwriting classifications for the purposes of establishing contract rates, nor shall it prohibit experience rating.

(5) The entity furnishes evidence of adequate insurance coverage or an adequate plan for self-insurance to respond to claims for injuries arising out of the furnishing of comprehensive health care.

(6) The entity has provided, through contract or otherwise, for periodic review of its medical facilities and services.

*History.*—s. 6, ch. 72-264; s. 3, ch. 76-168; s. 1, ch. 77-457.

*Note.*—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1641.23 Revocation of certificate of authority.**—The department may revoke any certificate issued pursuant to ss. 641.17-641.38 if it finds that any one of the following conditions exists:

(1) A health maintenance organization is not operating in compliance with ss. 641.17-641.38 or is in substantial violation of its health maintenance contracts as certified by the Department of Health and Rehabilitative Services;

(2) Such organization is unable to fulfill its obligations under outstanding health maintenance contracts entered into with its subscribers, as certified by the Department of Health and Rehabilitative Services;

(3) Based upon accounting procedures acceptable to the department, the plan is no longer actuarially sound or the health maintenance organization does not have adequate working capital;

(4) The existing contract rates are excessive, inadequate, or unfairly discriminatory; or

(5) The health maintenance organization has advertised, merchandised, or attempted to merchandise its services in such a manner as to misrepresent its services or capacity for service, or has engaged in deceptive, misleading, or unfair practices with respect to advertising or merchandising.

*History.*—s. 7, ch. 72-264; s. 3, ch. 76-168; s. 1, ch. 77-457.

*Note.*—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1641.24 Denial and revocation proceedings; Department of Health and Rehabilitative Services participation.**—A representative of the Department of Health and Rehabilitative Services shall participate in any proceedings for denial or revocation of a certificate. In connection with any decision regarding denial or revocation of a charter, the recommendations and findings of the Department of Health and Rehabilitative Services with respect to matters relating to the quality and nature of health care services being provided shall be conclusive and binding upon the department.

*History.*—s. 8, ch. 72-264; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95.

*Note.*—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1641.25 Administrative fine in lieu of revocation.**—The department may, in lieu of revocation, levy an administrative penalty in an amount not less than \$100 or more than \$10,000, provided the organization is given a reasonable time within which to remedy the defect in its operations which gave rise to the penalty citation. The department may augment this penalty by an amount equal to the sum that the department calculates to be the damages suffered by subscribers or other members of the public.

*History.*—s. 9, ch. 72-264; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95.

*Note.*—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**1641.26 Annual report.**—Every health maintenance organization authorized under ss. 641.17-641.38 shall, annually on or before March 1, on forms prescribed by the department, file a verified report with the department, with a copy to the Department of Health and Rehabilitative Services, showing its condition on the last day of the preceding calendar year. Such report shall include:

(1) A financial statement of the organization, including its balance sheet and receipts and disbursements for the preceding year;

(2) A list of the names and residence addresses of all persons responsible for the conduct of its affairs, together with a disclosure of the extent and nature of any contracts or arrangements between such persons and the health maintenance organization, including any possible conflicts of interest;

(3) The number of health maintenance contracts issued and outstanding and the number of health maintenance contracts terminated and a compila-

tion of the reasons for such terminations in each case;

(4) A description by location and specialty of the providers retained or otherwise engaged by the organization to satisfy its contractual obligations with its subscribers;

(5) Such statistical information as shall be requested by the department reflecting the health maintenance organization's rates for all comprehensive health care services provided under health maintenance contracts;

(6) The number and amount of damage claims for medical injury initiated against the health maintenance organization and any of the providers engaged by it during the reporting year, broken down into claims with and without formal legal process, and the disposition, if any, of each such claim; and

(7) Such other information relating to the performance of health maintenance organizations as shall be required by the department.

**History.**—s. 10, ch. 72-264; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§641.27 Examination by the department.**—The department may make an examination of the fiscal affairs of any health maintenance organization subject to ss. 641.17-641.38 as often as it deems it expedient for the protection of the interests of the people of this state, but not less frequently than once every 3 years. The Department of Health and Rehabilitative Services may conduct periodic examinations regarding the quality of health care services being provided by the organization. Every health maintenance organization, its officers, and its agents shall submit their books and records relating to the health maintenance organization to such examinations and in every way facilitate them. However, medical records of individuals and records of physicians providing service under contract to the health maintenance organization shall not be subject to audit, although they may be subject to subpoena by court order upon a showing of good cause. For the purpose of examinations, the respective departments may administer oaths to and examine the officers and agents of a health maintenance organization concerning its business and affairs. The expenses of examination of each health maintenance organization by the department or by the Department of Health and Rehabilitative Services shall be paid by the organization. In no event shall expenses of examination exceed a maximum of \$10,000 per year. Any rehabilitation, liquidation, conservation, or dissolution of a health maintenance organization shall be conducted under the supervision of the department, which shall have all power with respect thereto granted to it under the laws governing the rehabilitation, liquidation, conservation, or dissolution of life insurance companies.

**History.**—s. 11, ch. 72-264; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§641.28 Liability of officers.**—Any person who is an officer or principal managing director of the affairs of a health maintenance organization shall be fully and personally liable and accountable for any

violations of the provisions of ss. 641.17-641.38 by himself or by persons under his control. However, it is not intended through this legislation to modify the existing law of Florida regarding personal or corporate liability for negligence or medical malpractice.

**History.**—s. 12, ch. 72-264; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§641.29 Fees.**—Every organization subject to the provisions of ss. 641.17-641.38 shall pay to the department the following fees:

- (1) For filing a copy of its application for a certificate of authority or amendment thereto, \$150.
- (2) For filing each annual report, \$150.

Fees charged under this section shall be distributed as follows: one-third to the Department of Health and Rehabilitative Services and two-thirds to the Department of Insurance.

**History.**—s. 13, ch. 72-264; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§641.30 Construction and relationship to other laws.**—

(1) Except as otherwise provided in ss. 641.17-641.38, the Florida Insurance Code shall not apply to health maintenance organizations, and health maintenance organizations certificated under the provisions of ss. 641.17-641.38 shall not be subject to part I of this chapter.

(2) Solicitation of subscribers by a duly certificated health maintenance organization or its representatives shall not be construed to be violative of any provisions of law relating to solicitation or advertising by health professionals.

**History.**—s. 14, ch. 72-264; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**§641.31 Health maintenance contracts.**—

(1) Any entity issued a certificate and otherwise in compliance with ss. 641.17-641.38 may enter into contracts in this state to provide an agreed-upon set of comprehensive health care services to subscribers or groups of subscribers in exchange for a prepaid per capita, or prepaid aggregate fixed, sum.

(2) The rates charged by any health maintenance organization to its subscribers shall not be excessive, inadequate, or unfairly discriminatory. The department may define by rule and regulation what constitutes excessive, inadequate, or unfairly discriminatory rates and may require whatever information it deems necessary to determine that a rate or proposed rate meets the requirements of this subsection.

(3) If a health maintenance organization desires to amend any contract with its subscribers or desires to change any rate charged therefor it may do so, upon filing with the department any such proposed amendments or change in rates. Any such proposed change shall be effective immediately, subject to disapproval by the department. However, it is not the intent of this subsection to restrict unduly the right to modify rates in the exercise of reasonable business judgment.

(4) Every health maintenance contract must clearly state all of the services to which a subscriber is entitled under the contract, and must include a clear and understandable statement of any limitations on the services or kinds of services to be provided, including any copayment feature required by the contract or by any insurer or entity which is underwriting any of the services offered by the health maintenance organization. The contract shall also state where and in what manner the comprehensive health care services may be obtained.

(5) Every subscriber shall receive a clear and understandable description of the health maintenance organization's method for resolving subscriber grievances.

(6) The rate of payment for a health maintenance contract shall be a part of the contract and shall be stated in individual contracts issued to subscribers.

**History.**—s. 15, ch. 72-264; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**641.32 Acceptable payments.**—Each health maintenance organization subject to ss. 641.17-641.38 may accept from governmental agencies, corporations, associations, groups, or individuals payments covering all or part of the cost of contracts entered into between the health maintenance organization and its subscribers.

**History.**—s. 16, ch. 72-264; s. 3, ch. 76-168; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**641.33 Certain words prohibited in name of organization.**—

(1) No entity certificated as a health maintenance organization, other than a licensed insurer insofar as its name is concerned, shall use in its name, contracts, or literature any of the words "insurance," "casualty," "surety," "mutual," or any other words descriptive of the insurance, casualty, or surety business or deceptively similar to the name or description of any insurance or surety corporation doing business in the state.

(2) No person, entity, or health care plan not certificated under the provisions of ss. 641.17-641.38 shall use in its name, logo, contracts, or literature the phrase "health maintenance organization" or the initials "HMO."

**History.**—s. 17, ch. 72-264; s. 3, ch. 76-168; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**641.34 Open enrollment.**—

(1) The requirement of an open-enrollment period is intended to provide the benefits of health maintenance organizations to the general public or to all members of the class of persons the organization serves; such requirement is not intended to restrict a health maintenance organization from establishing administrative procedures that protect the quality of service to its subscribers or the financial condition of such an organization. However, during periods of open enrollment, the organization shall not establish any administrative procedure that arbitrarily restricts enrollment.

(2) After the initial 24 months of operation a health maintenance organization shall have an annual open-enrollment period of at least 1 month during which it accepts up to the limits of its capacity, and without restrictions, individuals in the order in which they apply for enrollment. Health maintenance organizations organized to provide services to a specified group of individuals may limit such open enrollment to all members of said group.

(3) During annual periods of open enrollment the health maintenance organization shall afford the opportunity of membership to new subscribers in an amount up to a maximum of 10 percent of the total number of subscribers as at the end of the previous calendar year.

**History.**—s. 18, ch. 72-264; s. 3, ch. 76-168; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**641.35 Investment of funds.**—The funds of any health maintenance organization subject to the provisions of ss. 641.17-641.38 shall be invested only in securities permitted by the laws of this state for the investment of assets of life insurance companies.

**History.**—s. 19, ch. 72-264; s. 3, ch. 76-168; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**641.36 Promulgation of rules and regulations.**—The Department of Insurance, together with the Department of Health and Rehabilitative Services, on a joint basis, shall promulgate rules and regulations necessary to carry out the provisions of ss. 641.17-641.38. The approval of both said departments is required as a condition to the implementation of any rule or regulation governing health maintenance organizations. The Department of Insurance shall collect and make available in a single volume all health maintenance organization rules and regulations promulgated by the departments.

**History.**—s. 20, ch. 72-264; s. 3, ch. 76-168; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**641.37 Penalty.**—Any person who violates the provisions of ss. 641.17-641.38 shall be guilty of a misdemeanor of the first degree, and shall be punished by a fine not exceeding \$1,000 or by imprisonment for a period not exceeding 1 year, or by both such fine and imprisonment.

**History.**—s. 21, ch. 72-264; s. 3, ch. 76-168; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**641.38 Operational health maintenance organizations; issuance of certificate.**—

(1) Any health maintenance organization in existence and operating as of January 1, 1972 in the state shall apply for, and be entitled as of right to, the issuance of a certificate. Such organization shall apply for said certificate within 120 days after the effective date of ss. 641.17-641.38, submitting with such application the information required under s. 641.21, together with a filing fee in the amount of \$150.

(2) The provisions of this part shall not apply to those organizations providing the services defined in



ss. 641.17-641.38 which have been engaged in providing said services for a period of 25 years or more. Such exemption, however, shall terminate upon a change in controlling ownership of the organization.

**History.**—s. 23, ch. 72-264; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**641.39 Hospital and medical and surgical service plans and health maintenance organizations; discrimination on basis of sickle-cell trait prohibited.—**

(1) No hospital, medical, or surgical service plan or health maintenance organization regulated under this chapter shall refuse to issue and deliver any individual or group hospital, medical, or surgical ser-

vice or health care service contract in this state which plan or organization is currently issuing for delivery in this state and which affords benefits and coverage for any service authorized or permitted to be furnished by a hospital, medical, or surgical plan or a health maintenance organization solely because the person to be covered by the contract has the sickle-cell trait.

(2) No service contract issued by a hospital, medical, or surgical service plan or by a health maintenance organization for delivery in this state shall carry a higher rate or charge solely because the person covered by the contract has the sickle-cell trait.

**History.**—s. 2, ch. 78-35.

**Note.**—Also published at s. 641.165.

## CHAPTER 642

## LEGAL EXPENSE INSURANCE

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- 642.015 Definitions.
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- 642.045 Procedure for refusal, suspension, or revocation of registration of sales agent.
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- 642.049 Construction.

**642.011 Short title.**—Sections 642.011-642.049 may be cited as the "Legal Expense Insurance Act."

History.—s. 1, ch. 79-103.

**642.013 Purpose.**—The purpose of ss. 642.011-642.049 is to authorize certification and regulation of certain organizations which provide programs for the payment of the costs of legal services or provide legal services.

History.—s. 1, ch. 79-103.

**642.015 Definitions.**—As used in ss. 642.011-642.049:

(1) "Department" means the Department of Insurance.

(2) "Insurer" means any person authorized to conduct a casualty insurance business in this state or a legal service insurance corporation authorized under ss. 642.011-642.049.

(3) "Legal expense insurance" means a contractual obligation to provide specific legal services, or to reimburse for specific legal expenses, in consideration of a specified payment for an interval of time, regardless of whether the payment is made by the beneficiaries individually or by a third person for them, but does not include the provision of, or reimbursement for, legal services incidental to other insurance coverages.

History.—s. 1, ch. 79-103.

**642.017 Exemptions.**—The insurance laws of this state, including ss. 642.011-642.049, shall not apply to:

- (1) Retainer contracts made by attorneys-at-law

with individual clients with fees based on estimates of the nature and amount of services to be provided to the specific client and similar contracts made with a group of clients involved in the same or closely related legal matters.

(2) Any lawyer referral service authorized by The Florida Bar.

(3) The furnishing of legal assistance by labor unions or other employee organizations to their members in matters relating to employment or occupation.

(4) The furnishing of legal assistance to members, or their dependents, by a church, cooperative, educational institution, credit union, or organization of employees, in which the organization contracts directly with a lawyer or law firm for the provision of legal services and the administration and marketing of such legal services is conducted wholly by the organization.

(5) Employee welfare benefit plans to the extent that state laws are superseded by the Employee Retirement Income Security Act of 1974, 29 U.S.C. s. 1144, provided evidence of exemption from state laws is shown to the department.

History.—s. 1, ch. 79-103.

**642.019 Organization of legal service insurance corporations.**—

(1) Any number of corporations or adult natural persons may organize a legal service insurance corporation under the law of this state relating to corporations generally.

(2) The articles of incorporation shall conform to the requirements applicable to corporations, and, in addition:

(a) The name of the corporation shall indicate that legal services or indemnity for legal expenses is to be provided; and

(b) The purposes of the corporation shall be limited to providing legal services or indemnity for legal expenses and business reasonably related thereto.

History.—s. 1, ch. 79-103.

**642.021 Certificate of authority.**—

(1) It is unlawful for any person to engage in a legal expense insurance business in this state without a valid certificate of authority issued by the department, pursuant to ss. 642.011-642.049, except that a domestic, foreign, or alien insurer authorized to transact casualty insurance in this state may transact legal expense insurance provided it complies with the applicable provisions of ss. 642.011-642.049. A certificate of authority under ss. 642.011-642.049 may be issued only to a legal service insurance corporation.

(2) The corporation shall file with the department an application for a certificate of authority upon a form to be furnished by the department, which shall include or have attached the following:

(a) The names, and for the preceding 10 years, all addresses and all occupations of all incorporators and proposed directors and officers.

(b) A certified copy of the corporate articles and

bylaws and a list of the names, addresses, and occupations of all directors and principal officers and, for the 3 most recent years, the corporation's annual statements and reports.

(c) Each agreement relating to the corporation to which any incorporator or proposed director or officer is a party.

(d) A statement of the amount and sources of the funds available for organization expenses and the proposed arrangements for reimbursement and compensation of incorporators or other persons.

(e) A statement of compensation to be provided directors and officers.

(f) The forms to be used for any proposed contracts between the corporation and participating attorneys, between the corporation and corporations which perform administration, marketing, or management services, and forms relating to the provision of services to insureds.

(g) The plan for conducting the insurance business, which plan shall include all of the following:

1. The geographical area in which business is intended to be conducted in the first 5 years.

2. The types of insurance intended to be written in the first 5 years, including specification whether and to what extent indemnity rather than service benefits are to be provided.

3. The proposed marketing methods.

(h) A current statement of the assets and liabilities of the corporate applicant.

(i) Forms of all legal service contracts the applicant proposes to offer showing the rates to be charged for each form of contract.

(j) Such other documents and information as the department may reasonably require.

(3) Copies of the documents filed pursuant to paragraphs (f) and (i) of subsection (2) shall be filed with The Florida Bar within 5 days after filing with the department.

(4) The department shall issue a certificate of authority only to a legal service insurance corporation, provided it is satisfied that:

(a) All requirements of law have been met;

(b) All natural persons who are incorporators, the directors and principal officers of corporate incorporators, and the proposed directors and officers of the corporation being formed are trustworthy and collectively have the competence and experience to engage in the particular insurance business proposed; and

(c) The business plan is consistent with the interests of potential insureds and of the public.

History.—s. 1, ch. 79-103.

#### 642.023 Required deposit or bond.—

(1) To assure the faithful performance of its obligations in the event of insolvency, each legal service insurance corporation, prior to the issuance of its certificate of authority, shall deposit and maintain with the department securities of the type eligible for deposit by insurers under s. 625.52, which securities shall be held in trust and shall have at all times a market value in the amount specified. The initial deposit for a corporation shall be in the amount of \$50,000 for at least the first full year of operation; except that the initial deposit for any organization applying for a certificate of authority and having

previously been engaged in the sale of legal expense insurance under the supervision of The Florida Bar prior to October 1, 1979, shall be in the amount of \$50,000 or 50 percent of its gross written premiums in force, whichever is less. The amount of the initial deposit shall be adjusted annually thereafter on October 1 as follows:

(a) Each corporation having in force less than \$300,000 of gross written premiums shall deposit with the department an amount equal to 50 percent of such premiums in force or \$50,000, whichever is less.

(b) Each corporation having in force more than \$300,000 of gross written premiums, but less than \$750,000, shall deposit with the department an amount not less than \$75,000.

(c) Each corporation having in force more than \$750,000 of gross written premiums shall deposit with the department an amount equal to \$100,000.

(2) In lieu of any deposit of securities required under subsection (1) and subject to the approval of the department, a legal service insurance corporation may file with the department a surety bond issued by an authorized surety insurer. The bond shall be for the same purpose as the deposit in lieu of which it is filed. The department shall not approve any bond under the terms of which the protection afforded against insolvency is not equivalent to the protection afforded by those securities provided for in subsection (1).

(3) Securities or bonds deposited pursuant to this section shall be for the benefit of, and subject to, action thereon by any person sustaining an actionable injury due to the failure of the corporation to faithfully perform its obligations to its insureds in the event of insolvency or impairment of any legal service insurance corporation.

(4) The state shall be responsible for the safekeeping of all securities deposited with the department under ss. 642.011-642.049. Such securities shall not, on account of being in this state, be subject to taxation, but shall be held exclusively and solely to guarantee the performance by the legal service insurance corporation of its obligations to its insureds.

(5) Such deposit or bond shall be maintained unimpaired as long as the legal service insurance corporation continues to do business in this state. Whenever the corporation ceases to do business in this state and furnishes proof satisfactory to the department that it has discharged or otherwise adequately provided for all its obligations to its insureds in this state, the department shall release the deposited securities to the parties entitled thereto, on presentation of the department's receipts for such securities, or shall release the bond filed with it in lieu of such deposit.

(6) The department may reduce the amount of deposit or bond required under subsections (1) and (2) if it finds that the reduction is justified by:

(a) The terms and number of existing contracts with subscribers;

(b) Support by financially sound public or private organizations or agencies;

(c) Other reliable financial guarantees;

(d) A pressing social need in the community to be served for the benefits to be provided;



(e) Plan attorney agreements that provide for full plan benefits to subscribers without additional payments by the subscribers if the plan terminates; or

(f) Other special circumstances.

(7) The department may at any time enter an order modifying the amount of the deposit or bond specified under subsections (1) and (2) if it finds that there has been a substantial change in the facts on which the determination was based. The department shall hold a hearing within 30 days after receiving a request from the corporation which shall be submitted within 30 days after notification of the modification order. Failure to meet the new requirements within 30 days after final decision or after the expiration of the 30-day period for submitting the hearing request constitutes a ground for rehabilitation.

History.—s. 1, ch. 79-103.

#### 642.025 Policy and certificate forms.—

(1) Legal expense insurance may be written as individual, group, blanket, or franchise insurance. Each contractual obligation for legal expense insurance shall be evidenced by a policy. Each person insured under a group policy shall be issued a certificate of coverage.

(2) No policy or certificate of legal expense insurance may be issued in this state unless a copy of the form has been filed with and approved by the department.

(3) The department shall not approve any policy or certificate form which does not meet the following requirements:

(a) Policies shall contain a list and description of the legal services to be supplied or the legal matters for which expenses are to be reimbursed and any limits on the amounts to be reimbursed.

(b) Policies and certificates shall indicate the name of the insurer and the full address of its principal place of business.

(c) Certificates issued under group policies shall contain a full statement of the benefits provided and exceptions thereto but may summarize the other terms of the master policy.

(d) Policies providing for legal services to be supplied by a limited number of attorneys who have executed provider contracts with the insurer, whether the attorney in an individual case is to be selected by the insured or by the insurer, shall provide for alternative benefits if the insured is unable to find a participating attorney willing to perform the services or the attorney selected by the insurer is disqualified or otherwise unable to perform the services. The alternative benefit may consist of furnishing the services of an attorney selected and paid by the insurer or paying the fee of an attorney selected by the insured. The policy shall also provide a procedure that includes impartial review for settling disagreements concerning the grounds for demanding an alternative benefit.

(e) No policy, except one issued by a mutual or reciprocal insurance company, may provide for assessments on policyholders or for reduction of benefits for the purpose of maintaining the insurer's solvency.

(f) Policies shall contain a statement that the subscriber has a right to file a complaint with The

Florida Bar concerning attorney conduct pursuant to the plan.

(g) Policies shall contain a statement that the individual beneficiary has the right to retain, at his own expense, except when the policy provides otherwise, any attorney authorized to practice law in this state.

(4) The department may disapprove a policy or certificate form if it finds that the form:

(a) Is unfair, unfairly discriminatory, misleading, ambiguous, or encourages misrepresentation or misunderstanding of the contract;

(b) Provides coverage or benefits or contains other provisions that would endanger the solvency of the insurer; or

(c) Is contrary to law.

History.—s. 1, ch. 79-103.

**642.027 Premium rates.**—No policy of legal expense insurance may be issued in this state unless the premium rates for the insurance have been filed with and approved by the department. Premium rates shall be established and justified in accordance with generally accepted insurance principles, including, but not limited to, the experience or judgment of the insurer making the rate filing or actuarial computations. The department may disapprove rates that are excessive, inadequate, or unfairly discriminatory. Rates are not unfairly discriminatory because they are averaged broadly among persons insured under group, blanket, or franchise policies. The department may require the submission of any other information reasonably necessary in determining whether to approve or disapprove a filing made under this section or s. 642.025.

History.—s. 1, ch. 79-103.

#### 642.029 Contracts by insurers.—

(1) Contracts made between the insurer and participating attorneys, management contracts, or contracts with providers of other services by the legal expense insurance policy shall be filed with and approved by the department.

(2) Insurers shall annually report to the department, in such detail as is reasonably required, the number and geographical distribution of attorneys and providers of other services covered by the legal expense insurance policy with whom it maintains contractual relations and the nature of the relations. The department may require more frequent reports from an insurer or group of insurers.

History.—s. 1, ch. 79-103.

#### 642.032 Provisions of general insurance law applicable to legal service insurance corporations.—

(1) The following provisions of the insurance laws of this state shall apply to legal service insurance corporations, to the extent that they are not inconsistent with the provisions of ss. 642.011-642.049:

(a) Chapter 624, Administration and General Provisions.

(b) Chapter 625, Accounting, Investments, and Deposits.

(c) Chapter 626, part VII, Unfair Insurance Trade Practices.

(d) Chapter 627, part I, Rates and Rating Organizations, and part II, The Insurance Contract.

(e) Chapter 631, Insurer Insolvency; Guaranty of Payment.

(2) The department may, by rule, modify or waive any requirement of the law referred to in subsection (1) to avoid unreasonable hardship, expense, or inconvenience to a legal service insurance corporation if the interests of policyholders continue to be adequately protected.

History.—s. 1, ch. 79-103.

**642.034 Registration required.**—No person shall solicit, negotiate, advertise, or execute legal expense insurance contracts in this state unless such person is registered as a sales agent or is commissioned for that purpose by a sales agent, except a person who is licensed as a general lines agent or solicitor.

History.—s. 1, ch. 79-103.

**642.036 Sales agents to be registered.**—Each legal service insurance corporation shall, on forms prescribed by the department, register, on or before October 1 of each year, the name and business address of each sales agent under contract with it in this state and shall, within 30 days after termination of the contract, notify the department of such termination. At the time of the annual registration, a \$10 filing fee for each sales agent shall be paid by the legal service insurance corporation to the department. Any sales agent employed after the October 1 filing date shall be registered with the department within 10 days after such employment. No employee or sales agent of a legal service insurance corporation shall directly or indirectly solicit or negotiate insurance contracts, or hold himself out in any manner to be an insurance agent or solicitor, unless so qualified and licensed therefor under the Insurance Code.

History.—s. 1, ch. 79-103.

**642.038 Reporting and accounting for funds.**—

(1) All funds belonging to legal service insurance corporations or others received by a sales agent in transactions under his registration shall be trust funds so received by such agent in a fiduciary capacity, and the agent, in the applicable regular course of business, shall account for and pay the same to the legal service insurance corporation or other person entitled thereto.

(2) Any sales agent who, not being entitled thereto, diverts or appropriates such funds or any portion thereof to his own use is guilty of larceny as provided in s. 812.021.

History.—s. 1, ch. 79-103.

**642.041 Grounds for compulsory refusal, suspension, or revocation of registration of contracting sales agents.**—The department shall deny, suspend, revoke, or refuse to renew or continue the registration of any sales agent if it finds that, as to the agent, any one or more of the following applicable grounds exist:

(1) Material misstatement, misrepresentation, or fraud in registration.

(2) The registration is willfully used, or to be used, to circumvent any of the requirements or prohibitions of ss. 642.011-642.049.

(3) Willful misrepresentation of any legal service expense contract or willful deception with regard to any such contract, performed either in person or by any form of dissemination of information or advertising.

(4) In the adjustment of claims, material misrepresentation to a contract holder or other interested party of the terms and coverage of a contract, with the intent and for the purpose of settling such claim on less favorable terms than those provided in and contemplated by the contract.

(5) Demonstrated lack of fitness or trustworthiness to engage in the business of legal expense insurance.

(6) Demonstrated lack of adequate knowledge and technical competence to engage in the transactions authorized by the registration.

(7) Fraudulent or dishonest practices in the conduct of business under the registration.

(8) Misappropriation, conversion, or unlawful withholding of moneys belonging to a legal service insurance corporation or to others and received in the conduct of business under the registration.

(9) Rebating, or attempting to rebate, or unlawfully dividing, or offering to divide, his commission with another.

(10) Willful failure to comply with, or willful violation of, any proper order or rule of the department or willful violation of any provision of ss. 642.011-642.049.

History.—s. 1, ch. 79-103.

**642.043 Grounds for discretionary refusal, suspension, or revocation of registration of sales agents.**—The department may, in its discretion, deny, suspend, revoke, or refuse to renew or continue the registration of any sales agent if it finds, after notice and hearing thereon as provided in s. 642.045, that, as to the agent, any one or more of the following applicable grounds exist under circumstances for which such denial, suspension, revocation, or refusal is not mandatory under s. 642.041:

(1) Any cause for which granting of the registration could have been refused had it been known to the department at the time of application.

(2) Violation of any provision of ss. 642.011-642.049, or of any other law applicable to the business of legal expense insurance in the course of dealings under the registration.

(3) Violation of any lawful order or rule of the department.

(4) Failure or refusal to pay over, upon demand, to any legal service insurer he represents, or has represented, any money coming into his hands which belongs to the legal service insurance corporation.

(5) In the conduct of business under the registration, he has engaged in unfair methods of competition or in unfair or deceptive acts or practices, as such methods, acts, or practices are defined under part VII of chapter 626, or has otherwise shown himself to be a source of injury or loss to the public or

detrimental to the public interest.

(6) Conviction of a felony.

History.—s. 1, ch. 79-103.

**642.045 Procedure for refusal, suspension, or revocation of registration of sales agent.—**

(1) If any sales agent is convicted by a court of a violation of any provision of ss. 642.011-642.049, the registration of such individual shall thereby be deemed to be immediately revoked without any further procedure relative thereto by the department.

(2) As to a registration denied, suspended, or revoked by the department, the person aggrieved thereby shall have the right to a hearing thereon.

(3) If, after an investigation or upon other evidence, the department has reason to believe that grounds may exist for the suspension or revocation of, or refusal to renew or continue, the registration of any sales agent, as such grounds are specified in ss. 642.041 and 642.043, the department may proceed to suspend, revoke, or refuse to renew or continue the registration.

(4) Whenever it appears that any licensed insurance agent has violated the provisions of ss. 642.011-642.049, the department may take such action relative thereto as is authorized by the Insurance Code for a violation of the Insurance Code by such agent.

History.—s. 1, ch. 79-103.

**642.047 Administrative fine in lieu of suspension or revocation of registration.—**

(1) If, pursuant to procedures provided for in ss. 642.011-642.049, it is found that one or more grounds exist for the suspension or revocation of, or refusal

to renew or continue, any registration issued under ss. 642.011-642.049, and except when such suspension, revocation, or refusal is mandatory, an order may be entered imposing upon the registrant, in lieu of such suspension, revocation, or refusal, an administrative penalty for each violation in the amount of \$100 or, in the event of willful misconduct or willful violation on the part of the registrant, an administrative fine of \$500. The administrative penalty may be augmented in amount by an amount equal to any commissions received by or accruing to the credit of the registrant in connection with any transaction to which the grounds for suspension, revocation, or refusal related.

(2) The order may allow the registrant a reasonable period not to exceed 30 days, within which to pay to the department the amount of the penalty so imposed. If the registrant fails to pay the penalty in its entirety to the department at its office in Tallahassee within the period so allowed, the registration of the registrant shall stand suspended or revoked, or renewal or continuation may be refused, as the case may be, upon expiration of such period and without any further proceedings.

History.—s. 1, ch. 79-103.

**642.049 Construction.—**Nothing contained in ss. 642.011-642.049 shall be construed to regulate the practice of law or limit the powers or authority of the Supreme Court of Florida in the regulation of the conduct of attorneys.

History.—s. 1, ch. 79-103.



## CHAPTER 648

## BAIL BONDSMEN AND RUNNERS

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**<sup>1</sup>648.25 Definitions for ss. 648.25-648.57.**—The following words when used in ss. 648.25-648.57 shall have the meanings respectively ascribed to them in this section:

(1) "Department" shall mean the Department of Insurance.

(2) "Insurer" shall mean any domestic, foreign or alien surety company which has qualified to transact surety business in this state.

(3) "Bail bondsman" shall mean a limited surety agent or a professional bail bondsman as hereafter defined.

(4) "Limited surety agent" shall mean any individual appointed by an insurer by power of attorney to execute or countersign bail bonds in connection with judicial proceedings and receives or is promised money or other things of value therefor.

(5) "Professional bondsman" shall mean any per-

son who pledges United States currency, United States postal money orders, or cashier's checks or other property as security for a bail bond in connection with a judicial proceeding and receives or is promised therefor money or other things of value.

(6) "Runner" shall mean a person employed by a bail bondsman for the purpose of assisting the bail bondsman in presenting the defendant in court when required, or employed by the bail bondsman to assist in the apprehension and surrender of defendant to the court, or keeping the defendant under necessary surveillance. This does not affect the right of a bail bondsman to hire counsel, or to ask assistance of law enforcement officers.

(7) "General agent" shall mean any individual, partnership, association or corporation appointed or employed by an insurer to supervise or manage the bail bond business written by limited surety agents of such insurer.

**History.**—s. 1, ch. 29621, 1955; s. 2, ch. 57-63; s. 6, ch. 65-492; ss. 13, 35, ch. 69-106; s. 177, ch. 70-339; s. 272, ch. 71-377; s. 3, ch. 76-168; s. 1, ch. 77-457.

**<sup>1</sup>Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**Note.**—Former s. 903.37.

#### **<sup>1</sup>648.26 Department of Insurance; administration.**

(1) The department shall have full power and authority to administer the provisions of ss. 648.25-648.57, which regulate bail bondsmen and runners, and to that end, to adopt and promulgate rules and regulations pursuant to s. 624.308 of the insurance code, and enforce rules and regulations necessary and proper to effectuate and enforce the purposes and provisions of said sections. The department may employ and discharge such employees, examiners, counsel, and such other assistants as shall be deemed necessary, and it shall prescribe their duties, and their compensation shall be the same as other state employees receive for similar services.

(2) The department shall adopt a seal by which its proceedings are authenticated. Any written instrument purporting to be a copy of any action, proceeding, or finding of fact by the department, or any record of the department authenticated by the seal, shall be accepted by all the courts of this state as prima facie evidence of the contents thereof.

(3) The department's papers, documents, reports or evidence shall not be subject to subpoena without its consent until after the same shall have been published at a hearing held under said sections, unless after notice to the department and hearing, the court shall determine that the department shall not be unnecessarily hindered or embarrassed.

**History.**—s. 2, ch. 29621, 1955; s. 7, ch. 61-406; ss. 13, 35, ch. 69-106; s. 177, ch. 70-339; s. 3, ch. 76-168; s. 1, ch. 77-457.

**<sup>1</sup>Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**Note.**—Former s. 903.38.

#### **<sup>1</sup>648.27 Licenses; general.**

(1) No license shall be issued except in compliance with this chapter and none shall be issued except to an individual. A firm, partnership, associa-

tion, or corporation, as such, shall not be licensed.

(2) For the protection of the people of this state, the department shall not issue, renew, or permit to exist any license except in compliance with this chapter. The department shall not issue, renew, or permit to exist a license for any individual found to be untrustworthy or incompetent who has had his eligibility to hold a license revoked, or who has not established to the satisfaction of the department that he is qualified therefor in accordance with this chapter.

(3) The department may propound any reasonable interrogatories to an applicant for a license under this chapter or on any renewal thereof, relating to his qualifications, residence, prospective place of business, and any other matters which are deemed necessary or expedient in order to protect the public and ascertain the qualifications of the applicant. The department may also conduct any reasonable inquiry or investigation it sees fit, relative to the determination of the applicant's fitness to be licensed or to continue to be licensed. Upon the request of the department, a law enforcement agency shall inform the department of any specific criminal charge filed against any applicant and the final disposition of such charge.

(4) If upon the basis of the completed application for a license and such further inquiry or investigation the department deems the applicant to be unfit as to character and background or lacking in one or more of the required qualifications for the license, the department shall disapprove the application.

(5)(a) The license of a limited surety agent and a professional bail bondsman shall continue in force, without further examination unless deemed necessary by the department, until suspended, revoked or otherwise terminated but subject to annual continuation by the insurer or professional bondsman named therein on or before September 1 by payment of the fee and license taxes for renewal or continuation of the license as prescribed in s. 648.31 and miscellaneous fees as prescribed in s. 624.501 of the insurance code.

(b) The license of a bail bond runner shall continue in force until expired, suspended, revoked or otherwise terminated but subject to annual continuation by the appointing limited surety agent or professional bondsman named therein on or before September 1 by payment of the fee and license taxes for renewal or continuation of the license as prescribed in s. 648.31 and miscellaneous fees as prescribed in s. 624.501 of the insurance code.

(6) Any such license as to which request for renewal or continuation is not received by the department at its offices at Tallahassee as required by subsection (5), shall be deemed to have expired as at midnight on September 30 next following such failure. Request for renewal or continuation of any such license or payment of fee and license taxes therefor which is received by the department after such September 1 but on or before the next following October 15 may be accepted and effectuated by the department, in its discretion, and any such request and payment received by the department after such October 15 and on or before the next following November 15, may be accepted and effectuated by the de-

partment, in its discretion, only if accompanied by an additional license continuation fee in the amount of \$5. Such continuation fees to be deposited to the credit of the Insurance Commissioner's Regulatory Trust Fund.

(7) The original license certificate issued to any such licensee shall remain outstanding and in effect for so long as the license represented thereby continues in force as hereinabove provided.

(8) Any person who represents a surety company and whose duties are restricted to bail bonds only but who comes under the definition of service representative as provided in s. 626.081 of the insurance code may be licensed as a bail bondsman provided such person meets the qualification requirements of this chapter. Provided further, such person must either be licensed as a bail bondsman or qualify as a service representative and shall engage in such activities as provided in ss. 626.081, 626.744 and 626.745.

**History.**—s. 3, ch. 29621, 1955; s. 1, ch. 59-326; s. 8, ch. 61-406; s. 23, ch. 65-269; ss. 13, 35, ch. 69-106; s. 177, ch. 70-339; s. 24, ch. 71-86; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 1, ch. 78-29; s. 21, ch. 78-95.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**Note.**—Former s. 903.39.

cf.—s. 624.523 Insurance Commissioner's Regulatory Trust Fund.

#### **§648.28 Bondsman and general agent deposit or bond.—**

(1) When the department shall be satisfied that the applicant for a bail bondsman's license had qualified for such a license and met the requirements provided in ss. 648.27, 648.34, 648.35, and 648.38, it shall notify the applicant that a license will be issued upon the applicant's posting a deposit or bond.

(2) Prior to the issuance of a license or continuation of an existing license the applicant or licensee shall deposit with the department securities of the type eligible for deposit by insurers under s. 625.52, and having at all times a market value of not less than \$5,000; except that a general lines agent as defined in s. 626.041, shall not make such deposit unless the majority of his premium volume is derived from the bail bond business.

(3) No insurer shall appoint or allow to be represented in this state by a general agent unless first the general agent shall have deposited with the department securities of the type eligible for deposit by insurers under s. 625.52, and having at all times a market value of not less than \$25,000.

(4) In lieu of any deposit of securities the bail bondsman or general agent may file with the department a surety bond in the penal sum of like amount. The bond shall be issued and continued by an authorized surety insurer not represented by said bail bondsman or general agent. The bond shall be for the same purpose as the deposit in lieu of which it is filed, shall be in favor of the department and shall specifically authorize recovery by the department of the damages obtained in case the bail bondsman or general agent fails to faithfully perform his obligations in the conduct of the bail bond business. No such bond shall be canceled or subject to cancellation unless at least 60 days advance notice thereof in writing is filed with the department.

(5) The state shall be responsible for the safekeeping of all securities deposited with the depart-

ment under this chapter. Such securities shall not, on account of being in this state, be subject to taxation, but shall be held exclusively and solely to guarantee the bail bondsman's or general agent's faithful performance of his obligations in the conduct of the bail bond business.

(6) The depositing bail bondsman or general agent shall, during his solvency, have the right to exchange or substitute other securities of like quality and value for securities so on deposit to receive the interest and other income accruing on such securities, and to inspect the deposit at all reasonable times.

(7) Such deposit or bond shall be maintained unimpaired as long as the bail bondsman or general agent continues in business in this state. Whenever the bail bondsman or general agent ceases to do business in this state and furnishes to the department proof satisfactory to it that such bail bondsman or general agent has discharged or otherwise adequately provided for all his obligations in this state in the conduct of his business, the department shall release the deposited securities to the bail bondsman or general agent entitled thereto, on presentation of the department's receipts for such securities, or release any bond filed with it in lieu of such deposit.

**History.**—s. 7, ch. 65-492; ss. 13, 35, ch. 69-106; s. 177, ch. 70-339; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**Note.**—Former s. 903.391.

**648.29 Bondsman, build-up funds.**—All deposits or build-up funds posted by a bail bondsman or general agent, either with the insurer or general agent representing such insurer, must be maintained by the insurer or the general agent in a bank or savings and loan association in this state.

**History.**—s. 8, ch. 65-492; s. 177, ch. 70-339; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**Note.**—Former s. 903.392.

**648.30 License required.**—No person shall act in the capacity of a professional bail bondsman, limited surety agent, or runner, or perform any of the functions, duties or powers prescribed for bail bondsmen or runners under the provisions of this chapter unless that person shall be qualified and licensed as provided in this chapter.

**History.**—s. 4, ch. 29621, 1955; s. 177, ch. 70-339; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**Note.**—Former s. 903.40.

**648.31 License tax and fee.**—

(1) The department shall collect in advance all license taxes and fees for the issuance of any license to a bail bondsman, limited surety agent, or runner, as follows:

(a) Original license:	
Appointment fee .....	\$1.00
State license tax .....	\$6.00
County license tax .....	\$3.00
Total .....	\$10.00

(b) Annual renewal or continuation of license:

Appointment fee .....	\$1.00
State license tax .....	\$6.00
County license tax .....	\$3.00
Total .....	\$10.00

(2) The department shall deposit all license taxes and fees in such funds and for such uses as is provided by laws applicable to like license taxes and like fees in the case of general lines agents.

**History.**—s. 5, ch. 29621, 1955; s. 2, ch. 59-326; ss. 13, 35, ch. 69-106; s. 177, ch. 70-339; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**Note.**—Former s. 903.41.

**648.32 Effective date and initial period of license.**—

(1) All licenses as to which all requisite applications, payment of fees and taxes, passing of examinations, and waiting periods have been completed and evidence thereof in the customary form received by the department at its office in Tallahassee within 1 calendar month prior to the expiration of the applicable license year then current or within 1 calendar month after the commencement of the next following new license year, shall be dated and be effective as of the first day of such new license year and shall be as for the entire such license year (subject to suspension, revocation, renewal, continuation, or termination as otherwise provided for in this chapter); but such a license, if issued pursuant to qualification therefor during the last calendar month of the preceding license year as hereinabove provided, shall be deemed to relate back in effectiveness to the date within such calendar month on which the last of such qualifying requirements was received by the department at its offices in Tallahassee.

(2) All other licenses shall be dated and become effective as of the date of issue.

**History.**—s. 3, ch. 59-326; ss. 13, 35, ch. 69-106; s. 177, ch. 70-339; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**Note.**—Former s. 903.411.

**648.33 Bail bond rates.**—Bail bond rates shall be subject to the provisions of part I of chapter 627 of the insurance code. It shall be unlawful for a bail bondsman to execute a bail bond without charging a premium therefor and the premium rate shall not exceed nor be less than the premium rate as filed with and approved by the department.

**History.**—s. 6, ch. 29621, 1955; s. 4, ch. 59-326; ss. 13, 35, ch. 69-106; s. 177, ch. 70-339; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**Note.**—Former s. 903.42.

**648.34 Bail bondsmen; qualifications.**—

(1) Application for filing for examination for bail bondsmen shall be submitted on forms furnished by the department.

(2) To qualify as a bail bondsman it must affirmatively appear:

(a) That the applicant is a natural person who has reached the age of 18 years.

(b) That the applicant has been a bona fide resident of the state for 1 year last past and will actually



reside in this state at least 6 months out of each year.

(c) That the place of business of the applicant will be located in this state and that such applicant will be actively engaged in the bail bond business and maintain a place of business accessible to the public.

(d) That no applicant for a license as a limited surety agent or professional bondsman shall be qualified therefor or be so licensed unless, within the 2 years immediately preceding the date his application for license is filed with the department, he has:

1. Successfully completed a basic certification course in the criminal justice system, consisting of not less than 80 hours, approved by the department; and

2.a. Successfully completed a correspondence course for bail bondsmen approved by the department;

b. Been engaged as a licensed runner for a period of 1 year;

c. Held a valid general lines agent's license for 1 year; or

d. Had at least 1 year with responsible duties as a substantially full-time bona fide employee of a licensed agent or professional bondsman or an insurer engaged in writing bail bonds in which field he has specialized.

(e) That the applicant is vouched for and recommended upon sworn statements by at least three bail bondsmen licensed by the department, or three other reputable citizens who are residents of the same counties in which applicant proposes to engage in the bail bond business.

(f) That the applicant is a person of high character and approved integrity.

(3) A fee of \$10 shall be submitted to the department with each application, such fee to be deposited to the credit of the Insurance Commissioner's Regulatory Trust Fund.

(4) Applicant shall furnish with his application, a complete set of his fingerprints and a recent credential-size fullface photograph of himself. The applicant's fingerprints shall be certified by an authorized law enforcement officer.

(5) Any limited surety agent or professional bondsman who holds a license on October 1, 1977, issued under the provisions of this chapter shall be exempt from the provisions of this section.

**History.**—s. 7, ch. 29621, 1955; s. 5, ch. 59-326; s. 9, ch. 61-406; s. 2, ch. 61-119; s. 24, ch. 65-269; ss. 13, 35, ch. 69-106; s. 177, ch. 70-339; s. 3, ch. 76-168; s. 1, ch. 77-96; s. 1, ch. 77-116; s. 61, ch. 77-121, s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**Note.**—Former s. 903.43.

**§648.35 Professional bondsmen; qualifications.**—In addition to the qualifications prescribed in s. 648.34, to qualify as a professional bondsman an applicant shall:

(1) File with his application for filing for examination and with each application for renewal or continuation of his license a detailed financial statement under oath; and

(2) File with his application for filing for examination the rating plan he proposes to use in writing

bail bonds; such rating plan must be approved prior to issuance of the license.

**History.**—s. 8, ch. 29621, 1955; s. 10, ch. 61-406; s. 177, ch. 70-339; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**Note.**—Former s. 903.44.

#### **§648.36 Bail bondsman's records.**—

(1) Every bail bondsman must maintain in his office such records of bail bonds executed or countersigned by him to enable the public to obtain all necessary information concerning such bail bonds for at least 1 year after the liability of the surety has been terminated.

(2) On or before August 15 of each year, a sworn statement on a form furnished by the department shall be filed with the department by:

(a) Every bail bondsman listing his assets and liabilities, and

(b) Every bail bondsman or every firm or agency if the bail bondsman is employed by, associated with or is a member of such firm or agency, listing every outstanding or unpaid forfeiture, estreature and judgment, together with the name of the court in which such forfeiture, estreature and judgment is recorded, and submitting all other pertinent information requested by the department.

**History.**—s. 11, ch. 61-406; ss. 13, 35, ch. 69-106; s. 177, ch. 70-339; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**Note.**—Former s. 903.441.

#### **§648.37 Runners; qualifications.**—To qualify as a runner:

(1) It must affirmatively appear from the application:

(a) That the applicant is a natural person who has reached the age of 18 years.

(b) That the applicant has been a bona fide resident of this state for more than 6 months last past.

(c) That the applicant will be employed by only one bail bondsman, who will supervise the work of the applicant, and be responsible for the runner's conduct in the bail bond business.

(d) The application must be endorsed by the appointing bail bondsman, who shall obligate himself to supervise the runner's activities in his behalf.

(2) A fee of \$10 shall be submitted to the department with each application, such fee to be deposited to the credit of the Insurance Commissioner's Regulatory Trust Fund.

(3) Applicant shall furnish with his application, a complete set of his fingerprints and a recent credential-size fullface photograph of himself. The applicant's fingerprints shall be certified by an authorized law enforcement officer.

**History.**—s. 9, ch. 29621, 1955; s. 6, ch. 59-326; s. 2, ch. 61-119; s. 12, ch. 61-406; s. 25, ch. 65-269; ss. 13, 35, ch. 69-106; s. 177, ch. 70-339; s. 3, ch. 76-168; s. 1, ch. 77-116; s. 62, ch. 77-121; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**Note.**—Former s. 903.45.

#### **§648.38 Examination; time; place; fee; scope.**—

(1)(a) If upon the basis of the completed application for examination and such further inquiry or investigation as the department may make concern-

ing the fitness and qualifications of the applicant, the department is satisfied that, subject to any examination required to be taken and passed by the applicant for a license, the applicant is qualified to take the examination applied for and that all pertinent taxes and fees have been paid, it shall approve the application.

(b) If upon the basis of the completed application for examination and such further inquiry or investigation as to the fitness and qualifications of the applicant, the department deems the applicant to be unfit or lacking in any one or more of the required qualifications as specified in s. 648.34 as to limited surety agent, and ss. 648.34 and 648.35 as to professional bondsmen, the department shall disapprove the application.

(2) Upon approval by the department the applicant shall be required to appear in person at a place hereinafter designated to take a written examination prepared by the department, testing his ability and qualifications to be a bail bondsman.

(3) Each applicant shall become eligible for examination 60 days after the date the application is received by the department in Tallahassee provided the department is satisfied as to the applicant's fitness to take the examination. Examinations shall be held in the department's offices where an adequate and designated examination room is available. Each applicant shall be entitled to take the examination at such of the said offices which is located closest to his place of residence, and he shall be entitled to notice of the time and place not less than 15 days prior to taking the examination.

(4) A fee of \$10 shall be submitted to the department with each application, such fee to be deposited to the credit of the Insurance Commissioner's Regulatory Trust Fund. The fee for filing application for examination shall not be subject to refund.

(5) The failure of the applicant to secure approval of the department shall not preclude him from applying as many times as he desires, but no application will be considered by the department within 60 days subsequent to the date upon which the department denied the last application.

(6) The failure of an applicant to pass an examination, after having been approved by the department to take the examination, shall not preclude him from taking subsequent examinations. A separate and additional application and fee for filing application for examination shall be filed with the department for each subsequent examination; provided, however, that at least 60 days must intervene between examinations.

(7) The \$10 fee for filing application for examination shall apply to each examination, but once an applicant has been approved by the department he will not have to file another application as set forth in ss. 648.34 and 648.35 unless specifically so ordered by the department. Any bail bondsman who successfully passes an examination must be licensed within 24 months from date of examination or be subject to another examination unless failure to be so licensed was due to military service, in which event the period within which another examination is not required may, in the department's discretion, be extended to 12 months following the date of discharge

from military service, if the military service does not exceed 3 years, but in no event to extend under this clause for a period of more than 4 years.

(8) The scope of the examination shall be as broad as the bail bond business.

**History.**—s. 10, ch. 29621, 1955; s. 7, ch. 59-326; s. 13, ch. 61-406; s. 2, ch. 61-119; s. 26, ch. 65-269; ss. 13, 35, ch. 69-106; s. 177, ch. 70-339, s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**Note.**—Former s. 903.46.

#### **§648.39 Notice of appointment of limited surety agents; termination.—**

(1) The insurer shall annually prior to September 1 file with the department an alphabetical list of all limited surety agents appointed, giving the type and class of license, names and addresses of each licensee whose appointment and license in this state is being renewed or is to be continued in effect, accompanied by payment of the applicable renewal or continuation fees and taxes. Every such insurer who shall, subsequent to the filing of this list expect to appoint a limited surety agent in this state, shall give notice thereof to the department along with a written application for license for said agents. All such appointments shall be subject to the issuance of a license to such agents.

(2) The department shall promptly notify any applicant who has passed the limited surety agent's examination. Upon receipt of application for license and proper taxes and fees, the department shall issue a license in the name of the individual to the insurer.

(3) An insurer terminating the appointment of a limited surety agent shall, within 30 days after such termination, file written notice thereof with the department, together with a statement that it has given or mailed notice to the limited surety agent. Such notice filed with the department shall state the reasons, if any, for such termination. Information so furnished the department shall be privileged and shall not be used as evidence in or basis for any action against the insurer or any of its representatives.

(4) Every insurer shall within 5 days after terminating appointment of any limited surety agent give written notice thereof to any clerk of the circuit court and sheriff with which the agent is registered.

**History.**—s. 11, ch. 29621, 1955; s. 8, ch. 59-326; ss. 13, 35, ch. 69-106; s. 177, ch. 70-339; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**Note.**—Former s. 903.47.

#### **§648.40 Notice of appointment of professional bondsmen; termination.—**

(1) Any person applying to qualify as a professional bondsman shall at the time of filing his application for examination also file with the department an application for license and upon the applicant's passing the examination for bail bondsmen the department shall promptly issue proper license.

(2) Any professional bail bondsman who discontinues writing bail bonds during the period for which

he is licensed shall notify the clerks of the circuit court and the sheriffs with whom he is registered and return his license to the department for cancellation within 30 days from such discontinuance.

**History.**—s. 12, ch. 29621, 1955; s. 9, ch. 59-326; ss. 13, 35, ch. 69-106; s. 177, ch. 70-339; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**Note.**—Former s. 903.48.

#### **§648.41 Notice of appointment of runners; termination.—**

(1) Every person duly licensed as a bail bondsman may appoint as runner any person who holds or has qualified for a runner's license. Each bail bondsman shall annually prior to September 1 file with the department an alphabetical list of all runners appointed, giving the type and class of license, names and addresses of each licensee whose appointment and license in this state is being renewed or is to be continued in effect, accompanied by payment of the applicable renewal or continuation fees and taxes. Each such bail bondsman who shall, subsequent to the filing of this list, expect to appoint additional persons as runners shall file written notice with the department and request a license for the said runner.

(2) A bail bondsman terminating the appointment of a runner shall within 30 days file written notice thereof with the department, together with a statement that he has given or mailed notice to the runner. Such notice filed with the department shall state the reasons, if any, for such termination. Information so furnished the department shall be privileged and shall not be used as evidence in any action against the bail bondsman.

**History.**—s. 13, ch. 29621, 1955; s. 10, ch. 59-326; ss. 13, 35, ch. 69-106; s. 177, ch. 70-339; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**Note.**—Former s. 903.49.

**§648.42 Registration of bail bondsmen.**—No bail bondsman shall become a surety on an undertaking unless he has registered in the office of the sheriff and with the clerk of the circuit court in the county in which the bondsman resides and he may register in a like manner in any other county and any limited surety agent shall file a certified copy of his appointment by power of attorney from each insurer which he represents as agent with each of said officers. Registration and filing of certified copy of renewed power of attorney shall be performed annually on October 1. The clerk of the circuit court and the sheriff shall not permit the registration of a bail bondsman unless such bondsman is currently licensed by the department.

**History.**—s. 14, ch. 29621, 1955; ss. 13, 35, ch. 69-106; s. 177, ch. 70-339, s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**Note.**—Former s. 903.50.

#### **§648.43 Power of attorney; to be approved by department; filing of copies.—**

(1) Every insurer engaged in the writing of bail bonds through limited surety agents in this state shall submit and have approved by the department a sample power of attorney which will be the only

form of power of attorney the insurer will issue to limited surety agents in Florida.

(2) Every professional bondsman who authorizes a licensed professional bondsman directly employed by him to sign his name to bonds must file copy of the power of attorney given to such licensed bondsman with the sheriff and the clerk of the circuit court in the county in which he resides and with the department. Such power of attorney shall remain in full force and effect until written notice revoking the power of attorney has been received by the above-named officials.

**History.**—s. 15, ch. 29621, 1955; s. 14, ch. 61-406; ss. 13, 35, ch. 69-106; s. 177, ch. 70-339; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**Note.**—Former s. 903.51.

#### **§648.44 Prohibitions.—**

(1) No bail bondsman or runner shall:

(a) Suggest or advise the employment of or name for employment any particular attorney to represent his principal.

(b) Solicit business in or about any place where prisoners are confined or in or about any court.

(c) Pay a fee or rebate or give or promise anything of value to a jailer, policeman, peace officer, committing magistrate, or any other person who has power to arrest or to hold in custody; or to any public official or public employee in order to secure a settlement, compromise, remission or reduction of the amount of any bail bond or estreatment thereof.

(d) Pay a fee or rebate or give anything of value to an attorney in bail bond matters, except in defense of any action on a bond.

(e) Pay a fee or rebate or give or promise anything of value to the principal or anyone in his behalf.

(f) Participate in the capacity of an attorney at a trial or hearing of one on whose bond he is surety.

(g) Accept anything of value from a principal except the premium, provided that the bondsman shall be permitted to accept collateral security or other indemnity from the principal which shall be returned upon final termination of liability on the bond. Such collateral security or other indemnity required by the bondsman must be reasonable in relation to the amount of the bond.

(2) When a bail bondsman accepts collateral he shall give a written receipt for same, and this receipt shall give in detail a full account of the collateral received.

(3) The following persons or classes shall not be bail bondsmen or runners and shall not directly or indirectly receive any benefits from the execution of any bail bond:

(a) Jailers.

(b) Police officers.

(c) Committing magistrates.

(d) Sheriffs and deputy sheriffs.

(e) Any person having the power to arrest or having anything to do with the control of federal, state, county or municipal prisoners.

(4) A bail bondsman shall not sign nor countersign in blank any bond, nor shall he give a power of attorney to, or otherwise authorize, anyone to countersign his name to bonds unless the person so au-



thorized is a licensed bondsman directly employed by the bondsman giving such power of attorney.

(5) No bail bond agency shall advertise as or hold itself out to be a bail bond or surety company.

**History.**—s. 16, ch. 29621, 1955; s. 177, ch. 70-339; s. 26, ch. 73-334; s. 3, ch. 76-168; s. 1, ch. 77-119; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**Note.**—Former s. 903.52.

**§648.45 Denial, suspension, refusal to renew, or revocation of license or eligibility to hold same.—**

(1) The department may deny, suspend, revoke or refuse to renew any license issued under this law, or it may suspend or revoke the eligibility of any person to hold a license under this law, for any of the following causes or for any violation of the laws of this state relating to bail:

(a) For any cause for which issuance of the license could have been refused had it then existed and been known to the department.

(b) Violation of any law relating to the business of bail bond insurance in the course of dealings under the license issued him by the department.

(c) Material misstatement, misrepresentation or fraud in obtaining the license, or failure to pass any examination required under this chapter.

(d) Misappropriation, conversion or unlawful withholding of moneys belonging to insurers or others and received in the conduct of business under the license.

(e) Conviction of a felony.

(f) Fraudulent or dishonest practices in the conduct of business under the license.

(g) Willful failure to comply with, or willful violation of any proper order, rule or regulation of the department.

(h) Failure or refusal, upon demand, to pay over to any insurer he represents or has represented, any money coming into his hands belonging to the insurer.

(i) Willful failure to return collateral security to the principal when the principal is entitled thereto.

(j) When, in the judgment of the department, the licensee has, in the conduct of affairs under the license, demonstrated incompetency, or untrustworthiness, or conduct or practices rendering him unfit to carry on the bail bond business, or making his continuance in such business detrimental to the public interest, or when the department finds that he is no longer in good faith carrying on the bail bond business, or that he is guilty of rebating, or offering to rebate, or unlawfully dividing, or offering to divide his commissions in the case of limited surety agents, or premiums in the case of professional bondsmen, and for such reasons is found by the department to be a source of detriment, injury or loss to the public.

(2) In case of the suspension or revocation of license or the eligibility to hold such license of any bail bondsman, the license or eligibility to hold same of any or all other bail bondsmen who are members of the same agency, whether incorporated or unincorporated, any or all runners employed by such agency who knowingly were parties to the act which formed the ground for the suspension or revocation shall

likewise be suspended or revoked for the same period as that of the offending bail bondsman, but this shall not prevent the licensing or reinstatement of eligibility of any bail bondsman or runner except the one whose license was first suspended or revoked and those persons who knowingly were parties to the act, from being licensed as a member of, or bail bondsman or runner for some other agency.

(3) No license under this chapter shall be issued, renewed, or permitted to exist when the same is used directly or indirectly to circumvent any of the provisions of this law.

**History.**—s. 17, ch. 29621, 1955; s. 3, ch. 57-63; s. 15, ch. 61-406; ss. 13, 35, ch. 69-106; s. 177, ch. 70-339; s. 25, ch. 71-86; s. 167, ch. 73-333; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**Note.**—Former s. 903.53.

cf.—s. 112.011 Felons; removal of disqualifications for employment, exceptions.

**§648.46 Procedure for suspension or revocation of eligibility or for denial, revocation, suspension, or refusal to renew license.—**

(1) If any bail bondsman or runner is convicted by a court of a violation of any of the provisions of this chapter, the license or eligibility to hold a license of such individual shall thereby be deemed to be immediately revoked.

(2) If after an investigation or upon other evidence the department has reason to believe that there may exist any one or more causes for suspension of, revocation of, or refusal to renew or continue the license of any bail bondsman or runner as such causes are specified in s. 648.45 or that a bail bondsman or runner has been guilty of violating any of the laws of this state relating to bail bonds, or that any licensee is no longer eligible to hold a license, the department may suspend, revoke, or refuse to renew or continue such license.

**History.**—s. 18, ch. 29621, 1955; s. 16, ch. 61-406; ss. 13, 35, ch. 69-106; s. 177, ch. 70-339; s. 26, ch. 71-86; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**Note.**—Former s. 903.54.

**§648.48 Witnesses and evidence.—**

(1) As to the subject of any examination or investigation being conducted by him, the agent or examiner appointed by the department may administer oaths, examine and cross-examine witnesses, receive oral and documentary evidence, and shall have the power to subpoena witnesses, compel their attendance and testimony, and require by subpoena the production of books, papers, records, files, correspondence, documents, or other evidence which he deems relevant to the inquiry.

(2) If any person refuses to comply with any such subpoena or to testify as to any matter concerning which he may be lawfully interrogated, the Circuit Court of Leon County or of the county wherein such examination or investigation is being conducted, or of the county wherein such person resides, on the department's application may issue an order requiring such person to comply with the subpoena and to testify; and any failure to obey such an order of the court may be punished by the court as a contempt thereof.

(3) Subpoenas shall be served and proof of such

service made in the same manner as if issued by a circuit court. Witness fees and mileage, if claimed, shall be allowed the same as for testimony in a circuit court.

(4) Any person willfully testifying falsely under oath as to any matter material to any such examination, investigation or hearing shall upon conviction thereof be guilty of perjury and shall be punished accordingly.

(5) If any person asks to be excused from attending or testifying or from producing any books, papers, records, contracts, documents, or other evidence in connection with any examination, hearing or investigation being conducted by the department or its examiner, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture, and shall notwithstanding be directed to give such testimony or produce such evidence, he must, if so directed by the department and the Department of Legal Affairs, nonetheless comply with such direction, but he shall not thereafter be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may have so testified or produced evidence, and no testimony so given or evidence produced shall be received against him upon any criminal action, investigation or proceeding; except, however, that no such person so testifying shall be exempt from prosecution or punishment for any perjury committed by him in such testimony, and the testimony or evidence so given or produced shall be admissible against him upon any criminal action, investigation or proceeding concerning such perjury; nor shall he be exempt from the refusal, suspension, or revocation of any license, permission, or authority conferred, or to be conferred, pursuant to this chapter.

(6) Any such individual may execute, acknowledge and file in the office of the department a statement expressly waiving such immunity or privilege in respect to any transaction, matter or thing specified in such statement, and thereupon the testimony of such individual or such evidence in relation to such transaction, matter or thing may be received or produced before any judge or justice, court, tribunal, grand jury or otherwise, and if so received or produced such individual shall not be entitled to any immunity or privileges on account of any testimony he may so give or evidence so produced.

(7) Any person who refuses or fails, without lawful cause, to testify relative to the affairs of any person when subpoenaed and requested by the department to so testify shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 18, ch. 61-406; ss. 11, 13, 35, ch. 69-106; s. 177, ch. 70-339; s. 666, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**Note.**—Former s. 903.542.

#### **§648.49 Duration of suspension or revocation.—**

(1) The department shall, in its order suspending a license or the eligibility to hold same, specify the period during which the suspension is to be in effect, but such period shall not exceed 1 year. The license

and eligibility to hold same shall remain suspended during the period so specified, subject, however, to any rescission or modification of the order by the department, or modification or reversal thereof by the court, prior to expiration of the suspension period. A license which has been suspended shall not be reinstated, nor shall the eligibility to hold such license be reinstated, except upon request for such reinstatement, but the department shall not grant such reinstatement if it finds that the circumstances for which the license was suspended still exist or are likely to recur.

(2) No individual licensed under any license which has been revoked or who has had his eligibility to hold same revoked by the department, shall have the right to apply for another license under this chapter within 2 years from the effective date of such revocation, or, if judicial review of such revocation is sought, within two years from the date of final court order or decree affirming the revocation. The department shall not, however, grant a new license to any individual if it finds that the circumstances for which the previous license was revoked still exist or are likely to recur.

(3) If licenses or the eligibility to hold licenses as bail bondsman or runner as to the same individual have been revoked at two separate times, the department shall not thereafter grant or issue any license under this chapter as to such individual.

(4) During the period of suspension, or after revocation of the license, the former licensee shall not engage in or attempt to profess to engage in any transaction or business for which a license is required under this chapter.

**History.**—s. 19, ch. 61-406; ss. 13, 35, ch. 69-106; s. 177, ch. 70-339; s. 27, ch. 71-86; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**Note.**—Former s. 903.543.

#### **§648.50 Effect of suspension, revocation upon associated licenses and licensees.—**

(1) Upon suspension, revocation or refusal to renew or continue any license or the eligibility to hold same of a bail bondsman or runner the department shall at the same time likewise suspend or revoke all other licenses and the eligibility to hold any other such licenses which may be held by the licensee under the Florida Insurance Code.

(2) In case of the suspension or revocation of license or eligibility to hold same of any bail bondsman, the license or eligibility of any and all bail bondsmen who are members of a bail bond agency, whether incorporated or unincorporated, and any and all runners employed by such bail bond agency, who knowingly are parties to the act which formed the ground for the suspension or revocation may likewise be suspended or revoked for the same period as that of the offending bail bondsman; but this shall not prevent any bail bondsman or runner, except the one whose license was first suspended or revoked, from being licensed as a member of or a runner for some other bail bond agency.

**History.**—s. 20, ch. 61-406; ss. 13, 35, ch. 69-106; s. 177, ch. 70-339; s. 28, ch. 71-86; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective

July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

Note.—Former s. 903.544.

#### **§648.51 Surrender of license or permit.—**

(1) Though issued to a licensee all certificates of licenses issued under this chapter are at all times the property of the state, and upon notice of any suspension, revocation, refusal to renew, expiration or other termination of the license, the licensee or other person having either the original or copy of the license shall promptly deliver the certificate of license or copy thereof to the department for cancellation.

(2) As to any certificate of license lost, stolen or destroyed while in the possession of any such licensee or person, the department may accept in lieu of return of the certificate the affidavit of the licensee or other person responsible for or involved in the safekeeping of such certificate, concerning the facts of such loss, theft, or destruction. Willful falsification of any such affidavit shall, upon conviction, be subject to punishment as for perjury.

(3) This section shall not be deemed to require the delivery to the department of any certificate of license which, as shown by specific date of expiration on the face of the license, has already expired, unless such delivery has been requested by the department.

History.—s. 21, ch. 61-406; ss. 13, 35, ch. 69-106; s. 177, ch. 70-339; s. 3, ch. 76-168; s. 1, ch. 77-457.

Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

Note.—Former s. 903.545.

#### **§648.52 Administrative fine in lieu of suspension, revocation, or refusal to renew.—**

(1) If the department finds that one or more causes exist for the suspension of, revocation of, or refusal to renew or continue any license issued under this chapter, the department may, in its discretion, in lieu of such suspension, revocation, or refusal, and except on a second offense, impose upon the licensee an administrative penalty in the amount of \$100, or if the department has found willful misconduct or willful violation on the part of the licensee, \$500. The administrative penalty may, in the department's discretion, be augmented in amount by an amount equal to any commissions received by or accruing to the credit of the licensee in connection with any transaction as to which the grounds for suspension, revocation, or refusal related.

(2) The department may allow the licensee a reasonable period, not to exceed 30 days, within which to pay to the department the amount of the penalty so imposed. If the licensee fails to pay the penalty in its entirety to the department at its office at Tallahassee within the period so allowed, the licenses of the licensee shall stand suspended, revoked, or renewal or continuation refused, as the case may be, upon expiration of such period.

History.—s. 22, ch. 61-406; s. 2, ch. 61-119; s. 30, ch. 65-269; ss. 13, 35, ch. 69-106; s. 177, ch. 70-339; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95.

Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

Note.—Former s. 903.546.

#### **§648.53 Probation.—**

(1) If the department finds that one or more causes exist for the suspension of, revocation of, or refusal to renew or continue any license issued under this chapter, the department may, in its discretion, in lieu of such suspension, revocation, or refusal, or in connection with any administrative monetary penalty imposed under s. 648.52, place the offending licensee on probation for a period, not to exceed 2 years, as specified by the department in its order.

(2) As a condition to such probation or in connection therewith, the department may specify in its order reasonable terms and conditions to be fulfilled by the probationer during the probation period. If during the probation period the department has good cause to believe that the probationer has violated such terms and conditions or any of them, it shall forthwith suspend, revoke, or refuse to renew or continue the license of the probationer, as upon the original causes referred to in subsection (1).

History.—s. 23, ch. 61-406; ss. 13, 35, ch. 69-106; s. 177, ch. 70-339; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 21, ch. 78-95.

Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

Note.—Former s. 903.547.

#### **§648.55 All bondsmen of same agency; licensed by same companies.—**

All bail bondsmen who are members of the same agency, partnership, corporation or association shall be licensed for the same companies. If any member of such agency, partnership, corporation or association is licensed as a professional bondsman, all members thereof shall be so licensed. It shall be the responsibility of each company to see that each agent in an agency is licensed to represent that particular company.

History.—s. 20, ch. 29621, 1955; s. 4, ch. 57-63; s. 177, ch. 70-339; s. 3, ch. 76-168; s. 1, ch. 77-457.

Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

Note.—Former s. 903.56.

**§648.56 Exemption.—**Nothing in ss. 648.25-648.57 shall be construed as to prevent any duly licensed general lines agent as defined in s. 626.041 of the Insurance Code, from writing bail bonds for any company authorized to write fidelity and surety bonds which he represents as agent, provided such agent shall be subject to and governed by all laws, rules, and regulations relating to bail bondsmen when engaged in the activities thereof.

History.—s. 21, ch. 29621, 1955; s. 12, ch. 59-326; s. 177, ch. 70-339; s. 3, ch. 76-168; s. 1, ch. 77-457.

Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

Note.—Former s. 903.57.

**§648.57 Penalty.—**Any person or corporation, who is found guilty of violating any of the provisions of this chapter shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 22, ch. 29621, 1955; s. 177, ch. 70-339; s. 667, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457.

Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

Note.—Former s. 903.58.



## CHAPTER 649

## AUTOMOBILE CLUBS

- 649.011 Definitions.
- 649.021 License required.
- 649.031 Evidence of qualification for licensing.
- 649.041 Deposit required or surety bond.
- 649.051 Salesmen to be registered.
- 649.061 Powers of department; rules.
- 649.071 Penalty.

**<sup>1</sup>649.011 Definitions.—**

(1) "Automobile club" shall mean a legal entity which, in consideration of dues, assessments, or periodic payments of money, promises its members or subscribers to assist them in matters relating to the ownership, operation, use or maintenance of a motor vehicle; provided, however, that the definition of automobile clubs shall not include persons, associations, or corporations which are organized and operated solely for the purpose of conducting, sponsoring or sanctioning motor vehicle races, exhibitions or contests upon race tracks, or upon race courses established and marked as such for the duration of such particular event. The words "motor vehicles" used herein shall be the same as defined in chapter 320.

(2) "Department" shall mean the Department of Insurance.

**History.**—s. 1, ch. 57-65; ss. 13, 35, ch. 69-106; s. 273, ch. 71-377; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**<sup>1</sup>649.021 License required.**—No automobile club shall do, or offer to do, business in the state unless the same shall be organized as a domestic or foreign corporation and shall be licensed by the Department of Insurance.

**History.**—s. 2, ch. 57-65; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**<sup>1</sup>649.031 Evidence of qualification for licensing.—**

(1) An applicant seeking to do business as or engage in the operation of an automobile club shall be required to furnish the department with evidence of the competency and trustworthiness of its management and their professional ability to perform the services to be offered. The applicant shall pay a license fee of \$100 annually. All licenses shall expire on September 30 of each year and may be renewed on application and payment of the same fee. Nothing in this act shall be construed as authorizing a licensed automobile club to provide or furnish insurance coverage unless such club shall have complied with all the laws and regulations required of insurance companies authorized to do business in this state.

(2) The actual or proposed name by which the automobile club is, or will be known, and the trademark and emblem which it is using, or proposed to use, shall be submitted to the department for its approval, providing such name, emblem or trademark is distinctive and not likely to mislead the pub-

lic as to the nature or identity of the corporation using it, or interfere with the transactions of any other automobile club already doing business in the state, it shall be entitled to be approved.

**History.**—s. 3, ch. 57-65; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

cf.—s. 624.523 Insurance Commissioner's Regulatory Trust Fund.

**<sup>1</sup>649.041 Deposit required or surety bond.—**

(1) Except as provided by this act, every automobile club, to assure the faithful performance of its obligations to its members or subscribers, shall deposit with the department securities of the type, in which by the laws of this state an insurance company may invest its funds, the sum of \$50,000 before the department may issue it a license to do business; or in lieu thereof such clubs may file with the department a surety bond in the amount of \$50,000 of a surety company authorized to do business in this state. The bond shall be approved by the department and shall not be canceled without a 30-day notice to the department.

(2) Any automobile club doing business in this state on April 1, 1957, shall, on or before October 1, 1957, deposit \$25,000 in securities with the commissioner, as set forth in subsection (1), and on or before October 1, 1958, deposit with the commissioner an additional \$25,000 in such securities, or in lieu thereof such clubs may file with the commissioner a surety bond in the same amounts, of a surety company authorized to do business in this state. The bond shall be approved by the commissioner and shall not be canceled without 30 days' notice to the commissioner.

(3) The state shall be responsible for the safekeeping of all securities deposited with the department under this act. Securities deposited with the department under this act shall not, on account of such securities being in the state, be subject to taxation but shall be held exclusively and solely to insure the automobile club's faithful performance of its obligations to its members or subscribers.

(4) Automobile clubs depositing securities as required in this act shall have the right to draw the interest on such securities as the same accrues; and should coupon bonds be deposited under this act, the department, upon demand of the automobile club shall surrender the coupons as the same shall become due from any or all such bonds deposited by the said automobile clubs.

(5) Whenever an automobile club ceases to do business in this state and has satisfactorily satisfied its obligations to its members or subscribers, securities so deposited under this act shall be delivered up to the proper parties on presentation of the department's receipt for said securities.

**History.**—s. 4, ch. 57-65; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior

to that date.

**'649.051 Salesmen to be registered.**—Every automobile club shall on forms prescribed by the department register, on or before October 1 of each year, the names of, and home office address of each salesman, and shall within 30 days of termination of employment notify the department of such termination. Any salesman employed subsequent to the October 1 filing shall be registered with the department within 10 days of such employment. No employee or salesman of an automobile club shall directly or indirectly be licensed to solicit, negotiate, or hold himself out in any manner to be an insurance agent or solicitor, to effect insurance contracts unless it is in accordance with the provisions of the insurance laws.

**History.**—s. 5, ch. 57-65; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**'649.061 Powers of department; rules.**—The department shall have full power and authority to administer the provisions of this act and, to that end, it may adopt, promulgate and enforce rules and regulations necessary and proper to effectuate the purpose and provisions of this act.

**History.**—s. 6, ch. 57-65; ss. 13, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**'649.071 Penalty.**—Any person violating the provisions of this act shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 7, ch. 57-65; s. 668, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

## CHAPTER 650

## SOCIAL SECURITY FOR PUBLIC EMPLOYEES

- 650.01 Declaration of policy.
- 650.02 Definitions.
- 650.03 Federal-state agreement; interstate instrumentalities.
- 650.04 Contributions by state employees.
- 650.05 Plans for coverage of employees of political subdivisions.
- 650.06 Social Security Contribution Trust Fund.
- 650.07 Rules and regulations.
- 650.08 Studies and reports.
- 650.09 Liberal construction.
- 650.10 Referenda and certification.

**650.01 Declaration of policy.**—In order to extend to employees of the state and its political subdivisions and to the dependents and survivors of such employees, the basic protection accorded to others by the Old-age and Survivors Insurance System embodied in the Social Security Act, it is hereby declared to be the policy of the Legislature, subject to the limitations of this chapter, that such steps as are necessary be taken to provide such protection to employees of the state and its political subdivisions on as broad a basis as is permitted under the Social Security Act. It is also the policy of the Legislature that the protection afforded employees in positions covered by a retirement system on the date an agreement under this act is made applicable to service performed in such positions, or receiving periodic benefits under such retirement system at such time, will not be impaired as a result of making the agreement so applicable or as a result of legislative enactment in anticipation thereof.

*History.*—s. 1, ch. 26841, 1951; s. 2, ch. 29824, 1955.

**650.02 Definitions.**—For the purpose of this chapter:

(1) The term "wages" means all remuneration for employment as defined herein, including the cash value of all remuneration paid in any medium other than cash, except that such term shall not include that part of such remuneration which, even if it were for "employment" within the meaning of the Federal Insurance Contributions Act, would not constitute "wages" within the meaning of that act;

(2) The term "employment" means any services performed by an employee in the employ of the state, or any political subdivision thereof, including hospital or drainage taxing districts, for such employer, except:

(a) Service which in the absence of an agreement entered into under this chapter would constitute "employment" as defined in the Social Security Act.

(b) Service which under the Social Security Act may not be included in an agreement between this state and the Secretary of Health, Education, and Welfare entered into under this chapter. Service which under the Social Security Act may be included in an agreement only upon certification by the Governor in accordance with s. 218(d)(3) of that act shall be included in the term "employment" if and when the Governor issues, with respect to such services, a certificate to the Secretary of Health, Education,

and Welfare, pursuant to said section.

(c) At the option of the employer, and when so provided in its agreement, any one or more of the following:

1. Service in any class or classes of elective positions.

2. Service in any class or classes of part-time positions.

3. Service in any class or classes of positions the compensation for which is on a fee basis.

4. Service performed by individuals as members of a coverage group (as defined in s. 218(b) of the Social Security Act, as amended) in positions covered by a retirement system on the date the federal-state agreement is made applicable to such coverage group, but only in the case of individuals who, on such date (or, if later, the date on which they first occupy such positions), are not eligible to become members of such system and whose services in such positions have not already been included under such agreement.

5. Agricultural labor, as defined in s. 210 of the Social Security Act, as amended.

6. Service performed by a student for the school in which he is enrolled.

(3) The term "employee" includes an officer of the state or political subdivision thereof;

(4) The term "state agency" means the Division of Retirement of the Department of Administration.

(5) The term "Secretary of Health, Education, and Welfare" includes any individual to whom the Secretary of Health, Education, and Welfare has delegated any of the secretary's functions under the Social Security Act with respect to coverage under such act of employees of states and their political subdivisions, and with respect to any action taken prior to April 11, 1953, includes the Federal Security Administrator and any individual to whom such administrator had delegated any such function.

(6) The term "political subdivision" includes an instrumentality of the state, or of one or more of its political subdivisions, but only if such instrumentality is a juristic entity which is legally separate and distinct from the state or subdivision and only if its employees are not by virtue of their relation to such juristic entity employees of the state or subdivision;

(7) The term "Social Security Act" means the Act of Congress approved August 14, 1935, Chapter 531, 49 Stat. 620, officially cited as the "Social Security Act," (including regulations and requirements issued pursuant thereto), as such act has been and may from time to time be amended; and

(8) The term "Federal Insurance Contributions Act" means subchapter A of chapter 9 of the Federal Internal Revenue Code of 1939 and subchapters A and B of chapter 21 of the Federal Internal Revenue Code of 1954, as such codes have been and may from time to time be amended; and the term "employee tax" means the tax imposed by s. 1400 of such code of 1939 and s. 3101 of such code of 1954.

*History.*—s. 2, ch. 26841, 1951; ss. 1-3, ch. 28246, 1953; ss. 1, 3-5, ch. 29824, 1955; s. 1, ch. 65-151; ss. 31, 35, ch. 69-106; s. 1, ch. 70-127; s. 1, ch. 73-326.



**650.03 Federal-state agreement; interstate instrumentalities.—**

(1) The state agency with the approval of the Governor, is hereby authorized to enter on behalf of the state into an agreement with the Federal Security Administrator, consistent with the terms and provisions of this chapter, for the purpose of extending the benefits of the Federal Old-age and Survivors Insurance System to employees of the state or any political subdivision thereof with respect to services specified in such agreement which constitutes "employment" as defined in s. 650.02. Such agreement may contain such provisions relating to coverage, benefits, contributions, effective date, modification and termination of the agreement, administration, and other appropriate provisions as the state agency and the Secretary of Health, Education and Welfare shall agree upon, but, except as may be otherwise required by or under the Social Security Act as to the services to be covered, such agreement shall provide in effect that:

(a) Benefits will be provided for employees whose services are covered by the agreement (and their dependents and survivors) on the same basis as though such services constituted employment within the meaning of Title II of the Social Security Act;

(b) The state will pay to the Secretary of the Treasury, at such time or times as may be prescribed under the Social Security Act, contributions with respect to wages (as defined in s. 650.02), equal to the sum of the taxes which would be imposed by the Federal Insurance Contributions Act if the services covered by the agreement constituted employment within the meaning of that act.

(c) Such agreement shall be effective with respect to services in employment covered by the agreement performed after January 1, 1951;

(d) All services which constitute employment as defined in s. 650.02 and are performed in the employ of the state by employees of the state, shall be covered by the agreement.

(e) All services which:

1. Constitute employment as defined in s. 650.02;
2. Are performed in the employ of a political subdivision of the state; and
3. Are covered by a plan which is in conformity with the terms of the agreement and has been approved by the state agency under s. 650.05, shall be covered by the agreement.

(f) As modified, the agreement shall include all services described in either paragraph (d) or paragraph (e) of this subsection and performed by individuals to whom s. 218(c)(3)(C) of the Social Security Act is applicable, and shall provide for election by the employer as to whether the service of any such individual shall continue to be covered by the agreement in case he thereafter becomes eligible to be a member of a retirement system.

(g) As modified, the agreement shall include all services described in either paragraph (d) or paragraph (e) of this subsection and performed by individuals in positions covered by a retirement system with respect to which the Governor has issued a certificate to the Secretary of Health, Education, and Welfare pursuant to s. 218(d)(3) of the Social Security Act, as amended.

(2) Any instrumentality jointly created by this state and any other state or states is hereby authorized, upon the granting of like authority by such other state or states,

(a) To enter into an agreement with the Secretary of Health, Education, and Welfare whereby the benefits of the Federal Old-age and Survivors Insurance System shall be extended to employees of such instrumentality.

(b) To require its employees to pay (and for that purpose to deduct from their wages) contributions equal to the amounts which they would be required to pay under s. 650.04(1) if they were covered by an agreement made pursuant to subsection (1) of this section, and

(c) To make payments to the Secretary of the Treasury in accordance with such agreement, including payments from its own funds, and otherwise to comply with such agreements. Such agreement shall, to the extent practicable, be consistent with the terms and provisions of subsection (1) and other provisions of this chapter.

(3) Where a retirement system established by the state or any political subdivision thereof covers positions of policemen or firemen, or both, and whether or not other positions are covered by such system, there shall, for the purposes of this chapter, be deemed to be a separate retirement system with respect to the positions of policemen and a separate retirement system with respect to the positions of firemen.

(4) For the purposes of this chapter any retirement system established by the state or any political subdivision thereof, which, on, before, or after the date of enactment of this subsection is divided into two divisions or parts, one of which is composed of positions of members of such system who desire coverage under an agreement under this chapter and the other of which is composed of positions of members of such system who do not desire such coverage, shall, upon the governor's authorization of a referendum for either division or part, be deemed to be a separate retirement system with respect to each such division or part. The positions of individuals who become members of such system after such coverage is extended shall be included in such division or part composed of members desiring such coverage. The position of any individual which is covered by any retirement system to which the preceding two sentences are applicable shall, if such individual is ineligible to become a member of such system on the date of enactment of this subsection or, if later, the day he first occupies such position, be deemed to be covered by the separate retirement system consisting of the positions of members of the division or part who do not desire coverage under this chapter.

(5) For purposes of this chapter employees of the institutions of higher learning under the Board of Regents who are covered by the Teachers' Retirement System shall be deemed to be covered by a separate retirement system for each institution.

(6) If a retirement system covers positions of employees of a hospital which is an integral part of a

municipal political subdivision, then, for the purposes of this chapter, there shall be deemed to be a separate retirement system for the employees of such hospital.

**History.**—s. 3, ch. 26841, 1951; s. 4, ch. 28246, 1953; ss. 6-9, ch. 29824, 1955; s. 1, ch. 57-226; s. 1, ch. 57-780; s. 1, ch. 61-138; s. 2, ch. 63-204.

#### **650.04 Contributions by state employees.—**

(1) Every employee of the state whose services are covered by an agreement entered into under s. 650.03 shall be required to pay for the period of such coverage, into the Social Security Contribution Trust Fund established by s. 650.06, contributions, with respect to wages as defined in s. 650.02, equal to the amount of the employee tax which would be imposed by the Federal Insurance Contributions Act if such services constituted employment within the meaning of that act. Such liability shall arise in consideration of the employee's retention in the service of the state, or his entry upon such service, after the enactment of this chapter.

(2) The contribution imposed by this section shall be collected by deducting the amount of the contribution from wages as and when paid, but failure to make such deduction shall not relieve the employee from liability for such contribution.

(3) If more or less than the correct amount of the contribution imposed by this section is paid or deducted with respect to any remuneration, proper adjustments, or refund if adjustment is impracticable, shall be made, without interest, in such manner and at such times as the state agency shall prescribe.

**History.**—s. 4, ch. 26841, 1951; s. 10, ch. 29824, 1955; s. 2, ch. 61-119.

#### **650.05 Plans for coverage of employees of political subdivisions.—**

(1) Each political subdivision of the state is hereby authorized to submit for approval by the state agency a plan for extending the benefits of Title II of the Social Security Act, in conformity with the applicable provisions of such act, to employees of such political subdivisions. Each such plan and any amendment thereof shall be approved by the state agency if it is found that such plan, or such plan as amended, is in conformity with such requirements as are provided in regulations of the state agency, except that no such plan shall be approved unless:

(a) It is in conformity with the requirements of the Social Security Act and with the agreement entered into under s. 650.03;

(b) It provides that all services which constitute employment as defined in s. 650.02 are performed in the employ of the political subdivisions by employees thereof, shall be covered by the plan, except such of those services set forth in s. 650.02(2)(c) as the political subdivision specifically elects to exclude.

(c) It specifies the source or sources from which the funds necessary to make the payments required by paragraph (a) of subsection (3) and by subsection (4) are expected to be derived and contains reasonable assurance that such sources will be adequate for such purpose;

(d) It provides for such methods of administration of the plan by the political subdivision as are found by the state agency to be necessary for the proper and efficient administration of the plan;

(e) It provides that the political subdivision will

make such reports, in such form and containing such information, as the state agency may from time to time require, and comply with such provisions as the state agency or the Secretary of Health, Education, and Welfare may from time to time find necessary to assure the correctness and verification of such reports; and

(f) It authorizes the state agency to terminate the plan in its entirety, in the discretion of the state agency, if it finds that there has been a failure to comply substantially with any provisions contained in such plan, such termination to take effect at the expiration of such notice and on such conditions as may be provided by regulations of the state agency and may be consistent with the provisions of the Social Security Act.

(2) The state agency shall not finally refuse to approve a plan submitted by a political subdivision under subsection (1), and shall not terminate an approved plan, without reasonable notice and opportunity for hearing to the political subdivision affected thereby. Any final decision of the state agency shall be subject to proper judicial review.

(3)(a) Each political subdivision as to which a plan has been approved under this section shall pay into the Social Security Contribution Trust Fund, with respect to wages (as defined in s. 650.02), at such time or times as the state agency may by regulation prescribe, contributions in the amounts and at the rates specified in the applicable agreement entered into by the state agency under s. 650.03.

(b) Each political subdivision required to make payments under paragraph (a) is authorized, in consideration of the employee's retention in, or entry upon, employment after enactment of this chapter, to impose upon each of its employees, as to services which are covered by an approved plan, a contribution with respect to his wages as defined in s. 650.02 not exceeding the amount of the employee tax which would be imposed by the Federal Insurance Contributions Act if such services constituted employment within the meaning of that act, and to deduct the amount of such contribution from his wages as and when paid. Contributions so collected shall be paid into the Social Security Contribution Trust Fund in partial discharge of the liability of such political subdivision or instrumentality under paragraph (a). Failure to deduct such contribution shall not relieve the employee or employer of liability therefor.

(4) Delinquent payments due under subsection (3)(a) may, with interest of one-half of 1 percent for each calendar month or part thereof past the due date, be recovered by action in a court of competent jurisdiction against the political subdivision liable therefor or shall, at the request of the state agency, be deducted from any other moneys payable to such subdivision by any department or agency of the state.

(5) Each political subdivision as to which a plan has been approved shall be liable to the state agency for a proportionate part of the cost of administering this chapter. Such proportionate cost shall be computed and paid in accordance with such regulations relating thereto as may be adopted by the state agency, and shall be deposited in the Social Security Administration Trust Fund, and if any such payment

be not made when due, the amount thereof, with interest of one-half of 1 percent for each calendar month or part thereof past the due date, shall, upon request of the state agency, be deducted from any other moneys payable to such political subdivision by any officer, department, or agency of the state, and forthwith paid to the state agency. Withdrawals from the Social Security Administration Trust Fund shall be made solely for the payment of costs of administering this chapter, and any balance in excess of the amount necessary for administering this chapter shall be transferred to the State Retirement System Trust Funds established pursuant to chapter 121 to make up the actuarial deficit in any of the state retirement systems consolidated thereunder, and the necessary amounts are hereby appropriated from said funds for these purposes.

(6)(a) Notwithstanding any other provision of this chapter, effective January 1, 1972, all state political subdivisions receiving financial aid, that provide social security coverage for their employees pursuant to the provisions of this chapter and the provisions of the various retirement systems as authorized by law, shall, in addition to other purposes, utilize all grants-in-aid and other revenue received from the state to pay the employer's share of social security cost.

(b) The grants-in-aid and other revenue referred to in paragraph (a) specifically include, but are not limited to, minimum foundation program grants to public school districts and community colleges; gasoline, motor fuel, intangible, cigarette, racing, and insurance premium taxes distributed to political subdivisions; and amounts specifically appropriated as grants-in-aid for mental health, mental retardation, and mosquito control programs.

**History.**—s. 5, ch. 26841, 1951; ss. 5-7, ch. 28246, 1953; s. 11, ch. 29824, 1955; s. 2, ch. 61-119; s. 1, ch. 72-109; s. 70, ch. 72-221; s. 1, ch. 72-342.

#### **650.06 Social Security Contribution Trust Fund.—**

(1) There is hereby established a special fund to be known as the "Social Security Contribution Trust Fund." Such fund shall consist of and there shall be deposited in such fund:

(a) All contributions, interest, and penalties collected under ss. 650.04 and 650.05;

(b) All moneys appropriated thereto under this chapter;

(c) Any property or securities and earnings thereof acquired through the use of moneys belonging to the fund;

(d) Interest earned upon any moneys in the fund, and

(e) All sums recovered upon the bond of the custodian or otherwise for losses sustained by the fund and all other moneys received for the fund from any other source. All moneys in the fund shall be mingled and undivided. Subject to the provisions of this chapter, the state agency is vested with full power, authority and jurisdiction over the fund, including all moneys and property or securities belonging thereto, and may perform any and all acts whether or not specifically designated, which are necessary to the administration thereof and are consistent with the provisions of this chapter.

(2) The Social Security Contribution Trust Fund

shall be established and held separate and apart from any other funds or moneys of the state and shall be used and administered exclusively for the purpose of this chapter. Withdrawals from such fund shall be made for, and solely for:

(a) Payments of amounts required to be paid to the Secretary of the Treasury pursuant to an agreement entered into under s. 650.03;

(b) Payments of refunds provided for in s. 650.04(3);

(c) Refunds of overpayments, not otherwise admissible, made by a political subdivision or instrumentality; and

(d) Investments of idle funds and the transfer of interest earned on such investments to the Social Security Administration Trust Fund.

(3) From the Social Security Contribution Trust Fund the custodian of the fund shall pay to the Secretary of the Treasury such amounts and at such time or times as may be directed by the state agency in accordance with any agreement entered into under s. 650.03 and the Social Security Act.

(4) The Treasurer of the state shall be ex officio treasurer and custodian of the Social Security Contribution Trust Fund and shall administer such fund in accordance with the provisions of this chapter and the directions of the state agency. The Treasurer shall pay all warrants drawn by the Comptroller and countersigned by the Governor upon the fund in accordance with the provisions of this section and with such regulations as the state agency may prescribe pursuant thereto.

(5) There are hereby authorized to be appropriated to the Social Security Contribution Trust Fund, out of the general funds of this state not otherwise appropriated, such additional sums as are found to be necessary to make the payments to the Secretary of the Treasury which the state is required to make pursuant to an agreement entered into under s. 650.03.

**History.**—s. 6, ch. 26841, 1951; s. 2, ch. 61-119; s. 2, ch. 72-342.

**650.07 Rules and regulations.**—The state agency shall make and publish such rules and regulations, not inconsistent with the provisions of this chapter, as it finds necessary or appropriate to the efficient administration of the functions with which it is charged under this chapter.

**History.**—s. 7, ch. 26841, 1951.

**650.08 Studies and reports.**—The state agency shall make studies concerning the problem of old-age and survivors insurance protection for employees of the state and local governments and their instrumentalities and concerning the operation of agreements made and plans approved under this chapter and shall submit a report to the legislature at the beginning of each regular session, covering the administration and operation of this chapter during the preceding calendar year, including such recommendations for amendments to this chapter as it considers proper.

**History.**—s. 8, ch. 26841, 1951.



**650.09 Liberal construction.**—The provisions of this chapter shall be liberally construed in order to effectively carry out the purposes of the chapter as set forth in the declaration of public policy.

*History.*—s. 9, ch. 26841, 1951.

**650.10 Referenda and certification.**—

(1) The governor, or an official of the state designated by him for the purpose, is empowered to authorize and supervise the conduct of employee referenda prescribed by s. 213(d)(3) of the Social Security Act, on the question of whether service in positions covered by a retirement system established by the state or by a political subdivision thereof should be excluded from or included under an agreement under this chapter. The notice of referendum required by s. 218(d)(3)(C) of the Social Security Act to be given to employees shall contain or shall be accom-

panied by a statement, in such form and such detail as the agency or individual designated to supervise the referendum shall deem necessary and sufficient, to inform the employees of the rights which will accrue to them and their dependents and survivors, and the liabilities to which they will be subject, if their services are included under an agreement under this chapter.

(2) Upon receiving evidence satisfactory to him that with respect to any such referendum the conditions specified in s. 218(d)(3) of the Social Security Act have been met, the governor, or an official of the state designated by him for the purpose, shall so certify to the Secretary of Health, Education and Welfare.

*History.*—s. 12, ch. 29824, 1955; s. 2, ch. 61-138.

## CHAPTER 651

## LIFE CARE CONTRACTS

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**651.011 Definitions.**—For the purposes of this chapter:

- (1) "Department" means the Department of Insurance.
- (2) "Continuing care" or "care" means furnishing shelter, food, and nursing care, whether the nursing care is provided in the facility or in another setting designated by the agreement for continuing care, to an individual not related by consanguinity or affinity to the provider furnishing such care. Other personal services provided shall be designated in the continuing care agreement. "Continuing care" shall include only life care, care for life, or care for a term of years.
- (3) "Facility" means a place in which it is undertaken to provide continuing care to an individual for a term of years or for life.
- (4) "Provider" means the owner or operator, whether a natural person, partnership or other unincorporated association, however organized, trust, or corporation, of an institution, building, residence, or other place, whether operated for profit or not, which owner or operator undertakes to provide continuing care for a fixed or variable fee, or for any other remuneration of any type, whether fixed or

variable, for the period of care, payable in a lump sum or lump sum and monthly maintenance charges or in installments.

(5) "Member" means a purchaser of, nominee of, or a subscriber to, a continuing care agreement. Such an agreement shall not be construed to give the member a part ownership of the facility in which the member is to reside or voting rights in the operation of the facility.

(6) "Life care" or "care for life" means a life lease, life membership, life estate, or similar agreement between a member and a provider by which the member pays a fee for the right to occupy a space in a designated facility and to receive continuing care for life.

(7) "Care for a term of years" means an agreement between a member and a provider whereby the member pays a fee for the right to occupy space in a designated facility, and to receive continuing care, for at least 1 year, but for less than the life of the member. "Care for a term of years" also refers to a contract or agreement for continuing care for an indefinite term.

(8) "Entrance fee" means an initial or deferred payment of a sum of money or property which assures the member a place in a facility for a term of years or for life. An accommodation fee, admission fee, or other fee of similar form and application shall be considered to be an entrance fee.

(9) "Records" means the permanent financial, directory, and personnel information and data maintained by a provider pursuant to this chapter.

(10) "Personnel records" means information pertaining to an employee's employment, including education, training, experience, salary or wages, and performance of duties of employment.

*History.*—s. 1, ch. 77-323; s. 170, ch. 79-164.

**651.015 Administration; forms; fees; rules; fines.**—The administration of this chapter is vested in the Department of Insurance, which shall:

- (1) Prepare and furnish all forms necessary under the provisions of this chapter in relation to applications for certificates of authority or renewals thereof, statements, examinations, and other required reports.
- (2) Collect in advance, and the applicant so served shall pay to it in advance, the following fees:
  - (a) At the time of filing an application for a certificate of authority, an application fee in the amount of \$75 for each facility.
  - (b) At the time of renewal of a certificate of authority, a renewal fee in the amount of \$75 for each year or part thereof for each facility where continuing care is provided.
  - (c) A late fee in an amount equal to 50 percent of the renewal fee in effect on the last preceding regular renewal date.
  - (d) An investigation fee, to be paid upon original application, in the amount of \$100 for each facility where continuing care is provided. Upon application subsequent to the denial of an earlier application or to the revocation, suspension, or surrender of a cer-

tificate of authority, a second investigation fee in the amount of \$100.

(e) For the issuance of the provisional certificate of authority, a fee in the amount of \$50.

(3) Adopt rules, within the standards of this chapter, necessary to effect the purposes of this chapter. Specific provisions in this chapter relating to any subject shall not preclude the department from adopting rules concerning such subject if such rules are within the standards and purposes of this chapter.

(4) Impose administrative fines pursuant to this chapter.

History.—s. 1, ch. 77-323; s. 249, ch. 79-400.

**651.021 Certificate of authority required; designation of net worth.—**

(1) No provider shall engage in the business of providing continuing care in this state without a certificate of authority therefor obtained from the Department of Insurance as provided in this chapter. Every provider holding a certificate of authority under the provisions of this chapter shall maintain at all times a net worth in an amount to be determined by the department, based upon the number of continuing care agreements entered into by the provider and the types and levels of services provided by the provider under the agreements. Any provider in the business of offering continuing care within 1 year from the date of the adoption of the rules under this chapter and not having a net worth as determined necessary by the department shall have 3 years from such date to attain the required net worth. The increase in net worth during each year of such 3-year period shall not be less than one-third of the total required to meet the designated amount of net worth. However, in lieu of having a net worth in the amount designated by the department, a provider shall file a surety bond, letters of credit, surplus debentures as provided for in s. 628.401, or any other acceptable collateral with the department, as approved by it, in the amount of the designated net worth.

(2) Every applicant shall provide proof, on a form prescribed by the department, of a net worth as provided in subsection (1). Assets to be used in computing the required net worth shall be determined by rules adopted by the department.

History.—s. 1, ch. 77-323.

**651.026 Certificate of authority; application; annual statements; renewals.—**

(1) A provider shall file an application for a certificate of authority on a form prescribed by the Department of Insurance, and the application shall be accompanied by the annual statement and other matters as provided in this section and in s. 651.021. Annually thereafter, on or before July 1, such provider shall file the annual statement and such other information and data, showing its condition on the last day of the preceding calendar year, as may be required by the department. If the department does not receive the required information on or before July 1, a late fee shall be charged in an amount equal to 50 percent of the renewal fee in effect on the last preceding regular renewal date.

(2) When an applicant has more than one facility

offering continuing care, a separate application for a certificate of authority shall be made for each facility.

(3) If the provider is a corporation, the original application for the certificate of authority shall be accompanied by a copy of the charter; if the provider is a partnership or other unincorporated association, the original application shall be accompanied by a copy of the partnership agreement, articles of association, or other membership agreement; and if the provider is a trust, the original application shall be accompanied by a copy of the trust agreement or instrument.

(4) The annual statement shall be in such form as the department shall elect and shall contain at least the following:

(a) The name and address of the facility in which the continuing care is to be offered and the name and address of any affiliated parent or subsidiary corporation or partnership.

(b) The full name, residence, and business address of:

1. The proprietor, if the provider is an individual.

2. Every partner or member, if the provider is a partnership or other unincorporated association, however organized, having less than 50 partners or members, together with the business name and address of the partnership or other organization.

3. The principal partners or members, if the provider is a partnership or an unincorporated organization, however organized, having 50 or more partners or members, together with the business name and business address of the partnership or other organization. If such unincorporated organization has officers and a board of directors, the full name and business address of each officer and director may be set forth in lieu of the full name and business address of its principal members.

4. The corporation and each officer and director thereof, if the provider is a corporation.

5. Every trustee and officer, if the provider is a trust.

6. Any stockholder holding at least a 10 percent interest in the operations of the facility in which the care is to be offered.

7. Any person whose name is required to be provided in the application under the provisions of this paragraph and who owns at least a 10 percent interest in any professional service firm, association, trust, partnership, or corporation providing goods, leases, or services to the facility for which the application is made, and the name and address of the professional service firm, association, trust, partnership, or corporation in which such interest is held.

(c) A statement of whether or not the facility of an affiliate, parent, or subsidiary is a religious, nonprofit, or proprietary organization.

(d) Personnel records.

(e) The types of agreements for continuing care to be entered into by the provider and, if such provider is engaged in the business of furnishing care on July 1, 1977, a listing of each member for each type of agreement.

(f) For annual statements submitted after the issuance of an original certificate, a listing of each



member for each type of agreement.

(g) Financial information, updated at least annually, including the following, as certified by an independent auditor who is at least a certified public accountant:

1. A balance sheet;
2. A narrative explaining material facts relating to the balance sheet;
3. An income statement and a pro forma income statement;
4. A statement of use of proceeds;
5. A pro forma balance sheet;
6. The level of participation in Medicare or Medicaid programs, or both;
7. A statement of all fees required of members, including, but not limited to, a statement of the entrance fee charged, the monthly service charges, the proposed application of the proceeds of the entrance fee by the provider, and the plan by which the amount of the entrance fee is determined if the entrance fee is not the same in all cases; and
8. Changes or increases in fees when the provider changes either the scope of, or the rates for, care or services, regardless of whether the change involves the basic rate or only those services available at additional costs to the member, except those changes required by state or federal assistance programs.

(h) Location and description of physical property or properties essential for, and proposed to be used, or being used, in connection with, the agreements of the provider to furnish continuing care.

(i) Such other reasonable data, financial statements, and pertinent information as the department may require with respect to the provider or the facility, its directors, trustees, members, branches, subsidiaries, or affiliates.

(5) The application for original certificate of authority shall be accompanied by forms of agreements proposed to be used by the provider in the furnishing of care. If the department finds that the agreements comply with s. 651.055, it shall approve them. Thereafter, no other form of agreement shall be used by the provider until it has been submitted to, and approved by, the department.

(6) In addition to any other information which is required with respect to an application for a certificate of authority, the application shall require:

(a) Evidence that the provider is of reputable and responsible character. If the provider is a firm, association, organization, partnership, business trust, corporation, or company, the form shall require evidence that the members or shareholders are reputable and of responsible character, and the person in charge of providing care under a certificate of authority shall likewise be required to produce evidence of reputable and responsible character.

(b) Evidence satisfactory to the department of the ability of the provider to comply with the provisions of this chapter and with rules adopted by the department pursuant to this chapter.

(c) A statement of whether a person identified in the application for a certificate of authority or the administrator or manager of the facility, if such person has been designated, or any such person living in the same location:

1. Has been convicted of a felony or has pleaded nolo contendere to a felony charge, or has been held liable or enjoined in a civil action by final judgment, if the felony or civil action involved fraud, embezzlement, fraudulent conversion, or misappropriation of property.

2. Is subject to a currently effective injunctive or restrictive order or federal or state administrative order relating to business activity or health care as a result of an action brought by a public agency or department, including, without limitation, an action affecting a license under chapter 400.

The statement shall set forth the court or agency, date of conviction or judgment, the penalty imposed or damages assessed, or the date, nature, and issuer of the order. Prior to issuing a certificate of authority, the department shall verify such statement with the assistance of local law enforcement agencies.

(7) Upon the department being satisfied that such statement and other accompanying materials meet the requirements of this chapter; that there has been evidenced the information required; that the net worth requirement or requirement for the purchase of a sufficient surety bond or for provision of letters of credit, surplus debentures as provided in s. 628.401, or any other acceptable collateral has been met in accordance with s. 651.021; and that the fees as set forth in s. 651.015(2) have been paid, the certificate of authority shall be issued. If the annual statement of each subsequent year meets the requirements as set forth in this chapter; if the sufficient net worth or a sufficient surety bond, letters of credit, surplus debentures as provided in s. 628.401, or any other acceptable collateral is maintained; and if the fee is paid, a renewal certificate shall be issued. If the annual statement fails to meet the requirements as set forth in this chapter or to demonstrate sufficient net worth or maintenance of a sufficient surety bond, letters of credit, surplus debentures as provided in s. 628.401, or any other acceptable collateral, the department may issue a renewal certificate upon payment of the renewal fee, but shall advise the provider of the noted deficiencies, and shall require the provider to correct such deficiencies within a period to be determined by the department. Such period may be extended. If such deficiencies have not been cleared by the expiration of such time period, as extended, then the department shall petition for delinquency proceedings or pursue such other relief as is provided for under s. 651.114, as the circumstances may require.

(8) If the provider is an individual, the annual statement shall be sworn to by him; if a partnership or other unincorporated association having less than 50 partners or members, by all members thereof; if a partnership or other unincorporated association having 50 or more partners or members, by all its principal partners or members or by all its officers and directors; if a trust, by all its trustees and officers; and if a corporation, by the president and secretary thereof.

(9) All certificates of authority and renewals thereof shall expire on September 30 of each year.

History.—s. 1, ch. 77-323; s. 250, ch. 79-400.

**651.031 Provisional certificate of authority; feasibility study.—**

(1) All persons intending to enter into the offering of continuing care agreements who have not acquired the necessary facilities for providing such care or have not acquired land or begun preliminary construction of the necessary facilities by the date of the adoption of the rules under this chapter shall apply to the Department of Insurance for a provisional certificate of authority before proceeding.

(2) Such persons shall file with the department a statement of intent to provide continuing care and shall provide the following information to the department:

(a) The same information as required under s. 651.026(4)(b) for application for a certificate of authority.

(b) A statement as to the proposed location and size of the facility.

(c) Submission of any advertisement to be used.

(3) Upon receipt of such information, the department shall, if satisfied with the information submitted, issue a provisional certificate of authority which shall entitle the person to engage in a feasibility study which shall be submitted to the department prior to a request for an application for a certificate of authority. The feasibility study shall include at least the following information:

(a) A statement of the purpose and need for the project and the reasons for the proposed construction, expansion, or renovation.

(b) A statement of the financial resources of the provider.

(c) A statement of the capital expenditures necessary to accomplish the project.

(d) A statement of financial feasibility for the proposed project, which shall include a statement of future funding sources.

(e) A statement of manpower requirements and availability to support the proposed project.

(4) Such person may collect deposits from prospective members, provided the funds collected are maintained in an escrow account.

(5) Upon submission of the feasibility study, the department shall determine whether such operation will be able to provide continuing care as proposed and whether the proposed operation appears to be financially solvent. If the decision of the department is favorable, the department shall permit the person to apply for a certificate of authority to begin its operation. Once the certificate of authority has been issued, the provider may use the funds held in escrow, unless otherwise prohibited by this chapter. If the decision of the department is not favorable, the department shall require the person to refund all deposits and to cease in its attempts to offer continuing care at the location specified in the feasibility study.

History.—s. 1, ch. 77-323.

**651.035 Reserve requirements.—**

(1) A provider shall maintain reserves covering obligations assumed under all agreements entered into and maintained. Reserves shall be in an amount not less than the sum computed in accordance with the standard of valuation based upon a modern and up-to-date table of mortality selected by the depart-

ment. The interest assumption for that computation shall be determined by the department.

(2) Failure to maintain reserves as provided in this chapter shall be deemed a breach of all agreements to furnish care.

History.—s. 1, ch. 77-323.

**651.041 Use of reserves; investment purposes.—**Reserves may be used for investment purposes. Such investments shall be maintained in forms as prescribed in chapter 625, where applicable, with the following exceptions:

(1) A percentage of the investments, to be determined by the Department of Insurance, shall be in bonds, stocks, commercial and savings accounts, or building and loan certificates.

(2) A percentage of the investments, to be determined by the department, may be in real property used to provide care and housing for persons under continuing care agreements, or equities therein, owned by the provider. Valuation shall be based on the net equity, which shall be the appraised value less any depreciation and encumbrances.

(3) Investments may be in equipment situated in property used to provide care and housing for members, to the extent of the percentage of net value to be determined by the department. The types of equipment and amortization rate for such equipment to be used for this determination shall be determined by the department.

History.—s. 1, ch. 77-323.

**651.045 Conversion of property.—**When the consideration received by any provider to furnish care in pursuance of an agreement is in a form other than money or securities, the provider shall convert the property into money within 1 year of the date of the agreement, unless an extension is granted by the Department of Insurance; however, an extension shall be granted whenever such a conversion would result in a financial loss. During the 1-year period and any extension prior to conversion of the property into money, the value thereof as set forth in the agreement is an admissible asset of the provider for the purpose of available funds or reserve in relation to the agreement. The requirement for conversion of property shall not apply when proof satisfactory to the department is submitted indicating that such property is to be utilized for the future expansion of the continuing care operation.

History.—s. 1, ch. 77-323.

**651.051 Maintenance of assets and records in state.—**No records or assets shall be removed from this state by a provider unless the Department of Insurance consents in writing to such removal. Such consent shall be based upon the provider's submitting satisfactory evidence that the removal will facilitate and make more economical the operations of the provider and will not diminish the service or protection thereafter to be given the provider's members in this state.

History.—s. 1, ch. 77-323.

**651.055 Agreements; right to rescind.—**

(1) In addition to such other provisions as may be considered proper to effectuate the purpose of any continuing care agreement, each agreement executed on and after the date of the adoption of the rules under this chapter shall:

(a) Provide for the continuing care of only one member, or for two persons occupying space designed for double occupancy, under appropriate regulations established by the provider and shall show the value of all property transferred, including donations, subscriptions, fees, and any other amounts paid or payable by, or on behalf of, the member or members.

(b) Specify all services which are to be provided by the provider to each member, including, in detail, all items which each member will receive and whether the items will be provided for a designated time period or for life, and the estimated monthly cost to the provider of providing the care. Such items shall include, but not be limited to, food, shelter, nursing care, drugs, burial, and incidentals.

(c) Describe the health and financial conditions upon which the provider may have the member relinquish his space in the designated facility.

(d) Describe the health and financial conditions required for a person to continue as a member.

(e) Describe the circumstances under which the member will be permitted to remain in the facility in the event of financial difficulties of the member.

(f) State the fees that will be charged if the member marries while at the designated facility, the terms concerning the entry of a spouse to the facility, and the consequences if the spouse does not meet the requirements for entry.

(g) Provide that the agreement may be canceled upon the giving of notice of cancellation of at least 30 days by the provider, the member, or the person who provided the transfer of property or funds for the care of such member; however, if an agreement is canceled because there has been a good faith determination that a member is a danger to himself or others, only such notice as is reasonable under the circumstances shall be required. The agreement shall further provide in clear and understandable language, in print no smaller than the largest type used in the body of said agreement, the terms governing the refund of any portion of the entrance fee.

(h) State the terms under which an agreement is canceled by the death of the member. The agreement may contain a provision to the effect that, upon the death of the member, the moneys paid for the continuing care of such member shall be considered earned, and become the property of the provider.

(i) Provide for advance notice to the member, of not less than 60 days, before any change in fees or charges or the scope of care or services may be effective, except for changes required by state or federal assistance programs.

(j) Provide that charges for care paid in one lump sum shall not be increased or changed during the duration of the agreed upon care, except for changes required by state or federal assistance programs.

(2) A member shall have the right to rescind a continuing care agreement, without penalty or forfeiture, within 7 days after making an initial deposit

or executing the agreement. During the 7-day period, the member's funds shall be retained in a separate escrow account under terms approved by the Department of Insurance. A member shall not be required to move into the facility designated in the agreement before the expiration of the 7-day period.

(3) If a member dies before occupying the facility, or through illness, injury, or incapacity would be precluded from becoming a resident under the terms of the continuing care agreement, the agreement is automatically canceled, and the member or his legal representative shall receive a full refund of all moneys paid to the facility, except those costs specifically incurred by the facility at the request of the member and set forth in writing in a separate addendum, signed by both parties, to the agreement.

(4) Those agreements entered into subsequent to July 1, 1977, and prior to the issuance of a certificate of authority to the provider shall be valid and binding upon both parties in accordance with their terms.

*History.—s. 1, ch. 77-323.*

**651.061 Dismissal or discharge of member; refund.—**No agreement for care shall permit dismissal or discharge of the member from the facility providing care prior to the expiration of the agreement, without just cause for such a removal. "Just cause" shall include, but not be limited to, a good faith determination that a member is a danger to himself or others while remaining in the facility. If a facility terminates a member for just cause, the facility shall pay to the member any refund due in the same manner as if the member had provided notice pursuant to s. 651.055(1)(g).

*History.—s. 1, ch. 77-323.*

**651.065 Waiver of statutory protection.—**No act, agreement, or statement of any member, or of an individual purchasing care for a member, under any agreement to furnish care to the member shall constitute a valid waiver of any provision of this chapter intended for the benefit or protection of the member or the individual purchasing care for the member.

*History.—s. 1, ch. 77-323.*

**651.071 Agreements as preferred claims on liquidation.—**

(1) In the event of liquidation of the provider, all care agreements executed by a provider shall be deemed preferred claims against all assets owned by the provider; however, such claims shall be subordinate to those priority claims set forth in s. 631.271 and any secured claim as defined in s. 631.011(16).

(2) Any other claims not set forth in subsection (1) above shall be considered as general creditors' claims.

(3) Nothing in this section shall be construed to impair the priority of mortgages and security agreements, with respect to the lien property, duly recorded at least 4 months prior to the institution of liquidation proceedings.

*History.—s. 1, ch. 77-323.*



**651.081 Continuing care facilities members' organizations.**—Members living in a facility holding a valid certificate of authority under this chapter shall have the right of self-organization, the right to be represented by an individual of their own choosing, and the right to engage in concerted activities for the purpose of keeping informed on the operation of the facility which is caring for them or for the purpose of other mutual aid or protection.

*History.*—s. 1, ch. 77-323; s. 251, ch. 79-400.

**651.085 Quarterly meetings between members and the governing body of the facility.**—The board of directors or other such governing body of a continuing care facility shall hold quarterly meetings with the members of the continuing care facility for the purpose of free discussion of subjects including, but not limited to, income, expenditures, and financial trends and problems as they apply to the facility, as well as a discussion on proposed changes in policies, programs, and services.

*History.*—s. 1, ch. 77-323; s. 252, ch. 79-400.

**651.091 Availability, distribution, and posting of reports and records; requirement of full disclosure.**—

(1) Each continuing care facility shall maintain as public information, available upon request, records of all cost and inspection reports pertaining to that facility that have been filed with or issued by any governmental agency. A copy of each such report shall be retained in said records for not less than 5 years from the date said report is filed or issued. Each facility shall also maintain as public information, available upon request, all annual statements that have been filed with the Department of Insurance.

(2) Any records, reports, or documents which by state or federal law or regulation are deemed confidential shall not be distributed or made available for purposes of compliance with this section unless and until such confidential status has expired.

(3) Every continuing care facility shall:

(a) Display the certificate of authority in a conspicuous place inside the facility.

(b) Post in a sufficient number of prominent positions in the facility so as to be accessible to all members and to the general public a concise summary of the last inspection report issued by the department, with references to the page numbers of the full report noting any deficiencies found by the department, and the actions taken by the provider to rectify such deficiencies, indicating in such summaries where the full report may be inspected in the facility.

(c) Post in a sufficient number of prominent positions in the facility so as to be accessible to all members and to the general public a summary by the department of the latest annual statement, indicating in the summary where the full annual statement may be inspected in the facility. A listing of any proposed changes in policies, programs, and services shall also be posted.

(4) Prior to entering into an agreement to furnish continuing care, the provider undertaking to furnish the care, or the agent of the provider, shall make full disclosure, and provide copies to the pro-

spective member or his legal representative, of the following information relative to the undertaking:

(a) The agreement to furnish continuing care.

(b) A copy of the summaries listed in paragraphs (b) and (c) of subsection (3).

The prospective member or his legal representative shall be permitted to inspect the full reports referenced in paragraphs (b) and (c) of subsection (3); the charter or other agreement or instrument required to be filed with the department pursuant to s. 651.026(3), together with all amendments thereto; and the bylaws of the corporation or association, if any. Upon request, copies of the reports and information shall be provided to the individual requesting them if the individual agrees to pay a reasonable charge to cover copying costs.

*History.*—s. 1, ch. 77-323.

**651.095 Advertisements; requirements; penalties.**—

(1) The Department of Insurance shall require each provider to submit for approval each financial statement, pamphlet, circular, form letter, advertisement, or other sales literature or advertising communication addressed or intended for distribution to prospective members. Within 15 business days after the date of receipt of the documents listed in this section, the department shall enter an order approving or rejecting the documents. If an order of rejection is not entered within 15 business days after the date of receipt, the documents shall be deemed approved, unless the applicant has consented in writing to a further delay.

(2) A provider shall not have published, and a person shall not publish, an advertisement offering continuing care agreements subject to the registration requirements of this chapter unless a true copy of the advertisement has been filed with the department at least 15 business days before the first publication, or a shorter period as the department may allow, or unless the advertisement has been exempted by rule of the department. The department may require that the advertising be registered and that the advertising display a registration number.

(3) Any report, circular, public announcement, certificate, financial statement, or other printed matter or advertising material which is designed or used to solicit or induce persons to enter into any agreement providing for the transfer of property, conditioned upon an agreement to furnish continuing care for life or for a term of years, and which lists or refers to the name of any individual or organization as being interested in, or connected with, the person, association, or corporation that is to perform the contract, shall clearly state the extent of financial responsibility assumed by that individual or organization for the person, association, or corporation and the fulfillment of its agreements.

(4) This chapter does not impose liability, civil or criminal, upon a person or publisher who is regularly engaged in the business of publishing a bona fide newspaper or operating a radio or television station and who, acting solely in his official capacity, publishes an advertisement in good faith and without knowledge that the advertisement or publication constitutes a violation of this chapter.

(5) Any violation of this section is subject to the provisions of the Florida Deceptive and Unfair Trade Practices Act.

History.—s. 1, ch. 77-323; s. 253, ch. 79-400.

**651.101 Reasonable time to comply with rules and standards.**—Any provider who is offering continuing care may be given a reasonable time, not to exceed 1 year from the date of publication of any applicable rules or standards adopted pursuant to this chapter, within which to comply with the rules and standards and to obtain a certificate of authority.

History.—s. 1, ch. 77-323.

**651.105 Examination and inspections; fines.**—

(1) The Department of Insurance shall have power, and is required from time to time as it may deem necessary, to examine the business of any provider engaged in the execution of care agreements or engaged in the performance of obligations under such agreements, in the same manner as is provided for examination of insurance companies. Such examinations shall be made by a representative or examiner designated by the department, whose compensation shall be fixed by the department. Routine examinations may be made by having the necessary documents submitted to the department, and, for this purpose, financial documents and records conforming to commonly accepted accounting principles and practices, as required under s. 651.026, shall be deemed adequate. The final written report of each such examination shall be filed in the office of the department and, when so filed, shall constitute a public record. Any provider being examined shall, upon request, give reasonable and timely access to all of its records. The representative or examiner designated by the department may at any time examine the records and affairs and inspect the physical property of any provider, whether in connection with a formal examination or not.

(2) Any duly authorized officer, employee, or agent of the department may, upon presentation of proper identification, have access to, and inspect, any records, with or without advance notice, to secure compliance with, or to prevent a violation of, any provision of this chapter.

(3) Every provider operating under a valid certificate of authority shall be examined periodically and evaluated as to its financial condition by a representative or representatives designated by the department. Such examinations and evaluations shall be conducted as often as necessary to ensure the financial stability of the facility. Reports of the results of such financial examinations and evaluations shall be kept on file by the department and shall be open to public inspection in the facility providing care. Any records, reports, or documents which by state or federal law or regulation are deemed confidential shall not be distributed or made available for purposes of compliance with this subsection unless and until such confidential status has expired.

(4) The department shall notify the provider in writing of all deficiencies in its compliance with the provisions of this chapter and the rules adopted pursuant to this chapter and shall set a reasonable

length of time for compliance by the provider. Upon a finding of noncompliance, the department may levy an administrative fine, not to exceed \$50 per day, which shall be paid to the department each day until the department finds the provider in compliance. If the provider fails to comply within the established length of time, then the amount collected from the provider shall be forfeited to the department. In such case, the department may also initiate action against the provider in accordance with the provisions of s. 651.125.

History.—s. 1, ch. 77-323.

**651.111 Requests for inspections.**—

(1) Any interested party may request an inspection of the records and related financial affairs of a provider providing care in accordance with the provisions of this chapter by transmitting to the Department of Insurance notice of an alleged violation of applicable requirements prescribed by statute or by rule, specifying to a reasonable extent the details of the alleged violation, which shall be signed by the complainant.

(2) The substance of the complaint shall be given to the provider no earlier than at the time of the inspection. Unless the complainant specifically requests otherwise, neither the substance of the complaint provided the provider nor any copy of the complaint or any record published, released, or otherwise made available to the provider shall disclose the name of any person mentioned in the complaint except the name of any duly authorized officer, employee, or agent of the department conducting the investigation or inspection pursuant to this chapter.

(3) Upon receipt of a complaint, the department shall make a preliminary review, and, unless the department determines that the complaint is willfully intended to harass a provider or is without any reasonable basis, the department shall make an on-site inspection within 10 business days after receiving the complaint. In either event, the complainant shall be informed, within 30 days of the receipt of the complaint by the department, what the proposed course of action of the department is.

(4) No provider operating under a certificate of authority under this chapter shall discriminate or retaliate in any manner against a member or an employee of a facility providing care because such member or employee or any other person has initiated a complaint pursuant to this section.

History.—s. 1, ch. 77-323.

**651.114 Delinquency proceedings.**—

(1) If any of the grounds for rehabilitation, liquidation, conservation, reorganization, seizure, or summary proceedings of an insurer as set forth in ss. 631.051, 631.061, and 631.071 exist as to a provider, the Department of Insurance may petition for an appropriate court order or may pursue such other relief as is afforded in part I of chapter 631.

(2) In the event an order of rehabilitation, liquidation, conservation, reorganization, seizure, or summary proceeding has been entered against a provider, the department shall be vested with all of the powers and duties it has under the provisions of

part I of chapter 631 in regard to delinquency proceedings of insurance companies.

History.—s. 1, ch. 77-323.

#### **651.121 Advisory council.—**

(1) An advisory council to the Department of Insurance is created to consist of seven members appointed by the Governor, each of whom shall be a resident of, and geographically representative of, this state. Three members shall be holders of certificates of authority under this chapter, except that with respect to the initial appointments, these three members are required only to have been actively engaged in the offering of continuing care agreements in this state for 5 years prior to appointment. The remaining members shall include:

(a) A representative of the business community whose expertise is in the area of management.

(b) A certified public accountant.

(c) A representative of the field of insurance.

(d) A consumer representative.

(2) The term of office for each member shall be 3 years, or until his successor has been appointed and qualifies, except that of the members first appointed, two shall be appointed for terms of 1 year each, two for terms of 2 years each, and three for terms of 3 years each.

(3) The council members shall serve without pay.

(4) The council shall:

(a) Meet within 30 days after the members' appointment and elect a chairman from their number and elect or appoint a secretary, each of whom shall hold office for 1 year and thereafter until his successor is elected and qualified.

(b) Hold an annual meeting each year and hold other meetings at such times and places as the department or the chairman of the council may direct.

(c) Keep a record of its proceedings. The books and records of the council shall be prima facie evidence of all matters reported therein and shall be open to inspection by the department at all times.

(d) Act in an advisory capacity to the department.

(e) Recommend to the department needed changes in rules.

(f) Upon the request of the department, assist in the rehabilitation of continuing care operations.

History.—s. 1, ch. 77-323; s. 171, ch. 79-164.

#### **651.125 Criminal penalties; injunctive relief.—**

(1) Any person who maintains, enters into, or, as manager, officer, or in any other administrative capacity, assists in entering into, maintaining, or per-

forming any continuing care agreement subject to this chapter without doing so in pursuance of a valid certificate of authority or renewal thereof, as contemplated by or provided in this chapter, or who otherwise violates any provision of this chapter or rule adopted in pursuance of this chapter, is guilty of a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083. Each violation of this chapter constitutes a separate offense.

(2) The State Attorney for a circuit shall, upon application of the Department of Insurance or its authorized representative, institute and conduct the prosecution of an action for violation, within such circuit, of any provision of this chapter.

(3) The department may bring an action to enjoin a violation, threatened violation, or continued violation of this chapter in the circuit court in and for the county in which the violation occurred, is occurring, or is about to occur.

(4) Any action brought by the department against a provider shall not abate by reason of a sale or other transfer of ownership of the facility used to provide care, which provider is a party to the action, except with the express written consent of the Treasurer and Insurance Commissioner.

History.—s. 1, ch. 77-323.

**651.13 Civil action.**—Any member injured by a violation of this chapter may bring an action for the recovery of damages plus reasonable attorney's fees.

History.—s. 1, ch. 77-323.

#### **651.131 Actions under prior law.—**

(1) With respect to any proceedings hereafter instituted by any person believing himself to be aggrieved by a violation of any of the provisions of former s. 651.01, s. 651.02, s. 651.03, s. 651.04, s. 651.05, s. 651.06, s. 651.07, s. 651.072, s. 651.074, s. 651.076, s. 651.08, s. 651.09, s. 651.10, s. 651.11, s. 651.115, or s. 651.12, any resulting judgment shall be limited to the actual monetary loss suffered by such person plus reasonable attorney's fees.

(2) with respect to the provisions of former s. 651.12, any prosecution hereafter instituted under the provisions of said section shall require an affirmative finding of intent to defraud.

History.—s. 4(3), (4), ch. 77-323.

**651.132 Amendment or renewal of existing contracts.**—Any contract or agreement executed prior to July 1, 1977, which is amended or renewed, subsequent to July 1, 1977, shall be subject to this act.

History.—s. 6, ch. 77-323.



# TITLE XXXVII

## BANKS AND BANKING

### CHAPTER 654

#### SAVINGS BANKS

- 654.001 Incorporation under general banking laws.
- 654.01 Limitation of deposits by one individual.
- 654.02 Notice of withdrawal of deposits.
- 654.03 Withdrawal of deposit by married woman or infant.
- 654.04 Withdrawal of deposit of deceased person.
- 654.05 Investment of funds.
- 654.06 Application for loan.
- 654.07 Certain officers prohibited from borrowing, etc.
- 654.08 Company or agent not to receive commission for loan; penalty.
- 654.09 Department's supervision and control.

**1654.001 Incorporation under general banking laws.**—Savings banks shall be incorporated in accordance with the general laws of this state prescribing the manner and regulating the incorporation of banks and trust companies.

**History.**—s. 1, ch. 28012, 1953; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

cf.—s. 659.01 Creation of banking or trust corporation.

**1654.01 Limitation of deposits by one individual.**—Every savings bank may receive deposits from any person until the same amounts to \$2,000, and may allow interest upon such deposits, and upon the interest accumulated thereon, until the principal with accrued interest amounts to \$3,000, but the limitation contained in this section shall not apply to deposits by religious and charitable associations or corporations.

**History.**—s. 40, ch. 3864, 1889; RS 2197; s. 1, ch. 4427, 1895; GS 2729; RGS 4175; CGL 6116; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1654.02 Notice of withdrawal of deposits.**—No savings bank or institution for savings organized under this chapter shall be required to pay any deposit with such company until the depositor shall have first given it 60 days' notice that he intends to require payment of such deposits.

**History.**—s. 45, ch. 3864, 1889; RS 2198; GS 2730; RGS 4176; CGL 6117; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior

to that date.

**1654.03 Withdrawal of deposit by married woman or infant.**—Every person, not under guardianship, who may make a deposit personally in any savings bank or institution for savings may control, transfer or withdraw the money so deposited and the dividends or interest that have accrued or may accrue thereon, notwithstanding such person at the time of exercising such control or of making transfer or withdrawal may be a married woman or minor.

**History.**—s. 47, ch. 3864, 1889; RS 2199; GS 2731; RGS 4177; CGL 6118; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1654.04 Withdrawal of deposit of deceased person.**—Every savings bank or institution for savings organized under this chapter having money on deposit belonging to the estate of any deceased person whose residence at the time of his decease was in another state shall, if a foreign personal representative of such deceased person has been appointed by a court of any other state, pay the same at any time after 3 months from the issuance to such foreign personal representative of his letters of authority, if at such time such savings bank or institution for savings organized under this chapter has not received written notice of the appointment of a personal representative in this state, and the payment to such foreign personal representative shall be a valid discharge for money so paid. Such foreign personal representative shall furnish the savings bank or institution for savings organized under this chapter with an affidavit setting forth facts showing the domicile of the deceased person to be other than this state, and stating that there are no unpaid creditors of the deceased person in this state, together with a certified copy of his letters of authority. Such savings bank or institution for savings organized under this chapter shall maintain in its files a receipt executed by such foreign personal representative for the money so paid to him.

**History.**—s. 46, ch. 3864, 1889; RS 2200; GS 2732; RGS 4178; CGL 6119; s. 1, ch. 65-107; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1654.05 Investment of funds.**—The capital and deposits and the income derived therefrom shall be invested only as follows:

- (1) On the first mortgages of real estate situated

in this state to an amount not to exceed 60 percent of the valuation of such real estate, but not exceeding 75 percent of the whole amount of deposits shall be so invested; and no loan on mortgage shall be made except upon the report of not less than two members of the board of investment, who shall certify to the value of the premises to be mortgaged, according to their best judgment, and such report shall be filed and preserved with the records of the corporation.

(2) In the public funds of the United States, or bonds of any of the United States, or in the bonds or notes of any city, county or town of the United States whose actual indebtedness does not exceed 5 percent of the last preceding valuation of the property therein for the assessment of taxes, or in the notes of any citizen of this state with a pledge of any of the aforesaid securities at no more than the par value thereof.

(3) In the first mortgage bonds of any railroad company incorporated under authority of any of the United States, and whose road is located wholly in the same, and which is in possession of and operating its own road, and has earned and paid regular dividends for the 2 years next preceding such investment; or in the first mortgage bonds guaranteed by any such railroad company of any railroad company so incorporated whose road is thus located; or in the bonds or notes of any railroad company incorporated under the laws of this state which is unencumbered by mortgage, and which has paid a dividend of not less than 5 percent per annum for the 2 years next preceding such investment; or in the notes of any citizen of this state, with a pledge as collateral of any of the aforesaid securities at no more than 80 percent of the par value thereof.

(4) In the stock of any bank incorporated under the authority of this state, or the stock of any banking association incorporated under the authority of the United States, or in the notes of any citizen of this state with a pledge as collateral of any of the aforesaid securities at no more than 80 percent of the market value and not exceeding the par value thereof. Savings banks may deposit sums not exceeding 30 percent of the amount of their deposits on call in such banks, banking associations or in any trust company incorporated under the laws of this state or the United States, and may receive interest for the same.

(5) In loans upon the personal notes of the depositors of the company, but not exceeding three-fourths of the amount of his deposit to a depositor, and in each such case the deposit and the book of the depositor shall be held by the company as collateral security for the payment of such loan.

(6) If such deposits and income cannot be conveniently invested in the mode hereinbefore prescribed, not exceeding one-third part thereof may be invested in bonds or other personal security, payable at a time not exceeding one year, with at least two sureties, if the principal and sureties are all citizens of this state and resident therein.

(7) Ten percent of the deposits of any such corporation, but not exceeding \$25,000, may be invested in the purchase of a suitable site and the erection or

preparation of a suitable building for the convenient transaction of its business.

**History.**—s. 41, ch. 3864, 1889; RS 2201; GS 2733; RGS 4179; CGL 6120; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1654.06 Application for loan.**—All applications for loans shall be made in writing to the treasurer of the corporation, who shall keep a record thereof, showing date, name of applicant, amount asked for and the security offered, and he shall cause the same to be presented to the board of investment.

**History.**—s. 44, ch. 3864, 1889; RS 2202; GS 2734; RGS 4180; CGL 6121; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1654.07 Certain officers prohibited from borrowing, etc.**—No member of a committee or board of investment, or officer of such company, charged with the duty of investing its funds, shall borrow or use any portion thereof, be surety for loans to others, or in any manner, directly or indirectly, be an obligor for money borrowed from the company, and if such member or officer becomes the owner of real estate upon which a mortgage is held by the company, his office shall become vacant at the expiration of 60 days thereafter, unless he has ceased to be the owner thereof or has caused said mortgage to be discharged. Only one of the persons holding offices of president, vice president and treasurer shall at the time be a member of the investment committee.

**History.**—s. 42, ch. 3864, 1889; RS 2203; GS 2735; RGS 4181; CGL 6122; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1654.08 Company or agent not to receive commission for loan; penalty.**—No such company, nor any person acting in its behalf, shall negotiate, take or receive a fee, brokerage commission, gift or other consideration for or on account of a loan made by or on behalf of such corporation, other than appears on the face of the note or contract by which such loan purports to be made; but nothing herein contained shall apply to any reasonable charge for services in the examination of title and preparation of conveyances to such corporation as security for its loans. Whoever violates provisions of this section shall be subject to a penalty of not less than \$100 nor more than \$1,000, to be recovered by the state in any court of competent jurisdiction.

**History.**—s. 43, ch. 3864, 1889; RS 2204; GS 2736; RGS 4182; CGL 6123; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1654.09 Department's supervision and control.**—

(1) The Department of Banking and Finance shall make examinations at least once each year of each savings bank, at which time it will satisfy itself that the bank is in a solvent condition and is complying with the requirements of this chapter. In order to enforce its actions in this connection, the said department is vested with the same supervision and control in its examination of savings banks as it now

has under the statutes of this state regarding the examination and regulation of state banks, and should the department find the capital stock of any such savings bank impaired, it may give notice of such impairment to the directors of such bank, and if such impairment is not made good to the satisfaction of the department within a reasonable period of time, as may be determined by the department, the said department may proceed with the appointment

of a liquidator in the same manner as liquidators are provided by state banks.

(2) The cost of examination shall be borne by the bank at the rate which is now charged for the examination of state banks.

History.—s. 2, ch. 28012, 1953; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

<sup>1</sup>Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

cf.—s. 658.08 Examination fees.



## CHAPTER 656

## INDUSTRIAL SAVINGS BANKS

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**656.011 Definitions.**—As used in this chapter:

(1) "Industrial savings bank" means an industrial savings bank or Morris Plan bank or similar plan bank meeting all the requirements of this chapter and operating hereunder provided that the corporate name shall be so qualified and limited that such bank will be distinguished from commercial banks under Florida laws.

(2) "Department" means the Department of Banking and Finance.

(3) "Community" means a city, town or incorporated village, or, where not within any of the foregoing, a trade area.

(4) "Court" means a court of competent jurisdiction.

(5) "Item" means an instrument for the payment of money even though not negotiable, but does not include money.

(6) "Officer" when referring to a bank, means any person designated as such in the bylaws and includes, whether or not so designated, any executive officer, the chairman of the board of directors, the chairman of the executive committee, and any trust officer, assistant vice president, assistant treasurer, assistant cashier, assistant comptroller, or any person who performs the duties appropriate to those offices.

(7) "Person" means an individual, corporation, partnership, joint venture, trust estate, business trust, or unincorporated association.

**History.**—s. 1, ch. 57-351; ss. 12, 35, ch. 69-106; s. 275, ch. 71-377; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**656.021 Creation of an industrial savings bank.**—When authorized by the department, as provided herein, a corporation may be formed under the laws of the state by five or more persons for the purpose of conducting an industrial savings banking business.

**History.**—s. 2, ch. 57-351; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**656.031 Application for authority to organize an industrial savings bank.**—

(1) A written application for authority to establish a corporation, as provided in s. 656.021, shall be filed with the department, and shall include:

(a) The name, residence and occupation of each incorporator and stock subscriber and the amount of stock subscribed for by each, together with a statement under oath of each subscriber that he subscribes in good faith in his own right and not as agent or attorney for any undisclosed person.

(b) The proposed name.

(c) The total capital, the number of shares of

each class, and the par value of the shares of each class.

(d) The community, including the street and number, if known, and if not known, the area within the community where the proposed bank is to be located.

(2) Application shall be in such form and contain such additional information as the department shall reasonably require, and shall be accompanied by the required fee.

**History.**—s. 3, ch. 57-351; s. 1, ch. 67-382; ss. 12, 35, ch. 69-106; s. 1, ch. 70-262; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

#### **1656.041 Investigation by department.—**

(1) Upon the filing of an application, the department shall make an investigation of:

(a) The character, reputation, financial standing and motives of the organizers, incorporators and subscribers in organizing the proposed bank.

(b) The need for banking facilities or additional banking facilities, as the case may be, in the community where the proposed bank is to be located, giving particular consideration to the adequacy of existing banking facilities and the need for further banking facilities in the locality.

(c) The present and future ability of the community to support the proposed bank and all other existing banking facilities in the community.

(d) The character, financial responsibility, banking experience and business qualifications of the proposed officers.

(e) The character, financial responsibility, business experience and standing of the proposed stockholders and directors.

(2) The department shall approve or disapprove the application, in its discretion, but it shall not approve such application until, in its opinion:

(a) Public convenience and advantage will be promoted by the establishment of the proposed bank.

(b) Local conditions assure reasonable promise of successful operation for the proposed bank and those banks already established in the community.

(c) The proposed capital structure is adequate.

(d) The proposed officers and directors have sufficient banking experience, ability and standing to assure reasonable promise of successful operation.

(e) The name of the proposed bank is not so similar as to cause confusion with the name of an existing bank.

(f) Provision has been made for suitable banking house quarters in the area specified in the application.

**History.**—s. 4, ch. 57-351; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

#### **1656.051 Capital structure.—**

(1) The capital stock of an industrial savings bank hereafter organized shall be in such amount as the department shall deem adequate, but not less than the following aggregate amounts, based upon population of the community in which the bank will be located according to the latest official census:

(a) Twenty-five thousand dollars, if the population of the community in which the bank will be

located does not exceed 5,000 and \$50,000 if the population of the community in which the bank will be located does not exceed 10,000.

(b) One hundred thousand dollars if the population of the community in which the bank will be located exceeds 10,000, but does not exceed 50,000.

(c) Two hundred thousand dollars if the population of the community in which the bank will be located exceeds 50,000, but does not exceed 200,000.

(d) Three hundred thousand dollars if the population of the community in which the bank will be located exceeds 200,000.

(2) Every bank hereafter organized shall, upon its organization, establish, in addition to the capital required by subsection (1), a paid-in surplus equal in amount to not less than 20 percent of its paid-up capital, and a fund to be designated as undivided profits equal to 5 percent of its paid-up capital.

(3) Each subscriber at the time he subscribes to the stock of a proposed bank shall pay an additional sum at least equal to 5 percent of the par value of such stock into a fund to be used to defray the expenses of organization, such additional sum to be paid in cash. No organizational expense shall be paid out of any other funds of the bank. Upon the granting of a charter, any unexpended balance in such fund shall be transferred to undivided profits. If the application has been finally denied during said period, such balance shall be distributed among the contributors in proportion to their respective payments. The department may require an accounting of disbursements from the fund and may order the incorporators to restore any sum which has been expended for other than proper organizational expenses.

(4) No bank shall apply any part of the funds collected under this section for the payment of commissions or fees for obtaining subscriptions or selling shares or to the payment of compensation for services in connection with the organization of a proposed bank, or in connection with securing authority to transact business, other than the payment of fees for legal services and of other usual and ordinary expenses incidental and necessary for the organization of a bank.

**History.**—s. 5, ch. 57-351; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

cf.—s. 11.031 Official census.

#### **1656.061 Authorization to engage in industrial savings banking business.—**

(1) Upon approval of the application for authority to organize by the department, the proposed articles of incorporation shall be submitted to the department for its written approval before filing pursuant to chapter 607. After such approval and certification by the department, the proposed bank shall:

(a) File with the department a copy of its articles of incorporation duly certified by the Department of State.

(b) File with the department a statement in such form and with such supporting data and proof as it may require, showing that the entire capital, surplus and undivided profits have been fully paid in lawful money unconditionally and that the funds representing such capital, surplus and undivided profits, less sums spent with the approval of the department

for land, building, supplies, fixtures and equipment, are on hand.

(2) If the department finds that the proposed bank has in good faith complied with all the requirements of law, it shall within 30 days after the filing of the statement specified in subsection (1)(b), issue, in duplicate, under its official seal, a certificate of authorization to transact an industrial banking business, transmitting one copy to the bank and placing one copy in the department file. Said certificate shall state that the corporation named therein is authorized to transact an industrial savings banking business, and the bank shall cause said certificate to be published one time in some newspaper of general circulation published in the city or county where the bank is located.

(3) No bank shall, until it has received its certificates of authorization:

(a) Transact any banking business.

(b) Incur any indebtedness except that allowed under subsection (1)(b).

(4) Upon the failure to comply with subsection (1) (a) and (b) within 6 months after the approval of the application for authority to organize, such right shall automatically terminate and the charter be revoked. The department, however, for good cause, on written application filed before the expiration of said 6-month period, may extend the time within which the bank may be organized for a period not exceeding 6 months.

(5) Upon the failure to open for business with 30 days after the issuance of the certificate of authorization, the right to transact business shall automatically terminate and the charter be revoked.

**History.**—s. 6, ch. 57-351; ss. 10, 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 14, ch. 79-9.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

#### **1656.071 Place of transacting business; drive-in facilities.—**

(1)(a) Any bank heretofore or hereafter incorporated pursuant to this chapter shall have one principal place of doing business, as designated in its articles of incorporation; in addition, with the approval of the department and upon such conditions as the department shall prescribe, including a satisfactory showing by the bank that public convenience and necessity will be served thereby, any bank may establish up to two branches per calendar year within the limits of the county in which the parent bank is located and, in addition, may establish branches by merger with other banks located within the county in which the parent bank is located. The location of a parent bank or of a branch bank may be moved if the department determines that public convenience and necessity will be served by such move, but the location of a parent bank or of a branch bank may not be moved beyond the limits of the county in which it is located. The term "parent bank" shall be construed to mean the bank or banking office at which the principal functions of the bank are conducted.

(b) An application for a branch bank shall be in writing in such form as the department prescribes, supported by such information, data, and records as the department may require to make findings neces-

sary for approval. The department shall not act upon a branch application until it has completed consideration of any bank application pending when the branch application was filed, if the proposed locations for such branch and bank are within 1 mile of each other. However, action upon a branch application shall not be delayed more than 6 months after its filing due to the pendency of such a prior bank application. When the department has approved an application, it shall issue a certificate authorizing the operation of the branch bank and specifying the date on which it may be opened and the place where it will be located.

(c) This subsection shall be construed to allow the merger of banks within the same county and the operation by the merged company of such banks and to allow the sale of any bank to, and the purchase thereof through merger by, any other bank in the same county and the operation of such banks by the merged bank, provided that the Department of Banking and Finance shall be of the opinion and shall first determine that public convenience and necessity will be served by such operation.

(2) A bank may operate a drive-in facility, providing one or more tellers to serve patrons in motor vehicles in the following manner:

(a) The facility will be a part of or adjacent to the main banking room.

(b) There will be a physical connection of the main banking room and the facility.

(c) There will be a private connecting doorway or private enclosed secure passageway connecting the main banking room and the facility enabling tellers to pass between the facility and main banking room without coming in contact with the public. The operation of any drive-in facility not complying with these requirements shall constitute a violation of subsection (1).

**History.**—s. 7, ch. 57-351; ss. 12, 35, ch. 69-106; s. 1, ch. 76-142; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

#### **1656.081 Changes in articles of incorporation.**

—A bank shall not amend its articles of incorporation without the written approval of the department, and if any amendment requests a change in name of the bank, the department shall not approve such change if the new name is so similar as to cause confusion with the name of an existing bank.

**History.**—s. 8, ch. 57-351; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

#### **1656.091 Shares of stock.—**

(1) A bank shall issue its capital stock with par value of not less than \$5 or more than \$100 per share.

(2) No bank hereafter shall issue any shares before they are fully paid for.

(3) A bank pursuant to action taken by its board of directors, and after obtaining the written approval of the department and the approval of stockholders holding a majority of the voting stock of the bank evidenced either in a writing signed by the stockholders or by a vote at a stockholders' meeting called for such stated purpose after giving 10 days' notice



by registered mail, may issue preferred stock of one or more classes in an amount and with a par value as approved by the department and may make amendments to its articles of incorporation which may be necessary to accomplish this purpose. The holders of the preferred stock shall not be held individually responsible as such holders for any debts, contracts, or engagements of the bank and shall not be liable for assessment.

**History.**—s. 9, ch. 57-351; ss. 12, 35, ch. 69-106; s. 1, ch. 70-408; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**§656.101 Dividends and surplus.**—The directors of any bank, after charging off bad debts, depreciation and other worthless assets if any, may quarter-annually, semiannually, or annually, declare a dividend of so much of the net profits of the bank as they shall judge expedient, but each bank shall, before the declaration of a dividend on its common stock carry 10 percent of its net profits for such preceding period as is covered by the dividend to its surplus fund, until the same shall at least equal the amount of its common and preferred stock. Whenever the surplus becomes impaired or reduced below the aggregate amount of common and preferred stock, it shall be reimbursed in the manner provided for its accumulation.

**History.**—s. 10, ch. 57-351; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**§656.111 Changes in capital.**—

(1) No bank shall reduce its outstanding capital stock without first obtaining the consent of the department, and such consent shall be withheld if the reduction will cause the outstanding capital stock to be less than the minimum required hereunder.

(2) Any bank, may with the approval of the department, provide for an increase in its capital as may be deemed expedient.

**History.**—s. 11, ch. 57-351; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**§656.121 Directors, number, qualifications, oath, officers.**—

(1) The board of directors of the bank shall consist of not less than five nor more than 25 directors, and shall be elected at the annual meeting of stockholders.

(2) Every director must during his whole term of service be a citizen of the United States, and at least three-fifths of the directors must have resided in this state for at least 1 year preceding their election, and must be residents therein during their continuance in office. Every director of a bank hereafter chartered must own in his own right, free of lien or pledge agreement, voting common stock of the bank of which he is a director of not less than \$1,000 par value; any director who ceases to be the owner of such amount of voting common stock, or who becomes in any other manner disqualified, shall thereby vacate his place as such director; provided that as to those banks having an authorized capital of \$25,-

000 or less, such director must own in his own right capital stock in such bank of not less than \$500 par value in the manner above provided for other banks.

(3) Each director, upon assuming office, shall take an oath that he will, so far as the duty devolves on him, diligently and honestly administer the affairs of such bank and will not knowingly violate, or willfully permit to be violated, any of the provisions of this chapter, and that he is the owner in good faith and in his own right of shares of voting common stock in the amount required by subsection (2) subscribed by him or standing in his name on the books of the bank and that the same is not hypothecated or in any way pledged as security for any loan or debt. Such oath shall be immediately filed with the department.

(4) The board of directors of each bank shall manage the affairs of the bank and hold a meeting at least once every 2 months at the banking house of the bank.

**History.**—s. 12, ch. 57-351; ss. 12, 35, ch. 69-106; s. 1, ch. 71-171; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**§656.131 Deposit insurance; membership in Federal Reserve System.**—A bank is authorized to do any act necessary to obtain insurance of its deposits by the United States, or any agency thereof, and to acquire and hold membership in the Federal Reserve System.

**History.**—s. 13, ch. 57-351; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**§656.141 Liability of stockholders.**—Holders of voting common stock of banks shall be held individually responsible equally and ratable and not for one another for all contracts, debts, and engagements of such banks to the extent of the amount of their stock therein at the par value thereof in addition to the amount invested in such shares. Persons holding stock as executors, administrators, guardians or trustees shall not be personally subject to any liability as stockholders, but the estates and funds in their hands shall be liable in like manner and to the same extent as the testator, intestate, ward or person interested in trust funds would be, if living and competent to hold the stock in his own name. Such stockholders who have transferred their shares or registered the transfer thereof within 6 months next before the date of the failure of such bank to meet its obligations, or with knowledge of such impending failure, shall be liable to the same extent as if they had made no such transfer, to the extent that the subsequent transferee fails to meet such liability; but this provision shall not be construed to affect in any way any recourse which such stockholders might otherwise have against those in whose names such shares are registered at the time of such failure, provided that this section shall not apply to stockholders in a bank which is a member of the Federal Deposit Insurance Corporation, a corporation under laws of the United States, or which has an unim-

paired surplus equalling the amount of its capital stock.

**History.**—s. 14, ch. 57-351; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**656.15 Acquisition of majority stock in existing bank.**—In any case where a person, a group of persons, or a corporation proposes to purchase or acquire the majority of the outstanding capital stock of any bank and thereby to change the control of said bank, such person, shall first make application to the department for a certificate of approval of such proposed change of control of said bank and said application shall contain the name and address of the proposed new owner or owners of the controlling stock and the said department shall issue said certificate of approval only after it has become satisfied that the proposed new owner or owners of the controlling stock is qualified by character, experience and financial responsibility to control and operate the said bank in a legal and proper manner, and that the interests of the stockholders, depositors and creditors of the bank and the interest of the public generally will not be jeopardized by the proposed change in ownership and management.

**History.**—s. 15, ch. 57-351; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**656.16 Cash reserves.—**

(1) Every bank shall at all times have available in cash an amount equal to at least 15 percent of the aggregate amount of its deposits. Such portion of said reserve as the bank may desire may be invested in bonds and securities of the United States and bonds and securities guaranteed as to principal and interest by the United States, owned and unpledged by the bank, or which are in excess of the total deposits which they are pledged to secure, and balances payable on demand, due to the company from banks with whom such company may keep in current account.

(2) Whenever the lawful reserve of any such bank as defined in subsection (1) shall be below the amount of 15 percent of its deposits, such bank shall not increase its liabilities by making any new loans or discounts otherwise than by discounting or purchasing of bills of exchange payable at sight, nor making any dividends of its profits until the required proportion between its deposits and its lawful money of the United States has been restored. The department may notify any bank whose lawful money reserves shall be below the amount above required to be maintained to make good such reserve, and if such bank shall fail in 30 days thereafter so to make good its reserve of lawful money, the department may appoint a liquidator to wind up the business of the bank as provided in s. 661.10.

**History.**—s. 16, ch. 57-351; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior

to that date.

**656.17 Special powers.**—Industrial savings banks in addition to the general and usual powers incidental to ordinary corporations for profit in this state, which are not specifically restricted in this law, shall have the following special powers, to wit:

<sup>2</sup>(1) **LOANS; SECURITY REQUIRED, INTEREST AND CHARGES.**—The right to lend money, secured or unsecured, at an interest rate not to exceed the equivalent of 18 percent per annum simple interest calculated on the assumption that the loan will be paid in accordance with its agreed terms, whether or not the loan may be paid or collected prior to stated maturity, plus an additional charge not to exceed 2 percent of the principal amount of any loan or \$50, whichever is less, which additional charge shall be for investigating the character of the individual applying for the loan, the security submitted, and all other costs in connection with the making of such loans. No other charge of any kind or nature whatsoever, by whatsoever purpose or name designated, shall be made; however, when a loan is of such character as to necessitate the filing or recording of a legal instrument, an additional charge may be made for such filing or recording, providing such charge is actually paid to the proper public officials; also, a borrower may be required to pay abstract costs, reasonable attorney's fees, documentary stamp taxes, other taxes, premiums on insurance, and other similar charges, if the bank deems the same necessary for the protection and security of said loan.

<sup>2</sup>(2) **COLLECTION OF CHARGES.**—The right to require payment of the charges permitted in subsection (1) at the time the loan is made.

<sup>3</sup>(3) **ACCEPT DEPOSITS AND ISSUE INVESTMENT CERTIFICATES, CONTRACTS, ETC.**—The right to accept deposits and issue as evidence therefor investment certificates, contracts, or agreements, under any descriptive name which may bear such interest, if any, as their terms may provide and which may require the payment to the bank of such amounts from time to time as their terms may provide, and permit the withdrawal or cancellation of amounts paid upon the same in whole or in part from time to time and the credit of amounts thereon upon such condition as may be set forth therein.

<sup>3</sup>(4) **PLANS ON WHICH LOANS MAY BE MADE.**—The right to lend money on any combination of any of the foregoing plans or the elements thereof, including the right to lend money upon the collateral deposits of and the compliance of the borrowers with the terms of any deposit, investment certificate, contract or agreement issued under subsection (3).

<sup>3</sup>(5) **LATE CHARGES.**—To impose a late charge not exceeding 5 percent of the amount of any principal payment, installment payment, or payments in default on any evidence of debt given to secure payment of a loan made pursuant to subsection (1) or at the time any periodical installment upon a certificate assigned as collateral security for the payment of a loan made pursuant to subsection (1) becomes

due. However, such late charges shall not be cumulative.

**History.**—s. 17, ch. 57-351; s. 2, ch. 70-408; s. 1, ch. 71-200; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 1, ch. 78-182; s. 7, ch. 79-274.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**Note.**—These subsections as amended by ch. 79-274 "apply only to loans or advances of credit made on or subsequent to" July 1, 1979, "and shall not be construed as diminishing the force and effect of any laws applying to loans or advances of credit completed prior to that date."

**Note.**—Section 7, ch. 79-274 purported to amend the entire section, but did not republish subsections (3)-(5). Subsections (3)-(5) are republished here, however, as the apparent legislative intent was not to repeal them.

**1656.18 Prohibited powers.**—No industrial savings bank may, however, do any of the following, to wit:

(1) **CARRY COMMERCIAL OR DEMAND ACCOUNTS.**—Carry commercial or demand banking accounts.

(2) **UNSECURED LOANS, EXCESSIVE AMOUNTS.**—

(a) Unsecured loans exceeding 10 percent of the aggregate unimpaired capital and surplus shall not be made to any person; however, when approved by the board of directors, or an authorized committee therefrom, said 10 percent limitation may be increased to 25 percent of the aggregate unimpaired capital and surplus when such loans are amply and entirely secured.

(b) No bank shall lend directly or indirectly an amount exceeding 10 percent of the aggregate unimpaired capital and surplus of said bank to any director or officer of said bank, individually or to any copartnership or incorporated company in which a director or officer may be directly or indirectly interested. No such loans shall be made unless the same shall be first approved by the board of directors of such bank.

(c) No loan or discount shall be made by an industrial savings bank on the security of the shares of its own capital stock.

(3) **ACCEPT TRUSTS, ETC.**—Accept trusts or act as guardian, administrator, or judicial trustee in any form.

(4) **DEPOSIT FUNDS IN OTHER BANKS.**—Deposit any of its funds in any banking corporation, unless such corporation has been designated by vote of a majority of directors or of the executive committee present at a meeting duly called, at which a quorum was in attendance.

(5) **REAL ESTATE MORTGAGES.**—Banks may carry in their assets first mortgages on real property and certain second mortgages on real estate as hereinafter provided. Secondary liens may be taken and carried to secure further any debt previously contracted in good faith and owing to the bank or as additional security to loans made under provisions of Title I of the Federal Housing Administration Act. Secondary liens made under the provisions of the Servicemen's Readjustment Act of 1944, as amended, when fully guaranteed under the provisions of and meeting the requirements of said act, will not be considered secondary liens subject to the prohibitions of this subsection, but as acceptable assets for the bank. Secondary liens may also be taken at any time to further secure a loan if the loan is otherwise adequately secured, and second mortgages on real estate may be taken and carried as an asset if the

principal amount secured by the first and second mortgages, in the aggregate, does not exceed 75 percent of the appraised value of the encumbered real estate.

**History.**—s. 18, ch. 57-351; s. 2, ch. 67-382; s. 3, ch. 70-408; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 2, ch. 78-182.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1656.19 Powers of department.**—In addition to other powers conferred by this act, the department shall have power to:

(1) Implement by regulation any provision of this chapter.

(2) Restrict the withdrawal of deposits from all or one or more industrial banks where the department finds that extraordinary circumstances make such restriction necessary for the proper protection of depositors in the affected institutions.

(3) From time to time formulate and promulgate reasonable rules and regulations governing the conduct of industrial banks doing business in this state which rules and regulations shall have the force of law.

**History.**—s. 19, ch. 57-351; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 215, ch. 77-104; s. 1, ch. 77-457; s. 7, ch. 78-95.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1656.20 Liability when acting upon department's order or regulation.**—No person shall be subject to any civil or criminal liability for any act or omission to act in good faith in reliance upon a subsisting order or regulation issued by the department notwithstanding a subsequent decision by a court of competent jurisdiction invalidating the order or regulation.

**History.**—s. 20, ch. 57-351; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1656.21 Examinations and reports.**—The department shall:

(1) Examine the condition of each bank at least twice in each calendar year. The department may accept a Federal Deposit Insurance Corporation or Federal Reserve examination in lieu of one of said bank examinations and may furnish a copy of all examinations made of such banks to the Federal Deposit Insurance Corporation or its representatives or the Federal Reserve Board or its representatives.

(2) Require each bank to submit a report of its condition as of such date as it may fix at least twice in each calendar year or as often as ordered by the department, verified by the oaths or affirmations of the officer or officers authorized to do so by the by-laws of such corporation. Within 10 days after such report shall have been called for, the bank shall publish in a newspaper published in the county in which said bank is located a statement of its assets and liabilities as of the date of said report, and copies of said publication, with an affidavit of the publication, shall be filed with the department and the county property appraiser.

(3) Require each bank to submit a report of its income and dividends on a calendar year basis on such date as it may fix at least once each year, or as



often as ordered by the department, verified by the oaths or affirmations of the officer or officers authorized to do so by the bylaws of such corporation. Every such bank which fails to transmit any report required under this section shall be subject to a penalty of \$100 for each day of delinquency after the due date of the report.

**History.**—s. 21, ch. 57-351; ss. 12, 35, ch. 69-106; s. 1, ch. 70-406; s. 1, ch. 70-439; s. 3, ch. 76-168; s. 1, ch. 77-102; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1656.211 Confidentiality of records of division.**—All reports of examination and investigation conducted therewith, including any duly authorized copies in possession of any banking organization, foreign banking corporation, or any other person or agency, shall be confidential communications, other than such documents as are required by law to be published, and shall not be made public unless with the consent of the department or pursuant to a court order. All reports of examination or investigation of any bank shall be the sole property of the division of banking, Department of Banking and Finance, and under no circumstances shall the bank or any of its directors, officials, or employees disclose or otherwise make public in any manner such reports or any portion thereof, except in compliance with a court order.

**History.**—s. 2, ch. 71-200; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1656.22 Examination fees and assessments.**—The amount, kind, and disposition of the fees and assessments set forth in s. 658.08 shall also apply to industrial savings banks.

**History.**—s. 22, ch. 57-351; s. 1, ch. 63-254; s. 3, ch. 67-382; ss. 12, 35, ch. 69-106; s. 2, ch. 70-262; s. 3, ch. 73-69; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1656.23 Destruction of certain bank records.**—

(1) Banks shall not be required to preserve, or keep their records, or files, or photographic, or microphotographic copies thereof for a longer period than 10 years next after January 1 of the year following the time of the making or filing of such records or files, provided, however, that ledger sheets shall not be destroyed unless photographic copies of such ledger sheets are retained.

(2) No liability shall accrue against any bank destroying any such records after the expiration of the period provided in subsection (1), and any cause or proceedings in which any such records or files may be called in question or be demanded of the bank or any officer or employee thereof, a showing that such records or files have been destroyed in accordance with the terms of this section shall be a sufficient excuse for the failure to produce them.

(3) Any bank may photograph, microphotograph, or reproduce on film in such manner that each page is exposed in its entirety any or all of its journals, ledgers, statements, account books, or other books, or any or all of its internal records of every description, made or received in the regular course

of its business, and the photographs, microphotographs, or reproductions on film, or in the form of film or prints, or enlarged prints, or any duly certified or authenticated copy or reproduction thereof, duly certified or authenticated by a responsible officer of the bank under whose supervision the records are kept, shall in all cases, and in all courts and places, be admitted and received as evidence with a like force and effect as the original general ledger, voucher, statement, account book, or other record.

**History.**—s. 23, ch. 57-351; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1656.24 Investments.**—An industrial savings bank may invest its funds, subject to the following definitions, restrictions, and limitations:

(1) Bonds and securities not subject to limitation:

(a) Direct obligations of the United States Government.

(b) Obligations of agencies created by act of the United States Congress and authorized thereby to issue securities or evidences of indebtedness, regardless of guarantee of repayment by the United States Government.

(c) Public housing authority obligations.

(d) General obligations of states of the United States, of Puerto Rico, and of the political subdivisions and municipalities thereof.

(e) Obligations issued by the Florida State Board of Education under authority of the State Constitution or applicable statutes.

(f) Tax anticipation certificates or warrants of counties or municipalities having maturities not exceeding 1 year.

(2) Bonds and securities subject to a limitation of 25 percent of unimpaired capital and surplus of the purchasing bank. Any single issue of revenue bonds or certificates of states of the United States, of Puerto Rico, or of the political subdivisions and municipalities thereof.

(3) Bonds and securities subject to a limitation of 10 percent of unimpaired capital and surplus of the purchasing bank:

(a) Corporate obligations of any one corporation which is not an affiliate or subsidiary of the banking corporation.

(b) Savings shares or certificates issued by any one savings and loan association having its principal office in Florida.

(c) Any single issue of industrial development bonds issued by a county or municipality for the benefit of a specified corporation.

(4) None of the bonds or securities described in this section shall be eligible for investment in any amount unless current as to all payments of principal and interest and unless rated in one of the four highest investment grades by a recognized investment rating service or otherwise supported as to investment quality and marketability by a credit rating file compiled and maintained in current status by the purchasing industrial savings bank.

(5) An industrial savings bank may invest in the stock of incorporated companies to the extent hereinafter defined:

(a) Stock of the federal reserve bank of this district may be purchased and retained as required to

maintain membership in the federal reserve system.

(b) Stock of the Federal National Mortgage Association may be purchased and retained as required in connection with mortgage transactions with the said association.

(c) Up to 2 percent of the unimpaired capital and surplus of the industrial savings bank may be invested in small business investment companies which are organized under the provisions of the United States Code.

(d) Up to 10 percent of the unimpaired capital and surplus of the industrial savings bank may be invested in a bank service corporation, organized and operated as defined in this chapter.

(e) With the prior written approval of the department, an industrial savings bank may invest an aggregate amount up to 20 percent of its unimpaired capital and surplus in the stock of one or more operating subsidiary corporations organized for any of the following purposes: Owning and servicing real estate mortgages, owning and leasing real and personal property, issuing credit cards, operating a credit bureau, or such other purposes as the department may authorize.

(6) Investment securities shall be entered on the books of the industrial savings bank at the fair market value on the date of acquisition. Premiums paid in excess of par value shall be amortized over the life of the security; discount may be accreted.

(7) An industrial savings bank may invest in real estate to the extent hereinafter defined:

(a) Up to 50 percent of the unimpaired capital and surplus of the bank may be invested in the direct ownership, or in leasehold improvements, of land and buildings utilized by the bank in the transaction of its business. In lieu thereof, with the prior written approval of the department, up to 50 percent of the unimpaired capital and surplus of the bank may be invested in the stock of a corporation which owns the land and buildings within which the business of the bank is transacted.

(b) An additional investment up to 10 percent of the unimpaired capital and surplus of the bank may be made for the acquisition of land or buildings for future banking use or as a protection against undesirable encroachment of the banking premises or abandonment or deterioration of property in the immediate vicinity of the banking house. The bank may hold, improve, sell, lease, operate, or otherwise exercise the rights of an owner of any such property.

(c) The real estate investment limitations provided by this subsection may not be exceeded except with the prior written approval of the department.

(8) An industrial savings bank may own or lease furniture, fixtures, machinery, and equipment such as may be necessary to the transaction of its banking business, and may be the owner and lessor of personal property which is acquired pursuant to a written contract with a specified lessee.

(9) An industrial savings bank may acquire property of any kind to secure, protect, or satisfy a loan or investment previously made in good faith, and such property shall be entered on the bank's books, held, and disposed of subject to the following conditions and limitations:

(a) The book entry shall be the lesser of the bal-

ance of the loan or investment plus acquisition costs and accrued interest or the appraisal value or market value of the property acquired which shall be determined as near as possible to the date of acquisition.

(b) The bank shall have evidence of ownership of all property acquired and shall maintain subsidiary ledgers adequate to the separate recording of all income and expense attributable to its ownership of such property.

(c) Unless an extension of time is approved in writing by the department, real estate shall be sold or charged off within 5 years of the date of acquisition, and personal property shall be sold or charged off within 6 months of the date of acquisition.

(10) Special provisions:

(a) An industrial savings bank may invest up to 1 percent of its unimpaired capital and surplus in the stock of the Florida industrial development corporation, and may thereafter deal in the securities or other evidences of debt of that corporation as provided for in chapter 289.

(b) An industrial savings bank may invest in the stock or securities of a community corporation organized to promote the physical, social, or moral well-being of the members of the community in which the bank is located. However, the total of all such investments carried as assets of the bank may not exceed 2 percent of the unimpaired capital and surplus of the bank.

**History.**—s. 24, ch. 57-351; s. 1, ch. 59-86; s. 1, ch. 59-85; ss. 12, 22, 35, ch. 69-106; s. 18, ch. 69-216; s. 1, ch. 69-330; s. 1, ch. 70-410; s. 1, ch. 70-439; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**§656.25 Security of deposits.**—Notwithstanding any provisions of law of this state or any political subdivision thereof requiring security of deposits in the form of collateral, surety bond, or in any other form, security for such deposits shall not be required to the extent that said deposits are insured under the provisions of section 12-B of the Federal Reserve Act as amended, or any amendments thereto.

**History.**—s. 25, ch. 57-351; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**§656.26 Sale of assets in ordinary course.**—A bank may sell any asset in the ordinary course of business or with the approval of the department in any other circumstances.

**History.**—s. 26, ch. 57-351; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**§656.27 Borrowing.**—A bank may borrow money and issue evidences of indebtedness for a loan for temporary purposes in the usual course of its business.

**History.**—s. 27, ch. 57-351; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

to that date.

#### **'656.28 Depositories of public moneys and pledge of assets.—**

(1) Banks shall be depositories of public moneys under such regulations as may be prescribed by the department and they may also be employed as financial agents of the state and they shall perform such reasonable duties as depositories of public moneys and financial agents of the state as may be required of them. The department shall require banks so designated to give satisfactory security by the deposit of bonds of the United States, the state or political subdivisions or other satisfactory security for the safekeeping and prompt payment of the public moneys deposited with them and for the faithful performance of their duties as financial agents of the state. A bank or trust company may also pledge its assets to:

- (a) Enable it to act as agent for the sale of obligations of the United States.
- (b) Secure borrowed funds.
- (c) Secure deposits when the depositor is required to obtain such security by the laws of the United States or the laws of this state.

(2) Notwithstanding any provisions of law of this state or any political subdivision thereof requiring security of deposits in the form of collateral, surety bond, or in any other form, security for such deposits shall not be required to the extent that such deposits are insured under the provisions of Federal Deposit Insurance, as amended, or any amendments thereto.

**History.**—s. 28, ch. 57-351; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**'656.29 Rights of minority stockholders.**—No bank and no director, officer or employee thereof, shall permit any stockholder other than a qualified director, officer or employee thereof to have access to or to examine or inspect any of the books or records of such bank other than its general statement book showing its general assets and liabilities.

**History.**—s. 29, ch. 57-351; s. 3, ch. 76-168; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**'656.32 Deposit of minors.**—Bank deposits by a minor or made in his name, other than by a court-appointed guardian, may be withdrawn by the minor in the absence of an agreement to the contrary made between the bank and the depositor at the time the account is opened, and in case of any such agreement, such moneys, until the minor's disabilities are removed, may be withdrawn by the person or persons designated in such agreement.

**History.**—s. 32, ch. 57-351; s. 3, ch. 76-168; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**'656.33 Deposits in two or more names.**—Bank deposits, or any part thereof, or any interest therein made in the names of two or more persons, payable to either, or payable to either or the survivor, may be paid to either of said persons whether the other be living or not; and the receipt or acquittance of the

person so paid shall be a valid and sufficient release and discharge to the bank for any payment so made.

**History.**—s. 33, ch. 57-351; s. 3, ch. 76-168; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**'656.34 Deposits in trust.**—Bank deposits made by any person describing himself and making such deposit as trustee for another, and no other or further notice of the existence and terms of a legal and valid trust than such description shall have been given in writing to such bank, in the event of the death of the person so described as trustee, such deposit, or any part thereof, together with the interest thereon may be paid to the person for whom the deposit was thus stated to have been made.

**History.**—s. 34, ch. 57-351; s. 3, ch. 76-168; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**'656.35 Adverse claim to bank deposit.**—Notice to bank of an adverse claim to a deposit standing on its books to the credit of any person shall not be effectual to cause said bank to recognize said adverse claimant unless said adverse claimant shall also either:

- (1) Procure a restraining order, injunction or other appropriate process against said bank from a court in a cause therein instituted by him wherein the person to whose credit the deposit stands is made a party and served with process, or

- (2) Execute to said bank in form and with sureties acceptable to it, a bond, indemnifying said bank from any and all liability, loss, damage, costs and expenses, for and on account of the payment of such adverse claim or the dishonor of the check or other order of the person to whose credit the deposit stands on the books of said bank.

**History.**—s. 35, ch. 57-351; s. 3, ch. 76-168; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**'656.36 Death or incompetency of depositor.**—Any bank may pay any item made, drawn or accepted by a person who has funds on deposit to meet the same, notwithstanding the death or incompetency of the drawer, if presentation is made within 30 days after receipt of notice of the death or adjudication of incompetency of said depositor, and at any time if the bank has not received the written notice of the death or adjudication of incompetency of said depositor. No bank shall be liable for damages, or penalty, by reason of any payment made pursuant to this section.

**History.**—s. 36, ch. 57-351; s. 3, ch. 76-168; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

#### **'656.37 Powers of attorney.—**

- (1) A bank may continue to recognize the authority of an attorney authorized in writing to operate, in whole or in part, the account of a depositor, until it receives written notice of the revocation of his authority.

- (2) Written notice of the death or adjudication of incompetency of such depositor shall constitute written notice of revocation of the authority of his attorney.



ney; provided, however, bank may, until 30 days after receipt of such notice, pay any item made, drawn, accepted or endorsed by such attorney prior to such death or incompetency, provided that such item is otherwise properly payable.

**History.**—s. 37, ch. 57-351; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**656.38 Definitions, ss. 656.38-656.46.**—As used in ss. 656.38-656.46:

(1) "Lessee" means a person contracting with a lessor for the use of a safe-deposit box.

(2) "Lessor" means a bank renting safe-deposit facilities.

(3) "Safe-deposit box" means a safe-deposit box, vault, or other safe-deposit receptacle maintained by a lessor and the rules relating thereto apply to property or documents kept in safekeeping in the bank's vault.

**History.**—s. 38, ch. 57-351; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**656.39 Authority to engage in leasing safe-deposit facilities.**—An industrial savings bank may maintain and lease safe-deposit boxes and may accept property or documents for safekeeping if, except in the case of night depositories it issues a receipt therefor.

**History.**—s. 39, ch. 57-351; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**656.40 Access by fiduciaries.**—Where a safe-deposit box is made available by a lessor to one or more persons acting as fiduciaries, the lessor may, except as otherwise expressly provided in the lease or the writings pursuant to which such fiduciaries are acting, allow access thereto as follows:

(1) By any one or more of the persons acting as executors or administrators.

(2) By any one or more of the persons otherwise acting as fiduciaries when authorized in writing signed by all other persons so acting.

(3) By any agent authorized in writing signed by all of the persons acting as fiduciaries.

**History.**—s. 40, ch. 57-351; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**656.41 Effect of lessee's death or incompetence.**—Where a lessor without knowledge of the death or of an adjudication of legal incompetence of the lessee, deals with his agent pursuant to a written power of attorney signed by such lessee, the transaction binds the lessee's estate and the lessee.

**History.**—s. 41, ch. 57-351; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**656.42 Search procedure on death of lessee.**—Provided satisfactory proof of the death of the lessee is presented, a lessor shall permit the person named in a court order for the purpose, or if no order has been served upon the lessor, the spouse, a parent, an adult descendant, or a person named as an

executor in a copy of a purported will procured by him, to open and examine the contents of a safe-deposit box leased by a decedent, or any documents delivered by a decedent for safekeeping, in the presence of an officer of the lessor; and the lessor if so requested by such person, must deliver:

(1) Any writing purporting to be a will of the decedent to the court having probate jurisdiction in the county wherein the bank is located.

(2) Any writing purporting to be a deed to a burial plot or to give burial instructions to the person making the request for a search; and

(3) Any document purporting to be an insurance policy on the life of the decedent to the beneficiary named therein; but no other contents shall be removed pursuant to this section.

**History.**—s. 42, ch. 57-351; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**656.43 Lease to minor.**—A bank may lease a safe-deposit box to and in connection therewith deal with a minor with the same effect as if leasing to and dealing with a person of full legal capacity.

**History.**—s. 43, ch. 57-351; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**656.44 Delivery of safe-deposit box contents or property held in safekeeping to personal representative.**—

(1) The lessor shall immediately deliver to a resident personal representative, upon presentation of a certified copy of his letters of authority, all property deposited with it by the decedent for safekeeping, and shall grant him access to any safe-deposit box in the decedent's name and permit him to remove from such box any part or all of the contents thereof.

(2) After 3 months from the death of a lessee, if a personal foreign representative of such lessee has been appointed by a court of any other state and the lessor has not received written notice of the appointment of a personal representative in this state, a lessor may, in its discretion, deliver to a foreign personal representative all properties deposited with it for safekeeping and the contents of any safe-deposit box in the name of the decedent. Such a foreign personal representative shall furnish the lessor with an affidavit setting forth facts showing the domicile of the deceased lessee to be other than this state, and stating that there are no unpaid creditors of the deceased lessee in this state, together with a certified copy of his letters of authority. A lessor making delivery pursuant to this subsection shall maintain in its files a receipt executed by such foreign personal representative which itemizes in detail all property so delivered.

(3) No lessor shall be liable for damages or penalty by reason of any delivery made pursuant to this section.

**History.**—s. 44, ch. 57-351; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

to that date.

**1656.45 Access to safe-deposit boxes leased in two or more names.—**

(1) When specifically provided in the lease or rental agreement covering safe-deposit boxes heretofore or hereafter rented or leased in the names of two or more persons that access to said safe-deposit box shall be granted to either lessee or to either or the survivor, access to said safe-deposit box shall be granted by lessor to either of said persons, whether the other person or persons be living or not, and the receipt or acquittance of such person so granted access shall be a valid and sufficient release and discharge to the lessor for granting access thereto.

(2) No lessor shall be liable for damages or penalty by reason of any delivery made pursuant to this section.

**History.**—s. 45, ch. 57-351; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1656.46 Adverse claims to contents of safe-deposit box.—**

(1) An adverse claim to the contents of a safe-deposit box, or to property held in safekeeping, is not sufficient to require the lessor to deny access to its lessee unless:

(a) The lessor is directed to do so by a court order issued in an action in which the lessee is served with process and named as a party by a name which identifies him with the name in which the safe-deposit box is leased or the property held; or

(b) The safe-deposit box is leased or the property is held in the name of a lessee with the addition of words indicating that the contents or property are held in a fiduciary capacity, and the adverse claim is supported by a written statement of facts disclosing that it is made by or on behalf of a beneficiary and that there is reason to know that the fiduciary will misappropriate the trust property.

(2) A claim is also an adverse claim where one of several lessees claims, contrary to the terms of the lease, an exclusive right of access, or where one or more persons claim a right of access as agents, or officers of a lessee to the exclusion of others as agents, or officers, or where it is claimed that a lessee is the same person as one using another name.

**History.**—s. 46, ch. 57-351; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1656.47 Special remedies for nonpayment of rent.—**

(1) If the rental due on a safe-deposit box has not been paid for 6 months, the lessor may send a notice by registered mail to the last known address of the lessee stating that the safe-deposit box will be opened and its contents stored at the expense of the lessee unless payment of the rental is made within 30 days. If the rental is not paid within 30 days from the mailing of the notice, the box may be opened in the presence of an officer of the lessor and of a notary public who is not a director, officer, employee or stockholder of the lessor. The contents shall be sealed in a package by a notary public who shall write on the outside the name of the lessee and the

date of the opening. The notary public shall execute a certificate reciting the name of the lessee, the date of the opening of the box and a list of its contents. The certificate shall be included in the package and a copy of the certificate shall be sent by registered mail to the last known address of the lessee. The package shall then be placed in the general vaults of the lessor at a rental not exceeding the rental previously charged for the box.

(2)(a) If the contents of the safe-deposit box have not been claimed within 1 year of the mailing of the certificate, the lessor may send a further notice to the last known address of the lessee stating that, unless the accumulated charges are paid within 30 days, the contents of the box will be sold at public auction at a specified time and place, or in the case of securities listed on a stock exchange, will be sold upon the exchange on or after a specified date and that unsalable items will be destroyed. The time, place and manner of sale shall also be posted conspicuously on the premises of the lessor and advertised once in a newspaper of general circulation in the community. If the articles are not claimed, they may then be sold in accordance with the notice.

(b) The balance of the proceeds, after deducting accumulated charges, including the expenses of advertising and conducting the sale, shall be deposited to the credit of the lessee in any account maintained by him, or if none, shall be deemed a deposit account with the bank operating the safe-deposit facility, and shall be identified on the books of the bank as arising from the sale of contents of a safe-deposit box.

(3) Any documents or writings of a private nature, and having little or no apparent value need not be offered for sale, but shall be retained, unless claimed by the owner, for the period specified for unclaimed contents, after which they may be destroyed.

(4) The remedies provided for in this section shall apply to rental accrued or contents of safe-deposit boxes held by banks prior to the enactment of chapter 28016, Laws of Florida, 1953, chs. 656-661, Florida Statutes.

**History.**—s. 47, ch. 57-351; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**cf.**—s. 1.01 Defines registered mail to include certified mail with return receipt requested.

**1656.48 Miscellaneous offenses.—**

(1) Any director, officer or employee of a bank who asks for or receives, consents or agrees to receive any commission, emolument or gratuity or any money, property or things of value for his own personal benefit, or of personal advantage for procuring or endeavoring to procure for any person any loan from such bank or the purchase or discount of any note, draft, check, bill of exchange or other obligation by such bank or for permitting any person to overdraw any account with such bank shall be guilty of a felony.

(2) Any director, officer, agent, or employee of any bank who knowingly receives or possesses himself of any of its property otherwise than in payment of a just demand, and with intent to defraud, omits to make or cause to be made a full and true entry thereof in its books and accounts, or concurs in omit-

ting to make any material entry thereof, shall be guilty of a felony.

(3) Any director, officer, agent or employee of a bank who without authority from the board of directors of such bank makes, draws, issues, puts forth or assigns any certificate of deposit, draft, order, bill of exchange, acceptance, note, debenture, bond or other obligation, or mortgage, judgment or decree or makes any false entry in any book, report or statement of such bank with intent to defraud such bank or any other person, firm, or corporation, or to deceive any officer of such bank, or the department or any examiner appointed to examine the affairs of such bank shall be guilty of a felony.

(4) No bank shall purchase any real property or any contract arising from the sale of real property, or any note or bond in which any director, officer, or controlling stockholders of such bank, is personally or financially interested, directly or indirectly for his own account, for himself, or as a partner or agent of others without first obtaining the approval of the majority of the board of directors, excluding his own vote.

(5) No officer or director without prior approval of the board of a bank shall purchase directly or indirectly or be interested in the purchase of any of the bank's assets.

**History.**—s. 48, ch. 57-351; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

cf.—s. 775.081 Classifications of felonies.

**656.49 Unlawful service as an officer.**—It shall be unlawful for any person to serve as an officer or director of a bank who:

(1) Has been convicted of an offense constituting a violation of the banking laws, involving moral turpitude, or a breach of trust.

(2) Is indebted to the bank for more than 30 days upon a judgment that has become final.

(3) Has any interest adverse to the bank unless such interest is promptly and fully disclosed in writing to the board of directors of the bank.

**History.**—s. 49, ch. 57-351; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**656.50 Criminal penalties.**—Any person responsible for an act or omission expressly declared to be unlawful or a criminal offense by this chapter shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, or, if the act or omission was intended to defraud, of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 50, ch. 57-351; s. 670, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

to that date.

**656.51 Injunction.**—Whenever a violation of this chapter is threatened or impending, and will cause substantial injury to a bank or to the depositors, creditors, or stockholders thereof, the circuit court is hereby granted jurisdiction to hear any complaint filed by the department or any interested party, and, upon proper showing, to issue an injunction restraining such violation or granting such other appropriate relief.

**History.**—s. 51, ch. 57-351; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**656.52 Fictitious or fraudulent assets; past due paper.**—

(1) Any bank shall not carry as an asset of said company any note, obligation, or security which it does not own absolutely or which is known by the bank to be fraudulent or otherwise worthless, and no bank shall carry as an asset in any report to the department or any published report any note or other obligation which is past due or upon which no interest has been paid for 1 year or longer, provided, however, that such past due paper may be carried to the extent of the reasonable value of any lien or other collateral given to secure such obligation; and provided further that if suit has been filed to enforce the collection of any such past due obligation, it may be carried at its reasonable value as determined by the board of directors. The department may after investigation order the revision of any value so determined hereunder.

(2) Any officer of a bank who knowingly places among the assets of said bank any note, obligation or security which it does not own or which to his knowledge is fraudulent or otherwise worthless or who represents to the department or an examiner that any note, obligation, or security carried, or an asset of such bank is the property of the bank and is genuine when it is known to such officers that such representation is false or that such note, obligation or security is fraudulent or otherwise worthless, such officer shall be guilty of a felony.

**History.**—s. 52, ch. 57-351; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**656.53 Applicability of chapter 661.**—All provisions of chapter 661 shall be applicable to industrial savings banks operating under this chapter.

**History.**—s. 53, ch. 57-351; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.



## CHAPTER 657

## CREDIT UNIONS

## PART I GENERAL PROVISIONS (ss. 657.01-657.247)

PART II FLORIDA CREDIT UNION GUARANTY CORPORATION, INC.  
(ss. 657.25-657.268)

## PART I

## GENERAL PROVISIONS

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**657.01 Organization and definition.—**

(1) Any seven resident persons of the state who represent a potential membership of at least 200 persons having a common bond, as defined in this chapter, may apply to the Department of Banking and Finance for permission to organize a credit union. A "credit union" is a cooperative society incorporated for the twofold purpose of promoting thrift among its members and creating a source of credit for them at legitimate rates of interest for provident purposes. A credit union is organized in the following manner:

(a) The applicants execute in duplicate a certificate of organization by the terms of which they agree to be bound. The certificate shall state:

1. The name and location of the proposed credit union.

2. The names and addresses of the subscribers to the certificate and the number of shares subscribed by each.

3. The par value of the shares of the credit union which shall not exceed \$10 each.

(b) They next prepare and adopt bylaws for the general governance of the credit union consistent with the provisions of this chapter, and execute the same in duplicate.

(c) The certificate and the bylaws, both executed in duplicate, are forwarded to the department with a filing fee of \$5 and an investigation fee of \$15 for the use of the state.

(d) The department shall, within 30 days of the receipt of the certificate and bylaws, determine whether they conform with the provisions of this chapter, and whether or not the organization of the credit union in question would benefit the members of it and be consistent with the purposes of this chapter.

(e) Thereupon the department shall notify the applicants of its decision. If it is favorable the department shall issue a certificate of approval, attached to the duplicate certificate of organization and return the same, together with the duplicate bylaws, to the applicants.

(f) The applicants shall thereupon file the duplicate of the certificate of organization, with the certificate of approval attached thereto, with the clerk of the circuit court of the county within which the credit union is to do business, who shall make a record of the certificate and return it, with his certificate of record attached thereto, to the Department of Banking and Finance for permanent record.

(g) Thereupon the applicants shall become and be a credit union, incorporated in accordance with the provisions of this chapter.

(2) In order to simplify the organization of credit unions the department shall cause to be prepared an approved form of certificate of organization and a form of bylaws, consistent with this chapter which may be used by credit union incorporators for their guidance, and on written application of any seven resident persons of the state, shall supply them without charge with a blank certificate of organization and a copy of said form of suggested bylaws.

**History.**—s. 1, ch. 14499, 1929; CGL 1936 Supp. 6494(1); s. 1, ch. 59-56; ss. 12, 35, ch. 69-106; s. 1, ch. 75-171; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior

to that date.

**1657.02 Amendments.**—Any and all amendments to the bylaws must be approved by the Department of Banking and Finance before they become operative.

**History.**—s. 2, ch. 14499, 1929; CGL 1936 Supp. 6494(2); ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1657.03 Use of name "credit union."**—It shall be a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, for any person, association, copartnership or corporation (except corporations organized in accordance with the provisions of this chapter) to use the words "credit union" in its name or title. Associations organized under the provisions of this chapter shall include in their corporate names or titles the words "credit union."

**History.**—s. 3, ch. 14499, 1929; CGL 1936 Supp. 6494(3), 7977(1); s. 671, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1657.04 Powers.**—A credit union shall have the following powers:

(1) To receive the savings of its members either as payment on shares or as deposits (including the right to conduct Christmas clubs, vacation clubs, and other such thrift organizations within the membership.)

(2) To make loans to members for provident or productive purposes.

(3) To make loans to a cooperative society or other organization having membership in the credit union.

(4) To deposit its funds in state and national banks.

(5) To invest its funds as hereinafter in this chapter provided.

(6) To borrow money as hereinafter in this chapter indicated.

(7) To make contracts, to sue and be sued, and to incur and pay such operating expenses as are necessary or incidental to the operation thereof, including such membership fees in organizations of credit unions as may be approved by the board of directors, such expenses to be borne by the credit union from current earnings and unallocated surplus.

(8) To exercise such incidental powers as shall be deemed necessary or requisite to carry on effectively the business for which it is incorporated, pursuant to rules of the department.

(9) To purchase reasonable disability insurance, including accidental death benefits, for directors and committee members through insurance companies licensed to do business in this state.

(10) To reimburse directors and committee members for reasonable and necessary expenses incurred in the performance of their duties, under a policy to be determined by a majority vote of the membership at any annual or special meeting.

(11) To amend its bylaws to accept into the field

of membership individuals of a similar common bond of a liquidating credit union.

**History.**—s. 4, ch. 14499, 1929; CGL 1936 Supp. 6494(4); s. 1, ch. 29739, 1955; s. 2, ch. 59-56; s. 1, ch. 67-186; s. 2, ch. 75-171; s. 3, ch. 76-168; s. 1, ch. 78-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1657.05 Membership.**—Credit union membership shall consist of the incorporators and such other persons as may be elected to membership and subscribe to at least one share, pay the initial installment thereon, and the entrance fee. Organizations (incorporated or otherwise) composed for the most part of the same general group as the credit union membership may be members. Credit union organization shall be limited to groups (of both large and small membership) having a common bond of occupation, or association or to groups within a well-defined neighborhood, community or rural district.

**History.**—s. 5, ch. 14499, 1929; CGL 1936 Supp. 6494(5); s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1657.06 Reports to department; examinations; fees; revocation of certificate of approval.**—

(1) Credit unions shall be under the supervision of the Department of Banking and Finance, hereinafter referred to as the department. They shall report to it at least annually on or before January 31 on blanks supplied by the said department for that purpose. Additional reports may be required. For failure to file reports when due, unless excused for cause, the credit union shall pay to the treasurer of the state \$5 for each day of its delinquency. If the department determines that the credit union is violating the provisions of this chapter or is insolvent, the department may suspend the operation of the credit union or may serve notice on the credit union of its intention to revoke the certificate of approval. If, for a period of 15 days after said notice, the violation continues, the department may revoke the certificate and take possession of the business and property of said credit union and maintain possession until such time as the department shall permit it to continue business or its affairs are finally liquidated in the same manner as state banks are liquidated. It may take similar action if the report remains in arrears for more than 15 days.

(2) Credit unions shall be examined at least annually by the department or its agent, except that if a credit union has assets of less than \$25,000, it may accept the audit of a practicing public accountant in place of such examination. The board of directors and supervisory committee shall review the examination report. The recommendations to the board to eliminate violations or exceptions noted therein shall be enforced by the board.

(3)(a) An examination fee shall be paid to the department based on the total amount of resources held by the credit union as follows:

1. With resources up to \$10,000, \$25;
2. With resources up to \$15,000, \$50;
3. With resources up to \$25,000, \$75;
4. With resources up to \$50,000, \$100;
5. With resources up to \$75,000, \$125;
6. With resources up to \$100,000, \$150;

7. With resources over \$100,000 but less than \$1,000,000, \$150 plus \$50 for each additional \$100,000 or fractional part thereof;

8. With resources over \$1,000,000 but less than \$5,000,000, \$600 plus \$45 on each additional \$100,000 or fractional part thereof;

9. With resources over \$5,000,000, \$2,400 plus \$40 on each additional \$100,000 or fractional part thereof.

(b) Fees collected under part I of this chapter shall be deposited in the state treasury in a special Bank and Trust Company Trust Fund under the Department of Banking and Finance, and the same are hereby appropriated to the department to be used in administering this chapter. The department shall from time to time formulate and promulgate reasonable rules and regulations governing the conduct of state credit unions doing business in this state.

**History.**—s. 6, ch. 14499, 1929; CGL 1936 Supp. 6494(6); s. 1, ch. 20312, 1941; s. 1, ch. 23662, 1947; s. 1, ch. 28232, 1953; s. 3, ch. 59-56; s. 1, ch. 63-289; s. 2, ch. 67-186; ss. 12, 35, ch. 69-106; s. 1, ch. 70-216; s. 1, ch. 70-439; s. 138, ch. 71-355; s. 3, ch. 73-326; s. 1, ch. 76-119; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

#### **657.061 Disclosure of credit union records.—**

(1) All credit union charter applications filed with the department pursuant to chapter 657, including related information obtained or prepared by the department, shall be open to the public pursuant to chapter 119 and the rules of the department. However, the classes of records and information mentioned in subsection (3) shall be confidential and shall not be disclosed by the department or any of its officials, employees, or agents, except pursuant to an order of a court or a hearing officer under chapter 120, or legislative subpoena, as provided by law. Materials supplied to the department by other governmental agencies, federal or state, shall remain the property of the submitting agency and shall be made public only with the consent of such agency or pursuant to appropriate court order or legislative subpoena, as provided by law.

(2)(a) Orders of courts or of hearing officers for the production of confidential records and information shall provide for in camera inspection by the court or the hearing officer and shall be subject to further orders by the court or the hearing officer to protect the confidentiality thereof, except to the extent deemed necessary by the court or the hearing officer to protect the interests of all parties and affected persons or the soundness of individual credit unions or the credit union movement. However, any such order directing the release of information relating to the soundness of individual credit unions or the credit union movement shall be immediately reviewable. A petition filed by the department for review of such order directing the release of information relating to the soundness of individual credit unions or the credit union movement shall automatically stay further proceedings in the trial court or the administrative hearing until the disposition of said petition by the reviewing court; if any other party files such a petition for review, it shall operate as a stay of such proceedings only upon order of the reviewing court.

(b) Confidential records and information furnished in compliance with or in response to a legisla-

tive subpoena shall be confidential communications and shall retain their confidential status while in the possession of any legislative body or committee receiving the same and shall not be made public, and such confidential status shall continue after the legislative body or committee has returned such records and information to the department or other source from which they came. No member of the Legislature or member of the legislative body or committee, or any employee thereof, or any other person shall disclose or make public any of the information found in such records and information furnished in compliance with, or in response to, any such subpoena, except in cases involving investigation or charges against an officer subject to impeachment, and then only to the extent determined by the legislative body or committee to be necessary.

(3) The following records and information of the department are confidential, except such portions thereof which are otherwise matters of public record or general public knowledge:

(a) Personal financial statements or information; personnel, medical, or similar records or information; records or information obtained or prepared by the department with reference to the character or reputation of any person; transaction and application records of a person's share, deposit, or loan accounts; and any record or information which would constitute a clearly unwarranted invasion of personal privacy.

(b) Investigatory records compiled for civil or criminal law enforcement purposes, including investigatory records relating to the process of involuntary liquidation under s. 657.20(2), but only to the extent that the disclosure of such records would:

1. Interfere with enforcement proceedings;
2. Deprive a person or an institution of a right to a fair trial or an impartial adjudication;
3. Tend to impair the safety or soundness of any credit union;
4. Constitute an unwarranted invasion of personal privacy;
5. Disclose the identity of a confidential source, or, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, confidential information furnished only by the confidential source;
6. Disclose investigative techniques or procedures; or
7. Endanger the life or physical safety of law enforcement or department personnel.

(c) Reports of examination or operation and records, or a portion thereof, containing or relating to an examination, operation, or condition report prepared by, or on behalf of or for the use of, the department or any other agency, state or federal, responsible for the regulation or supervision of credit unions, relating to the affairs of any credit union. Reports of examination and operation prepared by, or on behalf of or for the use of, the department shall be the property of the department, but copies thereof may be furnished to the credit union examined for its confidential use. No credit union director, officer, committee members, or employee or any other person, shall disclose in any manner such report or any portion thereof, except such portions thereof which



are otherwise matters of public record or general public knowledge, to any person or organization not officially connected with the credit union as an officer, director, committee member, employee, attorney, auditor, or independent auditor.

(4) This section shall not prevent or restrict:

(a) The publication of reports required to be submitted to the department by s. 657.06(1), or required to be published by applicable federal statutes or regulations.

(b) The furnishing of records or information to any federal agency responsible for the regulation, supervision, or insuring of credit unions.

(c) The disclosure or publication of summaries of condition of the financial institutions and the disclosure or publication of general economic and similar statistics and data, provided any of the foregoing are in such form that the identity of particular financial institutions cannot reasonably be expected to be ascertained therefrom.

(d) The reporting of any suspected criminal activity to appropriate law enforcement agencies.

(5) Every credit union shall cause to be kept, at all times, full and correct records of the names and residences of all the members of the credit union, in the principal office where its business is transacted. Such records shall be subject to the inspection of all the members of the credit union and the officers authorized to assess taxes under state authority, during business hours of each business day. A current list of members shall be made available to the department's examiners for their inspection and, upon the request of the department, shall be transmitted to the department, but the department shall not disclose or make public said list or any part thereof.

(6) Willful violation of any of the provisions of this section relating to an unlawful disclosure of confidential information is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(7) Reports of examinations, investigations, and related information of existing credit unions made by the department, or photographic copies thereof, shall be retained for a period of at least 10 years.

(8) A copy of any document on file with the department which is certified by the department as being a true copy may be introduced in evidence as if it were the original. The department shall establish a schedule of fees for preparing copies of documents.

(9) The department shall have the authority to adopt rules pursuant to this chapter.

*History.*—s. 1, ch. 77-156; s. 254, ch. 79-400.

**657.07 Fiscal year; meetings.**—The financial year of all credit unions shall end December 31. Special meetings may be held in the manner indicated in the bylaws. At all meetings a member shall have but a single vote whatever his share holdings. There shall be no voting by proxy, and a member other than a natural person shall cast a single vote through a delegated agent. Any amendment to the bylaws of a credit union shall be approved by the

department before such amendment shall be effective.

*History.*—s. 7, ch. 14499, 1929; CGL 1936 Supp. 6494(7); s. 2, ch. 20312, 1941; s. 3, ch. 67-186; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

*Note.*—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

#### **657.08 Board of directors and committees.**—

At the annual meeting (the organization meeting shall be the first annual meeting) the credit union shall elect a board of directors of not less than five members, a credit committee of not less than three members and a supervisory committee of three members, all to hold office for such terms respectively as the bylaws provide and until successors qualify. However, the board of directors may appoint the credit committee if authorized by the bylaws of the credit union. A record of the names and addresses of the members of the board and committees and the officers shall be filed with the department within 10 days of their election.

*History.*—s. 8, ch. 14499, 1929; CGL 1936 Supp. 6494(8); ss. 12, 35, ch. 69-106; s. 1, ch. 71-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

*Note.*—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

#### **657.09 Election of officers; duties of directors.**—

At their first meeting the directors shall elect from their own number a president, vice president, treasurer and clerk, of whom the last two named may be the same individual. The directors shall have general management of the affairs of the credit union, particularly:

(1) To act upon all applications for membership, except to the extent that it may have authorized the approval of such applications by an executive committee or by a membership officer.

(2) To determine interest rates on loans and on deposits.

(3) To fix the amount of the surety bond which shall be required of all officers, directors, committeemen and employees handling or having access to money, bank accounts or securities owned by or pledged with the credit union, or having power to disburse, or, power to authorize disbursement of funds of the credit union; such bond for each such officer, director, committeeman and employee, or blanket bond for all such officers, directors, committeemen and employees, shall not be less than that shown in the following schedule, based upon the assets of the credit union:

With assets up to \$	5,000	bond of \$	1,000
" " " "	10,000	" "	2,000
" " " "	20,000	" "	4,000
" " " "	35,000	" "	7,000
" " " "	50,000	" "	10,000
" " " "	75,000	" "	15,000
" " " "	100,000	" "	20,000
" " " "	150,000	" "	30,000
" " " "	200,000	" "	40,000
with assets up to \$	300,000	bond of \$	60,000
" " " "	500,000	" "	80,000
" " " "	750,000	" "	90,000
" " " "	1,000,000	" "	100,000
" " " over 1,000,000		" "	100,000

plus \$5,000 for each additional \$100,000 of assets.

(4) To declare dividends, as provided under s. 657.18.

(5) To fill vacancies in the board and in the credit committee until successors are chosen and qualify.

(6) To determine the maximum individual share holdings and the maximum individual loan which can be made with and without security.

(7) To have charge of investments other than loans to members.

(8) To appoint an executive committee of not less than three directors to act for it in the purchase and sale of securities or the making of loans to other credit unions, or both.

The duties of the officers shall be as determined in the bylaws, except that the treasurer shall be the general manager. No member of the board or of either committee shall, as such, be compensated.

**History.**—s. 9, ch. 14499, 1929; CGL 1936 Supp. 6494(9); s. 2, ch. 28232, 1953; s. 3, ch. 29739, 1955; s. 4, ch. 59-56; ss. 2, 3, ch. 63-289; s. 4, ch. 67-186; s. 3, ch. 75-171; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

#### **657.10 Credit committee.**

(1) The credit committee shall have the general supervision of all loans to members. Applications for loans shall be on a form prepared by the credit committee, and all applications shall set forth the purpose for which the loan is desired, the security, if any, offered, and such other data as may be required. Within the meaning of this section an assignment of shares or deposits or the endorsement of a note may be deemed security. At least a majority of the members of the credit committee shall pass on all loans and approval must be unanimous. The credit committee shall meet as often as may be necessary after due notice to each member.

(2) The credit committee may appoint one or more loan officers and delegate to them the power to approve loans. Each loan officer shall furnish the credit committee a record of each loan approved or not approved within 7 days after the filing of the application therefor. All loans not acted upon by the loan officer shall be acted upon by the credit committee. No individual shall have authority to disburse funds of the credit union for any loan which has been approved by him in his capacity as a loan officer. Not more than one member of the credit committee may be appointed a loan officer.

**History.**—s. 10, ch. 14499, 1929; CGL 1936 Supp. 6494(10); s. 4, ch. 63-289; s. 1, ch. 73-22; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

#### **657.11 Supervisory committee.**

(1) The supervisory committee shall:

(a) Make an examination of the affairs of the credit union at least quarterly, including an audit of its books and, in the event said committee feels such action to be necessary, it shall call the members together thereafter and submit to them its report.

(b) Make an annual audit and report and submit the same at the annual meeting of the members; such audits shall include verification of accounts of members from time to time and not less than every 2 years.

(c) By unanimous vote, if it deem such action to be necessary to the proper conduct of the credit union, suspend any officer, director or member of the committee and call the members together to act on such suspension. The members at said meeting may sustain such suspension and remove such officer permanently or may reinstate said officer.

(2) By majority vote the supervisory committee may call a special meeting of the members to consider any matter submitted to it by said committee. The said committee shall fill vacancies in its own membership.

**History.**—s. 11, ch. 14499, 1929; CGL 1936 Supp. 6494(11); s. 5, ch. 63-289; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**657.12 Capital.**—The capital of a credit union shall consist of the payments that have been made to it by several members thereof on shares. The credit union shall have a lien on the shares and deposits of a member for any sum due to the credit union from said member or for any loan endorsed by him. A credit union may charge an entrance fee as may be provided by the bylaws.

**History.**—s. 12, ch. 14499, 1929; CGL 1936 Supp. 6494(12); s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**657.13 Minors.**—Shares may be issued and deposits received in the name of a minor or in trust in such manner as the bylaws may provide. The name of the beneficiary must be disclosed to the credit union.

**History.**—s. 13, ch. 14499, 1929; CGL 1936 Supp. 6494(13); s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**657.14 Interest rates.**—Interest rates on loans made by a credit union shall not exceed 1.5 percent a month on unpaid balances.

**History.**—s. 14, ch. 14499, 1929; CGL 1936 Supp. 6494(14); s. 3, ch. 76-168; s. 1, ch. 77-457; s. 8, ch. 79-274.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date. This section as amended by ch. 79-274 applies "only to loans or advances of credit made on or subsequent to" July 1, 1979, "and shall not be construed as diminishing the force and effect of any laws applying to loans or advances of credit completed prior to that date." cf.—s. 687.01 Interest and usury.

**657.15 Borrowing power.**—A credit union may borrow from any source in total a sum not exceeding 50 percent of its unimpaired capital.

**History.**—s. 15, ch. 14499, 1929; CGL 1936 Supp. 6494(15); s. 4, ch. 29737, 1955; s. 6, ch. 63-289; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**657.16 Loans.**—A credit union may loan to members, subject to the conditions contained in the bylaws. Loans may be secured by a first or a second mortgage on real property. A borrower may repay his loan in whole or in part any day the office of the credit union is open for business. A director, officer, or committeeman may borrow from the credit union in which he holds office, provided the combined loans to all directors, officers, and committeemen, except share loans, shall not exceed 10 percent of the

capital and deposits of the credit union, and provided, further, that all loans to directors, officers, and committeemen (except share loans) must be approved by the credit committee and the board of directors without said director, officer, or committeeman having a vote on his loan. No directors, officers, or committeemen may be comakers or endorsers on loans obtained from the credit union in which they hold office. The department shall have the authority to adopt rules pursuant to this section. Such rules shall be designed to promote and preserve the liquidity and soundness of the credit union.

**History.**—s. 16, ch. 14499, 1929; CGL 1936 Supp. 6494(16); s. 7, ch. 63-289; s. 1, ch. 69-30; s. 4, ch. 75-171; s. 3, ch. 76-168; s. 1, ch. 77-151; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**§657.161 Investments.**—A credit union, after taking care of the provident and productive borrowing needs of its members, may invest its surplus funds in only the following:

(1)(a) Obligations of the United States, including bonds and securities upon which payment of principal and interest is fully guaranteed by the United States;

(b) In loans to other credit unions in the state provided that no such loan may exceed 25 percent of the unimpaired capital of the lending credit union nor be made for a period in excess of 1 year.

(2) General obligations of states and general obligations of counties, municipalities or county road, school, hospital and other public purpose districts of the state; provided, that such securities shall not be eligible for investment if they have been in default either as to principal or interest within 5 years prior to date of purchase.

(3) First mortgage bonds of railroad and public service corporations; provided, that the investment in bonds of any such corporations shall not exceed \$15,000, or 1 percent of the assets of the credit union, whichever is greater; and provided further that such securities shall not be eligible for investment if they have been in default either as to principal or interest within 5 years prior to date of purchase.

(4) Shares of building and loan associations, savings and loan associations and other credit unions; provided that the investment in any credit union shall not exceed \$15,000 or 1 percent of the assets of the credit union, whichever is greater, and that the aggregate of all such investments shall not exceed 25 percent of the unimpaired capital of the investing credit union.

(5) Real estate and improvements thereon that may be required for its accommodation in the transaction of its business; provided, that before any such investment is made, the proposal to make it shall be submitted to the Department of Banking and Finance and its approval obtained and, provided further that it shall not grant such approval until it is satisfied that the proposed investment is necessary, that the amount thereof is commensurate with the size and needs of the credit union, and that it will be beneficial to the members.

(6) Furniture, fixtures, and equipment that may be required in the transaction of its business.

(7) With the approval of the department, credit unions may invest in corporation bonds with a fixed

maturity of any corporation within the United States if such bonds are rated by at least two nationally recognized rating services in any one of the three highest classifications approved by the department of the currency for the investment of the funds of national banks; provided, however, that if only one nationally recognized rating service shall rate such obligations, then such rating service must have rated such obligations in any one of the two highest classifications heretofore mentioned. Not more than 10 percent of the total assets of the credit union shall be so invested, and not more than \$15,000 or 1 percent of the total assets of the credit union, whichever is greater, shall be invested in any one corporation's bonds.

(8) A credit union may invest in securities, obligations, participations, or other instruments of, issued by, or fully guaranteed as to principal and interest by, the United States Government or any agency thereof or any trust or trusts established for investing directly or collectively in the same.

(9) Certificates of deposit or time deposits of other credit unions, state and national banks, and savings and loan associations.

(10) Capital stock of credit union services corporations in an amount not to exceed 3 percent of their unimpaired capital and surplus. For the purposes of this subsection, "credit union services corporation" means a corporation organized to perform only business administration services for two or more credit unions, at least one of which is subject to supervision by the department.

(11) The assets of liquidating credit unions within the state.

(12) Shares and other savings accounts of the United States Central Credit Union and the Southeast Corporate Federal Credit Union.

**History.**—s. 5, ch. 29739, 1955; s. 1, ch. 57-346; ss. 8, 9, ch. 63-289; s. 2, ch. 69-30; ss. 12, 35, ch. 69-106; s. 3, ch. 71-106; s. 5, ch. 75-171; s. 3, ch. 76-168; s. 1, ch. 76-192; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

#### **§657.17 Reserves.**—

(1) All entrance fees (which may be provided by the bylaws), and, each year, before the declaration of a dividend, but after an interest refund, if any, is declared, 20 percent of the net earnings, shall be set aside as a reserve fund, which reservation of earnings shall continue until the reserve fund equals \$3,000. After the reserve has reached \$3,000 the credit union shall continue each year, before the declaration of a dividend, but after an interest refund, if any, is declared, to place 10 percent of the net earnings in a reserve fund, which reservation of earnings shall continue until the reserve fund equals 10 percent of the total of the outstanding loans of the credit union.

(2) A credit union which purchases federal share insurance may elect to use the following reserve requirement. Immediately before the payment of each dividend, the gross earnings of the credit union shall be determined. From this amount there shall be set aside, as a regular reserve against losses on loans and against such other losses as may be specified in regulations prescribed under this chapter, sums in accordance with the following schedule: 10 percent



of gross income until the regular reserve shall equal 7.5 percent of the total of outstanding loans and risk assets, then 5 percent of gross income until the regular reserve shall equal 10 percent of the total of outstanding loans and risk assets. Whenever the regular reserve falls below 10 percent or 7.5 percent of the total of outstanding loans and risk assets, as the case may be, it shall be replenished by regular contributions in such amounts as may be needed to maintain the reserve goals of 7.5 percent or 10 percent.

(3) Moneys acquired through the building up of this reserve fund may be invested under the terms of s. 657.04. The reserve fund herein provided for shall be held by the corporation as a reserve against bad debts of any nature owing to it; and said fund shall not be distributed or reduced except in cases of liquidation of the credit union or for the charging out of bad debts, and any such charge to this account must be first approved by the board of directors.

**History.**—s. 17, ch. 14499, 1929; CGL 1936 Supp. 6494(17); s. 3, ch. 20312, 1941; s. 3, ch. 28232, 1953; s. 3, ch. 69-30; s. 4, ch. 71-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**657.18 Dividends.**—The directors of a credit union, after provision has been made for transfers to the reserve fund in accordance with the provisions of s. 657.17, may declare a dividend from undivided earnings not to exceed 7.5 percent per annum, which dividend shall be paid on all shares outstanding at the end of the period covered by such dividend. Shares which become fully paid up during the period covered by such dividend shall be entitled to a proportional part of such dividend, calculated from the first day of the month following such payments in full, or, if the bylaws so provide, dividends may be calculated from the first day of the month during which they are paid in full on or before the 10th of such month.

**History.**—s. 18, ch. 14499, 1929; CGL 1936 Supp. 6494(18); s. 4, ch. 28232, 1953; s. 6, ch. 29739, 1955; s. 2, ch. 57-346; s. 4, ch. 69-30; s. 2, ch. 71-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**657.19 Expulsion; withdrawal.**—A member may be expelled by a two-thirds' vote of the members present at a special meeting called to consider the matter but only after a hearing. Any member may withdraw from the credit union at any time, but notice of withdrawal may be required. All amounts paid on shares or as deposits of an expelled or withdrawing member, with any dividends or interest accredited thereto, to the date thereof, shall, as funds become available and after deducting all amounts due from the member to the credit union, be paid to him. If funds are not then available, sums due expelled or withdrawing member shall be paid in the order filed out of one-half of receipts. The credit union may require 60 days' notice of intention to withdraw shares and 30 days' notice of intention to withdraw deposits. Withdrawing or expelled members shall have no further rights in the credit union but

are not, by such expulsion or withdrawal, released from any remaining liability to the credit union.

**History.**—s. 19, ch. 14499, 1929; CGL 1936 Supp. 6494(19); s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**657.20 Dissolution.**—A credit union established and operating under the provision of this chapter may be dissolved in one of the following ways:

(1) **VOLUNTARY LIQUIDATION.**—The process of voluntary liquidation shall be as follows:

(a) **Approval of liquidation.**—A state credit union may go into voluntary liquidation by a vote in favor of such liquidation by a majority of the members of the credit union in attendance at a regular meeting of the members, or at a special meeting called for that purpose. Where authorization for liquidation is to be obtained at a meeting of members, notice in writing shall be given to each member at least 7 days before such meeting, and the minutes of the meeting shall show the number of members present and the number that voted for and against liquidation.

(b) **Notice of liquidation to department.**—Within 10 days after the decision of the board of directors to submit the question of liquidation to the members, the president shall notify the department thereof in writing, setting forth in detail the reasons for the proposed action. Within 10 days after the action of the members on the question of liquidation, the president shall notify the department in writing as to whether or not a majority of the members approved the proposed liquidation.

(c) **Transaction of business during liquidation.**—Immediately on decision by the board of directors of a state credit union to seek approval of the members for liquidation, payments on shares, withdrawal of shares (including any transfer of shares to loans and interest), making investments of any kind, and granting of loans shall be suspended, pending action by members on the proposal to liquidate. On approval by a majority of the members of such proposal, payments on shares, withdrawal of shares (including any transfer of shares to loans and interest), making investments of any kind except with the approval of the department, and the making of loans shall be permanently discontinued. Necessary expenses of operation shall, however, continue to be paid on authorization by the board of directors or liquidating agent during the period of the liquidation.

(d) **Notice of liquidation to members.**—Immediately on decision by the board of directors, a notice of such decision shall be handed to each member or mailed to his last-known address together with a request that the member furnish his passbook or confirm in writing the shares held by him in the state credit union and the loans owed by him to the credit union.

(e) **Notice of liquidation to creditors.**—On approval of a majority of the members of a state credit union of a proposal to liquidate, the board of directors of the state credit union shall immediately have prepared and mailed to all creditors a notice of liquidation containing instructions to them to present their claims to the state credit union within 90 days for payment.

(f) *Report at commencement of liquidation.*—At the commencement of voluntary liquidation of a state credit union, the treasurer or agent conducting the liquidation shall file with the department a financial and statistical report, and a schedule showing the name, book number, share balance, and loan balance of each member.

(g) *Reports during period of liquidation.*—State credit unions in the process of voluntary liquidation shall file with the department a financial and statistical report as of December 31 within 10 days after such date. Additional reports, as determined by the department to be necessary, shall be furnished promptly on written request.

(h) *Examinations of state credit unions in voluntary liquidation.*—When deemed advisable by the department, an examination of the books and records of a state credit union may be made prior to, during, or following completion of voluntary liquidation. The fee for each such examination shall be waived by the department.

(i) *Responsibility for conduct of voluntary liquidation.*—The board of directors of a state credit union in voluntary liquidation shall be responsible for conserving the assets, for expediting the liquidation, and for equitably distributing the assets to members. The board of directors shall determine that all persons handling or having access to funds of the state credit union are adequately covered by surety bond. The board of directors shall appoint a custodian for the state credit union's records that are to be retained for 5 years after the charter is canceled. The board of directors may appoint a liquidating agent and delegate part or all of these responsibilities to him and may authorize reasonable compensation for his services. Any such liquidating agent shall be bonded for faithful performance of his duties.

(j) *Partial distribution.*—Upon the request of the board of directors or liquidating agent and with written approval of the department, a partial distribution of the credit union's assets may be made to its members from cash funds available.

(k) *Completion of liquidation.*—When all assets of the state credit union have been converted to cash or found to be worthless and all loans and debts owing to it have been collected or found to be uncollectible and all obligations of the state credit union have been paid, with the exception of amounts due its members, the books shall be closed and the pro rata distribution to members computed. The amount of gain or loss shall be entered in each member's share account and should be entered in his passbook or statement of account.

(l) *Distribution of assets.*—Promptly after the pro rata distribution to members has been computed, checks shall be drawn for the amounts to be distributed to each member who has surrendered his passbook or has given a written confirmation of his balance. The checks shall be mailed to such members at their last known address or handed to them in person. The passbooks or written confirmations submitted by members to verify balances shall be retained with the credit union records. The department shall be notified promptly of the date final distribution of assets to the members is started. Unclaimed share accounts which have been dormant

for the period which makes them subject to the escheat or abandoned property laws of the state, shall be paid to the state as required by such laws.

(m) *Final report.*—Within 120 days after the final distribution to members is started, the state credit union shall furnish to the department's office the following:

1. A schedule, on an official form, of unpaid claims, if any, due members who failed to surrender their passbooks or confirm their balances in writing during liquidation whose share accounts are not payable to the state under applicable escheat or abandoned property laws and of unpaid claims, if any, due members or creditors who failed to cash final distribution checks within the said 120 days. This schedule shall be accompanied by a certified check or money order payable to the department in the exact amount of the total of these unpaid claims. The department shall deposit said funds in a special account with the state treasury where they will be held for the account of the individuals named on said schedule. Each such individual, or any authorized person on his behalf, may submit to the department a written claim for the amount of such funds held for him.

2. A schedule, on an official form, showing the name, book number, share balance at the commencement of liquidation, pro rata share of gain or loss, and amount of each unclaimed share account paid to the state under applicable escheat or abandoned property laws. The check number and date of payment to the state should be included in the schedule.

3. A schedule, on an official form, showing the name, book number, share balance at the commencement of liquidation, pro rata share of gain or loss, and amount distributed to each member.

4. A summary report on liquidation in duplicate, on an official form.

5. The certificate of dissolution and liquidation, on an official form, signed under oath by the board of directors or agent who conducted the liquidation and made the final distribution of assets to the members.

6. The name and address of the custodian of the state credit union's records.

7. The charter of the state credit union.

(n) *Retention of records.*—All records of the liquidated credit union necessary to establish that creditors were paid and that members' share holdings were equitably distributed shall be retained by a custodian appointed by the department, for a period of 5 years following the date of cancellation of the charter.

(o) *Cancellation of charter.*—On proof that distribution of assets has been made to members and within 1 year after receipt of the certificate of dissolution and liquidation, the department shall cancel the charter of the state credit union concerned.

(2) **INVOLUNTARY LIQUIDATION.**—The process of involuntary liquidation shall be as follows:

(a) *Basis for suspension or revocation of charter and involuntary liquidation.*—The charter of any state credit union may be suspended or revoked, the state credit union placed in involuntary liquidation, and a liquidating agent therefor appointed, upon the finding by the department that the organization is

bankrupt or insolvent or has violated any provisions of its charter, its bylaws, or any regulation issued by the department or that such suspension or revocation and liquidation is in the best interests of the membership of the state credit union concerned.

(b) *Immediate suspension or liquidation.*—In any case when the department shall find that a state credit union is insolvent or that the interests of its members require immediate action, the department may order the suspension or revocation of the charter and the involuntary liquidation of the state credit union and the appointment of a liquidating agent therefor, without prior notice to the state credit union of such action.

(c) *Involuntary liquidation and appointment of liquidating agent.*—On receipt of a copy of the order placing the state credit union in involuntary liquidation, the officers and directors of the state credit union concerned shall deliver to the liquidating agent possession and control of all books, records, assets, and property of every description of the state credit union, and the liquidating agent shall proceed to convert said assets to cash, collect all debts due to said state credit union, and to wind up its affairs in accordance with the provisions of this chapter and the instructions and procedures issued to said liquidating agent by the department.

(d) *Cancellation of charter.*—On the completion of the liquidation and certification by the liquidating agent that the distribution of the assets of the state credit union has been completed, the department shall cancel the charter of the state credit union concerned.

**History.**—s. 20, ch. 14499, 1929; CGL 1936 Supp. 6494(20); s. 1, ch. 23013, 1945; s. 5, ch. 69-30; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 7, ch. 78-95.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**§657.21 Place of business.**—A credit union may change its place of business on written notice to the department.

**History.**—s. 21, ch. 14499, 1929; CGL 1936 Supp. 6494(21); ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**§657.22 Destruction of certain credit union records.**—

(1) Credit unions shall preserve the following records, if used, or files or photographic or microphotographic copies thereof, for a period of not less than 5 years next after January 1 of the year following the time of making or filing of such records or files:

- (a) Cash-received voucher.
- (b) Balance sheet and statement of income and expense.
- (c) General ledger.
- (d) Individual share and loan ledger.
- (e) Journal and cash record.
- (f) Bank reconciliation.
- (g) Dividend record.
- (h) Expense record.

Except that ledger sheets or photographic or microphotographic copies of such ledger sheets shall not be destroyed and shall be retained in an accessible location.

(2) No liability shall accrue against any credit union destroying any such records after the expiration of the period provided in subsection (1), and in any cause or proceedings in which any such records or files may be called in question or be demanded of the credit union or an employee thereof, a showing that such records or files have been destroyed in accordance with the terms of this section shall be a sufficient excuse for the failure to produce them.

(3) Any credit union may photograph, microphotograph, or reproduce on film, in such manner that each page is exposed in its entirety, any of its journals, ledgers, statements, account books, other books, or internal records of every description, made or received in the regular course of its business, and the photographs, microphotographs, or reproductions on film in the form of film, prints, enlarged prints, or any duly certified or authenticated copy or reproduction thereof, duly certified or authenticated by a responsible officer of the credit union under whose supervision the records are kept, shall, in all cases and in all courts and places, be admitted and received as evidence with a like force and effect as the original general ledger, voucher, statement, account book, or other record.

(4) This section shall, so far as applicable, apply to the records of federal credit unions operating in this state.

**History.**—s. 5, ch. 28232, 1953; s. 6, ch. 69-30; s. 1, ch. 74-40; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**§657.23 Conversion of credit unions from state to federal and vice versa.**—Any state-chartered credit union operating in the state may convert into a federal-chartered credit union and any federal-chartered credit union may convert into a state-chartered credit union upon approval of the authority under whose supervision the converted credit union will operate and upon compliance with applicable federal laws as to a converted federal credit union, and upon compliance with applicable state laws as to a converted state credit union. The procedure for obtaining such approval and effecting the conversion shall be as follows:

(1) A meeting of the board of directors, either regular or special, shall be called for the purpose of voting on converting from a federal credit union to a state credit union, or from a state credit union to a federal credit union. A majority of the board of directors shall adopt a resolution approving the contemplated conversion.

(2) A meeting, either regular or special, of the shareholders shall then be called for voting on the proposed conversion. Notice of said meeting shall be given in the manner prescribed in the bylaws, and it shall be given not more than 30 days nor less than 10 days prior to the date of the meeting. Proof of giving of the notice shall be by the affidavit of the president of the credit union. A majority of the members present at this meeting shall then approve the proposed conversion.

(3) The credit union shall then obtain, in writing, the approval of a majority of the shareholders on record as of the date of the resolution by the board of directors.



(4) Within 10 days after the approval of the conversion by the majority of the shareholders, as provided in subsection (3), the president or vice president and treasurer shall file a verified copy of the resolution adopted by the board of directors with the state or federal authority, under whose supervision the converting credit union is to operate.

(5) Upon the filing of the articles of incorporation with the proper state or federal authorities; and with the written approval of the state authorities for credit unions applying for conversion to state credit unions; and with the written approval of the federal authorities for credit unions applying for conversion to federal credit unions, the converting credit union shall, upon compliance with all other applicable state or federal laws, become a credit union under the laws of this state or the United States, as the case may be; and thereupon all assets shall become the property of the new state or federal credit union, as the case may be, subject to all existing liabilities against the credit union, and every person who was a shareholder, or member of the converting credit union, shall be a shareholder in the new state or federal chartered credit union in like amount.

(6) In consummation of the conversion, the old credit union may execute, acknowledge and deliver to the newly chartered credit union, instruments of transfer necessary to accomplish the transfer of any property and all right, title or interest therein.

**History.**—s. 1, ch. 57-413; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**657.24 Rental of office space in government-owned buildings.**—Any credit union organized under state law, or any federal credit union organized under federal law, the members of which are presently, or were, at the time of admission into the credit union, employees of the state or a political subdivision thereof, or members of the immediate families of such employees, residing in the same households, may apply for space in any building owned or leased by the state or respective political subdivision in the community or district in which the credit union does business. The application shall be addressed to the officer charged with the allotment of space in such building. If space is available, the officer may, in his own discretion, allot space to the credit union at a reasonable charge for rent or services. If the public board having jurisdiction over the building determines by official action that the services rendered by the credit union to the employees of the board are equivalent to a reasonable charge for rent or services, available space may be allotted to the credit union without charge for rent or services. The officer charged with the allotment of space in such building shall report annually any space allocated pursuant to this section and the charge made for rent or services to the auditor general on a form prescribed by the auditor general.

**History.**—s. 1, ch. 72-140; s. 1, ch. 73-245; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior

to that date.

**657.245 Central credit unions; definition.**—A central credit union shall be chartered primarily to serve elected officials and employees of credit unions, associations and organizations serving credit unions, individuals within the common bond of a liquidating credit union within this state, and select groups with a common bond of employment of not more than 250 employees and not less than 7 employees, provided they are approved by the board of directors of the central credit union and reviewed by the department. Common bond groups that exceed 250 employees shall not be taken into the field of membership of a central credit union unless they are approved by both the department and the board of directors of the central credit union. Central credit unions that now exist, or that may be chartered in the future, shall use the word "central" in their name.

**History.**—s. 6, ch. 75-171; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**657.246 Powers of central credit unions.**—A central credit union shall have all the rights and powers of any credit union chartered within the state and such incidental powers and rights as deemed necessary or requisite to enable it to carry out effectively the business for which it is incorporated, pursuant to rules promulgated by the department.

**History.**—s. 7, ch. 75-171; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**657.247 Insurance activities.**—No person licensed as an insurance agent or solicitor under chapter 626 who is an employee, officer, or director of a credit union, credit union services corporation, or any other entity which is a subsidiary or affiliate of the foregoing or who is under contract with, retained by, or owned or controlled by, such entity shall sell, solicit, or negotiate insurance on behalf of such entity. This section shall not apply to credit life or credit disability insurance as defined in part VIII of chapter 627.

**History.**—s. 8, ch. 75-171; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

## PART II

### FLORIDA CREDIT UNION GUARANTY CORPORATION, INC.

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**657.25 Title.**—This part shall be known and may be cited as the "Florida Credit Union Guaranty Corporation Act."

**History.**—s. 1, ch. 74-183; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 1, ch. 78-123.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**657.251 Purposes.**—The purposes of this part are to:

(1) Provide a mechanism whereby the shares and deposits of any member of a member credit union shall be protected or guaranteed up to amounts which are established by the corporation and to avoid excessive delay in payment of such shares and deposits.

(2) Avoid financial loss to members of credit unions because of the insolvency or liquidation of a member credit union.

(3) Assist in the detection and prevention of credit union insolvencies or liquidations.

(4) Provide for a corporation to administer, implement, and supervise the plan of operation provided for under this part.

(5) Provide for the equitable apportionment among member credit unions and to assess the cost of such protection.

**History.**—s. 2, ch. 74-183; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 2, ch. 78-123.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**657.252 Scope; construction.**—This act shall apply to all credit unions chartered and existing under the laws of this state, except as specifically exempted herein, and shall be liberally construed to accomplish the purposes set forth in s. 657.251, which shall constitute an aid and guide to interpretation.

**History.**—ss. 3, 4, ch. 74-183; s. 3, ch. 76-168; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**657.253 Definitions.**—As used in this part:

(1) "Account" means any account of any member of a member credit union into which are deposited shares or deposits of that member.

(2) "Corporation" means the Florida Credit Union Guaranty Corporation, Inc.

(3) "Department" means the Department of Banking and Finance.

(4) "Covered claim" means any unpaid shares or deposits of a member of a member credit union not in excess of the applicable amounts to which this act applies, as established by the plan of operation of the corporation, if such credit union becomes insolvent and goes into voluntary liquidation or is placed in

involuntary liquidation by order of the department after January 1, 1975.

(5) "Insolvent credit union" means a member credit union which has become insolvent and has gone into voluntary liquidation, or which has been placed in involuntary liquidation by order of the department. "Insolvent" means that all the assets of the credit union, if made immediately available or if made available within a reasonable time, would not be sufficient to discharge all the liabilities, shares, or deposits or that the credit union is unable to pay its debts as they become due in the ordinary course of business.

(6) "Member credit union" means any credit union authorized and chartered under the laws of this state, except those state-chartered credit unions whose accounts are insured by share-insurance provided through the National Credit Union Administration on January 1, 1975. Such excepted credit unions shall not be deemed to be "member credit unions" hereunder so long as they maintain such share-insurance in full force and effect.

(7) "Shares and deposit capital" means the aggregate total of shares and deposits held by the member credit union as of December 31 of the preceding year.

**History.**—s. 5, ch. 74-183; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 3, ch. 78-123.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**657.254 Creation of the corporation.**—The original enactment of part II of chapter 657 as set forth in chapter 74-183, Laws of Florida, created a corporation to be known as the Florida Credit Union Guaranty Corporation, Inc. The corporation shall perform its functions under a plan of operation established and approved under this part and shall exercise its powers through a board of directors established under this part. Said corporation shall have all of those powers granted or permitted corporations for profit, as provided in chapter 607 and as provided under this act.

**History.**—s. 6, ch. 74-183; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 4, ch. 78-123.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**657.256 Board of directors.**—

(1) The board of directors of the corporation shall consist of not less than five or more than nine persons serving terms as established in the plan of operation. The number of persons comprising the board of directors shall be fixed by the board of directors as established in the plan of operation.

(2) Vacancies created by expiration of a term of office shall be filled by annual election of the member credit unions. The election shall be in the manner provided by the plan of operation and may be by ballot at an annual meeting or by mail ballot. The annual meeting of the corporation shall be held each year at a time and place fixed by the board of directors in accordance with the plan of operation, and each term of office shall commence immediately following the annual meeting. Vacancies occurring during a term of office shall be filled for the remaining period of the term by election by a majority of the remaining directors.

(3) In order to be eligible for appointment or se-

lection to the board of directors and for continuing service as a director, a person must have served for at least 2 years as an officer or in a managerial position of a member credit union and must meet such other criteria and qualifications as established in the plan of operation.

(4) Members of the board may be reimbursed from the assets of the corporation for reasonable and necessary expenses incurred by them as members of the board of directors, but no members of the board shall be compensated for their services.

(5) All corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation shall be managed under the direction of, the board of directors.

(6) The board of directors may elect such officers as the board may determine to be necessary. Officers need not be members of the board.

**History.**—s. 8, ch. 74-183; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 5, ch. 78-123.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

#### **657.257 Membership and eligibility provision.—**

(1) Every member credit union shall maintain membership in the corporation and shall maintain a guaranty certificate issued by the corporation. All state-chartered credit unions, which are organized or converted to a state-chartered credit union after the effective date of this act, and those state-chartered credit unions presently exempt who terminate the maintenance of the share-insurance through the National Credit Union Administration, shall apply for membership in the corporation on forms prescribed by the corporation.

(a) With respect to applications from newly organized credit unions, the corporation shall review the application and within 30 days after receiving the application, notify the department of the recommendation by the corporation with respect to conformity of the application with the requirements of part I of this chapter, adoption of lending, savings, investment, and management policies and practices consistent with this act and establishment of qualified management and operation personnel. Such action by the corporation will be advisory to the department.

(b) With respect to applications from any other credit union, the corporation, before approving the application for guarantee of its accounts, shall consider:

1. The history, financial condition, and lending, savings, investment, and management policies and practices of the applicant.

2. The economic advisability of guaranteeing the applicant's accounts without undue risk to the corporation.

3. Such other reasonable standards and qualifications not inconsistent with this act as may be established by the corporation and set forth in the plan of operation.

(c) The corporation shall either approve or disapprove the application of any credit union within 90 days of receipt of a completed application for membership.

(2) Upon the approval of any application for membership, the corporation shall notify the depart-

ment and the applicant and, upon issuance of a certificate of organization by the department, shall issue to the applicant a guaranty certificate evidencing the fact that it is, as of the date of issuance of the certificate, a member credit union under the provisions of this part.

(3) The corporation shall disapprove the application of any credit union for guarantee of its account if it finds that the credit union's reserves are inadequate, that its financial condition and policies are unsafe or unsound, or that the guarantee of its accounts would otherwise involve undue risk to the corporation.

(4) The guaranty certificate issued by the corporation shall evidence the undertaking by the corporation to guarantee accounts of member credit unions to the extent of covered claims subject to such terms and conditions as the board of directors may from time to time prescribe. Guaranty certificates may be regular or provisional.

(a) Provisional guaranty certificates shall be issued for a period determined by the board of directors, but not less than 6 months nor more than 2 years. A provisional certificate may be renewed for an additional period not to exceed 12 months. There may be only one such renewal period.

(b) A regular guaranty certificate shall be issued for a continuing and indefinite period.

(c) The board of directors may cancel any certificate if the board of directors finds that there has been a deterioration since the issuance of the guaranty certificate in the financial condition, adequacy of reserves, application of financial and loan policies, or extent of delinquencies of the member credit union. In the event of cancellation of a regular guaranty certificate, the corporation shall issue to such member credit union a provisional guaranty certificate unless, at the time of such cancellation, the credit union is insolvent and, in such event, the corporation may decline to issue a provisional guaranty certificate.

(5) If, during the term of a provisional certificate, including any renewal thereof, the member credit union fails to qualify for a regular guarantee of its accounts and full membership in the corporation, the corporation will notify the department stating, with particularity, the deficiency which prevents the issuance of the regular guaranty certificate, and, thereupon, the department shall institute proceedings to revoke the certificate of organization of such credit union.

**History.**—s. 9, ch. 74-183; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 6, ch. 78-123.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

#### **657.258 Powers and duties of the corporation; assessments.—**

(1) The corporation shall, in addition to the powers and duties enumerated in other sections of this part:

(a) Be obligated to the extent of the covered claims existing as of the date that a member credit union adopts a resolution of voluntary liquidation, or as of the date the department enters the order that a member credit union be placed in involuntary liquidation, but such obligation shall include only that amount of each covered claim which is not



greater than the maximum amount established by the corporation, which maximum amount shall in no event be less than \$40,000.

(b) Be deemed the guarantor to the extent of its obligation on covered claims and, to such extent, shall have all of the rights, duties, and obligations of the insolvent credit union as if the credit union had not become insolvent.

(2) The corporation may:

(a) Employ or retain such persons as are necessary to handle claims and perform other duties of the corporation.

(b) Borrow funds necessary to effect the purposes of this act in accordance with the plan of operation.

(c) Sue or be sued.

(d) Negotiate, and become a party to, such contracts as are necessary to carry out the purposes of this act.

(e) Adopt, use, and display a corporate seal.

(f) Advance funds, with or without interest, in accordance with agreed terms and conditions to aid member credit unions to continue to operate and to maintain solvency or to maintain account balances with a financial institution in connection with the assumption of receivables from a member credit union, or to provide liquidity for payment of shares and deposits following a determination of voluntary or involuntary liquidation.

(g) Upon the written request of the department, assume control of the property, assets, and business of any member credit union and operate the credit union in accordance with the recommendations of the department. The corporation shall have all the powers, duties, and authorities of the board of directors of such credit union, specifically including the power and authority to elect or designate directors, officers, and committee members, who need not be members of the member credit union, to sell assets, and to terminate and employ personnel for the credit union.

(h) Assist in the merger, consolidation, or liquidation of member credit unions with written notice to the department. In the event of liquidation of a member credit union, whether voluntary or involuntary, the corporation may be designated as the liquidating agent and, as such, the corporation shall have all the duties, powers, and authorities of the board of directors of such liquidating credit union, specifically including, but not limited to, power and authority to elect and designate directors, officers, and committee members, who need not be members of the member credit union, to sell assets, and to terminate and employ personnel for the liquidating credit union. The corporation shall have the right and authority to participate in negotiations for any contemplated merger, consolidation, or liquidation of a member credit union and to approve the terms of any sales of assets in order to minimize potential loss which might result in a covered claim to be paid by the corporation.

(i) Receive money or other property from its member credit union or from any corporation, association, or person.

(j) Invest its funds in bonds, notes, securities, obligations, participations, or other instruments of, issued by, or fully guaranteed as to principal and in-

terest by, the U.S. Government or any agencies thereof, or in any trust or trusts established for investing directly or collectively in the same, and in such other investments, other than investments in credit unions which are members of the corporation, as are deemed prudent by the directors, but these other investments shall not exceed 25 percent of the funds of the corporation.

(k) Purchase in its own name, hold, and convey property of any nature.

(1) Receive by assignment or purchase from its member credit unions any property of any nature owned by those member credit unions, including securities.

(m) Sell, assign, mortgage, encumber, or transfer property of any nature.

(n) Adopt and amend a plan of operation and bylaws for carrying out the purposes of this part.

(o) Purchase or acquire by assignment loans due and owing to credit unions, along with the right to receive payments thereon.

(p) Pay dividends to member credit unions.

(q) Have access to and make audit or examination of all records and information concerning the affairs of a member credit union.

(3) To obtain funds for the fulfillment of the purposes of the corporation, for the provision of reserves for the protection of potential claimants, and for the payment of costs of operating the corporation, the corporation shall be authorized and empowered to levy and collect from member credit unions fees and assessments as follows:

(a) The corporation shall levy and collect from each member credit union an initial membership fee in an amount equal to 0.5 percent of its guaranteed shares and deposits as of the date of application for membership.

(b) The corporation shall levy and collect from each member credit union an annual growth fee in an amount equal to 0.5 percent of the annual increase in its guaranteed shares and deposits as determined as of December 31 of each year.

(c) In addition to the fees set forth above, the corporation may levy and collect a uniform annual assessment from each member credit union in an amount to be determined by the board of directors not to exceed 0.05 percent of its guaranteed shares and deposits determined as of December 31 of the preceding year.

(d) In addition to the fees and annual assessment, the corporation, in the event of potential impairment of the corporation's capital assets, may levy and collect from the member credit unions uniform special assessments in amounts to be determined by the board of directors, subject to approval by the department. If the board of directors determines that a special assessment is necessary, then such determination shall be submitted in writing to the department, and the special assessment shall be approved, modified, or disapproved within 60 days after it is received by the department.

(e) The initial membership fee and the growth membership fee shall be considered as an investment of the member credit union in the corporation. Such investment shall not be transferable except to another member credit union as a result of a merger

approved by the department; and, in such event, the amount of such investment which may be transferred to the acquiring credit union shall not exceed 0.5 percent of the guaranteed shares and deposits of the acquired member credit union as of the preceding December 31 or the date of merger, whichever amount is the lower. If a member credit union ceases to operate under a valid certificate of organization under part I, the corporation may refund to the withdrawing member an amount not to exceed 90 percent of the member's investment in the corporation; however, no refund shall be made to such withdrawing member unless it elects to convert and does convert to a federal credit union or unless the withdrawing member goes into voluntary liquidation, is not insolvent, and the corporation is not obligated in any manner for any loss, cost, expense, or claim arising out of the voluntary liquidation. In no event shall a withdrawing member be entitled to a refund of any portion of its investment under this section if the total assets of the corporation are less than 1 percent of the aggregate of all guaranteed shares and deposits of all member credit unions, excluding those of the members requesting such refund. Entitlement to any such refund shall be determined as of the date the withdrawing member converts to a federal credit union or the time when voluntary liquidation procedures have progressed to a state where final distribution in payment of shares and deposits is to be made to the members.

(f) Annual and special assessments hereunder shall be considered as an expense item of the member credit union on which no dividends will be payable and no portion of which will be refundable upon withdrawal from the corporation.

(g) All fees and assessments shall be paid in the manner established by the plan of operation.

(h) In the event the capital assets of the corporation fall below 0.5 percent of the total aggregate guaranteed shares and deposits of all member credit unions, the corporation may determine the proportionate amount of reduction of the investment of each member credit union, and this amount shall be treated as an expense item by the member credit union.

(i) Upon application, in writing, the corporation, for good cause shown, may exempt or defer any member credit union from an assessment if such assessment would result in such credit union being forced into insolvency, liquidation, or an unsound financial condition.

(j) No state funds of any kind shall be allocated or paid to the corporation.

(4) The corporation shall, upon proper verification, as provided by the plan of operation, reimburse a member credit union for necessary and proper expenses incurred by the member credit union in the investigation, adjustment, compromise, settlement, denial, or handling of covered claims at the request of the corporation.

**History.**—s. 10, ch. 74-183; s. 3, ch. 76-168; s. 1, ch. 77-174; s. 1, ch. 77-457; s. 7, ch. 78-123.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior

to that date.

#### **1657.259 Plan of operation.—**

(1) The corporation shall establish the plan of operation to assure the fair, reasonable, expeditious, and equitable administration of the corporation. The plan of operation, and any amendments thereto, shall be approved by the board of directors and submitted to the department. The plan of operation, and any amendments thereto, shall become effective upon approval in writing by the department, which shall approve or disapprove any proposal within 60 days after the proposal is received by the department.

(2) All member credit unions shall comply with the plan of operation, amendments thereto, and any rules adopted by the department under this part.

(3) The plan of operation shall:

(a) Require that every credit union authorized by certificate of organization by the department, excepting only those specifically exempted by statute, shall maintain membership in the corporation. Failure to meet the standards and qualifications of full membership within the terms of a provisional guaranty certificate shall constitute a ground for revocation of the certificate of organization by the department.

(b) Establish the procedure whereby all of the powers and duties of the corporation will be performed.

(c) Establish the procedures for handling assets of the corporation.

(d) Establish the amount and method of reimbursing members of the board of directors for reasonable and necessary expenses incurred by them as members of the board of directors.

(e) Establish procedures by which claims against insolvent credit unions, which are required to be filed with the receiver or liquidator, are to be referred to the corporation. No claim shall be filed with the corporation unless the same is properly filed with the liquidator. The liquidator shall periodically submit a list of all claims filed to the corporation for its consideration, approval, and payment.

(f) Establish the terms of office of members of the board of directors and the places and times for meetings of the board.

(g) Establish procedures for records to be kept of all financial transactions of the corporation and its agents and the board of directors.

(h) Contain any additional provisions necessary or proper for the execution of the powers, functions, and duties of the corporation consistent with this part.

**History.**—s. 11, ch. 74-183; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 7, ch. 78-95; s. 8, ch. 78-123.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

#### **1657.260 Duties and powers of the department.—**

(1) The department shall:

(a) Notify the corporation not later than 3 days after the taking of action or the finding by the department that a member credit union is bankrupt or insolvent, or of the filing of a complaint against a member credit union or of the issuance of a cease

and desist order against a member credit union, or of an order placing a member credit union in involuntary liquidation.

(b) Promptly notify the corporation of the existence of any material deviation from accepted and established practices, policies, and rules which may have an adverse effect on the financial condition of a member credit union.

(c) Designate and appoint the corporation as liquidating agent for any member credit union.

(d) Upon the request of the board of directors, provide the corporation, at not more than cost and at the corporation's expense, a copy of the most recent examination report by the department of each member credit union.

(2) The department may:

(a) Require that the corporation notify the individual members of the liquidating member credit union and any other interested parties of the determination of liquidation and of their rights and duties under this act. Such notification shall be by mail to their last known address, when available, but if sufficient information for notification by mail is not available, notice by publication at least one time in a newspaper of general circulation shall be sufficient.

(b) Suspend or revoke the certificate of organization or authority to transact business as a credit union in this state of any member credit union as defined by this act which fails:

1. To become a member of the corporation.
2. To pay an assessment when due.
3. Otherwise to comply with the plan of operation, with any rules promulgated by the department hereunder, or with this part.

As an alternative to suspension or revocation, the department may levy a delinquency charge on any member credit union which fails to pay an assessment when due. Such charge shall not exceed 5 percent of the unpaid assessment per month, except that no charge shall be less than \$100 per month. All such delinquent charges levied and collected shall be deposited in the bank and trust company trust funds of the department.

(c) Revoke, terminate, or cancel the designation of any service or claims facility being utilized by the corporation, or of any liquidating agent or receiver, if it finds claims are being handled unsatisfactorily.

**History.**—s. 12, ch. 74-183; s. 3, ch. 76-168; s. 1, ch. 77-117; s. 1, ch. 77-457; s. 7, ch. 78-95; s. 9, ch. 78-123.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

#### **§657.261 Effect of paid claims.—**

(1) Any claimant recovering under this part shall be deemed to have assigned all of his rights or interest in his shares or deposits with the insolvent member credit union to the corporation, to the extent of his recovery from the corporation. Every claimant seeking the protection of this act shall fully cooperate with the corporation and the receiver or liquidator to the same extent as such person would have been required to cooperate with the insolvent credit union. The corporation shall have the same cause of action as the insolvent credit union would

have had if such sums had been paid by the insolvent credit union.

(2) The receiver, liquidator, or statutory successor of an insolvent credit union shall be bound by settlements of covered claims paid by the corporation. The court, department, or liquidator having jurisdiction shall grant such claims a priority equal to that, and in an amount, to which the claimant would have been entitled in the absence of this act against the assets of the insolvent credit union. The administrative expenses of the corporation in handling claims shall be accorded the same priority as the liquidator's administrative expenses. Such administrative expenses of the corporation and of the liquidator shall be accorded first priority in the settlement of all claims against any credit union which goes into voluntary liquidation or which is placed in involuntary liquidation by order of the department.

(3) The corporation shall periodically file with the receiver or liquidator of the insolvent credit union statements of all of the covered claims paid by the corporation, along with estimates of anticipated claims on the corporation, which shall preserve the rights of the corporation against the assets of the insolvent credit union.

**History.**—s. 13, ch. 74-183; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 10, ch. 78-123.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

#### **§657.262 Detection and prevention of insolvencies.—**To aid in the detection and prevention of credit union insolvencies or liquidations:

(1) It shall be the duty of the board of directors of the corporation to promptly notify the department of any information it has indicating that any member credit union may be insolvent or in an unsound financial condition that might jeopardize the safety of shares and deposits of the members or potential members of the credit union.

(2) The board of directors may request that the department order an examination of any member credit union which the board in good faith believes may be in an unsound financial condition that might jeopardize the safety of the shares and deposits in the credit union. Within a reasonable time after receipt of such request, the department shall commence such examination. The cost of such examination shall be \$75 per day per man, which shall be paid by the corporation to the department, and the examination report shall be treated as are other examination reports under part I. The department shall notify the corporation when the examination is completed in writing and forthwith furnish the corporation with a copy of the report.

(3) It shall be the duty of the department to report immediately in writing to the corporation when it has reasonable cause to believe that any member credit union examined, or which is being examined at the request of the corporation, may be insolvent or in an unsound financial condition.

(4) The corporation may make reports and recommendations to the department upon any matter which is relevant to the solvency, liquidation, rehabilitation, or conservation of any member credit union. In order to protect the integrity and financial reputation of the credit union involved and the privacy of the members of that credit union, such re-



ports and recommendations under subsection (3) and this subsection shall not be considered to be public records or documents.

(5) The corporation may make recommendations to the department for the detection and prevention of member credit union insolvencies or to enhance the financial soundness of member credit unions.

(6) The corporation shall, within 6 months after the conclusion of any credit union liquidation proceedings in which the corporation was obligated to pay covered claims, prepare a report of the history and the causes of such insolvency, based on the information available to the corporation. Such report shall be submitted to the department.

**History.**—s. 14, ch. 74-183; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 11, ch. 78-123.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**657.263 Examination of the corporation.**

The books, records, and accounts of the corporation shall be subject to an examination at least annually by the department at a cost of \$75 per day per man. The corporation shall submit, not later than January 31 of each year, a financial report for the preceding calendar year in a format approved by the department. Such report shall be prepared in accordance with generally acceptable accounting practices.

**History.**—s. 15, ch. 74-183; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 12, ch. 78-123.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**657.264 Immunity.**—There shall be no liability for damages on the part of, and no cause of action in tort of any nature shall arise against:

- (1) Any member credit union;
- (2) The corporation or its agents, employees, or board of directors; or
- (3) The department or any of its representatives or employees;

for any action taken by any of them in the performance of its powers and duties under this act, unless such action is willful, wanton, or fraudulent.

**History.**—s. 16, ch. 74-183; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**657.265 Stay of proceedings; reopening of default judgments.**—All proceedings in which an insolvent member credit union may be a party in any court in this state shall be stayed for 60 days from the date the insolvency is determined by order of the department, by the board of directors in a voluntary liquidation, or by a court, in order to permit any proper defenses by the corporation to all pending

causes of action with respect to any covered claims arising against such credit union. In the event of a finding by any such court based on the default of the member credit union, the corporation, either on its own behalf or on behalf of such member credit union, may apply to the court to have any such judgment, order, decision, verdict, or finding set aside and shall be permitted to defend promptly against such claim on the merits.

**History.**—s. 17, ch. 74-183; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 13, ch. 78-123.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**657.266 Cooperation by liquidator and the corporation.**

Any order of liquidation issued by the department or any directive issued by the board of directors of a member credit union under voluntary liquidation under part I shall authorize and direct the receiver or liquidator to coordinate the operation of liquidation proceedings with the operation of the guaranty fund corporation created by this act. Such cooperation shall include, but not be limited to, access to, and the furnishing of, necessary copies of all claims files, records, or documents pertaining to claims on file with the liquidator. The guaranty fund corporation shall also coordinate the operation of its handling and payment of covered claims with said receiver or liquidator.

**History.**—s. 18, ch. 74-183; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**657.267 Advertising or displays.**—Every credit union which has its shares and deposits protected by the corporation shall display at each place of business maintained by it a sign or signs indicating that its member accounts are protected by the corporation and shall include in all of its advertisements a statement to the effect that its member accounts are protected by the guaranty corporation. The corporation may exempt from this requirement advertisements which do not relate to member accounts or advertisements in which it is impractical to include such a statement.

**History.**—s. 19, ch. 74-183; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 14, ch. 78-123.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**657.268 Rules.**—The department may promulgate any reasonable rules for the purpose of carrying out the intent and purposes of this part.

**History.**—s. 20, ch. 74-183; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 15, ch. 78-123.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

## CHAPTER 658

## BANKING CODE, FIRST PART

- 658.01 Short title.
- 658.02 Definitions.
- 658.03 Effect on existing banks.
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- 658.10 Banking records to be public.
- 658.11 Destruction of certain bank and trust company records.

**'658.01 Short title.**—Chapters 658-661 may be cited as the "Florida Banking Code."

**History.**—s. 1, ch. 28016, 1953; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**'658.02 Definitions.**—As used in chapters 658-661:

(1) "Bank" means any person doing a banking business whether subject to the laws of this or any other jurisdiction other than industrial or Morris Plan banks operating under the provisions of chapter 656, and savings banks operating under the provisions of chapter 654.

(2) "State bank" means any state bank chartered by this state.

(3) "Commercial bank" means any state bank chartered to do a general commercial banking business.

(4) "Action" in the sense of a judicial proceeding includes, but is not limited to, recoupment, counterclaim, setoff, suit in equity and any other proceedings in which rights are determined.

(5) "Community" means a city, town or incorporated village, or, where not within any of the foregoing, a trade area.

(6) "Court" means a court of competent jurisdiction.

(7) "Department" means the Department of Banking and Finance.

(8) "Fiduciary" means trustee, agent, executor, administrator, committee, guardian or conservator for a minor or other incompetent person, receiver, trustee in bankruptcy, assignee for creditors or any holder of a similar position of trust.

(9) "Item" means any instrument for the payment of money even though not negotiable, but does not include money.

(10) "Officer," when referring to a bank, means any person designated as such in the bylaws and includes, whether or not so designated, any executive officer, the chairman of the board of directors, the chairman of the executive committee, and any trust officer, assistant vice president, assistant treasurer, assistant cashier, assistant comptroller, or any person who performs the duties appropriate to those offices.

(11) "Person" means an individual, corporation, partnership, joint venture, trust estate, business trust, or unincorporated association.

(12) "Trust business" means the business of acting as executor, administrator, guardian of estates, assignee, receiver, depository or trustee under the appointment of any court, or by authority of any law of this or any other state or of the United States, or as trustee for any purpose permitted by law.

(13) "Trust company" means a corporation or the trust department of a bank which is authorized to engage in the trust business.

**History.**—s. 1, ch. 28016, 1953; ss. 12, 35, ch. 69-106; s. 276, ch. 71-377; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**'658.03 Effect on existing banks.**—The charters of state banks and trust companies existing at the time of the adoption of chapters 658-661 shall continue in full force and effect, but all state banks and trust companies and, to the extent applicable, all banks, shall hereafter be operated in accordance with the provisions of chapters 658-661.

**History.**—s. 1, ch. 28016, 1953; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**'658.05 Powers of department.**—In addition to other powers conferred by this act, the department shall have power to:

(1) Implement by regulation any provision of this code.

(2) Restrict the withdrawal of deposits from all or one or more state banks where the department finds that extraordinary circumstances make such restriction necessary for the proper protection of depositors in the affected institution.

(3) Employ examiners or other employees necessary to operate the department and fix their compensation.

(4) From time to time formulate and promulgate reasonable rules and regulations governing the conduct of state banks and trust companies doing business in this state which shall have the force of law.

**History.**—s. 1, ch. 28016, 1953; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 7, ch. 78-95.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**'658.051 State banks; competitive equality with national banks.**—With the approval of the department, state banks subject to the Florida Banking Code may make any loan or investment or exercise any power which they could make or exercise if they were incorporated and operating in Florida as national banks under federal statutes and regulations. The provisions of this section may take priority over, and be given effect over, any other general or specific provisions of the banking code to the contrary, except for s. 659.062, and any other state statute governing the electronic transfer of funds. Nothing contained herein shall be construed to grant the

power or right to establish any branch not otherwise specifically authorized by this code.

<sup>1</sup>History.—s. 1, ch. 76-178.

<sup>1</sup>Note.—This section was created subsequent to the enactment of ch. 76-168 and is therefore presumed to be excluded from the blanket repeal of ch. 658 by that act.

**1658.06 Liability when acting upon department's order or regulation.**—No person shall be subject to any civil or criminal liability for any act or omission to act in good faith in reliance upon a subsisting order or regulation issued by the department notwithstanding a subsequent decision by a court of competent jurisdiction invalidating the order or regulation.

<sup>1</sup>History.—s. 1, ch. 28016, 1953; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

<sup>1</sup>Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1658.07 Examinations, reports, and internal audits.**—The department shall:

(1)(a) Examine the condition of each state bank at least two times in each 18 months from July 1, 1978 and of each trust company at least once in each calendar year. The department may accept a Federal Deposit Insurance Corporation or Federal Reserve examination in lieu of one of said bank examinations and may furnish a copy of all examinations made of such banks to the Federal Deposit Insurance Corporation or its representatives or the Federal Reserve Board or its representatives.

(b) Require each bank or trust company to submit a report of its condition as of such date as it may fix, at least twice in each calendar year or as often as ordered by the department, verified by the oaths or affirmations of the officer or officers authorized to do so by the bylaws of such corporation. Within 10 days after such report shall have been called for, the bank shall publish in a newspaper published in the county in which said bank is located a statement of its assets and liabilities as of the date of said report, and a copy of said publication, with an affidavit of the publication, shall be filed with the department, and a copy of said publication shall also be filed with the county property appraiser.

(c) Require each bank or trust company to submit a report of its income and dividends on a calendar year basis on such date as it may fix, at least once each year or as often as ordered by the department, verified by the oaths or affirmations of the officer or officers authorized to do so by the bylaws of such corporation. Every such bank or trust company which fails to transmit any report required under this subsection shall be subject to a penalty of \$100 for each day of delinquency after the due date of the report. The provisions of this subsection shall not apply to national banks and trust departments of national banks.

(2)(a) Each state bank and trust company shall perform an internal audit annually and file a copy of such audit with the department, through one of the following means:

1. Under the supervision of the board of directors, in each state bank and trust company in which there is an internal audit department;

2. By the board of directors, acting as an audit committee; or

3. By an independent certified public accountant approved by the board of directors.

(b) The department may, in its discretion, require an independent certified public accountant audit.

<sup>1</sup>History.—s. 1, ch. 28016, 1953; s. 1, ch. 67-182; ss. 12, 35, ch. 69-106; s. 38, ch. 69-353; s. 1, ch. 70-407; s. 1, ch. 70-439; s. 1, ch. 75-162; s. 3, ch. 76-168; s. 1, ch. 77-102; s. 1, ch. 77-457; s. 1, ch. 78-152.

<sup>1</sup>Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1658.08 Examination fees and assessments.**—

(1) Each state bank or trust company shall pay to the Department of Banking and Finance examination fees and assessments as follows:

(a) A semiannual fee of \$250; and

(b) A semiannual assessment of 6 cents per \$1,000 of total assets, computed on total assets as shown on the report of condition of the bank as of the last business days in June and December in each year.

(2) The fee and assessment shall be due and payable within 30 days of the date of the semiannual report of condition.

(3) Applications required to be filed with the Department of Banking and Finance shall bear the following fees:

(a) Three thousand dollars for applications for authority to organize a new bank or trust company;

(b) One thousand dollars for applications for authority to exercise trust powers in an existing bank;

(c) Two thousand dollars for applications for authority to acquire a majority or controlling interest in an existing bank or trust company;

(d) One thousand dollars for applications for authority to relocate a banking house;

(e) The application for conversion of a national or industrial savings bank to a state bank will be accompanied by a fee which shall be the sum of \$250 plus an additional amount computed at the rate of 6 cents per \$1,000 of total assets. Total assets will be determined from the report of condition of the bank as of the date of application for conversion. If the conversion occurs, this fee will be credited to and reduce the first semiannual assessment;

(f) Applications to operate a facility, branch, or branch trust company authorized by s. 659.06 or s. 659.061 shall be accompanied by an application fee of \$1,000;

(g) Two hundred fifty dollars for application for authority to establish a trust service office of a trust company; and

(h) Two thousand five hundred dollars for investigating and processing each application for a merger, consolidation, or purchase of assets and assumption of liabilities. If three or more banks are involved in the aforesaid transaction, the fee is \$1,000 for each participating institution.

(i) Applications for license for international banking agencies shall be accompanied by an application fee of \$10,000. Annual license renewal fees for such agencies shall be \$1,000. Applications for representative offices shall be accompanied by an application fee of \$1,000. Annual license renewal fees for such offices shall be \$250.

(4) There is hereby imposed a fee for the examination of trust companies, including the trust departments of commercial banks, which shall be \$125



per day for the examiner-in-charge plus \$90 per day per examiner participating in the examination.

(5) There is hereby imposed a fee for the examination of international bank agencies, which shall be the department's cost of conducting such examination, but in no event less than \$100 per day per examiner participating in the examination.

(6) Examination fees and assessments shall, in all cases, be paid by the bank or trust company directly to the State Treasurer, who shall deposit all of the amount collected hereunder in a special bank and trust company trust fund, such fund to be used by the Department of Banking and Finance for the administration of the State Banking Law.

**History.**—s. 1, ch. 28016, 1953; s. 1, ch. 63-182; s. 1, ch. 67-381; ss. 12, 35, ch. 69-106; s. 1, ch. 70-263; ss. 1, 2, ch. 73-69; s. 1, ch. 73-119; s. 2, ch. 75-162; s. 3, ch. 76-168; s. 1, ch. 76-177; s. 2, ch. 77-157; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

cf.—s. 654.09 Savings banks.

**1658.09 Annual report to governor.**—The department shall submit an annual report to the governor, which shall include:

(1) The text of all regulations of the department of general application adopted or altered since its last previous report.

(2) A statement of the general condition and affairs of existing state banks.

(3) A statement of the status and remaining assets and liabilities of all banking or trust organizations in the possession of the department for liquidation.

(4) A summary of all changes occurring since its last previous report by reason of the opening of new state banks or trust companies, mergers and conversions, increases and decreases in capital, and the like.

**History.**—s. 1, ch. 28016, 1953; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1658.10 Banking records to be public.**—

(1) All bank or trust company license applications filed with the department pursuant to the Florida Banking Code, including related information obtained or prepared by the department, shall be open to the public pursuant to chapter 119, and the rules of the department. However, the classes of records and information mentioned in subsection (3) shall be confidential and shall not be disclosed by the department or any of its officials, employees, or agents, except pursuant to an order of a court or a hearing officer under chapter 120, or legislative subpoena, as provided by law. Materials supplied to the department by other governmental agencies, federal or state, shall remain the property of the submitting agency and shall be made public only with the consent of such agency or pursuant to appropriate court order or legislative subpoena, as provided by law.

(2)(a) Orders of courts or of hearing officers for the production of confidential records and information shall provide for in camera inspection by the court or the hearing officer and shall be subject to further orders by the court or the hearing officer to protect the confidentiality thereof, except to the extent deemed necessary by the court or the hearing

officer to protect the interests of all parties or affected persons or the soundness of individual banks or the banking industry. However, any such order directing the release of information relating to the soundness of individual banks or the banking industry shall be immediately reviewable. A petition for review of such order directing the release of information relating to the soundness of individual banks or the banking industry filed by the department shall automatically stay further proceedings in the trial court or the administrative hearing until the disposition of said petition by the reviewing court. If any other party files such a petition for review, it shall operate as a stay of such proceedings only upon order of the reviewing court.

(b) Confidential records and information furnished in compliance with, or in response to, a legislative subpoena shall be confidential communications and shall retain their confidential status while in the possession of any legislative body or committee receiving the same and shall not be made public, and such confidential status shall continue after the legislative body or committee has returned such records and information to the department or other source from which they came. No member of the Legislature or member of the legislative body or committee, or any employee thereof, or any other person shall disclose or make public any of the information found in such records and information furnished in compliance with, or in response to, any such subpoena, except in cases involving investigation of charges against an officer subject to impeachment, and then only to the extent determined by the legislative body or committee to be necessary.

(3) The following records and information of the department are confidential, except such portions thereof which are otherwise matters of public record or general public knowledge:

(a) Personal financial statements or information; personnel, medical, or similar records or information; records or information obtained or prepared by the department with reference to the character or reputation of any person; and any record or information which would constitute a clearly unwarranted invasion of personal privacy.

(b) Investigatory records compiled for civil or criminal law enforcement purposes, including investigatory records relating to a proceeding or the issuance of a cease and desist order or order of suspension or removal under ss. 659.561 and 659.562, but only to the extent that the disclosure of such records would:

1. Interfere with enforcement proceedings;
2. Deprive a person or an institution of a right to a fair trial or an impartial adjudication;
3. Tend to impair the safety or soundness of any bank or trust company;
4. Constitute an unwarranted invasion of personal privacy;
5. Disclose the identity of a confidential source, or, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, confidential information furnished only by the confidential source;
6. Disclose investigative techniques or procedures; or

7. Endanger the life or physical safety of law enforcement or department personnel.

(c) Reports of examinations or operations and records, or a portion thereof, containing or relating to an examination, operation, or condition report prepared by, or on behalf of or for the use of, the department or any other agency, state or federal, responsible for the regulation or supervision of banks or trust companies, relating to the affairs of any bank, trust company, or affiliate thereof, bank holding company, or subsidiary thereof. Reports of examination and operation prepared by, or on behalf of or for the use of, the department shall be the property of the department, but copies thereof may be furnished to the bank or trust company examined, for its confidential use. No bank or trust company director, officer, or employee or any other person shall disclose in any manner such report or any portion thereof, except such portions thereof which are otherwise matters of public record of general public knowledge, to any person or organization not officially connected with the bank or trust company as an officer, director, employee, attorney, auditor, or independent auditor, except that the same may be furnished to any bank holding company of which the bank or trust company is a subsidiary.

(4) This section shall not prevent or restrict:

(a) The publication of reports required to be submitted to the department by s. 658.07(1)(b) and (c) or required to be published by applicable federal statutes or regulations.

(b) The furnishing of records or information to any federal agency responsible for the regulation or supervision of banks or trust companies.

(c) The disclosure or publication of summaries of the condition of financial institutions, and the disclosure or publication of general economic and similar statistics and data, provided any of the foregoing are in such form that the identity of particular financial institutions cannot reasonably be expected to be ascertained therefrom.

(d) The reporting of any suspected criminal activity to appropriate law enforcement agencies.

(5) Every state bank and trust company shall cause to be kept at all times full and correct records of the names and residences of all the shareholders of the bank or trust company and the number of shares held by each in the principal office where its business is transacted. Such records shall be subject to the inspection of all the shareholders of the bank or trust company, and the officers authorized to assess taxes under state authority, during business hours of each banking day. A current list of shareholders shall be made available to the department examiners for their inspection and, upon the request of the department, shall be transmitted to the department, but the department shall not disclose or make public said list or any part thereof.

(6) Willful violation of the provisions of this section, relating to an unlawful disclosure of confidential information, is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(7) Reports of examinations, investigations, and related information of existing banks and trust companies made by the department, or a photographic

copy thereof, shall be retained for a period of at least 10 years.

(8) A copy of any document on file with the department, which is certified by the department as being a true copy, may be introduced in evidence as if it were the original. The department shall establish a schedule of fees for preparing copies of documents.

(9) The department shall have the authority to adopt rules pursuant to this chapter.

**History.**—s. 1, ch. 28016, 1953; ss. 12, 35, ch. 69-106; s. 1, ch. 71-170; s. 1, ch. 74-84; s. 3, ch. 76-168; s. 1, ch. 77-94; s. 1, ch. 77-174; s. 1, ch. 77-457; s. 255, ch. 79-400.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

#### **§658.11 Destruction of certain bank and trust company records.—**

(1) Banks or trust companies shall not be required to preserve or keep their records or files or copies thereof for a longer period than 10 years following the time of the making or filing of such records or files, provided, however, that ledger sheets shall not be destroyed unless copies of such ledger sheets are retained.

(2) No liability shall accrue against any bank or trust company destroying any such records or files or copies thereof after the expiration of the period provided in subsection (1), and in any cause or proceedings in which any such records or files or copies thereof may be called in question or be demanded of the bank or trust company or any officer or employee thereof, a showing that such records or files or copies thereof have been destroyed in accordance with the terms of this section shall be a sufficient excuse for the failure to produce them.

(3) Any bank or trust company may make, or cause to be made, a copy or copies of any or all of its journals, ledgers, statements, account books, or other books, or any or all of its internal or other records or files of every description, made or received in the regular course of its business (all of which, in this subsection and in subsections (4) and (5), are included in the term "records"), and any such copy, duly certified, authenticated, or identified by a responsible officer of the bank or trust company under whose supervision the records or copies are kept, shall in all cases, and in all courts and places, be admitted and received as evidence with a like force and effect as the original record, whether or not the original is in existence.

(4) The original of any record of a bank or trust company includes the data or other information comprising a record stored in an electronic, computerized, mechanized, or other information storage or retrieval system or device which can upon request generate or regenerate the precise data or other information comprising the record; and an original also includes the visible data or other information so generated or regenerated if it is legible or can be made legible by enlargement or other process.

(5) Copies of records of a bank or trust company, heretofore or hereafter made, include: Duplicates or counterparts of an original produced from the same impression as the original by carbon or other chemical or substance; negative and positive film and prints of an original and reproductions and facsimi-

les of an original, whether or not the same size, produced by photographic, microphotographic, photostatic, xerographic, or other process, and enlargements thereof; and the data or other information comprising a record stored as provided in subsection (4), and the visible data or other information gener-

ated or regenerated by such information storage or retrieval system if it is legible or can be made legible by enlargement or other process.

**History.**—s. 1, ch. 28016, 1953; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 2, ch. 78-152.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.



## CHAPTER 659

## BANKING CODE, SECOND PART

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- 659.01 Creation of banking or trust corporation.**—When authorized by the department, as provided herein, a corporation may be formed under the laws of the state by five or more persons for the purpose of conducting a general banking or trust business.  
**History.**—s. 2, ch. 28016, 1953; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.
- 659.02 Application for authority to organize bank.**—  
 (1) A written application for authority to establish a corporation, as provided in s. 659.01, shall be filed with the department, and shall include:

(a) The name, residence and occupation of each incorporator and stock subscriber and the amount of stock subscribed for by each, together with a statement under oath of each subscriber that he subscribes in good faith in his own right and not as agent or attorney for any undisclosed person.

(b) The proposed name.

(c) The total capital, the number of shares of each class, and the par value of the shares of each class.

(d) The community, including the street, and number, if known, and if not known, the area within the community where the proposed bank or the principal office of the proposed trust company is to be located.

(e) Request for trust powers, if desired.

(2) Said application shall be in such form and contain such additional information as the department shall reasonably require, and shall be accompanied by the required fee.

(3) All organizers, proposed directors, proposed chief executive and operational officers, and each person subscribing to 5 percent or more of the voting stock shall file with the department a complete set of fingerprints taken by an authorized law enforcement officer, and such fingerprints shall be submitted by the department to appropriate law enforcement agencies for processing.

**History.**—s. 2, ch. 28016, 1953; s. 1, ch. 63-181; ss. 12, 35, ch. 69-106; s. 2, ch. 70-263; s. 2, ch. 73-119; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 1, ch. 79-144.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

cf.—s. 661.08 Conversion from state bank to national bank and reverse.

#### **1659.03 Investigation by department.—**

(1) Upon the filing of an application, the department shall make an investigation of:

(a) The character, reputation, financial standing and motives of the organizers, incorporators and subscribers in organizing the proposed bank or trust company.

(b) The need for banking or trust facilities or additional banking or trust facilities, as the case may be, in the community where the proposed bank or the principal office of the proposed trust company is to be located, giving particular consideration to the adequacy of existing banking or trust facilities and the need for further banking or trust facilities in the locality.

(c) The present and future ability of the community to support the proposed bank or the principal office of the proposed trust company and all other existing banking or trust facilities in the community.

(d) The character, financial responsibility, banking experience, and business qualifications of the proposed officers.

(e) The character, financial responsibility, business experience, and standing of the proposed stockholders and directors.

(2) The department shall approve or disapprove the application, in its discretion, but it shall not approve such application until, in its opinion:

(a) Public convenience and advantage will be promoted by the establishment of the proposed bank or trust company.

(b) Local conditions assure reasonable promise of

successful operation for the proposed bank or the principal office of the proposed trust company and those banks or trust companies already established in the community.

(c) The proposed capital structure is adequate.

(d) The proposed officers and directors have sufficient banking or trust experience, ability and standing to assure reasonable promise of successful operation.

(e) The name of the proposed bank or trust company is not so similar as to cause confusion with the name of an existing bank.

(f) Provision has been made for suitable banking house quarters in the area specified in the application.

**History.**—s. 2, ch. 28016, 1953; ss. 12, 35, ch. 69-106; s. 3, ch. 73-119; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

cf.—s. 661.08 Conversion from state bank to national bank and reverse.

#### **1659.04 Capital structure.—**

(1) The capital stock of a state bank or trust company shall be in such amount as the department shall deem adequate, but not less than the following aggregate amounts, based upon population of the community in which the bank or trust company will be located according to the latest official census:

(a) Twenty-five thousand dollars, if the population of the community in which the bank or trust company will be located does not exceed 5,000, and \$50,000 if the population of the community in which the bank will be located does not exceed 10,000.

(b) One hundred thousand dollars if the population of the community in which the bank or trust company will be located exceeds 10,000, but does not exceed 50,000.

(c) Two hundred thousand dollars if the population of the community in which the bank or trust company will be located exceeds 50,000, but does not exceed 200,000.

(d) Three hundred thousand dollars if the population of the community in which the bank or trust company will be located exceeds 200,000.

(2) Unless the department determines that a trust company has adequate capital to enable it to meet the additional responsibilities it assumes upon opening each trust service office in addition to its principal office, the trust company, with respect to each trust service office so established, shall increase its capital by the amount required by the department.

(3) Every state bank or trust company hereafter organized shall, upon its organization, establish, in addition to the capital required by subsection (1), a paid-in surplus equal in amount to not less than 20 percent of its paid-up capital, and a fund to be designated as undivided profits equal to 5 percent of its paid-up capital.

(4) Each subscriber at the time he subscribes to the stock of a proposed state bank or trust company shall pay an additional sum at least equal to 5 percent of the par value of such stock into a fund to be used to defray the expenses of organization, such additional sum to be paid in cash. No organizational expense shall be paid out of any other funds of the bank. Upon the granting of a charter, any unexpended

ed balance in such fund shall be transferred to undivided profits. If the application has been finally denied during said period, such balance shall be distributed among the contributors in proportion to their respective payments. The department may require an accounting of disbursements from the fund and may order the incorporators to restore any sum which has been expended for other than proper organizational expenses.

(5) No bank or trust company shall apply any part of the funds collected under this section for the payment of commissions or fees for obtaining subscriptions or selling shares or to the payment of compensation for services in connection with the organization of a proposed bank, or in connection with securing authority to transact business, other than the payment of fees for legal services and of other usual and ordinary expenses incidental and necessary for the organization of a bank or trust company.

**History.**—s. 2, ch. 28016, 1953; ss. 12, 35, ch. 69-106; s. 4, ch. 73-119; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

cf.—s. 11.031 Official census.

#### **1659.05 Authorization to engage in banking or trust business.—**

(1) Upon approval of the application for authority to organize by the department, the proposed articles of incorporation shall be submitted to the department for its written approval before filing pursuant to chapter 607. After such approval and certification by the department, the proposed bank or trust company shall:

(a) File with the department a copy of its articles of incorporation duly certified by the Department of State.

(b) File with the department a statement in such form and with such supporting data and proof as it may require, showing that the entire capital, surplus and undivided profits have been fully paid in lawful money unconditionally, and that the funds representing such capital, surplus and undivided profits, less sums spent with the approval of the department for land, building, supplies, fixtures and equipment, are on hand.

(2) If the department finds that the proposed bank or trust company has in good faith complied with all the requirements of law, it shall within 30 days after the filing of the statement specified in subsection (1)(b), issue, in duplicate, under its official seal, a certificate of authorization to transact a general banking or trust business, transmitting one copy to the bank or trust company and placing one copy in the department file. Said certificate shall state that the corporation named therein is authorized to transact a general banking or trust business, and the bank or trust company shall cause said certificate to be published one time in some newspaper of general circulation published in the city or county where the bank or trust company is located.

(3) No bank or trust company shall, until it has received its certificates of authorization:

(a) Transact any banking or trust business.

(b) Incur any indebtedness except that allowed under subsection (1)(b).

(4) Upon the failure to comply with subsection

(1)(a) and (b) within 6 months after the approval of the application for authority to organize, such right shall automatically terminate and the charter be revoked. The department, however, for good cause, on written application filed before the expiration of said 6-month period, may extend the time within which the bank may be organized for a period not exceeding 6 months.

(5) Upon the failure to open for business within 30 days after the issuance of the certificate of authorization, the right to transact business shall automatically terminate and the charter be revoked.

(6) Upon opening for business a bank or trust company shall have power to engage in a general banking or trust business and to exercise, subject to law and the approval of the department, all such incidental powers as may reasonably promote its general banking or trust business.

**History.**—s. 2, ch. 28016, 1953; s. 1, ch. 65-37; ss. 10, 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 15, ch. 79-9.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1659.051 Annual meetings.**—The annual meetings of stockholders of state banks and trust companies shall be held on such day in January or February of each year as is specified therefor in the bylaws of the corporation; provided, however, that when the day fixed in the bylaws for the regular annual meeting of the stockholders falls on a legal holiday, the annual meeting of stockholders shall be held on the next following banking day.

**History.**—s. 1, ch. 65-35; s. 1, ch. 67-30; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

#### **1659.06 Place of transacting business; school savings; facilities.—**

(1)(a)1. Any bank heretofore or hereafter incorporated pursuant to this chapter shall have one principal place of doing business as designated in its articles of incorporation. In addition, with the approval of the department and upon such conditions as the department shall prescribe, including a satisfactory showing by the bank that public convenience and necessity will be served thereby, any bank may establish up to two branches per calendar year within the limits of the county in which the parent bank is located and, in addition, may establish branches by merger with other banks located within the county in which the parent bank is located. The location of a parent bank or of a branch bank may be moved if the department determines that public convenience and necessity will be served by such move, but the location of a parent bank or of a branch bank may not be moved beyond the limits of the county in which it is located. The term "parent bank" shall be construed to mean the bank or banking office at which the principal functions of the bank are conducted. An application for a branch bank shall be in writing in such form as the department prescribes and supported by such information, data, and records as the department may require to make findings necessary for approval. When the department has approved an application, it shall issue a certificate authorizing the operation of the branch bank and specifying the date on which it may be opened



and the place where it will be located.

2. This section shall be construed to allow the merger of banks within the same county and the operation by the merged company of such banks and to allow the sale of any bank to, and the purchase thereof through merger by, any other bank in the same county and the operation of such banks by the merged bank, provided the Department of Banking and Finance shall be of the opinion, and shall first determine, that public convenience and necessity will be served by such operation.

(b) A bank may contract with proper authorities of any elementary or secondary school or institution caring for minors for the participation by the bank in any school or institutional thrift or savings plan, and it may accept deposits at such school or institution, either by its own collector or by any representative of the school or institution who becomes the agent of the bank for such purposes. Withdrawal from any account carried with the bank by any such school or institution shall be made only at the banking house of said bank.

(2) With the prior written approval of the department, and in order to relieve some of the burdens on the public caused by congestion of public streets, roadways, and parking facilities, promote safety of pedestrians on public ways, or otherwise serve the needs or convenience of the public, a bank may:

(a) Operate facilities providing services to customers. It shall not be necessary that any such facility be a part of, or physically connected to, the main banking room or building of the parent or branch bank if the facility is located on the property on which the main banking house of the parent or branch bank is situated or on property contiguous thereto. Property which is separated from the property on which the main banking house of the parent or branch bank is situated only by a street and one or more walkways and alleyways shall, for the purposes of this subsection, be deemed contiguous to the property on which said main banking house is situated. The operation of any such facility which is not located on the property on which the main banking house of the parent or branch bank is situated or on property contiguous thereto, except as otherwise provided in paragraph (b), shall constitute a violation of subsection (1), unless otherwise approved as provided in said subsection (1).

(b) Notwithstanding s. 656.071, an industrial savings bank may operate the facilities authorized by this subsection. However, nothing in this subsection shall be construed to expand the powers of an industrial savings bank organized pursuant to chapter 656.

**History.**—s. 2, ch. 28016, 1953; s. 1, ch. 57-77; s. 1, ch. 65-276; ss. 12, 35, ch. 69-106; s. 1, ch. 70-130; s. 1, ch. 70-439; s. 1, ch. 73-103; s. 5, ch. 73-119; s. 1, ch. 75-217; s. 3, ch. 76-168; s. 2, ch. 76-178; s. 1, ch. 77-376; s. 1, ch. 77-383; s. 1, ch. 77-389; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

#### **§659.061 Place of transacting trust business; trust service offices.—**

(1) Any trust company heretofore or hereafter incorporated pursuant to this chapter shall have one principal place of doing business as designated in its articles of incorporation; in addition, with the approval of the department and upon such conditions

as the department shall prescribe, including a satisfactory showing by the trust company that public convenience and necessity will be served thereby, any trust company may establish branches within the limits of the county in which the parent trust company is located. The location of a parent trust company or of a branch trust company may be moved if the department determines the public convenience and necessity will be served by such move, but the location of a parent trust company or of a branch trust company may not be moved beyond the limits of the county in which it is located. The term "parent trust company" shall be construed to mean the trust company office at which the principal functions of the trust company are conducted. An application for a branch trust company shall be in writing in such form as the department prescribes and supported by such information, data, and records as the department may require to make findings necessary for approval. When the department has approved an application, it shall issue a certificate authorizing the operation of the branch trust company and specifying the date on which it may be opened and the place where it will be located. In addition to transacting business at its principal place of doing business or at a branch trust company, a trust company may transact its business as hereinafter set forth in this section.

(2) In addition to its principal office and any branch trust company authorized under subsection (1), a trust company as defined in subsection 658.02(13), organized under the laws of Florida or organized under the laws of the United States with its principal place of doing business in Florida may maintain one or more trust service offices at the location of any bank which is organized under the laws of Florida or under the laws of the United States with its principal place of doing business in Florida. However, a trust service office may be established at such bank only after the trust company has secured the consent of a majority of the stockholders entitled to vote at a meeting of stockholders, and a majority of the board of directors, of the bank at which a trust service office is proposed to be maintained and a certificate of authorization has been issued to the trust company by the department.

(3)(a) An application for approval to establish a trust service office shall be in such form and contain such information as the department may reasonably require and be accompanied by the required fee.

(b) The department shall issue a certificate approving the establishment of a trust service office by a trust company if the department determines that:

1. The trust company has complied with the capital requirements of s. 659.04;

2. Provision has been made for suitable quarters and staffing for the trust service; and

3. If the trust service office is to be established at a bank without existing trust powers, the establishment of the proposed trust service office will not unduly injure any existing trust companies in the community where the trust service office is to be located.

(4) Upon the failure of the trust service office to open for business within 60 days after receipt of the certificate of authorization from the department, the

certificate shall be deemed void.

(5) The trust company shall have the power to conduct any trust business at a trust service office which it is permitted to conduct at its principal office unless limited by the provisions of any agreement between the bank and the trust company.

(6)(a) Unless an election has been made pursuant to paragraph (b), when a trust service office is established by a trust company at the location of a bank which has trust powers, the bank may retain and continue to exercise its trust powers following the establishment of the trust service office.

(b) If the bank and trust company so elect in the application for approval to establish a trust service office at the location of a bank that has trust powers, and if the department is satisfied that the interests of beneficiaries of the estates, trusts, and other fiduciary relationships being serviced by the bank will be adequately protected, the department shall issue an order authorizing the following:

1. The trust company shall be substituted for, succeed to, and replace the bank as fiduciary. The trust company, as the successor fiduciary, shall succeed to all the powers, rights, duties, and privileges of the bank as fiduciary of all estates, trusts, guardianships, and other fiduciary relationships in which the bank is serving.

2. During the time the trust company maintains a trust service office at the location of the bank, the trust company shall be deemed to be named the fiduciary in all instruments in which the bank is named the fiduciary, even if the bank is not serving as fiduciary at the time the trust service office is established.

3. The bank shall be relieved from all of its fiduciary duties, and the bank shall not exercise its trust powers so long as there is a trust service office transacting business at the bank. The substitution of the trust company for the bank as fiduciary shall occur and be effective on the day the trust company opens the trust service office for business.

(c) When a trust service office is established at a bank that has retained its trust powers, the trust company may at any time be substituted as fiduciary as provided in paragraph (b) by filing an election with the department. The election to substitute the trust company for the bank as fiduciary must contain the consent of a majority of the stockholders entitled to vote at a meeting of stockholders, and a majority of the board of directors, of the bank at which the trust service office has been established.

(d) This subsection shall not affect any substitution of fiduciaries made under this subsection prior to May 31, 1976.

(e) This subsection shall not be construed as permitting a trust company to transfer the administration of any estate or any trust to a county outside the county wherein the bank is located.

(7) Nothing in the banking laws of this state shall be construed to prohibit a person from serving in a dual capacity as an officer or director of a bank at which a trust service office is located and an officer or director of the trust company which has a trust service office at that bank.

(8) A trust company may terminate a trust service office only with the prior approval of the department,

which shall only grant its approval after being satisfied that the interests of all beneficiaries of the estates, trusts, and other fiduciary relationships being serviced by the trust company as fiduciary at that trust service office will be adequately protected. Upon termination of the trust service office, the trust company shall continue to exercise its fiduciary powers, rights, duties, and privileges as fiduciary of the estates, trusts, and other fiduciary relationships being serviced at that trust service office and shall continue to be deemed the named fiduciary of all instruments naming the bank as fiduciary which became effective and operative prior to the termination of the trust service office at that bank. However, any beneficiary of an estate or trust which is being serviced at the trust service office at the time of the termination of the trust service office may petition the court of competent jurisdiction in the county where the trust service office is located for removal of the trust company as fiduciary and for appointment of a successor fiduciary. The court shall grant the petition upon being satisfied that such action is in the best interests of the beneficiaries of the trust or estate.

**History.**—s. 6, ch. 73-119; s. 2, ch. 75-217; s. 1, ch. 76-41; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 1, ch. 78-317.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

#### **§659.062 Remote financial service units.—**

(1) As used in this section:

(a) "Bank" means any person authorized under the laws of this state or of the United States to do a banking business and having his principal office and main banking house in this state and also includes an industrial savings bank organized and operating under the provisions of chapter 656 and a savings bank organized and operating under the provisions of chapter 654. For the purposes of this section, the foregoing definition of the term "bank" shall control over the definition of said term as contained in subsection 658.02(1); however, the foregoing definition of the term "bank" shall be limited to the application of the provisions of this section.

(b) "Credit union" means a credit union as defined in s. 657.01 and a credit union organized and existing under the laws of the United States having its principal office in this state.

(c) The "owner" of a remote financial service unit is the person having the right to determine the banks, savings and loan associations, or credit unions which will be permitted to use, or participate in the usage of, the remote financial service unit.

(d) "Point of sale terminal" means an information processing device by which transactions by a person with, among, or involving one or more banks are accomplished through or by means of electronic or automated signals or impulses, which may include the human voice. A point of sale terminal shall be located at a place of business other than the place of business of a bank, at the location thereof shall not be operated by an agent or employee of a bank, and shall not be located on any premises having a pari-mutuel license. For the purposes of this section and for the purposes of all other statutes and rules of law, an agent or employee of the place of business where the point of sale terminal is located who operates the

point of sale terminal shall not be deemed to be the agent or employee of any bank using the point of sale terminal or with which transactions are accomplished by means of the point of sale terminal.

(e) "Remote service terminal" means an information processing device, including associated structures, for the operation of which at its location an agent or employee of a bank is not required and by which, through or by means of electronic, automated, or mechanical signals or impulses generated through the use of electronic, automated, or mechanical equipment, transactions by a person are accomplished with, among, or involving one or more banks, including, but not limited to, the dispensing of cash. A bank utilizing a remote service terminal shall not cause any agent or employee of the bank to be stationed at the location of the remote service terminal for the operation thereof.

(f) "Remote financial service units" means and includes point of sale terminals and remote service terminals.

(g) "Savings and loan association" means an association as defined in subsection 665.021(1) and a savings and loan association organized and existing under the laws of the United States having its principal office in this state.

(2) A bank may use the facilities of, or participate in the use of, such number of remote financial service units at such locations as the bank may determine. It shall not be necessary that any remote financial service unit or any associated equipment, structures, or systems by which it is operated be a part of, or physically connected to, the main banking room or building of the bank, on the property on which the main banking house is situated, or on property contiguous thereto. It shall not be necessary that a bank using the facilities of a remote financial service unit hold the legal title to, or otherwise be the owner of, the remote financial service unit or any associated equipment, structures, or systems, but the owner of any remote financial service unit shall be subject to the provisions of this section.

(3)(a) As to any and each remote service terminal which a bank or savings and loan association chartered by the state proposes to use, the bank or savings and loan association shall give not less than 30 days' written notice to the department of its intention to use the same. Each written notice shall be in such form as the department shall require and shall include the following information with regard to the remote financial service unit:

1. The name of the bank or savings and loan association giving notice.
2. The owner of the remote financial service unit.
3. The exact location and a description of the surrounding area, including a description of any business establishment in or on which the remote financial service unit will be located.
4. Any other additional information as the department shall require.

(b) The department shall require that each bank or savings and loan association provide the department with a written periodic update of the information required in the written notice.

(4) The owner of a point of sale terminal, other

than a retail merchant, a savings and loan association, or a credit union or a subsidiary at least 50 percent of the equity ownership of which is owned by one or more savings and loan associations or credit unions, shall make the same available, on a nondiscriminatory basis, for use by any other bank or banks and the customers thereof upon the request of said bank or banks to pay a fair and equitable amount for such right to use the same; but the owner of the point of sale terminal shall have the right to retain the control thereof. The owner of a point of sale terminal may make the same available for use by one or more savings and loan associations and credit unions and the customers thereof and a bank may participate upon contractual agreement in the use of a point of sale terminal owned or operated by one or more savings and loan associations and credit unions.

(5) The owner of a remote service terminal may share the use of any remote service terminal with one or more banks, one or more savings and loan associations, or one or more credit unions, and a bank may share, upon contractual agreement with one or more savings and loan associations and credit unions, the use of a remote service terminal operated by one or more savings and loan associations and credit unions.

(6) It is the intent of this section to provide and authorize more convenient methods of implementing and performing the functions which banks, savings and loan associations, and credit unions, respectively, are permitted to perform and render. Nothing contained in this section shall be construed to enlarge the powers, services, or activities which banks or any category of banks, savings and loan associations, or credit unions are permitted to perform, render, or engage in by applicable law other than the provisions of this section.

(7) In considering any application for authority to organize a new bank or to establish any other banking facility, whether manned or unmanned, the department shall disregard the existence of remote financial service units in considering and determining the need for banking facilities in the community where the proposed new bank or other banking facility is to be located, in considering the adequacy of existing banking facilities and the need for further banking facilities in the locality, and in considering the present and future ability of the community to support the proposed new bank or other banking facility and all other existing banking facilities in the community.

(8) Neither a remote financial service unit nor any associated equipment or systems by which it is operated as provided for in this section shall be considered to be a branch of any bank using or participating in the use thereof, and such use shall not be deemed to be a violation of paragraph 659.06(1)(a). The provisions of this section are cumulative and in addition to the provisions of subsection 659.06(2).

(9) The provisions of this section shall not be available to any bank which does not have its principal office and place of business in this state, and any bank which does not have its principal office and place of business in this state is prohibited from using in this state any remote financial service unit or



any associated system by which a remote financial service unit is operated. However, nothing herein contained shall prohibit any Federal Reserve Bank or branch thereof from operating any electronic funds transfer system in this state.

(10) Every owner of a remote financial service unit and every bank using a remote financial service unit shall adopt and maintain safeguards to insure the safety of funds, items, and other information, which safeguards shall include security devices consistent with the minimum requirements specified under the Federal Bank Protection Act or such alternative security precautions as are approved by the department.

(11) The department shall have the authority by rule to require each bank operating pursuant to this section to supply information to customers using remote financial service units concerning the bank's consumer protection policies, including the rights and liabilities of consumers and protection against wrongful or accidental disclosure of confidential information.

(12) Each bank and each savings and loan association which participates in or establishes, maintains, or uses a remote financial service unit shall, for a period of 5 years from the effective date of this act, report annually to the Speaker of the House of Representatives and President of the Senate. Such report shall be submitted no later than August 1 of each year, commencing August 1, 1976, covering the annual period ending on the preceding July 1. Also, a preliminary report containing the identical information as the annual report shall be submitted to the Speaker of the House of Representatives and President of the Senate before February 1, 1976. In the annual report, each bank and each savings and loan association shall:

(a) Provide all the information required to be contained in the notice to the department under subsection (3).

(b) Present a step-by-step analysis of how a person uses the remote financial service unit and describe how the transactions are recorded in the remote financial service unit, if they are so recorded, and how frequently the system is updated.

(c) Discuss the procedures for the protection of a customer's privacy and confidentiality of account information and discuss who has access to a customer's account information and under what circumstances.

(d) State how the card or device used to activate the remote financial service unit is issued and discuss, in general terms, experiences with such cards or devices that are lost by, or stolen from, customers and the customer's liability thereon.

(e) Discuss, in general terms, customer complaints relating to the use of remote financial service units and the manner in which complaints are resolved, including the final disposition of complaints.

(f) Provide any other reasonable information that is considered relevant by the reporting bank or savings and loan association or is requested by the Speaker of the House of Representatives and President of the Senate.

(13)(a) Each bank and each savings and loan association shall maintain reasonable procedures to minimize losses to its customers from unauthorized

withdrawals from its customers' accounts by use of a remote financial service unit. Any bank or savings and loan association failing to maintain such reasonable procedures shall be liable to its customer for the amount of any unauthorized withdrawal plus any interest lost on the unauthorized drawn amount directly resulting from the failure to maintain such reasonable procedures, unless the customer, by his negligence, contributes to such unauthorized withdrawal. For the purposes of this paragraph "unauthorized withdrawal" means a withdrawal by a person other than the customer who does not have actual, implied, or apparent authority for such withdrawal and from which withdrawal the customer receives no benefit.

(b) A cardholder's federal social security number shall not be used as the personal identification number or as any code to activate any remote financial service unit.

(c) Information received through, or by means of, any remote financial service unit shall be treated and used in accordance with applicable law relating to the dissemination or disclosure of such information.

(d) A customer may bring a civil action against a person violating the provisions of this subsection in the Circuit Court of the county in which the alleged violator resides or has his principal place of business or in the county wherein the alleged violation occurred. Upon adverse adjudication, the defendant shall be liable for actual damages or \$500, whichever is greater, together with court costs and reasonable attorney's fees incurred by the plaintiff. The court may provide such equitable relief as it deems necessary or proper, including enjoining the defendant from further violations of this subsection. If it appears to the court that the suit brought by the plaintiff was ill-founded or brought for purposes of harassment, the plaintiff shall be liable for court costs and reasonable attorney's fees incurred by the defendant.

(14)(a) Whenever the department has reason to believe that a person has been or is violating this act or is engaging in unsafe and unsound banking practices with regard to the use of remote financial service units, and if it appears to the department that a proceeding by it against the person would be in the interest of the public, it shall issue and serve upon the person a complaint or notice stating its charges and containing a notice of opportunity for a hearing pursuant to chapter 120. The person so complained against shall have the right to appear and show cause why an order should not be entered by the department requiring him to cease and desist from the violation of this act as charged in the complaint. If no hearing is held, or if a hearing is held and it still appears that the person is in violation of this act, the department shall enter a final administrative order pursuant to chapter 120 requiring the person to cease and desist from engaging in the act or practice that has been found to be in violation of this act.

(b) The department may modify or set aside its order at any time by rehearing upon its own motion when the rehearing is in the interest of the public welfare.

(c) Judicial review of orders of the department

shall be as provided by chapter 120.

(d) An order of the department to cease and desist is effective 10 days after notice of its entry is sent by certified mail to the person complained against.

(e) A cease and desist order is not a limitation upon any other action or remedy available to the department or any person under any provision of this or any other act.

(f) The department is authorized to impose a civil penalty of not more than \$500 for each violation against any person who violates a cease and desist order of the department after it has become effective, which shall accrue to the department and may be recovered in a civil action by the department. Each day of a continuing violation shall constitute a separate violation.

(15) It is the intent of the Legislature that no person shall be deprived of any rights and protections now offered by existing law due to the effect of this act becoming law.

(16) The department shall have the power to promulgate any rule to implement any provision of this section.

**History.**—s. 1, ch. 75-134; s. 3, ch. 76-168; s. 1, ch. 77-174; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

#### **659.07 Changes in articles of incorporation.**

—A bank or trust company shall not amend its articles of incorporation without the written approval of the department, and if any amendment requests a change in name of the bank or trust company, the department shall not approve such change if the new name is so similar as to cause confusion with the name of an existing bank.

**History.**—s. 2, ch. 28016, 1953; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

#### **659.08 Shares of stock.—**

(1) A state bank or trust company shall issue its capital stock with par value of not less than \$5 or more than \$100 per share.

(2) No bank or trust company hereafter shall issue any shares before they are fully paid for.

(3) A bank or trust company, pursuant to action taken by its board of directors and after obtaining the written approval of the department and the approval of stockholders holding a majority of the voting stock of the bank or trust company evidenced either in a writing signed by the stockholders or by a vote at a stockholders' meeting called for such stated purpose after giving 10 days' notice by registered mail, may issue preferred stock of one or more classes in an amount and with a par value as approved by the department and may make amendments to its articles of incorporation which may be necessary to accomplish this purpose. The holders of the preferred stock shall not be held individually responsible as such holders for any debts, contracts, or engagements of the bank or trust company, and shall not be liable for assessment.

**History.**—s. 2, ch. 28016, 1953; ss. 12, 35, ch. 69-106; s. 1, ch. 70-409; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective

July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

#### **659.085 Stock options.—**

(1) For the stated purpose of providing stock options for one or more of its officers or employees, any bank or trust company may, pursuant to action taken by its board of directors and after obtaining the written approval of the department and the approval of stockholders holding a majority of the common capital stock of the bank or trust company, evidenced either in a writing signed by the stockholders or by vote at a stockholders' meeting called for such stated purpose after 10 days' notice and after issuance of the shares of stock representing the entire original organizational capital of such bank or trust company, hold unissued from the amount of any authorized increase in its capital, other than an increase authorized solely for the purpose of declaring and paying a stock dividend, or purchase or otherwise acquire and hold, shares of its own common capital stock in an aggregate par value amount not to exceed at any one time 10 percent of the par value of its total authorized common capital stock.

(2) Any such bank or trust company may thereafter from time to time, without first offering such shares of stock to its stockholders, grant options to such of its officers and employees as may be authorized by the board of directors, at a price of the fair market value of such shares as determined by the board of directors, but not less than the par value thereof.

(3) Upon the exercise of any such option by the optionee, the bank or trust company may sell and issue such shares to the optionee.

**History.**—s. 1, ch. 67-582; ss. 12, 35, ch. 69-106; s. 39, ch. 69-353; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**659.09 Dividends and surplus.**—The directors of any bank or trust company, after charging off bad debts, depreciation, and other worthless assets if any, may quarter-annually, semiannually, or annually, declare a dividend of so much of the net profits of the company as they shall judge expedient, but each company shall, before the declaration of a dividend on its common stock carry 20 percent of its net profits for such preceding period as is covered by the dividend to its surplus fund, until the same shall at least equal the amount of its common and preferred stock. Whenever the surplus becomes impaired or reduced below the aggregate amount of common and preferred stock, it shall be reimbursed in the manner provided for its accumulation.

**History.**—s. 2, ch. 28016, 1953; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

#### **659.10 Changes in capital.—**

(1) No state bank or trust company shall reduce its outstanding capital stock without first obtaining the consent of the department, and such consent shall be withheld if the reduction will cause the outstanding capital stock to be less than the minimum

required hereunder.

(2) Any state bank or trust company may, with the approval of the department, provide for an increase in its capital as may be deemed expedient.

**History.**—s. 2, ch. 28016, 1953; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

#### **1659.11 Directors, number, qualifications, oath, officers.—**

(1) The board of directors of a state bank or trust company shall consist of not less than 5 nor more than 25 directors, and shall be elected at the annual meeting of stockholders; provided, however, that if so authorized by the articles of incorporation and by a majority of the shareholders by appropriate action of the shareholders at the next preceding annual meeting, a majority of the full board of directors of a state bank or trust company may, at any time during the year following the annual meeting of shareholders in which such action has been authorized, increase the number of directors of such state bank or trust company within the limits specified above, and appoint persons to fill the resulting vacancies, provided further, that in any one year not more than two such additional directors shall be authorized pursuant to this provision.

(2) Not less than a majority of the directors must, during their whole term of service, be citizens of the United States, and at least three-fifths of the directors must have resided in this state for at least 1 year preceding their election and must be residents therein during their continuance in office.

(3) Each director, upon assuming office, shall take an oath that he will, so far as the duty devolves on him, diligently and honestly administer the affairs of such bank or trust company and will not knowingly violate, or willfully permit to be violated, any of the provisions of this chapter. Such oath shall be immediately filed with the department.

(4) The board of directors of each state bank or trust company shall manage the affairs of the bank or trust company and hold a meeting at least once every 2 months at the banking house of the bank or trust company.

**History.**—s. 2, ch. 28016, 1953; s. 1, ch. 65-34; ss. 12, 35, ch. 69-106; s. 1, ch. 71-168; s. 3, ch. 76-168; s. 2, ch. 76-177; s. 1, ch. 77-457; s. 1, ch. 79-53.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

#### **1659.12 Deposit insurance; membership in Federal Reserve System.—**A state bank or trust company is authorized to do any act necessary to obtain insurance of its deposits by the United States, or any agency thereof, and to acquire and hold membership in the Federal Reserve System.

**History.**—s. 2, ch. 28016, 1953; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

#### **1659.13 Liability of stockholders.—**Holders of voting common stock of state banks or trust companies shall be held individually responsible equally and ratably and not for one another for all contracts, debts, and engagements of such banks or trust companies to the extent of the amount of their stock

therein at the par value thereof in addition to the amount invested in such shares. Persons holding stock as executors, administrators, guardians or trustees shall not be personally subject to any liability as stockholders, but the estates and funds in their hands shall be liable in like manner and to the same extent as the testator, intestate, ward or person interested in trust funds would be, if living and competent to hold the stock in his own name. Such stockholders who have transferred their shares or registered the transfer thereof within 6 months next before the date of the failure of such bank or trust company to meet its obligations, or with knowledge of such impending failure, shall be liable to the same extent as if they had made no such transfer, to the extent that the subsequent transferee fails to meet such liability; but this provision shall not be construed to affect in any way any recourse which such stockholders might otherwise have against those in whose names such shares are registered at the time of such failure, provided that this section shall not apply to stockholders in a banking, savings or trust company which is a member of the Federal Deposit Insurance Corporation, a corporation under the laws of the United States, or which has an unimpaired surplus equalling the amount of its capital stock.

**History.**—s. 2, ch. 28016, 1953; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

#### **1659.14 Acquisition of majority stock or control in existing bank or trust company.—**

(1) In any case in which a person, a group of persons, or a corporation proposes to purchase or acquire a majority of the outstanding capital stock of, or a controlling interest in, any state bank or trust company and thereby to change the control of said bank or trust company, such person shall first make application to the department for a certificate of approval of such proposed change of control of said bank or trust company, and said application shall contain the name and address of the proposed new owner or owners of the controlling stock or controlling interest, and the department shall issue said certificate of approval only after it has become satisfied that the proposed new owner or owners of the controlling stock or interest are qualified by character, experience, and financial responsibility to control and operate the said bank or trust company in a legal and proper manner and that the interests of the stockholders, depositors, and creditors of the bank or trust company and the interests of the public generally will not be jeopardized by the proposed change in ownership, interest, and management. The proposed new owner or owners of the controlling stock or controlling interest shall file with the department a complete set of fingerprints taken by an authorized law enforcement officer, and such fingerprints shall be submitted by the department to appropriate law enforcement agencies for processing.

(2) For the purpose of this section, any person, group of persons, or corporation shall be deemed to be purchasing or acquiring, or to have purchased or acquired, a "controlling interest" if:

(a) Such person, group of persons, or company, directly, indirectly, or acting through one or more persons or corporations, owns, controls, or will own



or control, or has power or will have power to vote, 25 percent or more of any class of voting securities of the bank or trust company; or

(b) Such person, group of persons, or company controls or will control in any manner the election of a majority of the directors or trustees of the bank or trust company.

(3) Notwithstanding any other provision of this section, no person or company will be considered to be purchasing or acquiring a controlling interest by virtue of its ownership or control of shares in a fiduciary capacity. For the purposes of the preceding sentence, bank or trust company shares shall not be deemed to have been acquired in a fiduciary capacity if the acquiring person or company has sole discretionary authority to exercise voting rights with respect thereto. Further, no person or company shall be subject to the requirements of this section by virtue of its ownership or control of shares acquired in securing or collecting a debt contracted in good faith until 2 years after the date of acquisition.

**History.**—s. 2, ch. 28016, 1953; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 3, ch. 76-178; s. 1, ch. 77-174; s. 1, ch. 77-457; s. 2, ch. 79-144.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

#### **§659.141 Control; ownership.—**

(1) Except as provided in subsection (3), no bank, trust company, or holding company, the operations of which are principally conducted outside this state, shall acquire, retain, or own, directly or indirectly, all, or substantially all the assets of, or control over, any bank or trust company having a place of business in this state where the business of banking or trust business or functions are conducted, or acquire, retain, or own all, or substantially all, of the assets of, or control over, any business organization having a place of business in this state where or from which it furnishes investment advisory services in this state. However, if a bank, trust company, or holding company directly or indirectly owning all, or substantially all, the assets of, or having control over, a bank or a trust company or business organization to which the restrictions and prohibitions of this section apply, having acquired such assets or control prior to becoming disqualified hereunder, shall, on or after the effective date of this section, be or become disqualified hereunder to acquire, retain, or own the same, the restrictions and prohibitions of this section shall not be enforced against it for a period which, under all the circumstances, is determined by the department to be reasonable, not exceeding 2 years from the effective date of this act or from the date it becomes disqualified hereunder, whichever is later, unless said period of 2 years is extended by the department as herein provided. The department is authorized, upon a showing of undue hardship, to extend said period of 2 years from time to time if it determines that any such extension would not be detrimental to the public interest, but any such extension shall not exceed 1 year and all thereof shall not in the aggregate exceed 3 years.

(2) Except as provided in subsection (3), for the purposes of this section:

(a) "Holding company" means any business organization which has control over any bank, trust company, or holding company, the operations of any

of which are principally conducted inside or outside of the state.

(b) Any business organization has control over a bank, trust company, or holding company if:

1. The business organization, directly or indirectly or acting through one or more persons, owns, controls, or has power to vote 25 percent or more of the shares of any class of voting securities of the bank, trust company, or holding company;

2. The business organization controls in any manner the election of a majority of the directors or trustees of the bank, trust company, or holding company; or

3. The department determines that the business organization directly or indirectly exercises a controlling influence over the management or policies of the bank, trust company, or holding company.

(c) A business organization provides investment advisory services if, in this state, for compensation, it engages in the business of advising persons, as defined in s. 1.01, either directly or indirectly, or through publications or writings, as to the value of securities or as to the advisability of investment in or purchasing securities, or if, not being a certified public accountant, in this state and for compensation, it issues or distributes to persons, as defined in s. 1.01, analyses or reports concerning securities.

(d) The operations of a bank, trust company, or holding company are principally conducted outside this state if:

1. In the case of a bank, the largest amount of its total deposits are held outside this state;

2. In the case of a trust company, the largest amount of its total trust assets are held or administered outside this state; and

3. In the case of a holding company, the largest amount of the total deposits of all banks controlled by the holding company is held outside this state, or the largest amount of the total trust assets held by all trust companies controlled by the holding company is held or administered outside this state.

(e) "Business organization" means and includes any corporation, partnership, business trust, association, or similar organization, or any other trust unless by its terms it must terminate within 25 years or not later than 21 years and 10 months after the death of individuals living on the effective date of the trust, but shall not include any corporation the majority of the shares of which are owned by the United States or by this state.

(f) Shares of any kind or class of voting securities of a bank, trust company, or holding company shall be deemed to be indirectly owned or controlled by a business organization if:

1. The shares are owned or controlled by any bank, trust company, or holding company over which the business organization has control; or

2. The shares are held or controlled directly or indirectly by trustees for the benefit of:

a. The business organization;

b. The shareholders or members of the business organization; or

c. The employees of the business organization, whether exclusively or not.

(g) Shares of any kind or class of the voting securities of any bank, trust company, or holding compa-

ny which are transferred directly or indirectly to any transferee that is indebted to the transferor, or has one or more officers, directors, trustees, or beneficiaries in common with, or subject to control by, the transferor, shall be deemed to be indirectly owned or controlled by the transferor unless the department, after opportunity for hearing, determines that the transferor is not in fact capable of controlling the transferee.

(h) "Trust company" means any bank, corporation, or other business organization, whether organized or existing under the laws of this state or any other state or jurisdiction, which engages in, or is authorized to engage in, trust business.

(3) Notwithstanding any other provisions of this section, the restrictions and prohibitions of this section shall not apply:

(a) To the acquisition and retention of shares of the voting securities of a bank, trust company, or holding company by a bank or trust company acquiring or holding the same in a fiduciary capacity, except as provided in subparagraph (2)(f)2. and paragraph (2)(g). For the purpose of the preceding sentence, shares of a bank, trust company, or holding company shall not be deemed to have been acquired in a fiduciary capacity if the acquiring bank or trust company has sole discretionary authority to exercise voting rights with respect thereto; except that this limitation is applicable in the case of a bank or trust company acquiring such shares prior to the effective date of this act only if the bank or trust company has the right, consistent with its obligations under the instrument, agreement, or other arrangement establishing the fiduciary relationship, to divest itself of such voting rights and fails to exercise that right to divest within a reasonable period not to exceed 1 year after the effective date of this act.

(b) To the ownership or control of shares acquired by a bank, trust company, or holding company in connection with its underwriting of securities, if such shares are held only for such period of time as will permit the sale thereof on a reasonable basis.

(c) To ownership, control, or retention of shares acquired in securing or collecting a debt contracted in good faith, until 2 years after the date of acquisition or the effective date of this act [March 28, 1972], whichever is later.

(d) To the ownership or control of shares acquired by a bank, trust company, or holding company prior to January 1, 1972.

(e) To any acquisition of a bank, trust company, or investment advisory business organization if an application for approval of such acquisition or notice of proposed investment advisory activities was filed with the Department of Banking and Finance or the Board of Governors of the Federal Reserve System or other appropriate federal regulatory agency having jurisdiction prior to June 1, 1972.

(f) To the establishment of one office in this state by a business organization which, on March 1, 1972, and for a period of 1 year prior thereto, rendered investment advisory services to trust companies or banks in this state from an office outside the state.

(g) To any bank, trust company, or holding company the operations of which are principally conducted outside this state, which, upon December 20,

1972, owned all the assets of, or control over, a bank or trust company located within and doing business within this state.

(h) To any bank authorized under 12 U.S.C.A. ss. 611-632, commonly referred to as "Edge Act Banks," when performing functions authorized under said act.

**History.**—s. 1, ch. 72-96; ss. 1-7, ch. 72-726; s. 3, ch. 76-168; s. 3, ch. 76-177; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**§659.15 Filing fees.**—On filing any charters or other papers relative to banks or trust companies with the Department of State, fees as prescribed in s. 607.361 shall be paid to the Department of State for the use of the state.

**History.**—s. 2, ch. 28016, 1953; s. 1, ch. 57-23; ss. 10, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 16, ch. 79-9.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

#### §659.16 Cash reserves.—

(1) Every bank shall maintain a cash reserve equal to at least 20 percent of its total deposit liability, less those deposits of public funds for which security has been pledged as provided by law. Said cash reserve shall be maintained as cash on hand, as cash on demand deposit with other banks, or as investments in securities which are direct obligations of the United States or which are fully guaranteed as to principal and interest by the United States. Eligible securities must be owned by the bank free of pledge or encumbrance, and their par value will represent their cash reserve value. The par value of eligible securities which are owned by the bank free of pledge or encumbrance, and that portion of the par value of eligible securities which is in excess of the deposit to which pledged, may be utilized in meeting reserve requirements.

(2) Whenever the lawful reserve of any such bank as defined in subsection (1) shall be below the amount of 20 percent of its deposits, such bank shall not increase its liabilities by making any new loans or discounts otherwise than by discounting or purchasing of bills of exchange payable at sight, nor making any dividends of its profits until the required proportion between its deposits and its lawful money of the United States has been restored. The department may notify any bank whose lawful money reserves shall be below the amount above required to be maintained to make good such reserve, and if such bank shall fail in 30 days thereafter so to make good its reserve of lawful money, the department may appoint a liquidator to wind up the business of the bank as provided in s. 661.10.

**History.**—s. 2, ch. 28016, 1953; ss. 12, 35, ch. 69-106; s. 1, ch. 69-191; s. 1, ch. 71-169; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**§659.17 Loans.**—A state bank may make loans with or without security subject to the following limitations:

#### (1) LOANS TO OFFICERS AND DIRECTORS.—

(a) No bank shall lend in excess of 10 percent of its unimpaired capital and surplus to any one of its officers or directors, and no such loan shall be made

in any amount unless previously approved by the board of directors or funded pursuant to a line of credit previously approved by the board of directors at least annually.

(b) In computing the total liabilities of any officer or director subject to the said 10 percent limitation, there shall be included:

1. Loans to any corporations in which a stock interest of 10 percent or more is held by the officer or director, excepting corporations the stock of which is listed and traded on a recognized stock exchange;

2. Loans to any partnership in which the officer or director is a general partner or in which he has an interest of 10 percent or more as a limited partner; and

3. Loans endorsed or guaranteed as to repayment by the officer or director, or by any corporation or partnership in which he holds an interest as defined herein.

(c) The loan limitation stated shall not be enlarged by the provisions of any other section of this chapter except as provided in subsection (4).

(2) **LOANS TO OTHER PERSONS.—**

(a) Loans and lines of credit which are unsecured shall be limited to 10 percent of the unimpaired capital and surplus of the lending bank. However, when approved in advance by the board of directors or an authorized committee therefrom, loans and lines of credit all components of which are amply and entirely secured may be granted up to 25 percent of the unimpaired capital and surplus of the lending bank. When outstanding loans consist of both secured and unsecured portions, the secured and unsecured portions of the loans together may not exceed 25 percent of the unimpaired capital and surplus of the lending bank, and the unsecured portion of the loan may not exceed 10 percent of the unimpaired capital and surplus of the lending bank. However, a first mortgage on the home of the borrower shall not be included in the 25 percent limitation.

(b) In computing the total liabilities of any person, firm, partnership, or corporation subject to the said limitations, there shall be included:

1. Loans to any corporation in which a stock interest of 50 percent or more is held;

2. Loans to any partnership in which the person is a general partner or in which he has an interest of 50 percent or more as a limited partner; and

3. Loans endorsed or guaranteed as to repayment.

(c) The department may provide by rule for security margin requirements which shall be observed by banks in complying with the ample and entire security provisions of this section.

(d) The loan limitations stated shall not be enlarged by the provisions of any other section of this chapter except as provided in subsection (4).

(3) **SPECIAL PROVISIONS.—**

(a) A limitation of 25 percent of the unimpaired capital and surplus of the lending bank shall apply to the aggregate total of loans made to a corporation and upon the security of the shares of stock, bonds or other obligations of the corporation, unless the stocks or bonds are listed and traded on a recognized

stock exchange, in which case no aggregate loan limit shall apply.

(b) A limitation of 10 percent of the unimpaired capital and surplus of the lending bank shall apply to loans made to any one borrower on the security of shares of capital stock of the obligations subordinate to deposits of another bank. No aggregate limits shall apply to loans secured by the stock of another bank, or to the total number of shares of stock of another bank held as collateral by the lending bank.

(c) No loan shall be made by a bank on the security of the shares of its own capital stock or of its obligations subordinate to deposits.

(d) Loans based upon the security of real estate mortgages shall be documented as first liens, except that secondary liens may be taken:

1. To protect a loan previously made in good faith;

2. To further secure a loan otherwise amply and entirely secured;

3. As additional security for Federal Housing Administration Title 1 loans or loans made with participation or guaranty by the Small Business Administration; or

4. As security to a home improvement loan the principal amount of which does not exceed \$10,000.

(4) **APPLICABILITY OF LOAN LIMITATIONS.**—The loan limitations otherwise provided in this section shall not apply:

(a) To loans which are fully secured by assignment of a savings account or certificate of deposit of the lending bank;

(b) To loans which are fully secured by notes, bonds, or other evidences of indebtedness issued by the United States Government or fully guaranteed as to repayment by the United States Government, its agencies, bureaus, boards, or commissions;

(c) To loans made to district school boards when said loans are secured by the assignment of revenues reasonably expected to be received from the state and are otherwise made in compliance with statutes governing borrowings by such boards.

(5) **APPROVAL BY BOARD.**—The requirements of this section concerning approval of lending activities by the board of directors or an authorized committee therefrom shall have been met only when such approvals are recorded in the formal minutes of the actions of the board and its committees by name of borrower, amount of loan, maturity of loan, and general type of collateral.

(6) **LIABILITY OF OFFICERS AND DIRECTORS.**—Officers and directors shall be personally liable, jointly or severally, for any loss that may be occasioned by any willful violation of this section.

**History.**—s. 2, ch. 28016, 1953; s. 1, ch. 57-42; s. 1, ch. 63-322; ss. 12, 35, ch. 69-106; s. 1, ch. 69-297; s. 1, ch. 69-300; s. 164, ch. 71-355; s. 1, ch. 74-164; s. 3, ch. 76-168; s. 4, ch. 76-177; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**§659.18 Loans by banks where not in excess of \$50,000.—**

(1) Any bank shall have power, in addition to such other powers as it may have, to make loans, secured or unsecured, to any person, firm, or corporation in an amount not exceeding \$50,000, at a rate of interest not to exceed the equivalent of 18 percent



per annum, simple interest.

(2) No further interest or discount charge, or any other charge whatsoever, shall be made directly or indirectly on any such loan or discount of such note by such bank or trust company in addition to the charges herein expressly provided for, except that there may be charged to the borrower:

(a) A penalty not exceeding 5 percent of the amount of any payment or payments in default;

(b) The premiums on any credit life or disability insurance, in an amount not to exceed the full amount of the loan, in case such bank or trust company insures the borrower under a group insurance policy;

(c) An additional charge not to exceed the lesser of \$50 or 2 percent of the principal amount of any loan, which additional charge shall be for investigating the character of the individual applying for the loan, the security submitted, and all other costs connected with making such loan;

(d) Any premiums on insurance necessary for the protection and preservation of the collateral; and

(e) Any fees or taxes paid to public officials.

Provided, however, that such banks may make a minimum interest or discount charge of \$10 on any single payment loan, or \$15 on any installment loan, notwithstanding such sum shall exceed the contract rate otherwise fixed by law.

**History.**—s. 2, ch. 28016, 1953; s. 1, ch. 57-132; ss. 12, 35, ch. 69-106; s. 1, ch. 76-125; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 9, ch. 79-274.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date. As amended by s. 9, ch. 79-274, "applies only to loans or advances of credit made on or subsequent to" July 1, 1979, "and shall not be construed as diminishing the force and effect of any laws applying to loans or advances of credit completed prior to that date."

**§659.181 Bank loans; credit cards.**—Any bank shall have the power to make loans or extensions of credit to any person, firm, or corporation, not exceeding \$10,000 for each such loan or extension of credit, on a credit card or overdraft financing arrangement and to charge interest of not more than 1.5 percent per month, simple interest, on the unpaid balance of any such loans or extensions of credit computed on a monthly cycle.

**History.**—s. 1, ch. 69-339; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 10, ch. 79-274.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date. As amended by s. 10, ch. 79-274, applies "only to loans or advances of credit made on or subsequent to" July 1, 1979, "and shall not be construed as diminishing the force and effect of any laws applying to loans or advances of credit completed prior to that date."

**§659.19 Banks authorized to make commodity loans.**—

(1) Banks may make loans known and described as "commodity loans" on the obligations of any person, firm, copartnership, association or corporation, in the form of notes or drafts secured by shipping documents, warehouse receipts or other such documents transferring or securing title covering readily marketable nonperishable staples when such property is fully covered by insurance if it is customary to insure such staples in the following percentages of the bank's capital and surplus:

(a) Twenty-five percent when the market value of such staples securing such obligation is not at any time less than 115 percent of the face amount of such obligation.

(b) Thirty percent when the market value of such staples securing such obligation is not at any time less than 120 percent of the face amount of such obligation.

(c) Thirty-five percent when the market value of such staples securing such obligation is not at any time less than 125 percent of the face amount of such obligation.

(d) Forty percent when the market value of such staples securing such obligation is not at any time less than 130 percent of the face amount of such obligation.

(e) Forty-five percent when the market value of such staples securing such obligation is not at any time less than 135 percent of the face amount of such obligation.

(f) Fifty percent when the market value of such staples securing such obligation is not at any time less than 140 percent of the face amount of such obligation.

(2) The increased loan limitation provided by this section shall not apply to obligations of any one person, firm, copartnership, association or corporation arising from the same transaction or secured upon the identical staples for more than 10 months.

**History.**—s. 2, ch. 28016, 1953; s. 3, ch. 76-168; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**§659.20 Investments.**—A bank or trust company may invest its funds subject to the following definitions, restrictions, and limitations:

(1) Bonds and securities not subject to limitation:

(a) Direct obligations of the United States Government.

(b) Obligations of agencies created by act of the United States Congress and authorized thereby to issue securities or evidences of indebtedness, regardless of guarantee of repayment by the United States Government.

(c) Public Housing Authority obligations.

(d) General obligations of states of the United States and of Puerto Rico and of the political subdivisions and municipalities thereof.

(e) Obligations issued by the Florida State Board of Education under authority of the state constitution or applicable statutes.

(f) Tax anticipation certificates or warrants of counties or municipalities having maturities not exceeding 1 year.

(2) Any single issue of revenue bonds or certificates of states of the United States and of Puerto Rico and of the political subdivisions and municipalities thereof may be invested in subject to a limitation of 25 percent of the unimpaired capital and surplus of the purchasing bank.

(3) Bonds and securities subject to a limitation of 10 percent of unimpaired capital and surplus of the purchasing bank:

(a) Corporate obligations of any one corporation which is not an affiliate or subsidiary of the banking corporation.

(b) Savings shares or certificates issued by any one savings and loan association having its principal office in Florida.

(c) Any single issue of industrial development bonds issued by a county or municipality for the

benefit of a specified corporation.

(4) Up to 5 percent of the unimpaired capital and surplus of the purchasing bank may be used to invest in or purchase bonds or other evidences of indebtedness of the State of Israel.

(5) None of the bonds or securities described in this section shall be eligible for investment in any amount unless current as to all payments of principal and interest and unless rated in one of the four highest investment grades by a recognized investment rating service or otherwise supported as to investment quality and marketability by a credit rating file compiled and maintained in current status by the purchasing bank or trust company.

(6) A bank or trust company may invest in the stock of incorporated companies to the extent hereinafter defined:

(a) Stock of the Federal Reserve Bank of this district may be purchased and retained as required to maintain membership in the Federal Reserve System.

(b) Stock of the Federal National Mortgage Association may be purchased and retained as required in connection with mortgage transactions with the said association.

(c) Up to 5 percent of the unimpaired capital and surplus of the bank or trust company may be invested in small business investment companies which are organized under the provisions of the United States Code.

(d) Up to 10 percent of the unimpaired capital and surplus of the bank or trust company may be invested in a bank service corporation, organized and operated as defined in this chapter.

(e) With the prior written approval of the department, a bank or trust company may invest an aggregate amount up to 20 percent of its unimpaired capital and surplus in the stock of one or more operating subsidiary corporations organized for any of the following purposes: Owning and servicing real estate mortgages, owning and leasing real and personal property, issuing credit cards, operating a credit bureau, or for such other purposes as the department may authorize.

(f) Up to 10 percent of the unimpaired capital and surplus of the bank or trust company may be invested in a clearing corporation as defined in subsection 678.102(3).

(7) Investment securities shall be entered on the books of the bank or trust company at the fair market value on the date of acquisition. Premiums paid in excess of par value shall be amortized over the life of the security; discount may be accreted.

(8) A bank or trust company may invest in real estate to the extent hereinafter defined:

(a) Up to 50 percent of the unimpaired capital and surplus of the bank may be invested in the direct ownership, or in leasehold improvements, of land and buildings utilized by the bank in the transaction of its business. In lieu thereof, with the prior written approval of the department, up to 50 percent of the unimpaired capital and surplus of the bank may be invested in the stock of a corporation which owns the land and buildings within which the business of the bank is transacted.

(b) An additional investment up to 10 percent of

the unimpaired capital and surplus of the bank may be made for the acquisition of land or buildings for future banking use, or as a protection against undesirable encroachment of the banking premises or abandonment or deterioration of property in the immediate vicinity of the banking house. The bank may hold, improve, sell, lease, operate, or otherwise exercise the rights of an owner of any such property.

(c) The real estate investment limitations provided by this subsection may not be exceeded except with the prior written approval of the department.

(9) A bank or trust company may own or lease furniture, fixtures, machinery, and equipment such as may be necessary to the transaction of its banking business, and may be the owner and lessor of personal property which is acquired pursuant to a written contract with a specified lessee.

(10) A bank or trust company may acquire property of any kind to secure, protect, or satisfy a loan or investment previously made in good faith, and such property shall be entered on the bank's books and held and disposed of subject to the following conditions and limitations:

(a) The book entry shall be the lesser of the balance of the loan or investment plus acquisition costs and accrued interest or the appraisal value or market value of the property acquired which shall be determined as near as possible to the date of acquisition.

(b) The bank shall have evidence of ownership of all property acquired and shall maintain subsidiary ledgers adequate to the separate recording of all income and expense attributable to its ownership of such property.

(c) Unless an extension of time is approved in writing by the department, real estate shall be sold or charged off within 5 years of the date of acquisition, and personal property shall be sold or charged off within 6 months of the date of acquisition.

(11) Special provisions:

(a) A bank or trust company may invest up to 1 percent of its unimpaired capital and surplus in the stock of the Florida Industrial Development Corporation, and may thereafter deal in the securities or other evidences of debt of that corporation as provided for in chapter 289.

(b) A bank or trust company may invest in the stock or securities of a community corporation organized to promote the physical, social, or moral well-being of the members of the community in which the bank is located. However, the total of all such investments carried as assets of the bank may not exceed 2 percent of the unimpaired capital and surplus of the bank.

**History.**—s. 2, ch. 28016, 1953; s. 1, ch. 57-24; s. 1, ch. 59-24; s. 1, ch. 59-22; s. 1, ch. 65-185; ss. 1, 2, ch. 65-177; s. 1, ch. 67-261; ss. 12, 22, 35, ch. 69-106; s. 18, ch. 69-216; s. 1, ch. 70-411; s. 1, ch. 70-439; s. 1, ch. 71-167; s. 1, ch. 74-223; s. 1, ch. 76-154; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**659.201 Bonds of Inter-American Development Bank; approved investments.**—Any bonds or other obligations of the Inter-American Development Bank shall be and constitute legal investments for banks, savings banks, and insurers, the provision of any other law to the contrary notwithstanding, provided that the investment in such obligations by

a bank shall not exceed 25 percent of the unimpaired capital and surplus of such bank.

**History.**—s. 1, ch. 63-134; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**Note.**—Former s. 554.28.

**1659.21 Security of deposits.**—Notwithstanding any provisions of law of this state or any political subdivision thereof requiring security of deposits in the form of collateral, surety bond, or in any other form, security for such deposit shall not be required to the extent that said deposits are insured under the provisions of s. 12-B of the Federal Reserve Act as amended, or any amendments thereto.

**History.**—s. 2, ch. 28016, 1953; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

cf.—s. 136.02 Banks qualification as depositories.

**1659.22 Sale of assets in ordinary course.**—A bank or trust company may sell any asset in the ordinary course of business or with the approval of the department in any other circumstances.

**History.**—s. 2, ch. 28016, 1953; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1659.23 Borrowing; limits of indebtedness.**—

(1) A bank or trust company may borrow money and issue evidences of indebtedness for a loan for temporary purposes in the usual course of its business.

(2) A state bank may at any time, pursuant to action taken by its board of directors, and after obtaining the written approval of the department and the approval of stockholders holding not less than two-thirds of the outstanding voting stock of the bank evidenced either in a writing signed by the stockholders or by vote at a legally called and held meeting of the stockholders, issue and sell convertible and nonconvertible capital notes and convertible and nonconvertible capital debentures having a final maturity of not more than 25 years from the date of issue, in such amounts and under such terms and conditions as shall be approved by the department subject, with respect to the principal amount thereof, to the limitations imposed by this chapter on indebtedness of state banks and trust companies. If the capital notes or capital debentures are not subject to obligatory prepayments of principal at least annually, the issuing bank shall, at the end of the third year from the date of issue of the capital notes or debentures, establish and maintain a suitable sinking fund for the amortization of the principal amount thereof. Capital notes and capital debentures issued pursuant to the provisions of this subsection, and claims of holders thereof, shall be subordinate to the claims of depositors and all other creditors of the issuing state bank, regardless of whether the claims of, or the liability of the issuing bank to, the depositors arose before or after the issuance of such capital notes or debentures, but shall be superior to the claims of shareholders for dividends, reserve profits, or other claims on account of shares of capital stock held by them. The holders of the capital notes and the holders of the capital debentures shall not be held indi-

vidually responsible as such holders for any debts, contracts, or engagements of the issuing state bank, and shall not be liable for assessments.

(3) No state bank or trust company shall at any time be indebted, or in any way liable, to an amount exceeding the amount of its capital stock at such time actually paid in and remaining undiminished by losses or otherwise plus 50 percent of the amount of its unimpaired surplus fund, except on account of demands of the nature following:

(a) Moneys deposited with or collected by the bank.

(b) Bills of exchange or drafts drawn against money actually on deposit to the credit of the state bank or due thereto.

(c) Liabilities to the stockholders of the state bank or trust company for dividends and reserve profits.

(d) Liabilities incurred under the provisions of the Federal Reserve Act.

(e) Liabilities incurred under the provisions of the Federal Deposit Insurance Act.

(f) Liabilities created by the endorsement of accepted bills of exchange payable abroad actually owned by the endorsing bank and discounted at home or abroad.

(g) Liabilities incurred under the provisions of s. 202 of Title II of the Federal Farm Loan Act, approved July 17, 1916, as amended by the Agricultural Credits Act of 1923.

(h) Liabilities incurred for moneys borrowed from a bank when such borrowing is made with the express written approval of the department.

(4) Unrepaid proceeds of sales of capital notes and capital debentures, as provided herein, shall be considered as a part of the aggregate amount of capital and surplus in computing loan and investment limitations and in evaluating adequacy of capital of the issuing bank.

(5) The department may promulgate reasonable rules and regulations implementing the provisions of this section or otherwise relating to the borrowing and the capital notes and capital debentures authorized by this section.

**History.**—s. 2, ch. 28016, 1953; s. 1, ch. 65-260; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1659.24 Depositories of public moneys and pledge of assets.**—

(1) Banks shall be depositories of public moneys under such regulations as may be prescribed by the department and they may also be employed as financial agents of the state and they shall perform such reasonable duties as depositories of public moneys and financial agents of the state as may be required of them. The department shall require banks so designated to give satisfactory security by the deposit of bonds of the United States, the state or political subdivisions or other satisfactory security for the safekeeping and prompt payment of the public moneys deposited with them and for the faithful performance of their duties as financial agents of the state. A bank or trust company may also pledge its assets to:

(a) Enable it to act as agent for the sale of obliga-



tions of the United States.

(b) Secure borrowed funds.

(c) Secure deposits when the depositor is required to obtain such security by the laws of the United States or the laws of this state.

(2) Notwithstanding any rule of law, the provisions of any statute of the state, whether by general or special act of the Legislature, or the provisions of any law, ordinance, rule, or regulation of the state or any political subdivision thereof or of any municipality, commission, board or body, whether corporate or otherwise, created by or pursuant to the provisions of the Constitution or any statute of the state, or of any of the officers of any thereof requiring security for deposits of funds in the form of surety bond, or in any other form, security for such deposits shall not be required to the extent that such deposits are insured under the provisions of the Federal Deposit Insurance Act, as amended, or any amendments thereto.

(3) Any notes, bonds, or other securities, other than shares of stock in which a state bank is authorized by applicable law or regulation to invest any of its funds shall be accepted as satisfactory security for the deposit of funds, for the safekeeping and prompt payment of moneys deposited, and for the faithful performance of duties as financial agents, whether such moneys so deposited be funds of, or under the control of, the state or any political subdivision thereof, any municipality, or of any district, commission, board, or body, whether corporate or otherwise, created by or pursuant to the provisions of the constitution or any statute of the state, or of any officer of any of the foregoing. The provisions of this subsection shall be cumulative and shall not be subject to the restrictions or the provisions of any other statute, regulation, or ordinance relating to the type, characteristics, or form of securities acceptable or required in connection with deposits of any public funds or the qualification of depositories therefor.

**History.**—s. 2, ch. 28016, 1953; ss. 12, 35, ch. 69-106; ss. 1, 2, ch. 69-185; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

cf.—s. 659.21 Security of deposits.

**659.25 Rights of minority stockholders.**—No bank or trust company and no director, officer, or employee thereof shall permit any stockholder, other than a qualified director, officer, or employee thereof, to have access to, or to examine or inspect, any of the books or records of such bank or trust company, other than its general statement book showing its general assets and liabilities and a list of shareholders as provided in s. 658.10(5).

**History.**—s. 2, ch. 28016, 1953; s. 3, ch. 76-168; s. 3, ch. 77-94; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**659.27 Transactions outside of regular banking hours or on holidays.**—No other law shall affect the validity of, or render void or voidable, the acceptance of deposits, the payment, certification, or acceptance of a check or other negotiable instrument, or any other transaction by a bank or trust company because done or performed on any holiday,

or half-holiday, or during any time other than regular banking hours; provided that nothing herein shall be construed to compel any bank or trust company which by law or custom closes at its usual designated time on any Saturday or for the whole, or any part of any legal holiday, to keep open for the transaction of business, or to perform any of the acts or transactions aforesaid on any Saturday after such hour, or on any legal holiday, except at its own option.

**History.**—s. 2, ch. 28016, 1953; s. 2, ch. 71-160; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**659.271 Permissive legal holidays; Wednesdays, Thursdays, or Saturdays.**—

(1) Any bank or trust company lawfully doing business in the state may be closed on any one or more Wednesdays, Thursdays, or Saturdays upon the adoption of a resolution to such effect by a majority vote of the board of directors, or the board of trustees thereof. Any one or more of such Wednesdays, Thursdays, or Saturdays shall with respect to any such bank or trust company, which shall be closed thereon in accordance with the provisions of this section, constitute a holiday for all purposes whatsoever, as regards the time payable, the presenting for payment, or acceptance, and of the protesting and giving notice of a protest and notice of dishonor of bills of exchange, bank checks and promissory notes drawn on and payable at such bank or trust company, so closed and any other banking business of whatsoever character. All such bills of exchange, checks and notes otherwise presentable for acceptance or payment at any such bank on any Wednesdays, Thursdays or Saturdays when such bank shall in accordance with the provisions hereof be closed, shall be deemed to be payable and presentable for acceptance or payment on the next succeeding business day.

(2) For the purpose of this section the term "bank" shall include any banking organization as defined in the banking law whether chartered under state or federal statutes, any national bank or federal reserve bank. The term "trust company" shall mean any company authorized by federal or state law to carry on a trust business as defined in the statutes of the state.

(3) Whenever any legal holiday shall fall upon a Wednesday, Thursday, or Saturday the next following day which, except for the provisions of this subsection, would otherwise be a business day shall, with respect to any bank or trust company which shall be closed on any one or more Wednesdays, Thursdays, or Saturdays, in accordance with the provisions of subsection (1), be deemed a legal holiday for all and any of the purposes and business mentioned in subsection (1); provided, however, that any such bank or trust company may elect to treat any such next following business day as a business day and open its doors for the transaction of its general banking business; and provided further that any such bank or trust company may, on any day which by the provisions hereof is deemed and declared to be a legal holiday, open its doors or facilities for the transaction or conduct of a limited banking business by the operation of one or more, but less than all, its

departments, sections, or functions, and at the election of such bank or trust company, the limited business transacted or conducted on such day shall be deemed for all purposes as transacted or conducted on the next following business day.

**History.**—ss. 1, 2, ch. 29847, 1955; s. 1, ch. 57-394; s. 1, ch. 65-36; s. 2, ch. 71-160; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1659.272 Closing during emergencies and other special days.—**

(1) **DEFINITIONS.**—As used in this section, unless the context otherwise requires:

(a) "Bank" includes commercial banks, savings banks, industrial savings banks, trust companies, any agency of a foreign banking organization authorized by law to conduct its business in the state, any person or association of persons authorized by law to carry on the business of banking in the state, and, to the extent that the provisions hereof are not inconsistent with, and do not infringe upon, paramount federal law, national banks.

(b) "Commissioner" means the officer of this state designated by law to exercise supervision over banks chartered by this state, and any other person lawfully exercising such powers, whether as a deputy to such officer, or as the head of the department of the state designated by law to exercise supervision over banks chartered by this state or his deputy, or as a division director or bureau chief or section administrator of or within such department, or otherwise.

(c) "Emergency" means any condition or occurrence, actual or threatened, which may interfere physically with the conduct of normal business operations of a bank or of one or more or all of the departments, sections, functions, offices or facilities of a bank, or which poses an imminent or existing threat to the safety or security of persons or property, or both. Without limiting the generality of the foregoing, an emergency may exist, arise, or be imminent as the result of any one or more, actual or threatened, of the following: fire; flood; earthquake; tornadoes; hurricanes; wind, rain or other storms; labor disputes and strikes; power failures; transportation failures; interruption of communication facilities; shortages of fuel, food, transportation, or labor; robbery or burglary or attempted robbery or burglary; actual or threatened enemy attacks; epidemics or other catastrophes; explosions; and riots, civil commotions, and other acts of lawlessness or violence, actual or threatened.

(d) "Office" means any place at which a bank transacts its business or conducts operations relating to its business. However, this section shall not be deemed or construed to authorize a bank to conduct its banking business at any place or places not otherwise authorized or permitted by law.

(e) "Officers" means the person or persons designated by the board of directors, board of trustees, or other governing body of a bank to act for the bank in carrying out the provisions of this section or, in the absence of any such designation or in the absence of the officers so designated, the president or any other officer currently in charge of the bank or of the office or offices in question.

(f) The authorizations herein provided for a bank "to close" in case of an emergency shall mean and include the authority not to open on any business or banking day and, if having opened, to close and suspend business.

(2) **POWERS OF COMMISSIONER.**—Whenever the commissioner is of the opinion that an emergency exists, or is impending, in this state or in any part of this state, he may, by proclamation, authorize banks located in the affected area or areas to close or to close any or all the departments, sections, functions, offices, or facilities thereof. In addition, if the commissioner is of the opinion that an emergency exists, or is impending, which affects, or may affect, a particular bank or banks, or one or more particular departments, sections, functions, offices, or facilities thereof, but not banks located in the area generally, he may authorize the particular bank or banks to close or to close one or more of the departments, sections, functions, offices or facilities thereof. The bank or banks affected by any such proclamation or authorization may close in accordance therewith. Such banks and such of the departments, sections, functions, offices or facilities thereof so closed may remain closed until the commissioner proclaims that the emergency has ended, or until such earlier time as the officers of the bank determine that the bank or any of its departments, sections, functions, offices, or facilities, theretofore closed because of the emergency, should reopen, and, in either event, for such further time thereafter as may reasonably be required to reopen.

(3) **POWERS OF OFFICERS.**—

(a) Whenever the officers of a bank are of the opinion that an emergency exists, or is impending, which affects, or may affect, the bank or one or more or all of its departments, sections, functions, offices, or facilities, they shall have the authority, in the reasonable exercise of their discretion, to close the bank or any one or more or all of the departments, sections, functions, offices or facilities thereof on any business or banking day or days during the continuation of such emergency, even if the commissioner has not issued and does not issue a proclamation of emergency. The office or offices so closed may remain closed until such time as the officers determine that the emergency has ended and for such further time thereafter as may reasonably be required to reopen. However, in no case shall such bank or any department, section, function, office, or facility thereof remain closed pursuant to the provisions of this paragraph for more than 48 consecutive hours, excluding other legal holidays, without requesting the approval of the commissioner.

(b) The officers of a bank may close the bank or any one or more or all of the bank's departments, sections, functions, offices, or facilities on any day or days designated, by proclamation of the President of the United States or the governor of this state, as a day or days of mourning, rejoicing, or other special observance.

(4) **NOTICE TO BE GIVEN.**—

(a) A bank chartered under the laws of this state closing or closing any of its departments, sections, functions, offices, or facilities, pursuant to the authority granted under subsection (3), shall give no-

tice of its action to the commissioner as promptly as conditions reasonably will permit and by any means reasonably available.

(b) A national bank closing, or closing any of its departments, sections, functions, offices, or facilities, pursuant to the authority granted by this section shall give notice of its action to the comptroller of the currency as promptly as conditions reasonably will permit and by any means reasonably available.

**(5) EFFECT OF CLOSING AND PARTIAL CLOSING.—**

(a) Any day on which a bank, or any one or more of its departments, sections, functions, offices, or facilities, is closed during all or any part of its normal banking hours pursuant to the authorization granted in this section shall be, with respect to said bank or, if not all its departments, sections, functions, offices, or facilities are closed, then with respect to any of its departments, sections, functions, offices, or facilities which are closed, a legal holiday for all purposes with respect to any business of any kind or character of the bank, or of any of its departments, sections, functions, offices, or facilities, so closed, including, but without limiting the generality of the foregoing, matters relating to the time payable, the presenting for payment, or acceptance, and the protesting and giving notice of protest and notice of dishonor of bills of exchange, bank checks, promissory notes, and other items drawn on or payable at such bank, and any other banking business of any kind or character. No liability or loss of rights of any kind on the part of any bank or director, officer, or employee thereof shall accrue or result by virtue of any closing authorized by this section.

(b) On any day which by the provisions of this section is deemed or declared to be a legal holiday with respect to any bank or banks or office or offices thereof, the officers thereof may, in the exercise of their discretion, cause such bank or any office thereof to open its doors or facilities for the transaction or conduct of a limited business by the operation of one or more, but less than all, of its departments, sections, offices, functions, or facilities. On any day when, pursuant to the provisions of this section, less than all the departments, sections, functions, offices, or facilities are open, at the election of such bank the limited business transacted or conducted on such day shall be deemed for all purposes as transacted or conducted on the next following business day which is not deemed or declared as a legal holiday pursuant to the provisions of this section or of any other provision of law.

**(6) PROVISIONS CUMULATIVE.—**The provisions of this section shall be construed and applied as being in addition to, and not in substitution for or limitation of, any other law of this state or of the United States authorizing the closing of a bank or excusing the delay by a bank in the performance of its duties and obligations because of emergencies or conditions beyond the bank's control, or otherwise.

**History.**—s. 1, ch. 71-160; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior

to that date.

**1659.28 Deposit of minors.—**Bank or trust company deposits by a minor or made in his name, other than by a court-appointed guardian, may be withdrawn by the minor in the absence of an agreement to the contrary made between the bank and the depositor at the time the account is opened, and in case of any such agreement, such moneys, until the minor's disabilities are removed, may be withdrawn by the person or persons designated in such agreement.

**History.**—s. 2, ch. 28016, 1953; s. 1, ch. 29939, 1955; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1659.29 Deposits in two or more names.—**Bank or trust company deposits, or any part thereof, or any interest therein made in the names of two or more persons, payable to either, or payable to either or the survivor, and deposits made to an account standing in the names of two or more persons payable as hereinabove-mentioned, may be paid to, or pursuant to the order of, either or any of said persons or to, or pursuant to the order of, the guardian of the property of any such person who is incompetent, whether the other or others be living or not and whether the other or others be competent or not; and the check or other order for payment of any such person, or the receipt or acquittance of the person so paid, shall be a valid and sufficient release and discharge to the bank or trust company for any payment so made.

**History.**—s. 2, ch. 28016, 1953; s. 2, ch. 29939, 1955; s. 1, ch. 63-472; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1659.291 Deposits and accounts in two or more names; presumption as to vesting on death.—**

(1) Unless otherwise expressly provided in the signature contract card or other similar instrument delivered to and accepted by a bank in connection with the opening or maintenance of an account, including a certificate of deposit, in the names of two or more persons, whether minor or adult, payable to or on the order of one or more of them or the surviving account holder or holders, all such persons and each person depositing funds in any such account shall be presumed to have intended that upon the death of any such person all rights, title, interest and claim in, to, and in respect of, said deposits and account and the additions thereto, and the obligation of the bank created thereby, less all proper setoffs and charges in favor of the bank, shall vest in the surviving account holder or holders.

(2) The presumption herein created may be overcome only by proof of fraud or undue influence or clear and convincing proof of a contrary intent. In the absence of such proof, all rights, title, interest and claims in, to, and in respect of, said deposits and account and the additions thereto, and the obligation of the bank created thereby, less all proper setoffs and charges in favor of the bank against any one or more of such persons, shall, upon the death of any such person, vest in the surviving account holder or holders, notwithstanding the absence of proof of any



donative intent or delivery, possession, dominion, control, or acceptance on the part of any person, and notwithstanding the provisions hereof may constitute or cause a vesting or disposition of property or rights or interests therein, testamentary in nature, which, except for the provisions of this section, would or might otherwise be void or voidable.

(3) Nothing herein contained shall abridge, impair, or affect the validity, effectiveness, or operation of any of the provisions of ss. 659.29 and 674.405 or the rights of banks to make payments as therein provided.

**History.**—s. 1, ch. 71-205; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 256, ch. 79-400.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

#### 659.292 Convenience accounts.—

(1) "Convenience account" means a deposit account, other than a certificate of deposit, in the name of one individual (principal), in which one or more other individuals have been designated as agent with the right to make deposits to and to withdraw funds from or draw checks on such account. The designation of agents, the substitution or removal of agents, or any other change in the contractual terms or provisions governing a convenience account may be made only by the principal. Except as otherwise provided in this section, the agency relationship created under this account shall not be affected by the subsequent death or incompetence of the principal.

(2) All rights, interest, and claims in, to, and in respect of, said deposits and convenience account and the additions thereto shall be that of the principal only.

(3) Any balance standing to the credit of a convenience account shall be paid to the guardian of the property of the principal, to any person designated in a court order entered pursuant to s. 735.206, to any person designated by letter or other writing as authorized by s. 735.301, or to the personal representative of the deceased principal's estate, upon presentation of effective written notice and, if applicable, proof of judicial appointment of such guardian or personal representative by a court of competent jurisdiction. No such court order or letter, written notice, or proof of judicial appointment shall be effective until it is served upon and received by an officer of the bank at the banking house during regular banking hours and in such time and in such manner as to afford the bank a reasonable opportunity to act on it prior to the happening of any of the events described in s. 674.303. No other notice, knowledge, or any other information shown to have been available to a bank shall affect its right to the protection provided in this section.

(4) Payment by a bank pursuant to this section shall be a valid and sufficient release and discharge to the bank from all claims for payments so paid.

(5) Without qualifying any other right to setoff or lien, and subject to any contractual provision, if the principal is indebted to the bank, the bank has a right to setoff against the account.

**History.**—s. 1, ch. 77-160; s. 1, ch. 79-22.

**659.30 Deposits in trust.**—Bank or trust company deposits made by any person describing himself and making such deposit as trustee for another, and no other or further notice of the existence and terms of a legal and valid trust than such description shall have been given in writing to such bank, in the event of the death of the person so described as trustee, such deposit, or any part thereof, together with the dividends or interest thereon may be paid to the person for whom the deposit was thus stated to have been made.

**History.**—s. 2, ch. 28016, 1953; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

#### 659.35 Limitations; statements as correct.—

(1) Unless written objection thereto shall have been theretofore delivered by the depositor to the bank, a statement of account rendered by any bank or trust company in this state to a depositor, accompanied by vouchers which are the basis of debit entries in such account, shall, after the expiration of 3 years from the date rendered, be conclusively presumed to be correct and the depositor shall thereafter be barred from questioning same.

(2) In the absence of written contract between a bank and a depositor providing otherwise, a statement of account of a depositor, with accompanying vouchers, shall be deemed to have been rendered to the depositor within the meaning of this section when prepared and lodged by the bank at its statement window or other customary place for delivery to the depositor. Any such statement and vouchers, either or both, which are not demanded by the depositor within 3 years may be destroyed by the bank without accountability or liability therefor to anyone.

(3) Nothing herein contained shall be construed to relieve a depositor from any duty or obligation imposed by law or by contract heretofore or hereafter made to examine such account and vouchers and to report any errors or irregularities within a shorter period of time than herein mentioned, nor from the legal consequences of the depositor's failure to perform any such duty or obligation.

**History.**—s. 2, ch. 28016, 1953; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**659.36 Issuance of postdated checks.**—It shall be the duty of the person drawing a postdated check to notify, in writing, the bank or trust company upon which such check is drawn, giving a complete description thereof, including the name of the payee, the date, the number and amount thereof, otherwise the bank or trust company shall not be liable for erroneously paying such check.

**History.**—s. 2, ch. 28016, 1953; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**659.38 Adverse claim to bank or trust company deposit.**—Notice to any bank or trust company of an adverse claim to a deposit standing on its books to the credit of any person shall not be effectual to cause said bank or trust company to recognize said

adverse claimant unless said adverse claimant shall also either:

(1) Procure a restraining order, injunction or other appropriate process against said bank or trust company from a court in a cause therein instituted by him wherein the person to whose credit the deposit stands is made a party and served with process, or

(2) Execute to said bank or trust company in form and with sureties acceptable to it, a bond, indemnifying said bank or trust company from any and all liability, loss, damage, costs and expenses, for and on account of the payment of such adverse claim or the dishonor of the check or other order of the person to whose credit the deposit stands on the books of said bank or trust company.

**History.**—s. 2, ch. 28016, 1953; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

#### **659.41 Transmitting money; foreign exchange.—**

(1) A bank may accept money for transmission and may transmit money.

(2) A bank may buy and sell foreign exchange to the extent necessary to meet the needs of customers.

**History.**—s. 2, ch. 28016, 1953; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**659.411 Exchange rates.**—Whenever a check or checks are forwarded or presented to a bank for a payment, except when presented by the payee in person, the paying bank or remitting bank may pay or remit the same, at its option, either in money or in exchange drawn on its reserve agent or agents in the City of New York or in any reserve city within the Sixth Federal Reserve District; provided, however, no bank or trust company organized under the laws of this state shall settle any check drawn on it otherwise than at par. The provisions of this section shall not apply with respect to the settlement of a check sent to such bank or trust company as a special collection item.

**History.**—s. 2, ch. 28016, 1953; s. 3, ch. 29939, 1955; s. 1, ch. 67-480; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**659.412 Exchange collection not ground for protest.**—It is unlawful for any person or notary public, or other official in this state, knowingly, to protest any check for nonpayment, when payment is declined solely on the ground that the paying bank exercises its option to collect exchange on such check, not exceeding one-eighth of 1 percent of the amount of such check, or the minimum charge of not less than 10 cents, as set forth in s. 659.411 and any person, notary public, or other official knowingly violating this section shall be responsible for all damages to all interested persons or corporations and his official bond shall be liable therefor.

**History.**—s. 2, ch. 28016, 1953; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior

to that date.

**659.42 Definitions for ss. 659.43-659.51.**—As used in ss. 659.43-659.51:

(1) "Lessee" means a person contracting with a lessor for the use of a safe-deposit box.

(2) "Lessor" means a bank or trust company, renting safe-deposit facilities.

(3) "Safe-deposit box" means a safe-deposit box, vault, or other safe-deposit receptacle maintained by a lessor and the rules relating thereto apply to property or documents kept in safekeeping in the bank's vault.

**History.**—s. 2, ch. 28016, 1953; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**659.43 Authority to engage in leasing safe-deposit facilities.**—A state bank or trust company may maintain and lease safe-deposit boxes and may accept property or documents for safekeeping if, except in the case of night depositories, it issues a receipt therefor.

**History.**—s. 2, ch. 28016, 1953; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**659.44 Access by fiduciaries.**—Where a safe-deposit box is made available by a lessor to one or more persons acting as fiduciaries, the lessor may, except as otherwise expressly provided in the lease or the writings pursuant to which such fiduciaries are acting, allow access thereto as follows:

(1) By any one or more of the persons acting as executors or administrators.

(2) By any one or more of the persons otherwise acting as fiduciaries when authorized in writing signed by all other persons so acting.

(3) By any agent authorized in writing signed by all of the persons acting as fiduciaries.

**History.**—s. 2, ch. 28016, 1953; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**659.45 Effect of lessee's death or incompetence.**—Where a lessor without knowledge of the death or of an adjudication of legal incompetence of the lessee deals with his agent pursuant to a written power of attorney signed by such lessee, the transaction binds the lessee's estate and the lessee.

**History.**—s. 2, ch. 28016, 1953; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**659.46 Search procedure on death of lessee.**—Provided satisfactory proof of the death of the lessee is presented, a lessor shall permit the person named in a court order for the purpose, or if no order has been served upon the lessor, the spouse, a parent, an adult descendant or a person named as an executor in a copy of a purported will produced by him, to open and examine the contents of a safe-deposit box leased by a decedent, or any documents delivered by a decedent for safekeeping, in the presence of an officer of the lessor; and the lessor, if so requested by such person, must deliver:

(1) Any writing purporting to be a will of the

decedent to the court having probate jurisdiction in the county wherein the bank is located.

(2) Any writing purporting to be a deed to a burial plot or to give burial instructions to the person making the request for a search; and

(3) Any document purporting to be an insurance policy on the life of the decedent to the beneficiary named therein; but no other contents shall be removed pursuant to this section.

**History.**—s. 2, ch. 28016, 1953; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**659.47 Lease to minor.**—A bank may lease a safe-deposit box to and in connection therewith deal with a minor with the same effect as if leasing to and dealing with a person of full legal capacity.

**History.**—s. 2, ch. 28016, 1953; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**659.48 Delivery of safe-deposit box contents or property held in safekeeping to personal representative.**—

(1) The lessor shall immediately deliver to a resident personal representative, upon presentation of a certified copy of his letters of authority, all property deposited with it by the decedent for safekeeping, and shall grant him access to any safe-deposit box in the decedent's name and permit him to remove from such box any part or all of the contents thereof.

(2) If a foreign personal representative of a deceased lessee has been appointed by a court of any other state, a lessor may, at its discretion, after 3 months from the issuance to such foreign personal representative of his letters of authority, deliver to such foreign personal representative all properties deposited with it for safekeeping and the contents of any safe-deposit box in the name of the decedent if at such time the lessor has not received written notice of the appointment of a personal representative in this state, and such delivery shall be a valid discharge of the lessor for all property or contents so delivered. Such foreign personal representative shall furnish the lessor with an affidavit setting forth facts showing the domicile of the deceased lessee to be other than this state, and stating that there are no unpaid creditors of the deceased lessee in this state, together with a certified copy of his letters of authority. A lessor making delivery pursuant to this subsection shall maintain in its files a receipt executed by such foreign personal representative which itemizes in detail all property so delivered.

(3) No lessor shall be liable for damages or penalty by reason of any delivery made pursuant to this section.

**History.**—s. 2, ch. 28016, 1953; s. 1, ch. 65-108; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**659.49 Access to safe-deposit boxes leased in two or more names.**—

(1) When specifically provided in the lease or rental agreement covering safe-deposit boxes heretofore or hereafter rented or leased in the names of two or more lessees, that access to said safe-deposit box shall be granted to either lessee, or to either or the

survivor, access to said safe-deposit box shall be granted to:

(a) Either or any of said lessees, regardless of whether or not the other lessee or lessees or any of them be living or be competent, or

(b) The executor or administrator of the estate of either or any of said lessees who is deceased, or the guardian of the property of either or any of said lessees who is incompetent, and in either such case, the provisions of s. 659.44, shall apply, and the signature on the safe-deposit entry or access record (or the receipt or acquittance, in the case of property or documents otherwise held for safekeeping) shall be a valid and sufficient release and discharge to the lessor for granting access to such safe-deposit box, or for the delivery of such property or documents otherwise held for safekeeping.

(2) No lessor shall be held liable for damages or penalty by reason of any access granted or delivery made pursuant to this section.

**History.**—s. 2, ch. 28016, 1953; s. 1, ch. 63-110; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**659.50 Adverse claims to contents of safe-deposit box.**—

(1) An adverse claim to the contents of a safe-deposit box, or to property held in safekeeping, is not sufficient to require the lessor to deny access to its lessee unless:

(a) The lessor is directed to do so by a court order issued in an action in which the lessee is served with process and named as a party by a name which identifies him with the name in which the safe-deposit box is leased or the property held; or

(b) The safe-deposit box is leased or the property is held in the name of a lessee with the addition of words indicating that the contents or property are held in a fiduciary capacity, and the adverse claim is supported by a written statement of facts disclosing that it is made by, or on behalf of, a beneficiary and that there is reason to know that the fiduciary will misappropriate the trust property.

(2) A claim is also an adverse claim where one of several lessees claims, contrary to the terms of the lease, an exclusive right of access, or where one or more persons claim a right of access as agents or officers of a lessee to the exclusion of others as agents or officers, or where it is claimed that a lessee is the same person as one using another name.

**History.**—s. 2, ch. 28016, 1953; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**659.51 Special remedies for nonpayment of rent.**—

(1) If the rental due on a safe-deposit box has not been paid for 6 months, the lessor may send a notice by registered mail to the last known address of the lessee stating that the safe-deposit box will be opened and its contents stored at the expense of the lessee unless payment of the rental is made within 30 days. If the rental is not paid within 30 days from the mailing of the notice, the box may be opened in the presence of an officer of the lessor and of a notary public who is not a director, officer, employee or stockholder of the lessor. The contents shall be



sealed in a package by a notary public who shall write on the outside the name of the lessee and the date of the opening. The notary public shall execute a certificate reciting the name of the lessee, the date of the opening of the box and a list of its contents. The certificate shall be included in the package and a copy of the certificate shall be sent by registered mail to the last-known address of the lessee. The package shall then be placed in the general vaults of the lessor at a rental not exceeding the rental previously charged for the box.

(2) If the contents of the safe-deposit box have not been claimed within 1 year of the mailing of the certificate, the lessor may send a further notice to the last known address of the lessee stating that, unless the accumulated charges are paid within 30 days, the contents of the box will be sold at public auction at a specified time and place, or, in the case of securities listed on a stock exchange, will be sold upon the exchange on or after a specified date and that unsalable items will be destroyed. The time, place and manner of sale shall also be posted conspicuously on the premises of the lessor and advertised once in a newspaper of general circulation in the community. If the articles are not claimed, they may then be sold in accordance with the notice. The balance of the proceeds, after deducting accumulated charges, including the expenses of advertising and conducting the sale, shall be deposited to the credit of the lessee in any account maintained by him, or if none, shall be deemed a deposit account with the bank or trust company operating the safe-deposit facility, and shall be identified on the books of the bank as arising from the sale of contents of a safe-deposit box.

(3) Any documents or writings of a private nature, and having little or no apparent value need not be offered for sale, but shall be retained, unless claimed by the owner, for the period specified for unclaimed contents, after which they may be destroyed.

(4) The remedies provided for in this section shall apply to rental accrued or contents of safe-deposit boxes held by banks prior to the enactment of chapter 28016, Laws of Florida, 1953, chs. 658-661.

*History.*—s. 2, ch. 28016, 1953; s. 4, ch. 29939, 1955; s. 3, ch. 76-168; s. 1, ch. 77-457.

*Note.*—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

*cf.*—s. 1.01 Defines registered mail to include certified mail with return receipt requested.

#### **§659.52 Banking business by unauthorized persons.—**

(1) No person other than banks shall:

(a) Solicit or receive deposits, issue certificates of deposit, with or without provision for interest, make payments on checks, issue or sell travelers checks, or money orders, or transact business in the way or manner of a commercial bank or trust company; provided, however, that the provisions of this paragraph prohibiting persons other than banks from issuing or selling travelers checks and money orders shall not apply to the travelers checks or money orders issued by any person expressly authorized so to do by the laws of this state providing for the licensing of a person to engage in the business of selling and issuing travelers checks and money orders. The issuance

or sale by banks of travelers checks, money orders, or other instruments for the transmission or payment of money, by or through employees or agents of the bank off the bank premises shall not be deemed a violation of or inconsistent with the provisions of s. 659.06, relating to the place of transacting business by banks.

(b) Advertise that it is accepting deposits and issuing notes or certificates therefor, or making use of any office sign at the place where its business is transacted having thereon any artificial or corporate name or other words indicating that such place or office is the place or office of a bank or trust company, that deposits are received there or payments made on checks or any other form of banking business transacted, nor shall any such persons make use of or circulate any letterheads, billheads, blank notes, blank receipts, certificates or circulars, or any written or printed paper whatever having thereon any article or corporate name or other words indicating that such business is the business of a bank, commercial bank or trust company, or transact business in such a way or manner as to lead the public to believe that its business is that of a bank or trust company, except to the extent expressly authorized by this code.

(c) Transact business under any name or title which contains the word "bank," "banker," "banking," or "trust company," or which indicates that such business is the business of a bank or trust company; provided, however, that any bank holding company registered under the United States Bank Holding Company Act of 1956, 12 United States Code, ss. 1841 through 1849, as amended, may utilize a name or title which contains the word "bank," "banker," or "banking," or any plural thereof. Any building and loan association or savings and loan association having in its corporate name words not clearly indicating the nature of its business shall state in or on all signs, letterheads, and advertising, "This is a building and loan association," or "This is a savings and loan association," or words to that effect. This paragraph, as amended by chapter 61-164, Laws of Florida, shall not apply to any corporation or business using such words as herein defined on the effective date of said chapter 61-164.

(2) This subsection shall in no wise restrict or impair any right, authority or power granted savings banks, Morris Plan or industrial banks or credit unions organized and operated under the laws of the state.

(3) Any building and loan association may issue shares and investment certificates and do such other business as may be authorized by the laws of the state relating to building and loan associations, but no building and loan association shall advertise or hold itself out to the public as a bank.

(4) Any person, firm or corporation violating the provisions of this section shall be liable for a fine in the amount of \$100 per day, or part thereof, during which such violation continues. Any court, in a proceeding brought by the commissioner or any interested person affected thereby, may enjoin any person from using words in violation of the provisions of this section, or from transacting business in violation of this code, or in such a way or manner as to

lead the public to believe that its business is that of a bank, commercial bank or trust company.

**History.**—s. 2, ch. 28016, 1953; s. 1, ch. 59-129; ss. 1, 2, ch. 61-164; s. 1, ch. 65-418; s. 1, ch. 69-227; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

#### **1659.53 Miscellaneous offenses.—**

(1) Any director, officer or employee of a bank or trust company who asks for or receives, consents or agrees to receive any commission, emolument or gratuity or any money, property or things of value for his own personal benefit, or of personal advantage for procuring or endeavoring to procure for any person any loan from such bank or trust company or the purchase or discount of any note, draft, check, bill of exchange or other obligation by such bank or trust company, or for permitting any person to overdraw any account with such bank shall be guilty of a felony.

(2) Any director, officer, agent or employee of any bank or trust company who knowingly receives or possesses himself of any of its property otherwise than in payment of a just demand, and with intent to defraud, omits to make or cause to be made a full and true entry thereof in its books and accounts, or concurs in omitting to make any material entry thereof, shall be guilty of a felony.

(3) Any director, officer, agent or employee of a bank or trust company who without authority from the board of directors of such bank, makes, draws, issues, puts forth or assigns any certificate of deposit, draft, order, bill of exchange, acceptance, note, debenture, bond or other obligation, or mortgage, judgment or decree or who makes any false entry in any book, report or statement of such bank or trust company with intent to defraud such bank, or any other person, firm, or corporation, or to deceive any officer of such bank, or the commissioner or any examiner appointed to examine the affairs of such bank or trust company, shall be guilty of a felony.

(4) It shall be unlawful for any director, officer, agent, or employee of a bank or trust company willfully to violate any of the provisions of this Banking Code.

(5) It shall be unlawful for any director, officer, agent, or employee of a state bank or trust company to deliver or disclose to the department or any of its employees any examination report, report of condition, report of income and dividends, internal audit, account, statement, or document known by him to be fraudulent or to be false as to any material matter.

(6) No bank or trust company shall purchase any real property or any contract arising from the sale of real property, or any note or bond in which any director, officer, or controlling stockholders of such bank, is personally or financially interested, directly or indirectly for his own account, for himself, or as a partner or agent of others without first obtaining the approval of the majority of the board of directors, excluding his own vote.

(7) No officer or director without prior approval of the board of a bank or trust company shall pur-

chase directly or indirectly or be interested in the purchase of any of the bank's assets.

**History.**—s. 2, ch. 28016, 1953; s. 3, ch. 76-168; s. 5, ch. 76-177; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1659.54 Unlawful service as an officer.**—It shall be unlawful for any person to serve as an officer or director of a bank who:

(1) Has been convicted of an offense constituting a violation of the banking laws, involving moral turpitude, or a breach of trust.

(2) Is indebted to the bank for more than 30 days upon a judgment that has become final.

(3) Has any interest adverse to the bank unless such interest is promptly and fully disclosed in writing to the board of directors of the bank.

**History.**—s. 2, ch. 28016, 1953; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1659.55 Criminal penalties.**—Any person responsible for an act or omission expressly declared to be unlawful or a criminal offense by this code shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, or, if the act or omission was intended to defraud, of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 2, ch. 28016, 1953; s. 672, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1659.56 Injunction.**—Whenever a violation of this code is threatened or impending, and will cause substantial injury to a bank or trust company or to the depositors, creditors, or stockholders thereof, the circuit court is hereby granted jurisdiction to hear any complaint filed by the department or any interested party, and, upon proper showing, to issue an injunction restraining such violation or granting such other appropriate relief.

**History.**—s. 2, ch. 28016, 1953; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

#### **1659.561 Cease and desist orders.—**

(1) The department may issue and serve upon a bank or trust company a complaint stating charges whenever the department has reason to believe that the bank or trust company is engaging in any of the following conduct:

(a) The bank or trust company is engaging, or has engaged, in an unsafe or unsound banking practice; or

(b) The bank or trust company is violating, or has violated, any law, department rule, department order, or written agreement entered into with the department.

(2) The complaint shall contain the statement of facts and notice of opportunity for a hearing pursuant to s. 120.57.

(3) If no hearing is requested within the time allowed by s. 120.57, or if a hearing is held and the department finds that any of the charges in the complaint are true, the department may enter an order

directing the bank or trust company to cease and desist from engaging in the conduct complained of and to take corrective action.

(4) If the bank or trust company fails to respond to the complaint within the time allowed in s. 120.57, its failure constitutes a default and justifies the entry of the cease and desist order.

(5) A contested or default cease and desist order is effective when reduced to writing and served upon the bank or trust company. A consent order is effective as agreed.

(6) Whenever the department finds that conduct described in subsection (1) is likely to cause insolvency, substantial dissipation of assets or earnings of the bank or trust company, or substantial prejudice to the depositors or shareholders, it may issue an emergency cease and desist order, pursuant to s. 120.59, requiring the bank or trust company immediately to cease and desist from engaging in the conduct complained of. The emergency order is effective immediately upon service of a copy of the order on the bank or trust company and remains effective for 90 days. However, if the department begins non-emergency cease and desist proceedings under subsection (1), the emergency order remains effective until the conclusion of the proceedings under s. 120.57.

**History.**—s. 4, ch. 76-178; s. 1, ch. 77-174.

**Note.**—This section was created subsequent to the enactment of ch. 76-168, and is therefore presumed to be excluded from the blanket repeal of ch. 659 by that act.

#### **§659.562 Officer, director, and employee removal by department.—**

(1) The department may issue and serve upon any officer, director, or employee of a bank or trust company, and upon the bank or trust company involved, a complaint stating charges whenever the department has reason to believe that the officer, director, or employee is engaging, or has engaged, in any of the following conduct:

(a) Violating any law or department rule or order;

(b) Engaging or participating in any unsafe or unsound banking practice; or

(c) Performing any act of commission or omission or practice which is a breach of trust or breach of fiduciary duty.

(2) The complaint shall contain the statement of facts and notice of opportunity for a hearing pursuant to s. 120.57.

(3) If no hearing is requested within the time allowed by s. 120.57, or if a hearing is held and the department finds that any of the charges in the complaint are true, and if the department finds that the bank or trust company has suffered or will probably suffer substantial loss or other substantial damage or that the interests of its depositors or shareholders could be seriously prejudiced, it may enter an order removing the officer, director, or employee.

(4) If the officer, director, or employee fails to respond to the complaint within the time allowed in s. 120.57, his failure constitutes a default and justifies the entry of the order removing him from office.

(5) A contested or default removal order is effective when reduced to writing and served upon the bank or trust company and the officer, director, or employee. A consent order is effective as agreed.

(6) Any officer or director removed from office

pursuant to this section shall not be eligible for reelection to such position or to any official position in any bank or trust company in this state for a period not exceeding 3 years from the date of such removal.

(7) Whenever any officer, director, employee, or other person participating in the conduct of the affairs of a bank or trust company is charged with a felony in a state or federal court, involving violation of s. 659.53 or s. 659.54, the department may immediately suspend him from office or prohibit him from any further participation in the bank or trust company's affairs. The order is effective upon service of the order on the bank or trust company and the person charged, and it remains in effect until the criminal charge is disposed of or until modified by the department. If a judgment of conviction is entered, the department may order that the suspension or prohibition be permanent. A finding of not guilty or other disposition of the charge does not preclude the department from pursuing administrative or civil remedies.

**History.**—s. 4, ch. 76-178; s. 1, ch. 77-174.

**Note.**—This section was created subsequent to the enactment of ch. 76-168, and is therefore presumed to be excluded from the blanket repeal of ch. 659 by that act.

#### **§659.563 Certain hearings to be public, method of service.—**

(1) All hearings under ss. 659.561 and 659.562 shall be public, unless the department, in its discretion, after considering the views of the party afforded the hearing, determines that a private hearing is necessary to protect the public interest; the depositors, creditors, or stockholders of the bank; or the solvency of the bank. Any emergency order entered under s. 659.561 shall be confidential until it is made permanent.

(2) All administrative proceedings under ss. 659.561 and 659.562 shall be conducted in accordance with chapter 120. Any service required or authorized to be made by the department under those sections may be made by certified mail, return receipt requested, delivered to addressee only; by personal delivery; or in accordance with chapter 48. The service provided for herein shall be effective from date of delivery.

**History.**—s. 4, ch. 76-178.

**Note.**—This section was created subsequent to the enactment of ch. 76-168, and is therefore presumed to be excluded from the blanket repeal of ch. 659 by that act.

**§659.564 Administrative fines.**—The department may impose an administrative fine not to exceed \$1,000 against any person found to have violated any cease and desist order of the department. No fine may be imposed under these provisions until such person is notified in writing of the nature of the violation and has been afforded a reasonable period of time, as set forth in the notice, to correct the violation and has failed to do so. All fines collected under this section shall be paid to the department's Bank and Trust Company Trust Fund.

**History.**—s. 4, ch. 76-178.

**Note.**—This section was created subsequent to the enactment of ch. 76-168, and is therefore presumed to be excluded from the blanket repeal of ch. 659 by that act.



by that act.

**659.565 Investigations; subpoenas, hearings, witnesses.—**

(1)(a) The department may make investigations within or outside of this state as it deems necessary to determine whether a person has engaged or is about to engage in an unlicensed banking act or practice.

(b) The department may require or permit a person to file a statement in writing, under oath or otherwise as the department determines, as to all the facts and circumstances concerning the matter to be investigated.

(2) In the course of conducting an investigation, the department may gather evidence in the matter and shall have, but shall not be limited to, the following powers:

- (a) Administering oaths;
- (b) Examining witnesses; and
- (c) Issuing subpoenas.

(3) Subpoenas for witnesses whose evidence is deemed material to any investigation made pursuant to paragraph (1)(a) may be issued by the department under the seal of the department, or by any county court judge or clerk of the circuit court or county court, commanding such witnesses to be or appear before the department at a time and place to be therein named and to bring such books, records, and documents for inspection; and such subpoenas may be served by an authorized representative of the department.

(4)(a) In the event of substantial noncompliance with a subpoena issued by the department pursuant to this section, the department may apply to the circuit court of the county in which the person subpoenaed resides or has its principal place of business for an order requiring the subpoenaed person to appear and produce such documents or things that were specified in such subpoena.

(b) The application shall show that the subpoena has been properly served and issued pursuant to the powers granted in this section and shall show actions or inactions constituting substantial noncompliance.

(c) A copy of the application shall be served upon the person subpoenaed by a person authorized by the department, who shall file an affidavit showing the time, place, and date of service.

(d) A hearing on the application may be heard 7 days after service, and any person showing that he will be substantially affected by the investigation may appear and object to the subpoena. The court may grant or deny the application, in whole or part, under such conditions as it deems appropriate.

(e) Subject to the applicant's fifth amendment rights, failure to comply with an order granting an application for enforcement of a subpoena shall be a contempt of court.

(5) Witnesses shall be entitled to the same fees and mileage as they may be entitled by law for attending as witnesses in the circuit court, except when such examination or investigation is held at the place of business or residence of the witness.

(6) In addition to the provisions of s. 658.10, the records and material compiled by the department in an investigation under this chapter are confidential until such investigation is complete. Such records

and material shall remain confidential until the department's investigation is complete or, if the department has submitted the material or any part of it to any law enforcement agency for further investigation or for the filing of a criminal prosecution, until that agency has completed its investigation or prosecution.

*History.*—s. 6, ch. 79-144.

**1659.57 Transaction of business by out-of-state banking corporations; exempt transactions in Banking Code.—**

(1) Nothing in this code shall be construed to prohibit a foreign bank from:

(a) Contracting in this state with any person to acquire from such person a part or the entire interest in a loan which such person proposes to make, has heretofore made or hereafter makes, together with a like interest in any security instrument covering real or personal property in the state proposed to be given or hereafter or heretofore given to such person to secure or evidence such loan;

(b) Entering into mortgage servicing contracts with persons authorized to transact business in Florida, and enforcing in this state the obligations heretofore or hereafter acquired by it in the transaction of business outside of this state or in the transaction of any business authorized by this section;

(c) Acquiring, holding, leasing, mortgaging, contracting with respect to, or otherwise, protecting, managing, or conveying property in this state which has heretofore or may hereafter be assigned, transferred, mortgaged or conveyed to it as security for, or in whole or in part in satisfaction of, a loan or loans made by it or obligations acquired by it in the transaction of any business authorized by this section.

(2) No such foreign bank shall be deemed to be transacting business in this state, or be required to qualify so to do, solely by reason of the performance of any of the acts or business hereinbefore authorized in this section. Nothing in this section shall be construed as authorizing or permitting any foreign bank to maintain an office within the state.

*History.*—s. 2, ch. 28016, 1953; s. 1, ch. 71-336; s. 3, ch. 76-168; s. 1, ch. 77-457.

*Note.*—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1659.58 Fictitious or fraudulent assets; past due paper.—**

(1) Any bank or trust company shall not carry as an asset of said company any note, obligation or security which it does not own absolutely or which is known by the bank or trust company to be fraudulent or otherwise worthless, and no bank or trust company shall carry as an asset in any report to the department or any published report any note or other obligation which is past due or upon which no interest has been paid for 1 year or longer, provided, however, that such past due paper may be carried to the extent of the reasonable value of any lien or other collateral given to secure such obligation; and provided further that if suit has been filed to enforce the collection of any such past due obligation, it may be carried at its reasonable value as determined by the board of directors. The department may after investigation order the revision of any value so determined hereunder.

(2) Any officer of a bank or trust company who knowingly places among the assets of said bank or trust company any note, obligation or security which it does not own or which to his knowledge is fraudulent or otherwise worthless or who represents to the department or an examiner that any note, obligation or security carried or an asset of such bank or trust company is the property of the bank and is genuine when it is known to such officer that such representation is false or that such note, obligation or security is fraudulent or otherwise worthless, such officer shall be guilty of a felony.

**History.**—s. 2, ch. 28016, 1953; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**§659.59 Short title.**—This law may be cited as the "Florida Bank Service Corporation Act."

**History.**—s. 1, ch. 63-113; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**§659.60 Definitions.**—As used in ss. 659.59-659.66:

(1) "Bank" means any person, whether subject to the laws of this or any other jurisdiction, authorized to engage in the business of banking, or authorized to engage in the trust business, including the trust department of a bank.

(2) "Bank services" means services such as check and deposit sorting and posting, computation and posting of interest and other credits and charges, preparation and mailing of checks, statements, notices, and similar items, or any other clerical, book-keeping, accounting, statistical, or similar functions performed for a bank.

(3) "Bank service corporation" means a corporation organized to perform bank services for two or more banks, each of which owns part of the capital stock of such corporation.

(4) The words and terms "department," "person," and "trust business," shall have the meaning ascribed to said words and terms, respectively, in s. 658.02.

(5) "Invest" includes any advance of funds to a bank service corporation, whether by the purchase of stock, the making of a loan, or otherwise, except a payment for rent earned, goods sold and delivered, or services rendered prior to the making of such payment.

(6) "State bank" means a bank, as defined in subsection (1), chartered by this state.

**History.**—s. 2, ch. 63-113; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**§659.61 Banks authorized to invest.**—

(1) No limitation or prohibition otherwise imposed by any provision of the laws of this state exclusively relating to banks or any kind or class of banks shall prevent any two or more banks from investing not more than 10 percent of the paid-in and unimpaired capital and unimpaired surplus of each of them in a bank service corporation; and each of any two or more banks may invest not more than 10 percent of its paid-in and unimpaired capital and

unimpaired surplus in a bank service corporation.

(2) If stock in a bank service corporation has been held by two or more banks, and one or more banks ceases to utilize the services of the bank service corporation and ceases to hold stock in it, and leaves only one bank as the sole stockholding bank, the bank service corporation may nevertheless continue to function as such and the sole remaining stockholding bank may continue to hold stock in it.

**History.**—s. 2, ch. 63-113; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**§659.62 Banks authorized to use services.**—No limitation or prohibition otherwise imposed by any provision of the laws of this state, other than ss. 659.59-659.66, exclusively relating to banks or any kind or class of banks or exclusively relating to persons performing services for banks or any kind or class of banks, shall prevent:

(1) Any bank from causing bank services to be performed for itself at or away from its banking house or on or off its premises; and a bank may cause to be performed, by contract or otherwise, any bank services for itself, either at or away from its banking house or on or off its premises;

(2) Any bank from providing space and facilities, or either, in its banking house or on its premises for a bank service corporation or for a person performing bank services for such bank.

**History.**—s. 3, ch. 63-113; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**§659.63 Requirement to furnish services.**—Whenever a state bank, referred to in this section as an applying bank, applies for a type of bank services for itself from a bank service corporation which supplies the same type of bank services to another bank, and the applying bank is competitive with any bank, referred to in this section as a stockholding bank, which holds stock in such corporation, the bank service corporation must offer to supply such services by either:

(1) Issuing stock to the applying bank and furnishing bank services to it on the same basis as to the other banks holding stock in the bank service corporation, or

(2) Furnishing bank services to the applying bank at rates no higher than necessary to fairly reflect the cost of such services, including the reasonable cost of the capital provided to the bank service corporation by its stockholders, at the option of the bank service corporation, unless comparable services at competitive overall cost are available to the applying bank from another source, or unless the furnishing of the services sought by the applying bank would be beyond the practical capacity of the bank service corporation. In any action or proceeding to enforce the duty imposed by this section, or for damages for the breach thereof, the burden shall be upon the bank service corporation to show such availability.

**History.**—s. 4, ch. 63-113; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

to that date.

**1659.64 Prohibited activities.**—No bank service corporation may engage in any activity other than the performance of bank services for banks and the furnishing of goods and materials incidental thereto.

**History.**—s. 5, ch. 63-113; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1659.65 Retention of supervision by department.**—No state bank may cause to be performed, by contract or otherwise, any bank services for itself, whether at or away from its banking house or on or off its premises, unless assurances satisfactory to the department are furnished to the department by both the state bank and the person performing such services that the performance thereof will be subject to regulation and examination by the department to the same extent as if such services were being performed by the bank itself on its own premises.

**History.**—s. 6, ch. 63-113; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1659.66 Legislative intent.**—In enacting ss. 659.59-659.66, the Legislature of Florida takes cognizance of the enactment by the Congress of the United States of Public Law 87-856, 87th Congress, H.R. 8874, approved October 23, 1962 (76 Stat. 1132), entitled "An Act to authorize certain banks to invest in corporations whose purpose is to provide clerical services for them, and for other purposes," and the legislature takes cognizance of the legislative history of said Act of Congress (House Report 2062, 87th Congress on H.R. 8874, July 30, 1962; Senate Report 2105, 87th Congress on H.R. 8874, September 18, 1962), and it is intended that banks in this state shall have the authority to enjoy the benefits made available by said Act of Congress; and by the enactment of ss. 659.59-659.66 it is not intended to regulate services performed for state banks such as legal services, services of independent accountants, public relations and advertising, armored car and other transportation services, guard services, mechanical services in connection with the operation of equipment in buildings, or other services of similar nature, the bank services to which the regulatory requirements of ss. 659.59-659.66 relate being intended to be limited to banking functions as such.

**History.**—s. 7, ch. 63-113; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**659.67 International banking corporations and agencies.**—

(1) **DEFINITIONS.**—As used in this section:

(a) "Department" means the Department of Banking and Finance.

(b) "International banking corporation" means a banking corporation organized and licensed under the laws of some foreign country or a political subdivision thereof, other than the United States of America or any of the states within the United States of America.

(c) "International bank agency" means the international banking corporation with respect to all

business or activities conducted in this state or through an office located in this state.

(d) "Representative office" means the location of an international banking corporation's representative residing in the State of Florida, which exists for the purpose of acting in a liaison capacity with existing and potential customers of such international banking corporation and to generate new loans and other activities for such international banking corporation which is operating outside of the state.

(2) **APPLICATION OF CODE.**—

(a) International bank agencies shall be subject to all the provisions of the Florida Banking Code, except where it may appear, from the context or otherwise, that such provisions are clearly applicable only to banks or trust companies organized under the laws of this state or the United States. Without limiting the foregoing general provisions, it is the intent of the Legislature that the following provisions shall be applicable to such banks or agencies: ss. 659.18, 659.53, 659.54, 659.561, 659.562, 659.563, and 659.564. International bank agencies shall not have the powers conferred on domestic banks by the provisions of s. 659.06, relating to branches and facilities, s. 659.062, relating to remote financial service units, and s. 659.24, relating to deposits of public funds. The provisions of chapter 687, relating to interest and usury shall apply to all loans not subject to s. 659.18. An international bank agency shall have no greater right under, or by virtue of, this section than is granted to banks organized under the laws of this state. Legal and financial terms used herein shall be deemed to refer to equivalent terms used by the country in which the international banking corporation is organized. However, all contracts or agreements which are negotiated in this state with Florida residents shall be construed under Florida law.

(b) International bank agencies with regard to assets located within this state shall be subject specifically to the liquidation and conservation provisions of chapter 661.

(3) **PROVISIONS OF CHAPTER 607 APPLICABLE.**—Notwithstanding the definition of the term "foreign corporation" appearing in s. 607.004(2), all of the provisions of chapter 607 not in conflict with the Florida Banking Code relating to foreign corporations shall apply to all international bank agencies and representative offices doing business in this state.

(4) **REQUIREMENTS FOR CARRYING ON BANKING BUSINESS.**—

(a) No international banking corporation shall transact a banking business, or maintain in this state any office for carrying on such business, or any part thereof, unless such corporation shall have:

1. Been authorized by its charter to carry on such business and shall have complied with the laws of the country under which it is chartered.

2. Furnished to the Department of Banking and Finance such proof as to the nature and character of its business and as to its financial condition as the Department of Banking and Finance may require.

3. Filed with the Department of Banking and Finance a certified copy of that information required to be supplied to the Department of State by those



provisions of chapter 607 applicable to foreign corporations.

4. Paid to the Department of Banking and Finance the fee established in accordance with s. 658.08.

5. Received a license duly issued to it by the Department of Banking and Finance.

(b) The Department of Banking and Finance shall not issue a license to an international banking corporation unless it is chartered in a country which permits any bank having its principal place of business in the State of Florida to establish similar facilities therein or exercise similar powers.

(5) APPLICATION FOR LICENSE.—

(a) Every international banking corporation, before being licensed by the Department of Banking and Finance to act in a liaison capacity or to transact a banking business in this state, or before maintaining in this state any office to carry on such business or any part thereof, shall subscribe and acknowledge, and submit to the Department of Banking and Finance, a separate application which shall state:

1. The name of such international banking corporation.

2. The location by street and post office address and county where its business is to be transacted in this state, and the name of the person who shall be in charge of the business and affairs of such agency.

3. The place where its initial registered office will be located in this state.

4. The amount of its capital actually paid in and the amount subscribed for and unpaid.

5. The actual value of the assets of such international banking corporation, which must be at least \$25,000,000 in excess of its liabilities for the establishment of an international bank agency and \$10,000,000 in excess of its liabilities for the establishment of a representative office; and a complete and detailed statement of its financial condition as of a date within 60 days prior to the date of such application, except that the department in its discretion may, when necessary or expedient, accept such statement of financial condition as of a date within 120 days prior to the date of such application. The Department of Banking and Finance in its discretion may, when necessary or expedient, require an opinion audit or the equivalent.

(b) At the time such application is submitted to the Department of Banking and Finance, such corporation shall also submit a duly authenticated copy of its articles and an authenticated copy of its bylaws, or an equivalent thereof satisfactory to the Department of Banking and Finance, and pay an investigation and supervision fee as set forth in s. 658.08.

(c) Application shall be made on the form prescribed by the department and shall contain such information as the department may require. The department may, in its discretion, approve or disapprove the application, but it shall not approve such application unless, in its opinion, the applicant meets each and every requirement of this section and any other applicable provision of the Florida Banking Code. In the processing of applications, the time limitations under the Administrative Procedure Act shall not apply as to approval or disapproval of the application.

(6) LICENSES; PERMISSIBLE ACTIVITIES.—

(a) When the Department of Banking and Finance shall have issued a license to any international banking corporation, it may engage in the business authorized by this chapter at the office specified in such license for a period not exceeding 1 year from the date of such license or until such license is suspended or revoked. Said corporation shall have only one place of doing business as specified. No such license shall be transferable or assignable. Every such license shall be, at all times, conspicuously displayed in the place of business specified therein.

(b) Such license may be renewed annually upon application to the Department of Banking and Finance upon forms available for that purpose, within 30 days prior to the expiration of such license. Such license may be renewed by the Department of Banking and Finance, in its discretion, upon its determination, with or without examination, that the international banking corporation is in a safe and sound condition and has complied with all requirements of law with respect to the international bank agency and that such renewal of the license will not be detrimental to the public interest and the same has been duly authorized by proper corporate action. Each renewal application shall be accompanied by an annual renewal fee in an amount equivalent to the fees set forth in s. 658.08.

(c) Such license may be suspended or revoked by the Department of Banking and Finance, with or without examination, upon its determination that the international banking corporation does not meet all requirements for original licensing or any of the criteria established by paragraph (b) for renewal of licenses.

(d) In the event any such license shall be suspended or revoked by the Department of Banking and Finance, or the renewal thereof refused by the Department of Banking and Finance, all rights and privileges of such international banking corporation to transact the business thus licensed shall forthwith cease, and such license shall be surrendered to the Department of Banking and Finance within 24 hours after the department has mailed or personally delivered written notice of such decision. Such notice may be personally delivered to any officer, director, employee, or agent of the corporation physically present in this state.

(e) An international banking corporation licensed under the terms of this act is authorized to transact only such limited business in this state as is clearly related to, and is usual in, international or foreign business and financing international commerce. No such international banking corporation shall exercise fiduciary powers or receive deposits, but it may maintain for the account of others credit balances necessarily incidental to, or arising out of, the exercise of its lawful powers.

(f) Notwithstanding any other provision of this section to the contrary, an international banking corporation licensed under this section as an international bank agency may, if authorized by rules of the department, make any loan or investment or exercise any power which it could make or exercise if it were operating in this state as a federal agency under the federal International Banking Act of

1978. The department shall, when promulgating such rules, consider the public interest and convenience and the need to maintain a sound and competitive state banking system. Unless otherwise provided by statute, an international bank agency shall not exercise any powers that a federal agency is not authorized to exercise.

(g) It is the intent of this section that an international bank agency shall not be a "state branch" nor a "federal branch," as those terms are defined in the federal International Banking Act of 1978, and neither a foreign bank as defined in such federal act nor an international banking corporation shall establish or operate any such branch in this state.

(7) SECURITIES.—

(a) Each international banking corporation shall hold, in this state, currency, bonds, notes, debentures, drafts, bills of exchange or other evidence of indebtedness or other obligations payable in the United States or in United States funds or, with the prior approval of the Department of Banking and Finance, in funds freely convertible into United States funds, in an amount which shall be not less than 108 percent of the aggregate amount of liabilities of such international banking corporation, payable at or through its office in this state or as a result of the operations of the international bank agency, including acceptances, but excluding accrued expenses, and amounts due and other liabilities to other offices or branches of, and wholly owned (except for a nominal number of directors' shares) subsidiaries of, such international banking corporation. In lieu of holding such securities, the department may, by rule, permit an international bank agency to:

1. Maintain reserves similar to those required for agencies under the federal International Banking Act of 1978; or

2. Maintain other appropriate reserves, taking into consideration the nature of the business being conducted by the international bank agency.

The securities or reserves shall be held, to the extent feasible, in a state or national bank located in this state.

(b) For the purpose of this section, the Department of Banking and Finance shall value marketable securities at principal amount or market value, whichever is lower; shall have the right to determine the value of any nonmarketable bond, note, debenture, draft, bill of exchange, other evidence of indebtedness, or of any other obligation held by or owed to the international banking corporation in this state; and, in determining the amount of assets for the purpose of computing the above ratio of assets to liabilities, shall have the power to exclude any particular assets, but may give credit, subject to such rules as the Department of Banking and Finance may from time to time promulgate, to deposits and credit balances with unaffiliated banking institutions outside this state, if such deposits or credit balances are payable in United States funds or in currencies freely convertible into United States funds. Credit given for such deposits and credit balances shall not exceed in aggregate amounts such percentage, but not less than 8 percent, as the Department of Banking and Finance may from time to

time prescribe, of the aggregate amount of liabilities of such international banking corporation, determined as hereinabove provided.

(c) If, by reason of the existence, or the potential occurrence, of unusual or extraordinary circumstances, the Department of Banking and Finance deems it necessary or desirable for the maintenance of a sound financial condition, the protection of creditors and the public interest, and the maintenance of public confidence in the business of the international bank agency of the international banking corporation, it may reduce the credit balances with unaffiliated banking institutions outside this state, and it may require such international banking corporation to deposit, in accordance with such rules as the Department of Banking and Finance shall from time to time promulgate, the assets required to be held in this state pursuant to this section with such bank or trust company existing under the laws of this state as such international banking corporation may designate and the Department of Banking and Finance may approve.

(8) FINANCIAL CERTIFICATIONS; RESTRICTIONS.—

(a) Before opening an office in this state, and annually thereafter so long as a bank office is maintained in this state, an international banking corporation, licensed pursuant to this chapter, shall certify to the Department of Banking and Finance the amount of its paid-in capital, surplus, and undivided profits, each expressed in the currency of the country of its incorporation. The dollar equivalent of these amounts, as determined by the Department of Banking and Finance, shall be deemed to be the amount of its capital, surplus, and undivided profits.

(b) Purchases and discounts of bills of exchange, bonds, debentures and other obligations, and extensions of credit and acceptances by an international bank agency within this state shall be subject to the same limitations as to amount in relation to unimpaired capital and surplus and undivided profits as are applicable to banks organized under the laws of this state. With the prior approval of the department, the capital notes and capital debentures of such international banking corporation may be treated as capital in computing such limitations.

(9) REPORTS.—

(a) Every international banking corporation doing business in this state shall, at such times and in such form as the Department of Banking and Finance shall prescribe, make written reports in the English language to the Department of Banking and Finance under the oath of one of its officers, managers, or agents transacting business in this state, showing the amount of its assets and liabilities and containing such other matters as the Department of Banking and Finance shall prescribe. If any such international banking corporation shall fail to make any such report, as directed by the Department of Banking and Finance, or if any such report shall contain any false statement knowingly made, the same shall be grounds for revocation of the license of the international banking corporation.

(b) Section 658.07(1)(b) and (c) shall not apply to international banking corporations or international bank agencies.

(c) Each international banking corporation which operates an international bank agency licensed under this section shall cause to be kept, at its place of business in this state, correct and complete books and records of account of its business operations transacted by such agency, pursuant to s. 658.11. Such agencies shall also keep current copies of the charter and bylaws of the international banking corporation, relative to the operations of the agency, and minutes of the proceedings of its directors or committees relative to the agency business. Such records shall be kept pursuant to s. 658.11 and shall be made available to the department, upon request, at any time during regular business hours of the agency. Any failure to keep such records as aforesaid or any refusal to produce such records upon request by the department shall be grounds for suspension or revocation of any license issued under this section.

(10) DISSOLUTION.—In the event an international banking corporation, licensed to maintain an international bank agency in this state, is dissolved, or its authority or existence is otherwise terminated or canceled in the jurisdiction of its incorporation, a certificate of the official responsible for records of banking corporations of the jurisdiction of incorporation of such international banking corporation, attesting to the occurrence of any such event, or a certified copy of an order or decree of a court of such

jurisdiction directing the dissolution of such international banking corporation or the termination of its existence or the cancellation of its authority shall be delivered by the corporation or its surviving officers and directors to the department. The filing of the certificate, order, or decree shall have the same effect as the revocation of such international banking corporation's license as hereinabove provided.

(11) REPRESENTATIVE OFFICE LIMITATIONS.—No representative office shall conduct any banking business in this state. Each representative office shall be registered with the department, shall provide the department with such information as the department, by rule, deems necessary, and shall pay the annual fee provided in s. 658.08.

(12) RULES.—In addition to any other rulemaking authority it has under the Florida Banking Code, the department is authorized to promulgate reasonable rules which it deems advisable for the administration of international banking corporations under this section, in the interest of protecting depositors, creditors, borrowers, or the public interest, and in the interest of maintaining a sound banking system in this state. Because of the difficulty in obtaining economic data with regard to such banks, no economic impact statement shall be required in connection with said rules.

History.—s. 1, ch. 77-157; s. 1, ch. 79-145; s. 257, ch. 79-400.



## CHAPTER 660

## BANKING CODE, THIRD PART

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**660.01 Trust powers enumerated.**—Trust companies or banks heretofore or hereafter granted trust powers shall have power:

(1) To act as the fiscal or transfer agent of any state, municipality, body politic or corporation, and in such capacity to receive and disburse money.

(2) To transfer, register and countersign certificates of stock, bonds or other evidence of indebtedness, and to act as agent of any corporation, foreign or domestic, for any purpose now or hereafter required by statute or otherwise.

(3) To receive deposits of trust moneys, securities or other personal property from any person or corporation.

(4) To act as trustee under any mortgage or bond issued by any municipality, body politic or corporation, and to accept and execute any other municipal or corporate trust not inconsistent with the laws of this state.

(5) To accept trusts from and execute trusts for married women in respect to their separate equitable property, and to be their agent in the management of such property, or to transact any business in relation thereto.

(6) To act under the order or appointment of any

court of record, as guardian, receiver or trustee of the estate of any minor, and as depository of any moneys paid into court, whether for the benefit of any such minor or other person, corporation or party.

(7) To take, accept and execute any and all such legal trusts, duties and powers in regard to the holding, management and disposition of any estate, real or personal, and the rents and profits thereof, or the sale thereof, as may be granted or confided to it by any court of record, or by any person, corporation, municipal or other authority, and it shall be accountable to all parties in interest for the faithful discharge of every such trust, duty or power which it may so accept.

(8) To take, accept and execute any and all trusts and powers of whatever nature or description that may be conferred upon or intrusted or committed to it by any person or persons, or any body politic, corporation or other authority by grant, assignment, transfer, devise, bequest, or otherwise, or which may be intrusted or committed or transferred to it or vested in it by order of any court of record, or any probate court, and to receive, take and hold any property or estate, real or personal, which may be the subject of any such trust.

(9) To be appointed and accept the appointment of assignee or trustee under any assignment for the benefit of creditors of any debtor made pursuant to any statute or otherwise.

(10) To act under the order of the appointment of any court or otherwise as receiver or trustee of the estate or property of any person, firm, association or corporation.

(11) To be appointed and to accept the appointment of executor of or trustee under the last will and testament, or administrator, with or without the will annexed, of the estate of any deceased person, and to be appointed and to act as the curator or guardian of the property of any minor, habitual drunkard, or person judicially declared physically or mentally incompetent.

(12) To collect coupons on or interest upon all manner of securities when authorized so to do by the parties depositing the same.

(13) To receive and manage any sinking fund of any corporation upon such terms as may be agreed upon between said corporation and those dealing with it.

(14) Generally to execute trusts of every description and to act and serve in any and all fiduciary capacities not inconsistent with the laws of this state or of the United States.

**History.**—s. 3, ch. 28016, 1953; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**660.011 Trust agency contracts.**—Any trust company acting in a fiduciary capacity may employ any other trust company as an agent to advise or assist in the performance of its administrative duties and to render investment advice. Instead of acting personally, any trust company may employ any oth-

er trust company to perform any act of administration, whether or not discretionary, provided that the trust company serving as such agent shall observe the same standard of care as is required of the fiduciary trust company with respect to each fiduciary or other relationship affected by such agency. The establishment of such agency relationship shall neither diminish nor increase the standard by which the fiduciary trust company's performance as a fiduciary is governed. In any suit or other proceeding involving an evaluation of fiduciary performance, such agent's performance shall be deemed that of the fiduciary trust company.

**History.**—s. 1, ch. 76-37; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1660.012 Substitution of fiduciaries.**—Any trust company may agree with any other trust company to seek the transfer of fiduciary relationships between them as follows:

(1) Any trust company may, with respect to estates, trusts, or other fiduciary relationships as it and the proposed successor fiduciary shall jointly select, petition the Circuit Court of the county in which the original fiduciary is located for the substitution of the proposed successor fiduciary for the original fiduciary as to such fiduciary relationships. If a fiduciary relationship is then the subject of a pending proceeding before a state court, such petition shall be filed in such proceeding.

(2) Notice of each such petition shall, unless waived in writing, be given pursuant to the provisions of s. 731.301(1) to all cofiduciaries, to the persons entitled under the governing instrument to appoint a successor fiduciary, to all named successor fiduciaries, to all vested beneficiaries of the fiduciary relationship, and to the creator of each such relationship. All contingent beneficiaries shall be given notice pursuant to the provisions of s. 731.301(2). If, after diligent search and inquiry, the whereabouts of any person or entity to be given notice is not known, notice of each such petition in the form provided in s. 49.08 shall be published in the manner prescribed in ss. 49.10 or 49.11, as the case may be.

(3) All persons to whom notice hereunder is to be given who are not sui juris or who only receive notice by publication shall be represented by a guardian ad litem appointed by the court, unless such person has a court-appointed guardian of the property, in which case such person shall be represented by the appointed guardian. In the absence of a conflict of interest, one guardian ad litem shall be appointed to represent all such persons.

(4) All notices shall be accompanied by a copy of the petition and shall specify a date as of which objection in writing must be filed with the clerk of the court to be effective. Such date shall be at least 30 days after all notices have been given or published.

(5) If no objection by any person to whom notice under subsection (2) is to be given is filed with the Clerk of the Circuit Court by such date specified in the petition, the trust company may, ex parte, submit the petition to the court. If an objection is timely filed with the Clerk of the Circuit Court, then the trust company may, upon notice given pursuant to s. 731.301(2) to all persons or entities originally given

notice of the petition, bring the petition on for hearing. The court, after consideration of the interest of the parties, shall either grant the petition and order the proposed successor fiduciary to be substituted as fiduciary or deny the petition, in which case the original fiduciary shall remain the fiduciary. The court shall order the requested substitution unless the court determines that the requested substitution of fiduciaries would be of material detriment to the estate, trust, or other fiduciary relationship or to the beneficiaries thereof.

(6) All court costs and the fees of guardians ad litem arising in connection with any proceeding hereunder shall be paid by the petitioner, and shall not be charged to any fiduciary relationship.

(7) Within 30 days after the entry of an order of substitution of fiduciaries hereunder, the original fiduciary shall file a final account with the court and shall send a copy thereof to each person or entity to whom notice under subsection (2) is to be given, together with a notice of filing thereof. Objections to a final account must be filed within 60 days after the final account is filed with the court. Objections shall be tried and determined by the court upon the application of any person or entity to whom notice under subsection (2) is to be given. After the time for filing objections has expired, or at the hearing on any objections, the court may enter an appropriate order on such final account and on all unapproved annual or periodic accounts previously filed. If consents to a final account are filed with the court by all persons or entities to whom a copy of the final account is to be sent, then the court shall enter an order approving such account and all unapproved annual accounts previously filed. Unless otherwise barred, any claim against a trust company for breach of trust relating to such accounts shall be barred in accordance with s. 737.307.

(8) The filing of a petition hereunder or the substitution of fiduciaries pursuant to law shall not be deemed as the resignation by any trust company of any fiduciary relationship.

**History.**—s. 1, ch. 76-37; s. 3, ch. 76-168; s. 1, ch. 77-174; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1660.02 Securities described for investment of trust funds.**—No trust company shall have power to invest funds derived under subsections (5), (6) and (11) of s. 660.01, except only as provided by chapters 518 and 691.

**History.**—s. 3, ch. 28016, 1953; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1660.03 Trust funds separate and not liable.**—No money, property or securities held or received by any trust company, in its capacity as assignee, receiver, executor, administrator, guardian or trustee shall be mingled with the investments of the capital stock or other moneys or property belonging to or deposited with such corporation or shall be liable for the debts or obligations of such corporation.

**History.**—s. 3, ch. 28016, 1953; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior

to that date.

**1660.04 Security required before trust company may deposit uninvested trust funds in its banking department or any other bank.**—It is unlawful for any officer, director or employee of any trust company doing business in this state to deposit the uninvested funds belonging to any particular trust, for which said trust company shall be trustee, in the banking department of the trust company itself, or with any other bank or trust company, without first taking full and adequate security therefor in one or more of the securities which are at that time legal investments of funds held by executors, administrators, trustees and guardians. No security shall be required, however, to the extent that any such deposit is insured by the Federal Deposit Insurance Corporation.

**History.**—s. 3, ch. 28016, 1953; s. 1, ch. 29871, 1955; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1660.05 Disposition of security required for trust funds.**—When the uninvested funds of a particular trust are deposited in the banking side of the trust company acting as trustee, such trust company shall set aside, under proper resolution of the board of directors, securities of the class mentioned in s. 660.04, and hold the same in trust as security for the benefit of the uninvested funds mentioned. Security to be given as aforesaid, for uninvested funds of trusts that may be deposited in the banking side of the trust company acting as trustee, need not be segregated as to each particular trust for which uninvested funds are deposited but may be held in bulk for all of the trust funds so deposited.

**History.**—s. 3, ch. 28016, 1953; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1660.06 Penalty for violation of ss. 660.04 and 660.05.**—Any officer, director or employee of any trust company violating the provisions of ss. 660.04 and 660.05 shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 3, ch. 28016, 1953; s. 673, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1660.07 Trust company not required to give security as trustee, etc.**—No trust company of this state having deposited securities with the State Treasurer as provided in s. 660.08, and authorized to act as assignee, receiver, administrator, guardian or trustee, shall be required by any officer or court of this state to give security upon appointment to, or acceptance of, any office of trust which it is by law authorized to execute.

**History.**—s. 3, ch. 28016, 1953; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior

to that date.

**1660.08 Deposit of securities with State Treasurer.**—Every trust company shall deposit with the State Treasurer a sum equal to 25 percent of its paid-in capital stock; provided, that in no event shall such deposit be less than \$25,000, such deposits to be in cash or bonds, stocks, or other securities of equal market value, which shall include approved mortgages or deeds of trust of real estate to be kept by the State Treasurer in trust for said company, and for which he shall issue his official receipt or receipts, which receipt or receipts shall show the par value of securities so deposited, and the Treasurer shall not be required to embrace in one receipt all of such securities so deposited by a trust company; provided, the values of such securities shall be fixed by the Treasurer, the Department of Legal Affairs and the Department of Banking and Finance at the time such securities are so deposited; and provided, further, that in lieu of the actual depositing of such securities with the State Treasurer by any such trust company, the State Treasurer may accept a safekeeping receipt or safekeeping receipts therefor, issued by any Federal Reserve bank or national or state bank; provided, such national or state bank shall have been previously approved for such purposes by the Department of Legal Affairs, the Department of Banking and Finance and the State Treasurer, such safekeeping receipt to substantially comply with the form and provisions of the safekeeping receipt provided for and set forth in s. 18.11. Said securities shall be held subject to the payment of any judgment or decree which may be rendered against said company. Should the aggregate market value of the securities so held, at any time, exceed in value the said sum required to be deposited, said company may withdraw with the consent of the Department of Banking and Finance such excess, and should the aggregate market value of such securities fall below said sum required to be deposited, said company shall within 30 days thereafter, deliver to the State Treasurer additional securities sufficient to make good said sum. The State Treasurer shall at all times keep prepared and ready for inspection a record of securities so held by him, and he shall allow said records to be, at all reasonable times, inspected by any person to whom said company is liable absolutely or conditionally, or by any court or officer who shall have appointed said company to any still existing obligation upon which said company is surety. Said company may at any time withdraw any part of the securities in the hands of the State Treasurer, but before doing so must, except in cases of excess, as hereinbefore provided, deliver to said State Treasurer other securities of equal market value to those to be withdrawn. The Department of Banking and Finance, Treasurer and the Department of Legal Affairs shall determine the value of all such substituted securities.

**History.**—s. 3, ch. 28016, 1953; ss. 11, 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior



to that date.

**1660.09 Corporation officers authorized to make oath as trustee, etc.**—In all cases where any corporation of this state authorized by its charter to act as trustee, executor, administrator or guardian, shall be appointed executor, administrator or trustee of any estate or guardian of any infant, the president, or vice president, or trust officer, or assistant trust officer or cashier, or secretary or treasurer, of such corporation shall make and subscribe for such corporation any and all oaths or affirmations required to be taken or subscribed by such executor, administrator, trustee, or guardian.

**History.**—s. 3, ch. 28016, 1953; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1660.10 Trust powers and duties.**—All corporations except banks and trust companies incorporated under the laws of this state and having trust powers and except national banking associations located in this state and having trust powers, are prohibited from exercising any of the powers or duties and from acting in any of the capacities, within this state, as follows:

(1) As executor or administrator of the estate of any decedent, whether such decedent was a resident of this state or not, and whether the administration of the estate of such decedent be original or ancillary; provided, that if the executor or administrator of the estate of a nonresident decedent be a corporation duly authorized, qualified and acting as such executor or administrator in the jurisdiction of the domicile of the decedent, it may, as a foreign executor or administrator perform such duties and exercise such powers and privileges as are required, authorized or permitted by s. 734.30.

(2) As guardian of any infant, insane person or person physically or mentally incompetent whether domiciled in this state or not.

(3) As trustee under any will or other testamentary instrument, provided any corporation that is authorized to act as trustee under the laws of the place where it has its principal place of business may receive bequests as trustee of money or intangible personal property and devise of real property located in Florida and may sell, transfer and convey the property.

(4) As trustee of any real estate in this state or any interest therein under any agreement whereby the beneficial interest in such property is vested in others.

(5) As trustee under any deed of trust or other instrument executed after June 10, 1937, conveying or encumbering any real or tangible personal property in this state given to secure bonds or other evidence of indebtedness unless in such deed of trust or other instrument a trust company or bank having trust powers and located in this state or an individual residing in this state shall be named as cotrustee; and no suit shall be brought to foreclose any such deed of trust or other instrument unless such cotrustee or successor cotrustees of like qualifications be a party plaintiff.

(6) As receiver or trustee under appointment of any court in this state.

(7) As assignee, receiver or trustee of any insolvent person or corporation or under any assignment for the benefit of creditors.

(8) As fiscal agent, transfer agent or registrar of any municipal or private corporation, provided that this prohibition shall not be so construed as to prevent banks and trust companies not located in this state from acting within the state where located as fiscal agent, transfer agent or registrar of municipal or private corporations of this state; provided further, however, that nothing herein shall prevent any Florida corporation not a bank or trust company and not having trust powers from being its own fiscal agent, transfer agent or registrar concerning its own affairs, stock or securities. Provided, however, that nothing in this section or in any other law of this state shall be construed to prohibit a foreign bank or foreign trust company as trustee of any charitable foundation or endowment, employees' pension, retirement or profit-sharing trust, alone or together with a cotrustee from: Contracting in this state or elsewhere with any person to acquire from such person a part or the entire interest in a loan which such person proposes to make, has heretofore made or hereafter makes, together with a like interest in any security instrument covering real or personal property in the state proposed to be given or hereafter or heretofore given to such person to secure or evidence such loan; servicing directly or entering into servicing contracts with persons, and enforcing in this state the obligations heretofore or hereafter acquired by it in the transaction of business outside of this state or in the transaction of any business authorized or permitted hereby; or acquiring, holding, leasing, mortgaging, contracting with respect to, or otherwise, protecting, managing, or conveying property in this state which has heretofore or may hereafter be assigned, transferred, mortgaged or conveyed to it as security for, or in whole or in part in satisfaction of, a loan or loans made by it or obligations acquired by it in the transaction of any business authorized or permitted hereby; provided, further, that no such foreign bank or trust company shall be deemed to be transacting business in this state, or be required to qualify so to do, or to be unlawfully exercising powers or duties or acting in an unlawful or prohibited capacity or to be violating any of the provisions of this section or of any other law of this state, solely by reason of the performance of any of the acts or business hereinbefore permitted or authorized hereby; and provided, further, that nothing herein shall be construed as authorizing or permitting any foreign bank or trust company to maintain an office within this state.

**History.**—s. 3, ch. 28016, 1953; s. 1, ch. 57-409; s. 1, ch. 71-55; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

#### **1660.11 Establishment of common trust funds.**

(1) Any bank or trust company qualified to act as fiduciary in this state may establish one or more common trust funds for the exclusive purpose of furnishing investments to itself as fiduciary, including estates, guardianships, managing agencies, and all other fiduciary relationships, now in existence or

hereafter created, requiring or authorizing investment of funds held as fiduciary including managing agencies, or to itself and others, as cofiduciaries. It may, as such fiduciary or cofiduciary, invest funds which it lawfully holds for investment in interests in such common trust funds if such investment is not prohibited by the instrument, judgment, decree, or order creating such fiduciary relationship and if, in the case of cofiduciaries, the bank or trust company procures the consent of its cofiduciary or cofiduciaries to such investment, which consent such cofiduciary is hereby authorized to grant. The full management of the fund shall at all times be in full charge of such bank and trust company, and no cofiduciary shall have any right to interfere in the management of such common trust funds.

(2) For the purposes of this section, the term "bank or trust company" shall include two or more banks or trust companies which are members of the same affiliated group as defined in s. 1504 of the Internal Revenue Code of 1954, with respect to any fund established pursuant to this section of which any of such banks or trust companies is trustee, or two or more of such banks or trust companies are cotrustees. The fiduciary relationship that exists between an individual bank or trust company and its customer shall not be altered due to the fact of the enactment of this subsection.

**History.**—s. 3, ch. 28016, 1953; s. 1, ch. 67-365; s. 3, ch. 76-168; ss. 1, 2, ch. 77-42; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1660.12 Common trust fund investments.**—No bank or trust company shall mingle its own funds with any common trust fund managed by such bank or trust company, and every investment of a common trust fund shall, at all times, be such as would be a proper investment for each fiduciary account owning an interest in such common trust fund.

**History.**—s. 3, ch. 28016, 1953; s. 1, ch. 67-336; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1660.13 Common trust fund to be audited annually.**—A bank administering a common trust fund shall keep proper records, which in addition to all other necessary and proper matters shall show at all times the proportionate interest of each trust in the common trust fund, and at least once during each period of 12 months, cause an audit to be made of the common trust fund by auditors responsible only to the board of directors of the bank. The report of such audit shall include a list of the investments comprising the common trust fund at the time of the audit, which shall show the valuation placed on each item on such list by the trust investment committee of the bank as of the date of the audit, a statement of purchases, sales and any other investment changes, and of income and disbursements since the last audit, and appropriate comments as to any investment in default as to payment of principal or interest. The reasonable expenses of any such audit made by independent public accountants may be charged to the common trust fund. The bank shall manage such common trust funds without charge, save necessary expenses, and shall send a copy of the

latest report of such audit annually to each person to whom a regular periodic accounting of the trusts participating in the common trust fund ordinarily would be rendered or shall send advice to each such person annually that the report is available and that a copy will be furnished without charge upon request.

**History.**—s. 3, ch. 28016, 1953; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1660.14 Common trust fund court accountings.**—Unless ordered by a court of competent jurisdiction, the bank or trust company operating such common trust funds is not required to render a court accounting with regard to such funds; but it may, by application to the circuit court, secure approval of such an accounting after such notice, and on such conditions as the court may establish.

**History.**—s. 3, ch. 28016, 1953; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1660.15 Short title.**—Sections 660.16-660.23 may be cited as the "Mutual Trust Investment Company Act."

**History.**—s. 1, ch. 74-212; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1660.16 Definitions.**—For the purpose of ss. 660.16-660.23:

(1) "Mutual trust investment company" means a corporation which is:

(a) An investment company as defined by an Act of Congress entitled "Investment Company Act of 1940," approved August 22, 1940, as amended.

(b) Incorporated in compliance with the provisions of ss. 660.16-660.23 to constitute a medium for the common investment of trust funds held in a fiduciary capacity and for true fiduciary purposes, either alone or with one or more cofiduciaries, by state banks with trust powers, trust companies, and national banks with trust powers which are located in this state.

(2) "Corporate fiduciary" means a state bank with trust powers, a trust company, or a national bank with trust powers which is located in this state.

**History.**—s. 1, ch. 74-212; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1660.17 Authority to incorporate.**—Any three or more corporate fiduciaries are authorized, subject to the approval of the Department of Banking and Finance and subject to such regulations as the department may from time to time prescribe, to cause a mutual trust investment company to be organized and incorporated.

**History.**—s. 1, ch. 74-212; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1660.18 Application of general corporation law; articles of incorporation.**—Such a mutual trust investment company shall be incorporated under, and be subject to, the general corporation laws

of this state except as herein otherwise provided. The incorporators subscribing and acknowledging the articles of incorporation shall consist of three or more persons who are officers or directors of the corporate fiduciaries causing such mutual trust investment company to be incorporated, and the articles of incorporation shall set forth, in addition to the facts specified in the general corporation laws, the name of each corporate fiduciary causing such corporation to be incorporated and the amount of stock originally subscribed for by each. Not more than 40 percent of the board of directors shall be officers or directors of any one corporate fiduciary.

**History.**—s. 1, ch. 74-212; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

#### **1660.19 Corporate powers; ownership of stock.—**

(1) The stock of a mutual trust investment company shall be owned only by corporate fiduciaries acting as fiduciaries and their individual cofiduciaries, if any, but may be registered in the name of their nominee or nominees.

(2) The stock of a mutual trust investment company shall not be subject to transfer or assignment except to the mutual trust investment company or to a fiduciary or cofiduciary which becomes successor to the stockholder and which is also a bank or trust company qualified to hold such stock under the provisions of ss. 660.16-660.23.

(3) A mutual trust investment company shall have not less than five directors who shall be officers or directors of corporate fiduciaries owning stock of the mutual trust investment company.

(4) A mutual trust investment company may invest its assets only in those investments in which a trustee may invest under the laws of this state. In addition to the foregoing restrictions, it shall make no investment in:

(a) The note of an individual or individuals, whether or not it is secured.

(b) The note, bond, or other obligation of any firm, corporation, or other issuer if the total original issue of such notes, bonds, or other obligations is less than \$500,000.

(c) Any stocks, bonds, or other obligations issued or guaranteed by any one firm, corporation, or other issuer if, as a result of such investment, the total amount invested in stocks, bonds, or other obligations issued or guaranteed by such firm, corporation, or other issuer would aggregate in excess of 10 percent of the then market value of the total assets of the mutual trust investment company. However, this limitation shall not apply to investments in direct obligations of the United States or other obligations fully guaranteed by the United States as to principal and interest.

(d) Shares of stock of one class of any one corporation which would cause the total number of such shares held by the mutual trust investment company to exceed 5 percent of the number of such shares outstanding.

(e) Stocks, bonds, or other obligations issued by any corporate fiduciary owning stock of the mutual trust investment company or by any affiliate of such corporate fiduciary.

(5) A mutual trust investment company may acquire, purchase, or redeem its own stock and shall, by means of contract or by means of its bylaws, bind itself to acquire, purchase, or redeem its own stock, but it shall not vote upon shares of its own stock.

(6) A mutual trust investment company shall not be responsible for ascertaining the investment powers of any fiduciary who may purchase its stock and shall not be liable for accepting funds from a fiduciary in violation of the restrictions of the will, trust indenture, or other instrument under which such fiduciary is acting, in the absence of actual knowledge of such violation and shall be accountable only to the Department of Banking and Finance and the fiduciaries who are the owners of its stock.

**History.**—s. 1, ch. 74-212; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

#### **1660.20 Purchase of stock by fiduciaries; authority and restrictions.—**

(1) Corporate fiduciaries acting in a fiduciary capacity and for true fiduciary purposes, either alone or with one or more individual cofiduciaries, may, if exercising the care of a prudent investor, and with the consent of such individual cofiduciary or cofiduciaries, if any, invest and reinvest funds held in such fiduciary capacity in the shares of stock of a mutual trust investment company except when the will, trust indenture, or other instrument under which such fiduciary is acting specifically prohibits such investment. However, no investment in the stock of a mutual trust investment company may be made on behalf of any estate, trust, or fund which would result in such estate, trust, or fund having a total investment therein in excess of the maximum amount or percentage that might be invested by such estate, trust, or fund, under regulations of the comptroller of the currency in effect at the time of such investment, in a common trust fund having total assets equal to the total assets of the mutual trust investment company, as increased by the proposed investment. No purchases of stock of a mutual trust investment company shall be made other than for cash.

(2) A mutual trust investment company shall be permitted to rely on the written statement of any bank or trust company purchasing its stock that the purchase complies with the foregoing requirements.

**History.**—s. 1, ch. 74-212; s. 3, ch. 76-168; s. 1, ch. 77-174; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

#### **1660.21 Audits and reports.—**

(1) A mutual trust investment company shall, at least once during each period of 12 months, cause an adequate audit to be made of the company by auditors responsible only to the board of directors of the company.

(2)(a) A mutual trust investment company shall, at least once during each period of 12 months, prepare a financial report of the company which shall be filed with the Department of Banking and Finance. This report, based upon the above audit, shall contain:

1. A list of investments of the company showing the cost and current market value of each investment.



2. A statement for the period since the previous report, showing purchases, with cost.
3. Sales, with profit or loss.
4. Any other investment changes.
5. Income and disbursements.
6. An appropriate notation as to any investments in default.

(b) A copy of the report shall be sent by each corporate fiduciary owning stock in the mutual trust investment company annually to each person to whom a regular periodic accounting of the trusts for whose accounts the stock was acquired ordinarily would be rendered or shall send advice to each such person annually that the report is available and that a copy will be furnished without charge upon request.

(3) The reasonable expenses of any such annual audits made by independent public accountants and the cost of preparing the reports shall be borne and paid for by the mutual trust investment company.

**History.**—s. 1, ch. 74-212; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

#### **1660.22 Powers of the Department of Banking and Finance.—**

(1) The department shall have authority to adopt and issue reasonable and uniform rules and regulations to govern the conduct and management of all mutual trust investment companies formed pursuant to ss. 660.16-660.23 and to prescribe, among other things:

(a) The records and accounts to be kept by the mutual trust investment company.

(b) The methods and standards to be employed in establishing the value of the shares of stock in the mutual trust investment company and of its assets.

(c) The procedure to be followed in the sale and redemption of its stock.

(2) The department shall, at least once in each calendar year and whenever the department deems it necessary or expedient, examine every such mutual trust investment company. On every such examination of a mutual trust investment company the

department shall make inquiry as to its financial condition, the policies of its management, whether it is complying with the laws of this state, and such other matters as the department may prescribe. The reasonable expenses of such examination of a mutual trust investment company pursuant to this section shall be borne and paid for by such company.

(3) In the enforcement of ss. 660.16-660.23 and the fulfillment of its responsibilities hereunder, the department shall have the same powers and authorities over, and with respect to, mutual trust investment companies and their directors, officers, and employees as are given the department by the laws of this state with respect to banks and trust companies, in the same manner and with like effect as if mutual trust investment companies were expressly named therein.

**History.**—s. 1, ch. 74-212; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

#### **1660.23 Exemptions.—**

(1) The intangible personal property owned by a mutual trust investment company shall be subject to the tax imposed by s. 199.032(1), and the tax due upon such intangibles shall be paid by the company. The stock of the mutual trust investment company, issued and outstanding, shall not be subject to the tax imposed by s. 199.032(1), provided the company pays the annual tax due on the intangibles it owns.

(2) The stock of a mutual trust investment company shall be subject to the tax imposed by chapter 201, provided all purchasers of such stock, upon redemption of such shares, shall have a credit equal to the tax paid pursuant to chapter 201 on such redeemed shares. Such credit shall be applied against the tax due under chapter 201 upon subsequent repurchases of stock of the same mutual trust investment company.

**History.**—s. 1, ch. 74-212; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

## CHAPTER 661

## BANKING CODE, FOURTH PART

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- 1661.01 Definitions for ss. 661.01-661.09.—As used in ss. 661.01-661.09:**  
 (1) "Constituent bank" means a party to a merger.  
 (2) "Converting bank" means a bank converting from a state to a national bank, or the reverse.  
 (3) "Converted bank" means the same bank after the conversion.  
 (4) "Merger" includes consolidation.  
 (5) "Resulting bank" means the combined banks and trust companies carrying on business upon completion of a merger.
- History.**—s. 4, ch. 28016, 1953; s. 3, ch. 76-168; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.
- 1661.02 Merger; with resulting state or national bank.—**  
 (1) Upon approval of the department, banks may be merged with a resulting state bank, as hereafter prescribed, except that the action by a constituent national bank shall be taken in the manner prescribed by, and shall be subject to, any limitations or requirements imposed by any law of the United States which shall also govern the rights of its dissenting shareholders.  
 (2) Nothing in the law of this state shall restrict the right of a state bank to merge with a resulting national bank. The action to be taken by a constituent state bank and its rights and liabilities and those of its shareholders shall be the same as those prescribed for national banks at the time of the action by the applicable law of the United States and not by the law of this state.
- History.**—s. 4, ch. 28016, 1953; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.  
**cf.**—s. 659.02 Application to organize bank.  
 s. 659.03 Investigation by department.  
 s. 659.15 Filing fees.
- 1661.03 Merger agreement.—**Where there is to be a resulting state bank, the board of directors of each constituent state bank shall, by a majority of the entire board, approve a merger agreement which shall contain:  
 (1) The name of each constituent bank and the location of each office.  
 (2) With respect to the resulting bank:

- (a) The name and the location of the proposed office;
- (b) The name and residence of each director to serve until the next annual meeting of the stockholders;
- (c) The name and residence of each officer;
- (d) The amount of capital, the number of shares and the par value of each share;
- (e) Whether preferred stock is to be issued and the amount, terms and preferences;
- (f) The amendments to the charter and bylaws.
- (3) The terms for the exchange of shares of the constituent banks for those of the resulting bank.
- (4) A statement that the agreement is subject to approval by the department and by the stockholders of each constituent bank.

(5) Provisions governing the manner of disposing of the shares of the resulting state bank not taken by dissenting shareholders of constituent banks.

(6) Such other provisions as the department requires to enable it to discharge its duties with respect to the merger.

**History.**—s. 4, ch. 28016, 1953; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

#### **1661.04 Approval by department; valuation of assets.—**

(1) After approval by the board of directors of each constituent bank, the merger agreement shall be submitted to the department for approval, together with certified copies of the authorizing resolutions of the several boards of directors showing approval by a majority of the entire board and evidence of proper action by the board of directors of any constituent national bank.

(2) Without approval by the department, no asset shall be carried on the books of the resulting bank at a valuation higher than that on the books of the constituent bank at the time of the last examination by a state or national bank examiner before the effective date of the merger.

(3) Within 30 days after receipt by the department of the papers specified in subsection (1), the department shall approve or disapprove the merger agreement. The department shall approve the agreement if it appears that:

(a) The resulting state bank meets all the requirements of state law as to the formation of a new state bank.

(b) The agreement provides an adequate capital structure including surplus in relation to the deposit liabilities of the resulting state bank and its other activities which are to continue or are to be undertaken.

(c) The agreement is fair.

(d) The merger is not contrary to the public interest.

If the department disapproves an agreement, it shall state its objections and give an opportunity to the constituent banks to amend the merger agreement to obviate such objections.

(4) Where the resulting state bank is not to exercise trust powers, the department shall not approve a merger until satisfied that adequate provision has

been made for successors to fiduciary positions held by constituent banks.

**History.**—s. 4, ch. 28016, 1953; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

#### **1661.05 Approval by stockholders; rights of dissenters.—**

(1) To be effective, a merger must be approved by the stockholders of each constituent state bank by a vote of two-thirds of the outstanding voting stock at a meeting called to consider such action, which vote shall constitute the adoption of the charter and bylaws of the resulting state bank, including the amendments set forth in the merger agreement.

(2) The notice of the meeting of the stockholders shall state that dissenting stockholders will be entitled to a payment of the value of only those shares which are voted against approval of the plan.

(3) The owner of shares which were voted against the approval of the merger shall be entitled to receive their value in cash, if and when the merger becomes effective, upon written demand, made to the resulting state bank at any time within 30 days after the effective date of the merger, accompanied by the surrender of the stock certificates. The value of such shares shall be determined as of the date of the shareholders' meeting approving the merger by three appraisers, one to be selected by the owners of two-thirds of the shares involved, one by the board of directors of the resulting state bank, and the third by the two so chosen. The valuation agreed upon by any two appraisers shall govern. If the appraisal is not completed within 90 days after the merger becomes effective, the department shall cause an appraisal to be made.

(4) The expenses of appraisal shall be paid by the resulting state bank.

(5) The resulting state bank may fix an amount which it considers to be not more than the fair market value of the shares of a constituent bank at the time of the stockholders' meeting approving the merger, which it will pay dissenting shareholders of that constituent bank entitled to payment in cash. The amount due under such accepted offer or under the appraisal shall constitute a debt of the resulting state bank.

**History.**—s. 4, ch. 28016, 1953; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

#### **1661.06 Effective date of merger; filing of approved agreement; certificate of merger as evidence.—**

(1) A merger shall, unless a later date is specified in the agreement, become effective upon the filing with the department of the executed agreement together with copies of the resolutions of the stockholders of each constituent bank approving it, certified by such bank's president or vice president and a secretary. The charters of the constituent banks, other than the resulting bank, shall thereupon be deemed surrendered.

(2) The department shall thereupon issue to the resulting bank a certificate of merger setting forth



the name of each constituent bank and the name of the resulting state bank. Such certificate shall be conclusive evidence of the merger and of the correctness of all proceedings therefor in all courts and places, and may be recorded in any office for the recording of deeds to evidence the new name in which the property of the constituent bank is held.

**History.**—s. 4, ch. 28016, 1953; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

#### **1661.07 Continuation of corporate entity; use of old names.—**

(1) The resulting state bank shall be considered the same business and corporate entity as each constituent bank with all of the rights, powers, and duties of each constituent bank except as limited by the charter and bylaws of the resulting state bank.

(2) The resulting state bank shall have the right to use the name of any constituent bank whenever it can do any act under such name more conveniently.

(3) Any reference to any constituent bank in any writing, whether executed or taking effect before or after the merger, shall be deemed a reference to the resulting state bank if not inconsistent with the other provisions of such writing.

**History.**—s. 4, ch. 28016, 1953; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

#### **1661.08 Conversion from state bank to national bank and the reverse.—**

(1) Nothing in the law of this state shall restrict the right of a state bank to convert into a national bank upon compliance with the laws of the United States, and upon completion of such conversion it shall surrender its charter as a state bank.

(2) A national bank located in this state which follows the procedure prescribed by federal law to convert into a state bank, may be granted a state charter if it meets the requirements for the incorporation of a state bank. Any requirement of state law that shares must be paid for in cash may be satisfied by the exchange of shares of the converted state bank for those of the converting national bank, which may be valued at not more than their fair cash market value. The procedure for incorporation of a state bank may be modified to the extent made necessary by the difference between an ordinary incorporation and a conversion.

(3) The converted bank shall be considered the same business and corporate entity as the converting bank with all of the rights, powers and duties of the converting bank except as limited by the charter and bylaws of the resulting bank. It may use the name of the converting bank whenever it can do any act under such name more conveniently.

(4) Any reference to the converting bank in any writing, whether executed or taking effect before or after the conversion, shall be deemed a reference to the converted bank if not inconsistent with the other provisions of such writing.

**History.**—s. 4, ch. 28016, 1953; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior

to that date.

**1661.09 Nonconforming assets of business.**—If a constituent bank has assets which do not conform to the requirements of state law for the resulting bank or if a converting national bank has assets which do not conform to the requirements of state law for the converted state bank, or in either case there are business activities which are not permitted for the resulting or converted state bank, the department may permit a reasonable time to conform with state law.

**History.**—s. 4, ch. 28016, 1953; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1661.10 Insolvency; appointment of liquidator.**—On becoming satisfied from the reports furnished to it by a state bank examiner, or upon other satisfactory evidence thereof, that any state bank or trust company has become insolvent and is in default, or that the affairs of any bank or trust company chartered under the laws of this state are in an unsound condition, or threatened with insolvency because of illegal or unsafe investments, or that its liabilities exceed its assets, or that it is transacting business without authority of law, or in violation of law, or if the directors of any bank or trust company chartered under the laws of this state shall knowingly violate or knowingly permit any of its officers, agents or servants to violate any of the provisions of law relative to such bank or trust company, the rights, privileges and franchises shall be subject to be forfeited, and the department may, in its discretion, forthwith designate and appoint a liquidator to take charge of the assets and affairs of such bank, and require of him such bond and security as the department deems proper, not exceeding double the amount that may come into his hands, and such liquidator shall be subject to dismissal by the department whenever in its judgment such dismissal is deemed necessary or advisable. When one liquidator is dismissed, another may be duly designated and appointed.

**History.**—s. 4, ch. 28016, 1953; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1661.11 Liquidation procedure.**—Such liquidator, under the direction and supervision of the department, shall take possession of the books, records and assets of every description of such bank or trust company, and in his name shall sue for and collect all debts, dues and claims belonging to it, and upon the order of a court may sell or compound all bad or doubtful debts and, on a like order, may sell all the real and personal property of such bank or trust company on such terms as the court shall direct, and may, if necessary to pay the debts of such bank or trust company, sue for and enforce the individual liability of the stockholders. Such liquidator shall pay all money received by him to the state treasurer to be held as a special deposit for the use and benefit of the creditors subject to the order of the department, and shall also make quarterly reports, or when called upon, to the department of all of his acts

and proceedings. The department immediately, upon appointing such liquidator, shall serve notice upon the president, or upon any vice president or cashier, or upon any director, or other person having the charge or management of any such bank or trust company, informing him or them in such notice of its action in appointing such liquidator, and notifying him or them, or it, that the department would apply on a date therein named not to exceed 10 days from the date of service of such notice to some circuit judge having jurisdiction over the same for an order confirming its action, and the appointment of a liquidator for such banking institution or trust company; and such bank or trust company, at such hearing, may contest before such circuit judge the rightfulness and legality of such action of the department in appointing such liquidator; provided that this section shall not apply to stockholders in a bank or trust company which is a member of the Federal Deposit Insurance Corporation, a corporation under the laws of the United States, or which has an unimpaired surplus equalling the amount of its capital stock.

**History.**—s. 4, ch. 28016, 1953; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**§661.12 General liquidator.**—The department may provide for the administration of the affairs of institutions under s. 661.11 and this section by one general liquidator, who shall be designated by the department as a general liquidator for the administration of the affairs of several or all of the institutions in liquidation, whose compensation shall be paid by the department to be paid in such proportions out of the assets of the institution whose affairs are being administered as the department may determine, not exceeding in the aggregate \$7,500 per annum. The department may provide for the transfer at any time to the general liquidator of the affairs of any institution for which a particular liquidator, or receiver, has been heretofore, or shall hereafter, be designated, and the general liquidator shall thereupon be vested with all the rights conferred by law on such general liquidator as if he had been designated in the first instance to act as such.

**History.**—s. 4, ch. 28016, 1953; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**§661.13 Federal Deposit Insurance Corporation, as liquidator.**—The Federal Deposit Insurance Corporation, created under the Federal Deposit Insurance Act, upon appointment by the department, may be and act without bond as receiver or liquidator of any banking institution, the deposits in which are to any extent insured by the corporation, and which shall have been closed by the department. The department may, in its discretion, in the event of such closing, tender to the corporation the appointment as receiver or liquidator of such banking institution, and if the corporation accepts the appointment, the corporation shall have and possess

all the powers and privileges provided by the laws of this state with respect to a receiver or liquidator, respectively, of a banking institution, its depositors and other creditors.

**History.**—s. 4, ch. 28016, 1953; s. 1, ch. 67-247; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**§661.14 Federal Deposit Insurance Corporation, subrogated.**—Whenever any bank or trust company shall have been closed by the department and the Federal Deposit Insurance Corporation shall pay, or make available for payment, the insured deposit liabilities of the closed institution, the corporation, whether or not it shall have become receiver or liquidator of the closed bank or trust company, as provided in s. 661.13, shall be and become subrogated by operation of law to all rights against the closed bank or trust company of each owner of a claim for deposit, to the extent now or hereafter necessary to enable the Federal Deposit Insurance Corporation, under federal law, to make insurance payments available to depositors of closed insured banks or trust companies.

**History.**—s. 4, ch. 28016, 1953; s. 2, ch. 67-247; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**§661.15 Department's procedure as to unsound banks.**—If, from any examination made by the department, or any state bank examiner acting under its authority, of any bank or trust company, the department shall have reason to conclude that any such bank or trust company is in an unsound or unsafe condition, it shall forthwith take possession of the property and business of such bank or trust company and retain such possession until its affairs are placed in a sound and safe condition, or until a receiver or liquidator is appointed, as provided by law, and, pending such possession by the department, all the remedies at law or in equity of any creditor or stockholder against any such bank or trust company shall be suspended; however, the department may, upon conditions as may be approved by it, surrender possession of such bank or trust company for the purpose of permitting such bank or trust company to resume business, and the department shall have authority to authorize a reduction of capital in such suspended bank or trust company if found necessary for the resumption of business, and, upon consent in writing of the representatives of an amount of the deposits of any such bank or trust company aggregating 75 percent or more of the total deposits of such bank or trust company, the department shall, by order, freeze all deposits of such bank or trust company upon such reasonable terms and conditions as it may fix, as one of the terms of such resumption of business, and the public officers of any town, city, county, state, special road and bridge district, special school district, or other municipal corporation of the state having control over any unsecured public moneys on deposit with any such bank or trust company may sign and execute such consent to the freezing of such deposits of public money for the purpose herein contemplated

for and in behalf of the municipality, state, county, special road and bridge district, or special school district represented.

**History.**—s. 4, ch. 28016, 1953; s. 24, ch. 57-1; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 7, ch. 78-95.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1661.16 Transfer of nonliquid assets.**—In all cases where any bank or trust company has resumed or continued business under the provisions of s. 661.15 and a "freezing" order obtained as to all deposits, such bank or trust company may set aside, transfer and convey to a trustee, corporation or liquidating agent, by and with the consent of the department, a part or all of the nonliquidating assets of said bank or trust company and held by such bank or trust company at the time of such "freezing" order, and responsible for the payment of all deposits included within such "freezing" order, for and in consideration of the surrender to such bank or trust company of all of the special certificates of deposit issued pursuant to the freezing order theretofore obtained; provided, however, that the consent in writing of the representatives of an amount of such frozen deposits representing 75 percent or more of the total unpaid frozen deposits shall first be had and obtained.

**History.**—s. 4, ch. 28016, 1953; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1661.17 Issue of stock certificates for pro rata share in frozen assets.**—When the representatives of an amount of the frozen or unpaid deposits representing 75 percent, or more, of the total unpaid or frozen deposits, shall have agreed in writing to the setting aside, transferring or conveying to a trustee, corporation or other liquidating agent selected by the creditors, the frozen assets of such bank, or trust company, then such trustee, corporation or other liquidating agent may issue to the holder or holders of such certificates of deposit, or other evidence of indebtedness, who have not consented in writing to such transfer, a stock certificate or other evidence showing the pro rata interest of the holder of such certificate of deposit or other evidence of indebtedness in the frozen assets so set aside, transferred or conveyed, as above set out, and such trustee, corporation or other liquidating agent so selected by 75 percent, or more, of the creditors shall be responsible for the pro rata and equal distribution of such unpaid or frozen assets among all holders of such certificates of deposit or other evidence of indebtedness; provided that any such plan of settlement with the frozen certificate of deposit holders shall be confirmed by the circuit court.

**History.**—s. 4, ch. 28016, 1953; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1661.18 Notice of publication of department's approval of segregation and settlement plan, and date set for court confirmation.**—Upon becoming satisfied that the plan of segregation is just and fair, and for the best interest of the bank and

creditors, the department may give its approval to the plan and shall give 10 days' notice by publication in a newspaper located in the county in which the bank is located, and if there is no newspaper published in the county, said notice shall be caused to appear in a newspaper published in an adjoining county, and said publication shall give notice of the department's action in approving the plan of segregation, and shall designate a certain date for appearing before the court to ask for confirmation of its action in approving the said plan of segregation and settlement.

**History.**—s. 4, ch. 28016, 1953; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1661.19 Liability after transfer of certificates of deposit.**—Any bank or trust company, upon the setting aside, transferring and conveying of the assets of such bank or trust company, as provided herein, and upon the surrender to such bank or trust company, or other liquidating agent, of the certificates of deposit, or other evidence of indebtedness issued by such bank or trust company, or liquidating agent, aggregating 75 percent, or more, of the total unpaid deposits, such bank or trust company, or liquidating agent, shall thereupon cancel all such certificates of deposit, or other evidences of indebtedness, and such bank or trust company, or liquidating agent, appointed by, acting under the authority of the department, shall thereafter be relieved and discharged from any and all liability for the payment of any money to the holder of such certificates of deposit or other evidences of indebtedness.

**History.**—s. 4, ch. 28016, 1953; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1661.20 Transfers, etc., void after act of insolvency.**—Any and all transfers of the notes, bonds, bills of exchange, or other evidences of debt owing to any bank or trust company, or of deposits to its credit, all assignments of mortgages, securities or real estate, or of any judgments or decrees in its favor, all deposits of money, bullion or other valuable thing for its use, or for the use of any of its stockholders or creditors, and all payments of money to either, made after the commission of an act of insolvency or in contemplation thereof made with a view to the preference of one creditor to another, shall be utterly null and void.

**History.**—s. 4, ch. 28016, 1953; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1661.21 Notice to present claims.**—The department shall, upon appointing a liquidator, cause notice to be given, by advertisement in a newspaper of general circulation in the county where the bank is located, once each week for 9 consecutive weeks, calling on all persons, firms, or corporations who may have claims against such bank or trust company, to present the same and to make legal proof thereof.

**History.**—s. 4, ch. 28016, 1953; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective



July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1661.22 Claims, unclaimed dividends and undistributed funds.**—All claims of every kind and nature against a state bank or trust company which has been placed in the hands of a liquidator must be properly sworn to and filed with the liquidator thereof within 1 year from the date of the qualification of the liquidator thereof of the bank or trust company, and no claim not so filed within 1 year from the date of the qualification of the liquidator thereof or prior to the expiration of any additional period for which the time for filing claims may be extended by the department shall be included by the liquidator or department in the distribution of the assets. The department may, in its discretion, extend the time for filing claims for an additional period not exceeding 1 year, and may, for good cause shown, permit a claim to be filed after the time for filing same has elapsed. Any secured claim filed within the said 1 year or such time as the time for the filing of claims has been extended, may be amended at any time prior to the final distribution of the assets in the hands of the liquidator. The liquidator, with the approval of the department and the circuit court, may value any security held by a claimant and allow as a common claim any balance of the claim remaining beyond such value of the security, and it shall not be necessary for such claimant to liquidate such security prior to such valuation, nor shall such valuation in anywise affect or impair the right of such claimant to liquidate such security. Any dividend check not called for within 2 years after the same is issued shall be canceled, and the money represented thereby shall be put back into the general account for distribution to depositors and creditors who may have claimed their dividends; provided, however, that before the cancellation of any such dividend warrant the department shall give notice of its intention so to do in a newspaper published in the county in which the insolvent bank is located and if no newspaper is located within said county, then the notice shall be run in a newspaper of general circulation in an adjoining county, and for good cause shown the department may issue to a claimant a dividend check representing any prior dividend checks canceled. Whenever the depositors and other creditors of any such bank or trust company have been paid dividends representing 100 percent of all claims which have been duly proved against any such bank or trust company, the undistributed funds then on hand for the account of such bank or trust company not represented by dividend warrants shall be paid to such bank or trust company at the expiration of a period of 2 years from the time of the closing out of any such receivership.

**History.**—s. 4, ch. 28016, 1953; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1661.23 Disposition of unclaimed dividend checks.**—Whenever dividends representing 100 percent of all claims which have been duly proved against any state bank or trust company which has heretofore been placed or will hereafter be placed in the hands of a receiver or liquidator, or the liquida-

tion of the assets of which has been handled under the supervision of the department have been declared and there is any dividend check or warrant not called for within 2 years after the final dividend, making the total of 100 percent of dividends, is declared, any such dividend check or warrant, final or otherwise, shall be canceled and the moneys represented thereby shall be paid to the state bank or trust company upon whose account such dividend check or warrant was issued. Undistributed funds on hand at the time of closing out any such receivership or liquidation not represented by dividend checks or warrants shall be paid to such state bank or trust company at the expiration of a period of 2 years from the time of such closing out of any such receivership or liquidation.

**History.**—s. 4, ch. 28016, 1953; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1661.24 Expenses and compensation of liquidators; disposition of remainder of proceeds after payment of all claims.**—All expenses of any liquidator shall be paid out of the assets of such bank, or trust company, before distribution of the proceeds thereof. The compensation of the liquidator shall be fixed by the department, and shall be based upon the amount of work actually necessary and performed, and shall in no case exceed 5 percent of the cash collections. From time to time, after full provisions having first been made for the expenses of the liquidating agency, and the payment of liens for taxes and preferred claims, the department shall make ratable dividend of the money in the hands of the state treasurer on all such claims as may have been proved to its satisfaction or adjudicated in a court of competent jurisdiction, and as the proceeds of the assets of such bank, or trust company, are paid over to the liquidator, shall make further dividends on all claims previously proved or adjudicated; and the remainder of the proceeds, if any, after all claims have been paid, shall be paid over to the shareholders of such bank, or trust company, or their legal representatives, in proportion to the stock by them respectively held, or their interest therein as appearing.

**History.**—s. 4, ch. 28016, 1953; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1661.25 Purchase of property by department to protect liquidator's trust.**—Whenever any liquidator, duly appointed by the department, and who shall have qualified and entered upon the discharge of his trust, shall find it in his opinion necessary to fully protect and benefit his said trust, to the extent that said trust may have in any property, real or personal, by reason of any bond, mortgage, lien, assignment, equity or other proper legal claim attaching thereto, and which said property is to be sold under execution, decree of foreclosure, or any proper order of any court of competent jurisdiction, or reclaimed or repossessed by any person having title opposed to such equity of his trust, he may certify the facts in the case, together with his opinion as to

the value of the property, and the value of the equity his trust may have in same, and the amount that may be necessary to purchase such property, to the department, and if the department shall, in its judgment, deem it to the best interest of the said trust, it may draw upon the funds to the credit of said trust in the hands of the state treasurer to the amount necessary for the purchase of said property for the said trust.

**History.**—s. 4, ch. 28016, 1953; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1661.26 Receivers under supervision of department.**—The provisions of this chapter shall apply to all receivers of any bank, or trust company, heretofore appointed by the order of any circuit court, and all such receivers, both those hereunder and those hereafter appointed by the circuit court, shall at all times be under the supervision and control of the department, and subject at all times to summary discharge and dismissal by it, and any vacancy in such receivership may be filled by the department at any time.

**History.**—s. 4, ch. 28016, 1953; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1661.27 Liquidator may borrow money and pledge securities with the approval of department; fees.**—Any liquidator or receiver of an insolvent bank or trust company and any conservator appointed for any bank or trust company may borrow money from any person, and pledge or mortgage any part or all of the assets of such insolvent bank or trust company in conservatorship to secure the payment of such moneys borrowed, upon such terms and conditions as the department may approve, and such conditions may, in addition to any other terms and conditions, also include restriction, either in whole or in part, of the payment of any money to depositors or other creditors of insolvent banks and trust companies until the money so borrowed shall have been repaid in full, provided that any such pledge or mortgage shall be confirmed by the circuit court. The holder of any such pledge or mortgage shall have the right to enforce such pledge or mortgage as any other pledgee or mortgagee, and may exercise any rights given by such agreement or pledge or mortgage, providing further that a conservator may renew and extend notes or other obligations held by the bank in his custody from time to time, and may offer as substitution to the pledgee such renewed obligations. No commissions or fees shall be paid to any liquidator or receiver on account of any money received by him through the pledge of any assets of any bank or trust company provided for herein.

**History.**—s. 4, ch. 28016, 1953; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior

to that date.

**1661.28 Department may conserve assets by appointment of conservator; duties, rights, powers, expenses and salary.**—Whenever the department shall deem it necessary, in order to conserve the assets of any bank for the benefit of the depositors and other creditors thereof, it may appoint a conservator for such bank or trust company, and require of him such bond and security as the department deems proper. The conservator, under the directions of the department, shall take possession of the books, records and assets of every description of such bank and take such action as may be necessary to conserve the assets of such bank pending further disposition of its business, as provided by law. Such conservator shall have all the rights, powers, and privileges now possessed by or hereafter given receivers or liquidators of insolvent state banks, and shall be subject to the obligations and penalties not inconsistent with the provisions of this article, to which the receivers or liquidators are now and may hereafter become subject. During the time that such conservator remains in possession of such bank, the rights of all parties with respect thereto shall, subject to the other provisions of this article, be the same as if a receiver or liquidator had been appointed therefor. All expenses of any such conservator shall be paid out of the assets of such bank and shall be a lien thereon which shall be prior to any other liens provided by this law, or otherwise. The conservator shall receive as salary an amount to be fixed by the department, but in no case greater than that paid to liquidators performing a similar service.

**History.**—s. 4, ch. 28016, 1953; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1661.29 Examiner's report to department.**—The department shall cause to be made such examinations of the affairs of such bank or trust company as shall be necessary to inform it as to the financial condition of such bank or trust company, and the examiner designated for this purpose shall make a report thereon to the department at the earliest practicable date.

**History.**—s. 4, ch. 28016, 1953; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1661.30 Termination of conservatorship.**—After the department becomes satisfied that it may be safely done and that it would be in the public interest, it may, in its discretion, terminate the conservatorship and permit such bank to resume the transaction of its business subject to such terms and conditions, restrictions and limitations as it may prescribe.

**History.**—s. 4, ch. 28016, 1953; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1661.31 Banking business of bank in hands of a conservator.**—While a bank is in the hands of a conservator appointed by the department, the de-

partment may require the conservator to set aside and make available for withdrawal by depositors in payment to such other creditors, on a ratable basis, such amounts as in the opinion of the said department may safely be used for the purpose and the department may, in its discretion, permit the conservator to receive deposits but deposits received by the bank in the hands of the conservator shall not be subject to any limitations as to payment or withdrawal, and such deposits shall be segregated and shall not be used to liquidate any indebtedness of such bank or trust company existing at the time that a conservator was appointed for it, or any subsequent indebtedness incurred for the purpose of liquidating any indebtedness existing at the time such conservator was appointed. Such deposits received while the bank is in the hands of the conservator shall be kept on hand, in cash, invested in the direct obligations of the United States or deposited with the correspondent bank to be selected by the conservator and subject to his withdrawal.

**History.**—s. 4, ch. 28016, 1953; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**661.32 Reorganization.**—Any reorganization of any bank or trust company shall be effective only after "creditors," which term shall include depositors representing 75 percent or more of the institution's debts in aggregate amount, have agreed to such plan of reorganization, only after such plan has been approved by the department and confirmed by a judge of a circuit court within whose jurisdiction said bank is located. When the required number of creditors have signified their willingness to enter into the plan of reorganization, said fact shall be made known to the department which shall thereupon give 10 days' notice by publication in a newspaper located in the city or county in which the institution to be reorganized is situated, and if there is no newspaper within said city or county, publication may be made in such newspaper as shall be designated by the department; such notice of publication to state the exact date that the matter will be presented to the court for confirmation. When such confirmation has been given by a court, all depositors and creditors not a party to said agreement shall be bound by and made a party to the said plan of reorganization, and shall be treated in all respects as though they had joined in said agreement; provided, however, that claims of depositors or other creditors which will be satisfied in full under the provisions of the plan of reorganization shall not be included among the total deposits and other liabilities of the bank or trust company in determining the 75 percent thereof, as hereinabove provided. When such reorganization becomes effective by confirmation of the court, as provided herein, the affairs of the bank or trust company shall be conducted by its board of directors in the manner provided by the plan under the conditions, restrictions and limitations which may have been prescribed by the department.

**History.**—s. 4, ch. 28016, 1953; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective

July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**661.33 Notice of publication of conservator's return of banking business to board of directors.**—Within 15 days after the date that such bank or trust company has been turned back to its board of directors by the conservator, such bank or trust company shall give notice, by registered letter, to each such depositor having made deposits under the provisions of s. 661.31, and such conservator, upon the termination of his conservatorship and turning the affairs of such bank or trust company back to its board of directors shall cause to be published in a newspaper in the city or town or county in which such bank is located, and if no newspaper is published in such city, town or county, then in a newspaper in an adjoining county to be selected by the department, the notice to be in form approved by the department stating the date on which the affairs of the bank were returned to its board of directors, and that the said provisions of s. 661.31 will not be effective after 15 days from the date of such notice.

**History.**—s. 4, ch. 28016, 1953; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

cf.—s. 1.01 Defines registered mail to include certified mail with return receipt requested.

**661.34 Penalty for embezzlement of funds by conservator; removal.**—Any conservator appointed under the provisions of this law for any bank or trust company who embezzles, abstracts or willfully misapplies any moneys, funds or credits coming into his hands as such conservator shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Any person selected as conservator by the department shall be subject to removal at any time. Any vacancy in such conservatorship by removal or resignation may be filled by the department, as provided for the appointment of a conservator in the first instance.

**History.**—s. 4, ch. 28016, 1953; ss. 12, 35, ch. 69-106; s. 674, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**661.35 Powers of department unimpaired.**—Nothing in ss. 661.28-661.34 shall be construed to impair in any manner any powers now vested in the department in the supervision of banking institutions operating under a state charter.

**History.**—s. 4, ch. 28016, 1953; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**661.36 Preservation of records of insolvent banks.**—The general ledger of any insolvent bank in use at the time of its failure, any subsequent general ledger used in the course of its liquidation, and the records of claims as filed with the liquidator, shall be preserved by the department.

**History.**—s. 4, ch. 28016, 1953; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective



July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**'661.37 Destruction of records of insolvent bank by liquidator.**—The liquidator of any insolvent state bank in liquidation under the laws of the state, with the consent of the department, in writing, and upon court order, may destroy or cause to be destroyed such records other than those mentioned in s. 661.39 of any solvent state bank in liquidation or which may hereafter be in liquidation under the laws of the state, as in the judgment of the department and the court are not necessary to the liquidation of said insolvent state bank.

**History.**—s. 4, ch. 28016, 1953; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**'661.38 Prima facie evidence.**—The general ledger, list of claimants, examiner's final report made at the time of the failure of the bank and such other records of the department's office relating to any closed bank, or any duly authenticated copy thereof, shall be prima facie evidence of the subject matter therein set forth.

**History.**—s. 4, ch. 28016, 1953; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**'661.39 Voluntary liquidation.**—Any bank or trust company may go into liquidation and be closed by a vote of its stockholders owning two-thirds of its stock. Whenever a vote is taken to go into liquidation, the board of directors shall cause this fact to be certified to the department and publication thereof to be made for a period of 2 months in a newspaper of general circulation located in the county in which the bank is closing up its affairs and notifying its creditors to present their claims against the bank for payment.

**History.**—s. 4, ch. 28016, 1953; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**'661.40 Procedure in voluntary liquidation.**—When a bank or trust company decides to go into voluntary liquidation, the president and cashier, or other appropriate officers, shall, before beginning publication of the notice required by law furnish the department with a full and complete detailed statement of the affairs of the bank or trust company, and shall thereafter forward to the department on the first Monday in each month a like detailed statement until all of the liabilities of the bank or trust company shall have been settled in full, provided that if the department is not satisfied with the report of any bank or trust company intending to go into voluntary liquidation, or if at any time it is not satisfied with the progress of such liquidation, it shall have full authority to proceed under s. 661.29, or otherwise, as the law directs.

**History.**—s. 4, ch. 28016, 1953; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective

July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**'661.41 Department may direct examination.**—When it shall appear to the department that it is necessary or advisable to do so, it shall direct the person employed under this act to make a thorough examination, reporting to it the condition of the business of the bank or trust company, and the directors shall make good any losses or irregularities to the satisfaction of the department, and if not done at once, a liquidator may be appointed.

**History.**—s. 4, ch. 28016, 1953; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**'661.42 Disposition of unclaimed funds of bank in voluntary liquidation.**—In all cases of voluntary liquidation of any bank or trust company, when after 3 years from the notice of liquidation duly given or published, there are any unclaimed funds due to the depositors of said bank or trust company that cannot be distributed by reason of the inability to find claimants, or by reason of there being no claimants, and after all other depositors who have filed claims or presented demands for payment have been fully paid, then such funds shall inure to and for the benefit of the stockholders of said bank or trust company. Said bank or trust company shall certify to the department in a list of such unclaimed funds showing the amount of same and the name or names of the person or persons in which said deposits were made, or for whose benefit said funds appear, as shown by the books and records of said bank or trust company. The department, if it shall be satisfied that the matters so certified are true and correct and that the requirements of this section have been complied with, shall thereupon certify its approval for the distribution of such unclaimed funds for the benefit of the stockholders of said bank or trust company, and thereafter all such claims shall be forever barred.

**History.**—s. 4, ch. 28016, 1953; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**'661.43 County, municipality, school board, drainage district, etc., authorized to settle, compromise or adjust frozen deposits.**—Any county, municipality, school board, drainage district, or other taxing district or public body corporate, or any division of same, existing under the laws of the state having deposits of money which said deposits are frozen in any banking institution in the state, or having deposits in any banking institution in said state, which banking institution is in the hands of a liquidator, conservator or receiver, may compromise, settle and adjust such deposits by accepting as satisfaction thereof any real or personal property or monetary consideration, provided that such settlement, compromise or adjustment shall be approved in writing by the judge of the circuit court having jurisdiction. The compromise settlement or adjustment of deposits shall be made by the governing board as constituted under the laws of Florida having custody and control of such deposits, and upon

the making of such settlement, compromise or adjustment, the governing board making the same shall be authorized to surrender to the banking institution having such deposit, or to the person in charge thereof, any certificate of deposit or other evidence of such deposit. The provisions of this section shall not apply to any deposits which are liquid and subject to withdrawal or which are fully secured by collateral.

**History.**—s. 4, ch. 28016, 1953; s. 1, ch. 69-300; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**661.44 Unclaimed dividends; disposition.—**

(1) Whenever there are any dividend checks or warrants which have been issued under the provisions of ss. 661.15-661.17, inclusive, and which have not been called for or delivered within 2 years from the date of such dividend distribution, such dividend checks or warrants shall be canceled and the moneys represented thereby shall be put back into the general account and redistributed to those depositors and claimants who have claimed their dividends; provided, that where dividends or distribution to depositors or claimants have equaled 100 percent of their original claim, or will by this distribution equal 100 percent of their original claim, then all funds in excess of 100 percent of the original claim shall be paid to the bank or trust company; provided, further, that before the cancellation of any such dividend checks or warrants, 30 days' notice of intention so to do

shall be published in the county in which the bank or trust company is or was located, and if no newspaper is located within said county, then the notice shall be published in a newspaper of general circulation in an adjoining county, and before such cancellation an order from the circuit court shall be obtained approving the disposition of the unclaimed dividends.

(2) Whenever there are any redistributed dividend checks or warrants which have been issued under subsection (1) hereof, and which have not been called for or delivered within 2 years from such redistribution, such redistributed dividend checks or warrants shall be canceled, and the moneys represented thereby shall be paid into the general revenue fund of the state, provided that before the cancellation of any such redistributed dividend checks or warrants 30 days' notice of intention so to do shall be published in the county in which the bank or trust company is or was located, and if no newspaper is located within said county, then the notice shall be published in a newspaper of general circulation in an adjoining county and before such cancellation an order from the circuit court shall be obtained approving the disposition of the unclaimed redistributed dividends.

**History.**—s. 4, ch. 28016, 1953; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

# TITLE XXXVIII

## BUILDING AND LOAN ASSOCIATIONS

### CHAPTER 665

#### SAVINGS ASSOCIATION ACT

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**665.011 Short title.**—This chapter may be cited as the "Savings Association Act."

**History.**—s. 1, ch. 69-39; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**665.021 Definitions.**—When used in this chapter, the following words and phrases shall have the following meanings, except to the extent that any such word or phrase specifically is qualified by its context:

(1) "Association" shall mean a savings association or savings and loan association subject to the provisions of this chapter.

(2) "Department" shall mean the Department of Banking and Finance.

(3) "Community" shall mean a centralized area or locality in which a body of inhabitants is gathered in one group having common residential, social or business interests. The term does not necessarily mean a municipal corporation or other political subdivision; a community need not be limited by lines and boundaries. A village, town, or other governmental unit, either incorporated or unincorporated, may constitute one community, but a large, populous area under one or more forms of government may be composed of several communities.

(4) "Direct-reduction loan" shall mean a loan or other obligation repayable in consecutive monthly installments, equal or unequal, beginning not later than 90 days after the date of the advance, sufficient to retire the debt, interest, and principal within 30 years, the initial contract of which shall not provide for any subsequent monthly installment of interest and principal of an amount larger than any previous monthly installment, except that provisions may be contained in such contract which specify that one or more consecutive monthly installments may be lapsed to the extent that monthly installments have been made ahead of schedule or, in the event of an emergency to the borrower affecting his ability to pay, to the extent of no more than 6 monthly installments but that nevertheless the full amount of principal and interest shall be paid within the scheduled term of the loan. In the case of construction loans, the first installment under said contract shall be payable not later than 18 months after the date of the first advance. Any such loan or obligation is an amortized loan.

(5) "Dwelling unit" shall mean a single, unified combination of rooms designed for residential use by one family in a multiple dwelling unit structure, and which is not "home property."

(6) "Earnings" shall mean that part of the sources available for payment of earnings of an association which is declared payable on savings accounts from time to time by the board of directors, and is the cost of savings money to the association. Earnings also may be referred to as "interest."

(7) "Financial institution" shall mean a thrift institution, commercial bank, or trust company.

(8) "Home property" shall mean real estate on which there is located, or will be located pursuant to a real estate loan, either a structure designed for residential use by one family or a single condominium unit, including common elements pertinent thereto, designed for residential use by one family in a multiple dwelling unit structure or complex, and shall include fixtures and home furnishings and equipment.

(9) "Impaired condition" shall mean a condition in which the assets of an association in the aggregate do not have a fair value equal to the aggregate amount of liabilities of the association to its creditors, including its members and all other persons.

(10) "Improved real estate" shall mean real estate on which there is a structure or an enclosure, or which is cultivated, reclaimed, used for the purpose of agriculture in any form, prepared as building lots or sites, or otherwise occupied, made better, more useful, or of greater value by care so as to produce an enjoyment thereof.

(11) "Insured association" shall mean an association the savings accounts of which are insured wholly or in part in accordance with the provisions of this chapter.

(12) "Liquid assets" shall mean:

(a) Cash on hand;

(b) Cash on deposit in federal home loan banks, state banks performing similar reserve functions, or in commercial banks, which is withdrawable upon not more than 30 days' notice and which is not pledged as security for indebtedness, except that any deposits in a bank under the control or in the possession of any supervisory authority shall not be considered as liquid assets; and

(c) Obligations of, or obligations which are fully guaranteed as to principal and interest by, the United States or this state.

(13) "Member" shall mean a person holding a savings account of an association or a person borrowing from or assuming or obligated upon a loan or interest therein held by an association, or purchasing property securing a loan or interest therein held by an association. A joint and survivorship relationship, whether of savers or borrowers, constitutes a single membership. Neither a savings account holder, depositor, nor borrower is a member of an association capitalized solely on a capital stock basis as authorized by s. 665.701.

(14) "Net income" shall mean gross revenues for an accounting period less all expenses paid or incurred, taxes, and losses sustained as shall not have been charged to reserves pursuant to the provisions of this chapter.

(15) "One borrower" shall mean:

(a) Any person or entity which is, or which upon the making of a loan will become, obligor on a real estate loan;

(b) Nominees of such obligor;

(c) All persons, trusts, partnerships, syndicates, and corporations of which such obligor is a nominee or a beneficiary, partner, member, or record or beneficial stockholder owning 10 percent or more of the capital stock; and

(d) If such obligor is a trust, partnership, syndicate, or corporation, all trusts, partnerships, syndicates, and corporations of which any beneficiary, partner, member or record or beneficial stockholder owning 10 percent or more of the capital stock, is also a beneficiary, partner, member, or record or beneficial stockholder owning 10 percent or more of the capital stock of such obligor.

(16) "Primarily residential property" shall mean real estate on which there is located, or will be located pursuant to a real estate loan, any of the following:

(a) A structure or structures designed or used primarily for residential rather than nonresidential purposes and consisting of more than one dwelling unit;

(b) A structure or structures designed or used primarily for residential rather than nonresidential purposes for students, residents and persons under care, employees or members of the staff of an educational, health or welfare institution or facility; and

(c) A structure or structures which are used in part for residential purposes for not more than one family and in part for business purposes provided that the residential use of such structure or structures must be substantial and permanent, not merely transitory.

(17) "Primary lending area" shall mean this state and any additional area within 100 miles from the home office of an association.

(18) "Real estate loan" shall mean any loan or other obligation secured by a first lien on real estate in any state held in fee or in a leasehold extending or renewable automatically for a period of at least 15 years beyond the date scheduled for the final principal payment of such loan or obligation, or any transaction out of which a first lien or claim is created against such real estate, including inter alia the purchase of such real estate in fee by an association and the concurrent or immediate sale thereof on installment contract.

(19) "Savings account" shall mean that part of the savings liability of the association which is credited to the account of the holder thereof. A savings account also may be referred to as a savings deposit.

(20) "Savings liability" shall mean the aggregate amount of savings accounts of members, including earnings credited to such accounts, less redemptions and withdrawals.

(21) "Service organization" shall mean an organization substantially all the activities of which consist of originating, purchasing, selling, and servicing loans upon real estate and participating interest therein, or clerical, bookkeeping, accounting, statistical, or similar functions performed primarily for financial institutions, plus such other activities as

the department may approve.

(22) "Sources available for payment of earnings" shall mean net income for an accounting period less amounts transferred to reserves as provided in or permitted by this chapter, plus any balance of undivided profits from preceding accounting periods.

(23) "Thrift institution" shall mean an association, a savings and loan association, a building and loan association, a federal savings association, a federal savings and loan association, and a supervised thrift and residential financing institution of a substantially similar nature.

(24) "Withdrawal value" shall mean the amount credited to a savings account of a member, less lawful deductions therefrom, as shown by the records of the association.

(25) "Net worth" shall mean the sum of all reserve accounts, except specific or valuation reserves, retained earnings, capital stock, any other nonwithdrawable accounts of an association, and the principal amount of any subordinated debt securities to the extent authorized by the department.

**History.**—s. 2, ch. 69-39; ss. 12, 35, ch. 69-106; s. 278, ch. 71-377; s. 1, ch. 73-224; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

### **1665.031 Incorporation.—**

(1) **CREATION OF THRIFT INSTITUTIONS.**—When authorized by the Department of Banking and Finance as provided herein, a corporation may be formed under the laws of this state by five or more natural persons, a majority of whom are residents of this state, for the purpose of promoting thrift and home financing.

(2) **APPLICATION FOR AUTHORITY TO ORGANIZE.**—A written application for authority to organize a corporation as provided in subsection (1) shall be filed with the department and shall include:

(a) The name and address of the exact site at which the association is to be located;

(b) Such detailed financial and biographical information for each incorporator and subscriber as the department may require;

(c) The total amount of the savings account capital and organization expense fund subscribed, together with the name and address of each subscriber thereto;

(d) Such economic data, projections of business volume, income, expense, and other information as the department may require; and

(e) A complete set of fingerprints taken by an authorized law enforcement officer of each organizing incorporator, proposed director, and proposed managing officer. Such fingerprints shall be submitted by the department to appropriate law enforcement agencies for processing.

(3) **INVESTIGATION BY DEPARTMENT.**—Upon the filing of an application the department shall make an investigation of:

(a) The character, financial standing, responsibility, and experience of the persons named in the application to conduct the affairs of the thrift institution,

(b) The public need for a thrift institution or additional thrift institution, as the case may be, in the community where the proposed thrift institution is

to be located, giving particular consideration to the present and future ability of the community to support both the proposed and all other existing thrift institutions in the community in the conduct of profitable operations.

(4) **DECISION BY DEPARTMENT.**—The department shall approve the application upon such terms and conditions as it determines necessary to protect the public interest or disapprove the application at its discretion, but it shall not approve such application unless, in its opinion:

(a) Public convenience and advantage will be promoted by the establishment of the proposed thrift institution;

(b) Local conditions assure reasonable promise of the successful operation of the proposed thrift institution and of those thrift institutions already established in the community;

(c) The proposed officers and directors have good character, sufficient financial standing, and adequate experience and responsibility to assure reasonable promise of the successful operation of the thrift institution; and

(d) The proposed savings account capital and organization expense fund or capital stock subscriptions comply with the requirements of this chapter.

(5) **ACTION BY DEPARTMENT.**—If the department approves the application for authority to organize, the applicant may apply for insurance of accounts as provided for in s. 665.214(6). Upon notice to the department that said insurance of accounts has been approved by the insurer, the department shall furnish to the applicant form articles of incorporation and bylaws for execution and adoption. The executed and adopted articles of incorporation and bylaws shall be returned to the department for approval and filing with the Department of State. The corporate existence of a thrift institution shall begin on the date that the Department of State records the approved articles of incorporation. However, no thrift institution shall commence business before it is in possession of a certificate of authorization to transact business as provided in s. 665.041(3). Corporate existence shall be perpetual unless terminated in accordance with the provisions of this chapter.

**History.**—s. 3, ch. 69-39; ss. 10, 12, 35, ch. 69-106; s. 1, ch. 72-369; s. 1, ch. 73-49; s. 1, ch. 73-224; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 7, ch. 78-95; s. 3, ch. 79-144.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

#### **1665.032 Examination fees and assessments.**—

(1) Each state savings and loan association shall pay to the Department of Banking and Finance application and examination fees and assessments as follows:

(a) A semiannual fee of \$250; plus

(b) A semiannual assessment of 5 cents per \$1,000 of total assets up to \$50 million, plus 3 cents per \$1,000 in excess of \$50 million, computed on total assets as shown on the report of condition of the association as of the last business day in June and December of each year. The department is authorized to fix a fee or assessment which is less than the maximum herein. Said assessment may be based upon a per-man per-day cost of examination. In fixing said cost, consideration shall be given to the qual-

ifications of each man, and the rate may vary accordingly.

(2) The fee and assessment shall be due and payable within 30 days following the date of the semiannual report of condition.

(3) Applications required to be filed with the department by this chapter shall bear the following fees:

(a) The application to organize a new association shall be accompanied by a fee of \$2,000.

(b) The application to change the location of the home office or branch office shall be accompanied by a fee of \$1,000.

(c) The application to establish a branch office shall be accompanied by a fee of \$1,500.

(d) The application to convert from a federal association to a state association shall be accompanied by a fee which shall not exceed an amount which is the sum of \$250 plus an amount to be computed at the rate of 5 cents per \$1,000 of total assets up to \$50 million, plus 3 cents per \$1,000 of total assets in excess of \$50 million. Total assets shall be determined from the report of condition of the association as of the last business day in June or December immediately preceding the date of application for conversion. The department is authorized to fix a fee which is less than the maximum authorized herein. Said fee may be based upon a per-man per-day cost to process the application. In determining the per-man cost, consideration shall be given to the qualifications of each man, and the rate may vary accordingly. If the conversion occurs, this fee will be credited to, and reduce, the first semiannual assessment.

(4) All fees and assessments imposed by this chapter shall be paid to the state treasurer who shall deposit all of the amount collected hereunder in a special bank and trust company trust fund. The funds so deposited are to be used by the department to administer this chapter.

**History.**—s. 1, ch. 73-49; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

#### **1665.041 Capitalization and organization.**—

(1) **BASIS FOR INCORPORATION; MINIMUM SAVINGS ACCOUNT CAPITAL REQUIREMENTS.**—Except as provided in s. 665.704, associations may be incorporated on a mutual basis with savings accounts only. Said capital shall be in the following minimum amounts:

(a) In communities having a population of 10,000 or less ..... \$100,000;

(b) In communities having a population of more than 10,000 but less than 100,000 ..... 300,000;

(c) In communities having a population of more than 100,000 ..... 500,000;

except that the department may, in its discretion, require a larger amount. The population of the community shall be determined by the department based upon the latest Federal Census.

(2) **ORGANIZATION EXPENSE FUND.**—The incorporators shall create an organization expense fund equal to 10 percent of the total savings account capital required by the department and shall, at the time of filing the application for authority to organ-



ize an association, pay to their designated escrow agent a minimum of 10 percent of said fund in cash. Organization expenses may be paid from the expense fund, and the amounts expended will not thereafter be recoverable to the contributors.

(3) **AUTHORIZATION TO COMMENCE BUSINESS.**—Within 6 months of the date upon which approved articles of incorporation are filed, the association shall file with the department a statement, in such form and with such supporting data and proof as it may require, showing that the entire savings account capital and the organization expense fund have been fully paid in cash and that the funds represented thereby, less sums expended for organization expenses and for fixed assets and supplies, are on hand. Upon determination that the association has in good faith complied with all the requirements of law, and within 30 days of receipt of the statement specified herein, the department shall issue, in duplicate, under its official seal, a certificate of authorization to transact the business of a savings and loan association, transmitting one copy to the association and placing one copy in the department file. The association shall cause said certificate to be published one time in a newspaper of general circulation published in the city or county where the association is located.

(4) **RETENTION AND REPAYMENT OF ORGANIZATION EXPENSE FUND.**—The balance remaining in the organization expense fund on the date the association commences business shall be retained by the association as a source from which to pay operating expenses until such time as its net income is sufficient to pay such earnings as may be declared and paid or credited to its savings account holders. Said fund shall be paid earnings at the same rate as savings accounts of the association. The fund shall be reimbursed for payment of operating expenses as the net income of the association permits. It may be refunded to the original contributors when the net income of the association, after provision for statutory reserves and declaration of earnings on savings accounts, warrants and when such refund is approved by the department.

**History.**—s. 4, ch. 69-39; ss. 12, 35, ch. 69-106; s. 2, ch. 72-369; s. 1, ch. 73-224; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

cf.—s. 11.031 Official census.

#### **1665.051 Name; office, forfeiture of charter for nonuse.**

(1) **CORPORATE NAME.**—The name of every association shall include either the words "savings association," or "savings and loan association." These words shall be preceded by an appropriate descriptive word or words approved by the department. An ordinal number may not be used as a single descriptive word preceding the words "savings association," or "savings and loan association," unless such words are followed by the words "of .....", the blank being filled by the name of the community, town, city, or county in which the association has its home office. An ordinal number may be used together with another descriptive word preceding the words, "savings association" or "savings and loan association," provided the other descriptive word

has not been used in the corporate name of any other association in the state, in which case the suffix mentioned above is not required to be used. An ordinal number may be used, together with another descriptive word preceding the words "savings association" or "savings and loan association," even when such other descriptive word has been used in the corporate name of an association in the state, provided the suffix "of .....", as provided above, is also used. The suffix provided above may be used in any corporate name. The use of the words, "National," "Federal," "United States," "insured," "guaranteed," or any form thereof, separately or in any combination thereof with other words or syllables, is prohibited as part of the corporate name of an association. No certificate of incorporation of a proposed association having the same name as a corporation authorized to do business under the laws of this state or a name so nearly resembling it as to be likely to deceive shall be issued by the department, except to an association formed by the reincorporation, reorganization, or consolidation of the association with other associations, or upon the sale of the property or franchise of an association.

(2) **EXCLUSIVENESS OF NAME.**—No person, firm, company, association, fiduciary, partnership, or corporation, either domestic or foreign, unless he or it is lawfully authorized to do business in this state under the provisions of this chapter and actually is engaged in carrying on a savings association business shall do business under any name or title which contains the terms "savings association," "savings and loan association," "building and loan association," "building association," or any combination employing either or both of the words "building" or "loan" with one or more of the words "saving," "savings," "thrift," or words of similar import, or any combination employing one or more of the words "saving," "savings," "thrift," or words of similar import with one or more of the words "association," "institution," "society," "company," "fund," "corporation," or words of similar import, or use any name or sign or circulate or use any letterhead, billhead, circular or paper whatever, or advertise or represent in any manner which indicates or reasonably implies that his or its business is the character or kind of business carried on or transacted by an association or which is likely to lead any person to believe that his or its business is that of an association. Upon application by the department or any association, a court of competent jurisdiction may issue an injunction to restrain any such entity from violating or continuing to violate any of the foregoing provisions of this subsection. Any person who violates any provision of this subsection shall be punished by a fine of not more than \$5,000, and each day of violation shall constitute a separate offense. The prohibitions of this subsection shall not apply to any corporation or association formed for the purpose of promoting the interests of thrift institutions, the membership of which is comprised of thrift institutions, their officers or other representatives.

(3) **CORPORATE OFFICE.**—Without the prior approval of the department, as provided in this chapter, no association shall establish any office other than its home office, which shall be in the location

named in the certificate of incorporation. No office of an association shall be moved from its immediate vicinity unless approved by the department.

(4) **CHANGE OF NAME OR OFFICE.**—The name or the location of the home office or branch office of any association fixed in the certificate of incorporation or other certificate of approval may be changed in the following manner: The proposed new name or the new location of the home office or branch office of the association shall be approved by a resolution adopted by the board of directors. Immediately preceding application to the department for approval, notice of intention to change the name or the location of the home office or branch office, signed by two officers, shall be published once a week for 2 successive weeks in a newspaper of general circulation in the county in which the home office is located, and a copy of such notice shall be displayed during such consecutive 2 weeks' period in a conspicuous public place in the home office and in the branch office, if the branch location of the association is sought to be changed. Five copies of an application to the department for approval shall be signed by two officers of the association, acknowledged before an officer competent to take acknowledgments of deeds and filed with the department. Upon approval of an application for change of name, the department shall endorse on each copy of the application therefor a certificate of approval thereof, and the change of name of such association shall be effective immediately. Whenever the department shall receive from any association an application for change of location of its home office or a branch office, it shall make a determination based upon the criteria set out in s. 665.031(3) and (5) in the case of establishment of a newly chartered association, and, acting in its sole discretion, may hold a hearing as provided for in that section. Upon its approval of such application, the department shall endorse on each copy of such application a certificate of approval. When the department shall have endorsed such approval upon the copies of an application for approval of change of name or change of location of home office or branch office, it shall file one copy thereof with the Department of State, two copies with the Federal Home Loan Bank of which the association is a member, return one copy to the applicant association and retain the original copy in the permanent files of the department.

(5) **FORFEITURE OF CHARTER FOR NONUSE.**—Any association which shall not commence business within 6 months after the date upon which its corporate existence shall have begun, shall forfeit its corporate existence, unless the department, before the expiration of such 6-month period, shall have approved the extension of time within which it may commence business, upon a written application stating the reasons for such delay. Upon such forfeiture the certificate of incorporation shall expire, and all action taken in connection with the incorporation thereof except the payment of the incorporation fee shall become void. Amounts credited on savings accounts, less expenditures authorized by

law, shall be returned pro rata to the respective holders thereof.

**History.**—s. 5, ch. 69-39; ss. 10, 12, 35, ch. 69-106; s. 1, ch. 74-290; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

#### **§665.061 Conversion without change of business form.—**

(1) **CONVERSION INTO FEDERAL SAVINGS ASSOCIATION.**—At an annual meeting or at any special meeting of the members or stockholders called to consider such action, any association or corporation of this state doing a home-financing business may convert itself into a federal savings association or federal savings and loan association, hereinafter called "Federal Association," in accordance with the laws of the United States, as now or hereafter amended, upon a vote of 51 percent or more of the total number of votes of the members or stockholders eligible to be cast. A copy of the minutes of the proceedings of such meeting of the members or stockholders, verified by the affidavit of the secretary or an assistant secretary, shall be filed with the department within 10 days after the date of such meeting. A sworn copy of the proceedings of such meeting, when so filed, shall be presumptive evidence of the holding and action of such meeting. Within 3 months after the date of such meeting, the association shall take such action in the manner prescribed and authorized by the laws of the United States as shall make it a federal association. There shall be filed with the department a copy of the charter issued to such federal association by the Federal Home Loan Bank Board or a certificate showing the organization of such association as a federal association, certified by the secretary or assistant secretary of the Federal Home Loan Bank Board. A similar copy of the charter, or of such certificate, shall be filed by the association with the Department of State. No failure to file any such instruments with either the Department of Banking and Finance or the Department of State shall affect the validity of such conversion. Upon the grant to any association of a charter by the Federal Home Loan Bank Board, the association receiving such charter shall cease to be an association incorporated under this chapter and shall no longer be subject to the supervision and control of the department. Upon the conversion of any association into a federal association, the corporate existence of such association shall not terminate, but such federal association shall be deemed to be a continuation of the entity of the association so converted and all property of the converted association, including its rights, titles, and interest in all and to all property of whatever kind, whether real, personal, or mixed, and things in action, and every right, privilege, interest, and asset of any conceivable value or benefit then existing, or pertaining to it, or which would inure to it, shall immediately by operation of law and without any conveyance or transfer and without any further act or deed remain and be vested in and continue and be the property of such federal association into which the state association has converted itself, and such federal association shall have, hold, and enjoy the same in its own right as fully and to the same extent as the same was

possessed, held, and enjoyed by the converting association. Such federal association as of the time of the taking effect of such conversion shall continue to have and succeed to all the rights, obligations, and relations of the converting association. All pending actions and other judicial proceedings to which the converting state association is a party shall not be deemed to have abated or to have discontinued by reason of such conversion, but may be prosecuted to final judgment, order, or decree in the same manner as if such conversion into such federal association had not been made and such federal association resulting from such conversion may continue such action in its corporate name as a federal association, and any judgment, order, or decree may be rendered for or against it which might have been rendered for or against the converting state association theretofore involved in such judicial proceedings. Any association or corporation, which has heretofore converted itself into a federal association under the provisions of the Laws of the United States and has received a charter from the Federal Home Loan Bank Board, shall hereafter be recognized as a federal association, and its federal charter shall be given full recognition by the courts of this state to the same extent as if such conversion had taken place under the provisions of this section; provided, however, that there shall have been compliance with the foregoing requirements with respect to the filing with the department of a copy of the federal charter or a certificate showing the organization of such association as a federal association. All such conversions are hereby ratified and confirmed, and all the obligations of such an association which has so converted shall continue as valid and subsisting obligations of such federal association, and the title to all of the property of such an association shall be deemed to have continued and vested, as of the date of issuance of such federal charter, in such federal association as fully and completely as if such conversion had taken place since the enactment of this chapter pursuant to this section.

(2) **CONVERSION INTO STATE-CHARTERED ASSOCIATION.**—At an annual meeting or at any special meeting of the members or stockholders called to consider such action, any federal association may convert itself into an association under this chapter upon a vote of 51 percent or more of the total number of votes of the members or stockholders of such federal association eligible to be cast. Copies of the minutes of the proceedings of such meeting of members or stockholders, verified by the affidavit of the secretary or an assistant secretary, shall be filed in the office of the department and mailed to the Federal Home Loan Bank Board, Washington, D.C., within 10 days after such meeting. Such verified copies of the proceedings of the meeting when so filed shall be presumptive evidence of the holding and action of such meeting. At the meeting at which conversion is voted upon, the members or stockholders shall also vote upon the directors who shall be the directors of the state-chartered association after conversion takes effect. Such directors shall then execute two copies of the petition for certificate of incorporation and two copies of the bylaws. The department shall insert in the certificate of incorpora-

tion, at the end of the paragraph preceding the testimony clause, the following: "This association is incorporated by conversion from a federal association." All of the directors who are chosen for the association shall sign and acknowledge the petition for certificate of incorporation as subscribers thereto and the proposed bylaws as incorporators of the association. The provisions of this chapter shall, so far as applicable, apply to such conversion under this section. The department may provide, by rule, for the procedure to be followed by any federal association converting into a state-chartered association. All the applicable provisions regarding property and other rights contained in the preceding subsection shall apply to the conversion of a federal association into an association incorporated under this chapter, so that the state-chartered association shall be a continuation of the corporate entity of the converting federal association and continue to have all of its property and rights.

(3) **LIMITATION.**—No conversion of an association or a federal association, direct or indirect, shall be permitted except as specifically authorized by this chapter.

**History.**—s. 6, ch. 69-39; ss. 10, 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 1, ch. 78-234.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**§665.073 Power to reorganize, merge or consolidate.**—Pursuant to a plan adopted by the board of directors and approved by the department as equitable to the members of the association and as not impairing the usefulness and success of other properly conducted associations in the community, an association shall have power to reorganize or merge or consolidate with another association or federal association within its primary lending area, provided that the plan of such reorganization, merger or consolidation shall be approved at an annual meeting or at any special meeting of the members called to consider such action by a vote of 51 percent or more of the total number of votes of the members eligible to be cast. In all cases the corporate continuity of the resulting corporation shall possess the same incidents as that of an association which has converted in accordance with this chapter. No association, directly or indirectly, shall convert or reorganize, or merge, consolidate, assume liability to pay savings accounts or other liabilities of, transfer assets in consideration of the assumption of liabilities for any portion of the savings accounts, deposits made in, or other liabilities of such association to, or acquire the assets of or assume liability to pay any liabilities of, any financial institution or any other organization, person, or entity, except as specifically authorized by this chapter.

**History.**—s. 7, ch. 69-39; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**§665.081 Dissolution.**—

(1) **DISSOLUTION.**—Subject to the limitations of s. 665.073, any association may, at any special meeting of the members called to consider such action, terminate its existence in accordance with the provisions of this section upon a vote of 51 percent



or more of the total number of votes of members eligible to be cast.

(2) **CERTIFICATE OF DISSOLUTION.**—Upon such vote, five copies of a certificate of dissolution, which shall state the vote cast in favor of dissolution, shall be signed by two officers and acknowledged before an officer competent to take acknowledgments of deeds. Five copies of such certificate shall be filed with the department, which shall examine such association, and, if it finds that the association is not in an impaired condition, shall so note, together with its approval of such dissolution, upon all the copies of the certificate of dissolution. The department shall place a copy in its permanent files, file a copy with the Department of State, and return the remaining copies to the parties filing the same.

(3) **CONTINUATION AS CORPORATE ENTITY FOR SOLE PURPOSE OF WINDING UP AFFAIRS.**—Upon such approval the association shall be dissolved and shall cease to carry on business but nevertheless shall continue as a corporate entity for the sole purpose of paying, satisfying, and discharging existing liabilities and obligations, collecting and distributing assets, and doing all other acts required to adjust, wind up, and dissolve its business and affairs.

(4) **DIRECTORS AS LIQUIDATING TRUSTEES.**—The board of directors shall act as trustees for liquidation. It shall proceed as quickly as may be practicable to wind up the affairs of the association and, to the extent necessary or expedient to that end, shall exercise all the powers of such dissolved association and, without prejudice to the generality of such authority, may fill vacancies, elect officers, carry out the contracts, make new contracts, borrow money, mortgage or pledge the property, sell its assets at public or private sale, or compromise claims in favor of or against the association, apply assets to the discharge of liabilities, distribute assets either in cash or in kind among savings account members according to their respective pro rata interests after paying or adequately providing for the payment of other liabilities, and perform all acts necessary or expedient to the winding up of the association. All deeds or other instruments shall be in the name of the association and executed by the president or a vice president and the secretary or an assistant secretary. The board of directors shall also have power to exchange or otherwise dispose of or put in trust all, or substantially all, or any part of the assets, upon such terms and conditions and for such considerations, which may be money, stock, bonds, shares, or accounts of any insured association, or of any federal association, or other instruments for the payment of money, or other property, or other considerations, as the board of directors may deem reasonable or expedient, and may distribute such considerations or the proceeds thereof, or trust receipts, or certificates of beneficial interest among the savings account members in proportion to their pro rata interests therein. In the absence of fraud, any determination of value made by the board of directors for any such purposes shall be conclusive.

(5) **SUPERVISION BY DEPARTMENT DURING LIQUIDATION.**—The association, during the liquidation of the assets of the association by the

board of directors, shall continue to be subject to the supervision of the department, and the board of directors shall report the progress of such liquidation to the department from time to time as it may require. Upon completion of liquidation, the board of directors shall file with the department a final report and accounting of such liquidation. The approval of such report by the department shall operate as a complete and final discharge of the board of directors and each member thereof in connection with the liquidation of such association. No such dissolution or any action of the board of directors in connection therewith shall impair any contract right between such association and any borrower or other person or persons or the vested rights of any member of such association.

**History.**—s. 8, ch. 69-39; ss. 10, 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

#### **1665.091 Meetings of members.—**

(1) **ANNUAL AND SPECIAL MEETINGS.**—The annual meeting of the members of each association shall be held during the first 4 months of the fiscal year, as fixed in the bylaws of such association. Special meetings may be called as provided in the bylaws.

(2) **MEMBERS ENTITLED TO VOTE.**—The members who shall be entitled to vote at any meeting of the members shall be those who are members of record at the end of the calendar month next preceding the date of the meeting, except those who have ceased to be members. The number of votes which members shall be entitled to cast shall be in accordance with the books on the said date determinative of entitlement to vote.

(3) **VOTING RIGHTS.**—In the determination of all questions requiring action by the members, each member shall be entitled to cast one vote for each \$100 of the withdrawal value of savings accounts, if any, held by such member. No member however, shall cast more than 50 votes.

(4) **VOTING BY PROXY.**—At any meeting of the members, voting may be in person or by proxy, provided that no proxy shall be eligible to be voted at any meeting unless such proxy shall have been filed with the secretary of the association, for verification, at least 5 days prior to the date of such meeting. Every proxy shall be in writing and signed by the member or his duly authorized attorney-in-fact and, when filed with the secretary, shall unless otherwise specified in the proxy, continue in force from year to year until revoked by a writing duly delivered to the secretary or until superseded by subsequent proxies.

(5) **QUORUM.**—At an annual meeting or at any special meeting of the members, 25 members present in person or by proxy eligible to be voted constitutes a quorum. A majority of all votes cast at any meeting of members shall determine any question unless this chapter specifically provides otherwise.

**History.**—s. 9, ch. 69-39; s. 1, ch. 71-91; s. 1, ch. 73-168; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 1, ch. 78-40.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective

July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**'665.101 Membership charges prohibited.**—The association shall not directly or indirectly charge any membership, admission, withdrawal, or any other fee or sum of money for the privilege of becoming, remaining, or ceasing to be a member of the association, except reasonable charges upon the making or modification of a loan or the withdrawal of savings accounts classified pursuant to s. 665.331 prior to the contract terms of the account. Except as authorized by this chapter, the association shall not charge any member any sum of money by way of fine or penalty for any cause, except that a reasonable charge may be made against borrowers for defaults or prepayments.

**History.**—s. 10, ch. 69-39; s. 5, ch. 73-285; s. 3, ch. 76-168; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**'665.111 Access to books and records; communication with members.**—

(1) **EXCLUSIVENESS OF ACCESS.**—Every member shall have the right to inspect the books and records of an association which pertain to his loan or savings account. Otherwise, the right of inspection and examination of the books and records shall be limited:

(a) To the department or its duly authorized representatives;

(b) To persons duly authorized to act for the association; and

(c) To any federal or state instrumentality or agency authorized to inspect or examine the books and records of an insured association.

The books and records pertaining to the accounts and loans of members shall be kept confidential by the association, its directors, officers and employees, and by the department, its examiners and representatives, except where the disclosure thereof shall be compelled by a court of competent jurisdiction or by legislative subpoena as provided by law. All such books and records which have been produced or furnished to any legislative body or committee pursuant to legislative subpoena, as described herein, shall be kept confidential by the legislative body or committee and shall not be made public. The confidential status of such books and records and information obtained therefrom shall exist while the books and records are in the possession of the legislative body or committee and shall continue after the legislative body or committee has returned the books and records to the association from whence they came. No member of the legislature, member of the legislative body or committee, or other person shall make public or disclose any of the information found in the books and records which are subpoenaed, except in cases involving investigation of charges against any officer subject to impeachment. No member or any other person shall have access to the books and records or be furnished or possessed of a partial or complete list of the members except upon express action and authority of the board of directors. Any violation of the provisions of this section relating to an unlawful disclosure of confidential in-

formation is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) **COMMUNICATION WITH MEMBERS.**—In the event, however, that any member or members desire to communicate with the other members of the association with reference to any question pending or to be presented for consideration at a meeting of the members, the association shall furnish upon request a statement of the approximate number of members of the association at the time of such request, and an estimate of the cost of forwarding such communication. The requesting member or members shall then submit the communication, together with a sworn statement that the proposed communication is not for any reason other than the business welfare of the association, to the department, which, if it finds it to be appropriate, truthful, and in the best interest of the association and its members, shall forward the communication to the association, together with its order directing that the communication be prepared and mailed by the association to the members upon the requesting member's or members' payment to it of the expenses of such preparation and mailing. If the department finds such proposed communication to be inappropriate, untruthful, or contrary to the best interests of the association and its members, it shall have the discretion to make any disposition of the request to communicate which it deems proper, and it shall execute its order making disposition of the request.

(3) **APPLICABILITY OF SECTION TO FEDERAL ASSOCIATIONS.**—Insofar as the provisions of this section are not inconsistent with federal law, such provisions shall apply to federal associations whose home offices are located in this state, and to the members thereof, except that the communication and statement provided for in subsection (2) shall be tendered to the Federal Home Loan Bank Board, Washington, D.C., in the case of a federal association and forwarded only upon the board's certificate and direction.

**History.**—s. 11, ch. 69-39; ss. 12, 35, ch. 69-106; s. 1, ch. 74-83; s. 3, ch. 76-168; s. 1, ch. 77-174; s. 1, ch. 77-457; s. 7, ch. 78-95.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**'665.121 Financial statement.**—Every association shall prepare and publish annually no later than the second month of the fiscal year in a newspaper of general circulation in the county in which the home office of such association is located a statement of its financial condition in the form prescribed or approved by the department. The association shall deliver a copy of such statement to each of its members upon application.

**History.**—s. 12, ch. 69-39; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 2, ch. 78-40.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**'665.131 Board of directors.**—

(1) **ASSOCIATION UNDER DIRECTION OF BOARD OF DIRECTORS.**—The business of the association shall be directed by a board of directors of not less than 5 nor more than 15 as determined by, and elected by ballot from among, the members by a plurality of the votes of the members present, or repre-

sented by proxy. If authorized by vote of the members the directors may elect all directors. At all times at least two-thirds of the directors shall be bona fide residents of this state.

(2) **QUALIFICATIONS REQUIRED OF DIRECTORS.**—In order to qualify as a director, a member of an association must hold individually, or jointly with his spouse, a savings account, the withdrawal value of which is at least \$500; however, if the assets of the association exceed \$5 million, the withdrawal value of such account must be at least \$1,000. Except with the written consent of the department, no member shall be eligible for election or shall serve as a director or officer of an association who has been adjudicated a bankrupt or convicted of a criminal offense involving dishonesty or a breach of trust. A director shall automatically cease to be a director when he ceases to be a member, or when he is adjudicated a bankrupt, or is convicted of a criminal offense, or when the net equity above loans of all savings accounts in the association held by him aggregates less than the minimum required to be eligible for election as a director. No action of the board of directors shall be invalidated through the participation of such director in such action. If a director becomes ineligible under the terms of this subsection by reason of the exercise by the association of the right of redemption of savings accounts provided for in s. 665.351 he shall remain validly in office until the expiration of his term or until he otherwise becomes ineligible, resigns, or is removed, whichever may occur first.

(3) **CLASSIFICATION OF DIRECTORS.**—At the first annual meeting, the members shall by majority vote divide the directors into three classes of as nearly equal numbers as possible. The term of office of directors of the first class shall expire at the annual meeting next after the first election; of the second class, 1 year thereafter; and of the third class, 2 years thereafter; and at each annual election thereafter directors shall be chosen for a full term of 3 years to succeed those whose terms expire.

(4) **NUMBER OF DIRECTORS.**—The authorized number of directors determined by the members within the limits hereinabove specified may subsequently be increased or decreased only by vote of the members.

(5) **VACANCY ON BOARD OF DIRECTORS CAUSED BY INCREASE IN NUMBER.**—If the members fail to elect a director to fill each vacancy created by any such increase, the directors may fill such vacancy by electing a director to serve until the next annual meeting of the members, at which time a director shall be elected to fill the vacancy for the unexpired term for the class of director in which such vacancy exists.

(6) **CLASSIFICATION OF NEW DIRECTORS ELECTED TO FILL VACANCIES.**—Whenever the number of directors is changed and vacancies caused by such change are filled, the directors so elected shall be classified so that each of the three classes shall always contain numbers as nearly equal as possible.

(7) **VACANCY ON BOARD OF DIRECTORS FILLED BY DIRECTORS.**—Any vacancy among directors, not so filled by the members, may be filled

by a majority vote of the remaining directors, though less than a quorum, by electing a director to serve until the next annual meeting of the members, at which time a director shall be elected to fill the vacancy for the unexpired term for the class of director in which such vacancy exists. In event of a vacancy on the board of directors from any cause, the remaining directors shall have full power and authority to continue direction of the association until such vacancy is filled.

**History.**—s. 13, ch. 69-39; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**665.141 Indemnity bonds.**—All directors, officers, and employees of an association shall, before entering upon the performance of any of their duties, execute their individual bonds with adequate corporate surety payable to the association as an indemnity for any loss the association may sustain of money or other property by or through any fraud, dishonesty, forgery or alteration, larceny, theft, embezzlement, robbery, burglary, holdup, wrongful or unlawful abstraction, misapplication, misplacement, destruction or misappropriation, or any other dishonest or criminal act or omission by any such director, officer, employee, or agent. Associations which employ collection agents, who for any reason are not covered by a bond as hereinabove required, shall provide for the bonding of each such agent in an amount equal to at least twice the average monthly collection of such agent. Such agents shall be required to make settlement with the association at least monthly. No bond coverage will be required of any agent which is a financial institution insured by the Federal Deposit Insurance Corporation or by the Federal Savings and Loan Insurance Corporation. The amounts and form of such bonds and sufficiency of the surety thereon shall be approved by the board of directors and by the department. In lieu of individual bonds, a blanket bond in an amount and form approved by the department protecting the association from loss through any such act or acts on the part of any such director, officer, or employee, may be obtained. A true copy of every such indemnity bond shall be filed at all times with the department. Such bonds shall provide that a cancellation thereof either by the surety or by the insured shall not become effective unless and until 10 days' notice in writing first shall have been given to the department, unless it shall have approved such cancellation earlier.

**History.**—s. 14, ch. 69-39; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**665.151 Transactions of officers and directors.**—

(1) **CONFLICT OF INTEREST.**—Directors and officers occupy a fiduciary relationship to the association of which they are directors or officers, and no director or officer shall engage or participate, directly or indirectly, in any business or transaction conducted on behalf of or involving the association, which would result in a conflict of his own personal interests with those of the association which he serves, unless:



(a) Such business or transactions are conducted in good faith and are honest, fair and reasonable to the association;

(b) A full disclosure of such business or transaction and the nature of the director's or officer's interest is made to the board of directors;

(c) Such business or transactions are approved in good faith by the board of directors, any interested director abstaining, and such approval is recorded in the minutes;

(d) Any profits inuring to the officer or director are not at the expense of the association and do not prejudice the best interests of the association in any way; and such business or transactions do not represent a breach of the officer's or director's fiduciary duty and are not fraudulent, illegal or ultra vires.

(2) **DISCLOSURE OF PERSONAL INTEREST.**—Without limitation by any of the specific provisions of this section, the department may require the disclosure by directors, officers, and employees of their personal interest, directly or indirectly, in any business or transactions on behalf of or involving the association and of their control of or active participation in enterprises having activities related to the business of the association.

(3) **SPECIFIED RESTRICTIONS.**—The following restrictions governing the conduct of directors and officers expressly are specified, but such specification is not to be construed in any manner as excusing such persons from the observance of any other aspect of the general fiduciary duty owed by them to the association which they serve:

(a) *Dual status.*—No officer or director of an association shall hold office or status as a director or officer of another thrift institution the principal office of which is located in the association's primary lending area.

(b) *Remuneration.*—No director shall receive remuneration as director except reasonable fees for service as a director or for service as a member of a committee of directors, except that nothing herein contained shall be deemed to prohibit or in any way to limit any right of a director who is also an officer or employee of or attorney for the association to receive compensation for service as an officer, employee or attorney.

(c) *Loans.*—No director or officer shall have any interest, directly or indirectly, in the proceeds of a loan or investment or of a purchase or sale made by the association, unless such loan, investment, purchase or sale is authorized expressly by resolution of the board of directors, and unless such resolution is approved by vote of at least two-thirds of the directors authorized of the association, any interested director taking no part in such vote.

(d) *Savings.*—No director or officer shall have any interest, direct or indirect, in the purchase at less than its face value of any evidence of a savings account, deposit or other indebtedness issued by the association.

(e) *Coercion.*—No director, association, or officer thereof shall require, as a condition to the granting of any loan or the extension of any other service by the association, that the borrower or any other person undertake a contract of insurance or any other agreement, or understanding with respect to the fur-

nishing of any other goods or services, with any specific company, agency or individual.

(f) *Voting rights; office.*—No officer or director acting as proxy for a member of an association shall exercise, transfer, or delegate such vote or votes in any consideration of a private benefit or advantage, direct or indirect. The voting rights of members and directors shall not be the subject of sale, barter, exchange or similar transaction, either directly or indirectly. Any officer or director who violates the provisions of this section shall be held accountable to the association for any increment.

(g) *Inducements.*—No director or officer shall solicit, accept or agree to accept, directly or indirectly, from any person other than the association any gratuity, compensation or other personal benefit for any action taken by the association or for endeavoring to procure any such action.

(4) **PENALTY.**—Any violation of the provisions of this section shall be punishable as a misdemeanor.

*History.*—s. 15, ch. 69-39; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.  
*Note.*—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**665.162 Depositories.**—No association shall deposit any of its funds except with a depository approved by a vote of a majority of the directors authorized of the association. No director who is an officer, partner, director, or trustee of the depository so designated shall take part in such vote.

*History.*—s. 16, ch. 69-39; s. 3, ch. 76-168; s. 1, ch. 77-457.  
*Note.*—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**665.171 Indemnification of officers, directors, and employees.**—Any person shall be indemnified or reimbursed by the association for reasonable expenses, including but not limited to attorney fees, actually incurred by him in connection with any action, suit or proceeding, instituted or threatened, judicial or administrative, civil or criminal, to which he is made a party by reason of his being or having been a director, officer or employee of an association; provided, however, that no person shall be so indemnified or reimbursed, nor shall he retain any advancement or allowance for indemnification which may have been made by the association in advance of final disposition, in relation to such action, suit or proceeding in which and to the extent that he finally shall be adjudicated to have been guilty of a breach of good faith, to have been negligent in the performance of his duties or to have committed an action or failed to perform a duty for which there is a common law or a statutory liability; and provided further, that a person may, with the approval of the department, be so indemnified or reimbursed for amounts paid in compromise or settlement of any action, suit or proceeding, including reasonable expenses incurred in connection therewith, or reasonable expenses including fines and penalties incurred in connection with a criminal or civil action, suit or proceeding in which such person has been adjudicated guilty, negligent or liable if it shall be determined by the board of directors and by the department that such person was acting in good faith and in what he believed to be the best interests of the association and without knowledge that the

action was illegal, and if such indemnification or reimbursement is approved at an annual or special meeting of the members by a majority of the votes eligible to be cast. Amounts paid to the association, whether pursuant to judgment or settlement by any person within the meaning of this section shall not be indemnified or reimbursed in any case.

**History.**—s. 17, ch. 69-39; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**665.181 Approval of operating contracts.**—

No association shall make any operating or management contract with any person or persons extending for more than 1 year, except with the approval of the department.

**History.**—s. 18, ch. 69-39; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**665.191 Records.**—

(1) **RECORDS AT HOME OFFICE.**—Every association shall keep at the home office correct and complete books of account and minutes of the proceedings of members, directors, and the executive committee. Complete records of all business transacted at the home office shall be maintained at the home office. Control records of all business transacted at each branch office or agency shall be maintained at the home office.

(2) **RECORDS AT BRANCH OFFICE.**—Each branch office shall keep detailed records of all transactions at such branch office and shall furnish full control records to the home office.

(3) **FORMS AND ACCOUNTING; APPROVAL.**—Every association shall use such forms and observe such accounting principles and practices as the department may require from time to time.

(4) **CLOSING OF BOOKS.**—Every association shall close its books at the end of its fiscal year or calendar year, or more often if authorized or required by the department.

(5) **INACCURATE DESIGNATION OF ASSETS.**—No association by any system of accounting or any device of bookkeeping shall, either directly or indirectly, enter any of its assets upon its books in the name of any other person, partnership, association or corporation or under any title or designation that is not truly descriptive of such assets.

(6) **OVERVALUED ASSETS; SPECIAL RESERVES.**—The department, after a determination of value made in accordance with s. 665.451(6), may order that assets, individually or in the aggregate, to the extent that such assets are overvalued on an association's books, be charged off, or that a special reserve or reserves equal to such overvaluation be set up by transfers from undivided profits or reserves.

(7) **BONDS AND OTHER OBLIGATIONS.**—The bonds or other interest-bearing obligations purchased by an association shall not be carried on its books at more than the cost thereof.

(8) **REAL ESTATE INVESTMENTS.**—An association shall not carry any real estate on its books at a sum in excess of the total amount invested by such association on account of such real estate, including advances, costs, and improvements but excluding ac-

rued but uncollected interest.

(9) **APPRAISAL OF REAL ESTATE.**—Every association shall have appraised each parcel of real estate at the time of acquisition thereof. The report of each such appraisal shall be submitted in writing to the board of directors and shall be kept in the records of the association. In addition to its powers under s. 665.451(6), the department may require the appraisal of real estate securing loans which are delinquent more than four months.

(10) **MAINTENANCE OF LOAN AND INVESTMENT RECORDS.**—Every association shall maintain complete loan and investment records, and shall do so in a manner satisfactory to the department. Detailed records necessary to make determinations of compliance by an association with the requirements of ss. 665.351-665.391 and other provisions of this chapter shall be maintained consistently and at all times, the record of each real estate loan or other secured loan or investment containing documentation to the satisfaction of the department of the type, adequacy and complexion of the security.

(11) **MAINTENANCE OF MEMBERSHIP RECORDS.**—Every association shall maintain membership records, which shall show the name and address of the member, the status of the member as a savings account holder, or an obligor, or a savings account holder and obligor, and the date of membership thereof. In the case of members holding a savings account the association shall obtain a savings account contract containing the signatures of each holder of such account or his duly authorized representative, and shall preserve such contract in the records of the association.

(12) **REPRODUCTION AND DESTRUCTION OF RECORDS.**—Any association may cause any or all records kept by such association to be copied or reproduced by a photostatic, photographic or micro-filming process which correctly and permanently copies, reproduces or forms a medium for copying or reproducing the original record on a film or other durable material, and such association may thereafter dispose of the original record. Any such copy or reproduction shall be deemed to be an original record for all purposes and shall be treated as an original record in all courts or administrative agencies for the purpose of its admissibility in evidence. A facsimile, exemplification or certified copy of any such copy or reproduction reproduced from a film record shall, for all purposes, be deemed a facsimile, exemplification or certified copy of the original record.

**History.**—s. 19, ch. 69-39; ss. 12, 35, ch. 69-106; s. 2, ch. 73-285; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**665.201 Reserve accounts.**—

(1) **GENERAL RESERVE.**—Every association shall set up and maintain adequate reserves satisfactory to the department, in accordance with rules promulgated by the department, for the sole purpose of absorbing losses. Such rules shall require the building up of reserves to at least 5 percent of all savings accounts within a period not exceeding 20 years and shall prohibit the payment of dividends or interest on savings accounts from such reserves.

However, the department may in its discretion extend the 20-year limitation period hereinabove prescribed by not more than 20 years for any association if it determines that such action is in the interests of the savings account holders therein.

(2) **GENERAL RESERVES OF CONVERTED ASSOCIATION.**—In the case of conversion of a federal mutual association to a state mutual or state stock association, the 20-year period referred to in subsection (1) shall begin as of the first year that said association acquired insurance of savings accounts. However, a federal association is deemed to meet the requirements of this section if, at the time it converts to a state mutual or stock association, it meets the reserve requirements of the Federal Home Loan Bank Board.

**History.**—s. 20, ch. 69-39; ss. 12, 35, ch. 69-106; s. 2, ch. 74-55; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**665.214 Powers of association generally.**—Every association incorporated pursuant to or operating under the provisions of this chapter shall have all the powers enumerated, authorized, and permitted by this chapter and such other rights, privileges, and powers as may be incidental to or reasonably necessary or appropriate for the accomplishment of the objects and purposes of the association. Among others, and except as otherwise limited by the provisions of this chapter, every association shall have the following powers:

(1) **EXISTENCE; SEAL; BYLAWS.**—To have perpetual existence; to adopt and use a corporate seal, which may be affixed by imprint, facsimile, or otherwise; and to adopt and amend bylaws as provided in this chapter;

(2) **PLAINTIFF; DEFENDANT.**—To sue and be sued, complain and defend in any court of law or equity;

(3) **PROPERTY TRANSFERS.**—To acquire, hold, sell, dispose of and convey real and personal estate consistent with its objects and powers; to mortgage, pledge, or lease any real or personal estate; and to take property by gifts, devise, or bequest;

(4) **BORROWING.**—If and when an association is not a member of a Federal Home Loan Bank, to borrow from sources, individual or corporate, not more than an aggregate amount equal to one-fourth of its savings liability on the date of borrowing and such additional sums as the department may approve. If and when an association is a member of a Federal Home Loan Bank, to secure advances of not more than an aggregate amount equal to one-half of its savings liability; within such amount equal to one-half of its savings liability, the association may borrow from sources individual or corporate, other than such Federal Home Loan Bank an aggregate amount not in excess of 20 percent of its savings liability. Sources of borrowing other than financial institutions or Federal Home Loan Banks shall require advance written approval of the department, acting in its sole discretion. A subsequent reduction of savings liability shall not affect in any way outstanding obligations for borrowed money. All such loans and advances may be secured by property of the association, and may be evidenced by such notes,

bonds, debentures, or other obligations or securities, except capital stock, as the department may authorize for all associations; provided that authorization by the department shall not be required in the case of securities guaranteed pursuant to s. 306(g) of the National Housing Act of 1934, as amended.

(5) **SALE OF LOANS.**—To sell with or without recourse any loan, including any participating interests therein, at any time, provided that the total dollar amount of such loans sold, including such sale, within the calendar year beginning January 1 immediately preceding the date of such sale, does not exceed a sum equivalent to 25 percent of the dollar amount of all loans and participating interests in loans held by such association at the beginning of such calendar year; provided, further, that the department, upon application of the association showing good cause, may authorize the sale of a greater amount during a calendar year. Notwithstanding the limitations of this subsection, loans may be assigned for collateral purposes with recourse to any Federal Home Loan Bank of which the association is a member.

(6) **INSURANCE OF ACCOUNTS.**—To obtain and maintain insurance of its savings accounts by the Federal Savings and Loan Insurance Corporation, any agency of this state or other federal agency established for the purpose of insuring savings accounts in associations, or with any other insurer approved by the department and meeting the qualifications prescribed in this subsection; provided that no association subject to the provisions of this chapter shall have the power to obtain insurance of accounts from, or represent in any way that its accounts are insured by, any insurer other than the Federal Savings and Loan Insurance Corporation, or other federal agency or a state agency as herein defined, unless the department, after application to the department for approval has been submitted by the association, shall have determined that:

(a) The contract of insurance contemplated is written upon substantially the same basis as to form, amount, coverage, maturity, voluntary and involuntary termination and other provisions as the insurance contract provided at that time by the Federal Savings and Loan Insurance Corporation, and complies with such further requirements for protection as the department in its discretion may deem reasonably necessary; and

(b) The contract is underwritten by an insurer having a net worth reasonably commensurate with the risks underwritten, but in no event less than \$25 million, which is licensed in this state and authorized to do business in this state, and which is admitted and authorized by law to write such insurance in all of the states of the union,

and shall have issued its certificate of approval of such application. The aforesaid requirements shall apply to all revisions or modifications of such contracts of insurance. Associations and foreign associations insured as provided in this subsection may make representations as to such insurance of savings accounts, provided that any such representations shall set forth the name of the insurer. Excepting banks, no association or foreign association or



any other person shall advertise or represent or accept or offer to accept any savings accounts in this state as insured or guaranteed accounts or as the savings accounts of an insured or guaranteed institution unless the same are insured as provided in this subsection, any violation of this provision shall be a separate offense for each day of such violation and shall be a misdemeanor and shall be enjoined upon the application of the Department of Legal Affairs, the Department of Banking and Finance, or other state prosecuting official, or by an association in this state. The requirements of this subsection are in the exercise of the police power of this state and are enacted to protect the people of the state from misrepresentation, misunderstanding and loss.

(7) **FEDERAL HOME LOAN BANK MEMBERSHIP.**—To qualify as and become a member of a Federal Home Loan Bank;

(8) **EMPLOYEES.**—

(a) To appoint officers, agents, and employees as its business shall require and to provide them suitable compensation;

(b) To provide for life, health and casualty insurance for officers and employees;

(c) To adopt and operate reasonable bonus plans and retirement benefits for such officers and employees; and

(d) To provide for indemnification of its officers, employees and directors as prescribed or permitted in this chapter whether by insurance or otherwise;

(9) **FACILITATING ORGANIZATIONS.**—To become a member of, deal with, or make reasonable payments or contributions to any organization to the extent that such organization assists in furthering or facilitating the association's purposes, powers or community responsibilities, and to comply with any reasonable condition of eligibility;

(10) **FISCAL AGENT.**—If and when an association is a member of a Federal Home Loan Bank, to act as fiscal agent of the United States, and, when so designated by the Secretary of the Treasury, to perform, under such regulations as he may prescribe, all such reasonable duties as fiscal agent of the United States as he may require; and to act as agent for any instrumentality of the United States and as agent of this state or any instrumentality thereof;

(11) **SERVICING.**—To service loans and investments for others, provided that the maximum principal amount of loans and investments serviced for others at any one time shall not exceed 75 percent of the amount of the savings liability of such association;

(12) **AGENCY.**—To act as agent for others in any transaction incidental to the operation of its business;

(13) **SAVINGS, INVESTMENTS.**—To acquire savings and pay earnings thereon, and to lend and invest its funds as provided in this chapter.

(14) **MEMBERS OF A FEDERAL HOME LOAN BANK.**—Notwithstanding and without regard to any other provisions of this chapter, if and when an association is a member of a Federal Home Loan Bank, to raise capital in the form of such savings deposits or other accounts as are authorized by regulations made by the Federal Home Loan Bank Board, and the holders of such deposits or accounts

shall, to such extent as may be provided by such regulations, be members of the association and shall have such voting rights and such other rights as are thereby provided, and the association may, to such extent as said board may authorize by regulation or by other action authorized by or under Federal Statute, exercise any authority to borrow money, to give security, or to issue notes, bonds, debentures, or other obligations, or other securities, provided by or under provisions of Federal Statute as from time to time in effect.

**History.**—s. 21, ch. 69-39; ss. 11, 12, 35, ch. 69-106; s. 1, ch. 71-92; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1665.215 Competitive equality.**—As regulated by the department, any association incorporated pursuant to the provisions of this chapter or otherwise subject to this chapter may make any loan or investment or exercise any power which it could make or exercise if it were incorporated and operating as a federal savings and loan association. This section is a continuing grant of authority to both the department and to associations subject to this chapter, which power is in addition to, and in excess of, the authority and power heretofore granted. It is not a limitation of power or authority heretofore granted and may take priority and be given effect over any other general or specific provisions of this chapter to the contrary.

**History.**—s. 1, ch. 73-225; s. 3, ch. 74-55; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1665.221 Savings liability.**—The savings liability of an association is not limited, but shall consist only of the aggregate amount of savings accounts of its members, plus earnings credited to such accounts, less redemption and withdrawal payments. Except as limited by the board of directors from time to time, a member may make additions to his savings accounts in such amounts and at such times as he may elect. Savings accounts may be opened for cash or property in which the association is authorized to invest, and, in the absence of fraud in the transaction, the value of the property taken in payment therefor as determined by the board of directors shall be conclusive. The members of an association shall not be responsible for any losses which its savings liability shall not be sufficient to satisfy, and savings accounts shall not be subject to assessment, nor shall the holders thereof be liable for any unpaid installments on their accounts. Earnings shall be declared in accordance with the provisions of this chapter. Except as provided in s. 665.331, no association shall prefer one of its savings accounts over any other savings account as to the right to participate in earnings. No preference between savings account members shall be created with respect to the distribution of assets upon voluntary or involuntary liquidation, dissolution, or winding up of an association. No association shall issue, sell, negotiate, or advertise for issuance or sale to members any type of sav-

ings or investment media other than savings accounts or savings deposits, nor shall it contract with respect to the savings liability in a manner inconsistent with the provisions of this chapter.

**History.**—s. 22, ch. 69-39; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

#### **1665.231 Savings accounts.—**

(1) **OWNERSHIP.**—Savings accounts or savings deposits may be opened and held solely and absolutely in his own right by, or in trust or other fiduciary capacity for, any person, including an adult or minor individual, male, or female, single or married, partnership, association, fiduciary, corporation, or political subdivision or public or governmental unit. Savings accounts shall be represented only by the account of each savings account or savings deposit holder on the books of the association, and such accounts or any interest therein shall be transferable only on the books of the association and upon proper written application by the transferee and upon acceptance by the association of the transferee as a member upon terms approved by the board of directors. The association may treat the holder of record of a savings account as the owner thereof for all purposes without being affected by any notice to the contrary unless the association has acknowledged in writing notice of a pledge of such savings account.

(2) **SAVINGS ACCOUNT CONTRACT.**—Each holder of a savings account shall execute a savings account contract setting forth any special terms and provisions applicable to such savings account and the ownership thereof and the conditions upon which withdrawals may be made not inconsistent with the provisions of this chapter.

(3) **EVIDENCE OF OWNERSHIP.**—An account book may be issued to each savings account holder of record as shown by the books of the association, and such account book shall, if issued, indicate the withdrawal value of the savings account. A separate certificate for a savings account may be issued in lieu of an account book, entitled "Certificate of Savings Account," and if issued shall be on the following form:

This certifies that ..... is a member of the undersigned savings association and holds a ..... dollar savings account therein, subject to the Savings Association Act, the certificate of incorporation, and bylaws of the association.

(4) **DUPLICATE ACCOUNT BOOKS AND CERTIFICATES.**—Upon the filing with an association by the holder of record as shown by the books of the association, or by his legal representative, of an affidavit to the effect that the account book or certificate evidencing his savings account with the association has been lost or destroyed, and that such account book or certificate has not been pledged or assigned in whole or in part, such association shall issue a new account book or certificate in the name of the holder of record, such evidence stating that it is issued in lieu of the one lost or destroyed, and the association shall in no way be liable thereafter on account of the original account book or certificate, provided that the board of directors shall, if in its judgment it is necessary, require a bond in an amount it deems sufficient to indemnify the associa-

tion against any loss which might result from the issuance of such new account book or certificate.

(5) **INDUCEMENTS.**—No association shall, directly, or indirectly, for the opening or increasing of any savings account, give, sell, dispose of, or permit the giving, selling or disposition of, for any one such opening or increase anything having a cost or value in excess of \$2.50, except that the department in its sole discretion may by rule or regulation authorize a cost or value up to, but not in excess of, \$15, based upon the amount of the deposit required to open or increase the savings account, and may limit the frequency of offering inducements. However, the amount of the inducement shall not exceed the amount of inducements which may be offered by federally chartered associations.

**History.**—s. 23, ch. 69-39; s. 6, ch. 73-285; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

#### **1665.241 Contracts for savings programs.—**

(1) **SCHOOL SAVINGS.**—An association may contract with the proper authorities of any public or nonpublic elementary or secondary school or institution of higher learning, or any public or charitable institution caring for minors, for the participation and implementation by the association in any school or institutional thrift or savings plan, and it may accept savings accounts at such a school or institution, either by its own collector or by any representatives of the school or institution, which becomes the agent of the association for such purpose.

(2) **PAYROLL SAVINGS.**—An association may contract with any employer with respect to the solicitation, collection and receipt of savings by payroll deduction to be credited to a designated account or accounts of his or its employee or employees who voluntarily may participate.

**History.**—s. 24, ch. 69-39; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1665.251 Powers of attorney on savings accounts.**—Any association or federal association may continue to recognize the authority of an attorney-in-fact authorized in writing to manage or to make withdrawals either in whole or in part from the savings account of a member, whether minor or adult, until it receives written notice or is on actual notice of the revocation of his authority. For the purposes of this section, written notice of the death or adjudication of incompetency of such member shall constitute written notice of revocation of the authority of his attorney. No such institution shall be liable for damages, penalty or tax by reason of any payment made pursuant to this section.

**History.**—s. 25, ch. 69-39; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1665.262 Married women and minors.**—Any association operating under this law and any federal savings and loan association doing business in this state may accept savings accounts from any married woman or minor as the sole and absolute owner of such savings account, and receive payments thereon by or for such owner, and pay withdrawals, accept

pledges to the association, and act in any other matter with respect to such accounts in the order of such married woman or minor. Any payment or delivery of rights to a married woman or to any minor, or a receipt or acquittance signed by a married woman or by a minor who holds a savings account, shall be a valid and sufficient release and discharge of such institution for any payment so made or delivery of rights to such married woman or minor. In the case of a minor, the receipt, acquittance, pledge or other action required by the institution to be taken by the minor shall be binding upon such minor with like effect as if he were of full age and legal capacity; provided, if any parent or guardian of such minor should not desire the minor to have authority to pledge, hypothecate, control, transfer or make withdrawals from his savings account, such fact may be made known to the association in writing by such parent or guardian, in which event the right of the minor to pledge, hypothecate, control, transfer and make withdrawals from the account during the minority of such minor shall not be exercised by him except with the joinder of such parent or guardian. In the event of the death of such minor, the receipt or acquittance of either parent or guardian of such minor shall be valid and sufficient discharge of such institution for any sum or sums not exceeding in the aggregate \$1,000.

**History.**—s. 26, ch. 69-39; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

#### **1665.271 Accounts in two or more names.—**

When a savings account, other than a convenience account as provided in s. 665.272, is maintained in any association or federal association in the names of two or more persons, whether minor or adult, in such form that the moneys in the account are payable to either or the survivor or survivors, then, in the absence of fraud or undue influence, such account and all additions thereto shall be the property of such persons as joint tenants. The moneys in the account may be paid to or on the order of any one of such persons during their lifetimes or to or on the order of any one of the survivors of them after the death of any one or more of them. The opening of the account in such form shall, in the absence of fraud or undue influence, be conclusive evidence in any action or proceeding to which either the association or the survivor or survivors is a party of the intention of all of the parties to the account to vest title to such account and the additions thereto in such survivor or survivors. By written instructions given to the association by all the parties to the account, the signatures of more than one of such persons during their lifetime or of more than one of the survivors after the death of any one of them may be required on any check, receipt, or withdrawal order, in which case the association shall pay the moneys in the account only in accordance with such instructions, but no such instructions shall limit the right of the survivor or survivors to receive the moneys in the account. Payment of all or any of the moneys in such account as provided in this section shall discharge the association from liability with respect to the moneys so paid, prior to receipt by the association of a written notice from any one of them direct-

ing the association not to permit withdrawals in accordance with the terms of the account or the instructions. After receipt of such notice, an association may refuse, without liability, to honor any check, receipt, or withdrawal order on the account pending determination of the rights of the parties. No association paying any survivor in accordance with the provisions of this section shall thereby be liable for any estate, inheritance, or succession taxes which may be due this state.

**History.**—s. 27, ch. 69-39; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 1, ch. 79-21.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

#### **665.272 Convenience accounts.—**

(1) "Convenience account" means a savings account in the name of one individual, who is the principal, in which one or more other individuals have been designated as agents with only the right to make deposits to and to withdraw funds from such account. The designation of agents, the substitution or removal of agents, or any other change in the contractual terms or provisions governing a convenience account may be made only by the principal. Except as otherwise provided in this section, the agency relationship created under this account shall not be affected by the subsequent death or incompetence of the principal.

(2) All rights, interests, and claims in, to, and in respect of said convenience account and the additions thereto shall be that of the principal only.

(3) Any balance standing to the credit of a convenience account shall be paid to the guardian of the property of the principal, to any person designated in a court order entered pursuant to s. 735.206, to any person designated by letter or other writing as authorized by s. 735.301, or to the personal representative of the deceased principal's estate. No such court order or letter, written notice, or proof of judicial appointment shall take priority over any withdrawal as provided in s. 665.341, unless it is served upon and received by an officer of the savings and loan association at the association's office during regular business hours and at such time and in such manner as to afford the association a reasonable opportunity to act on it prior to any withdrawals authorized in s. 665.341.

(4) Payment by a savings and loan association pursuant to this section shall be a valid and sufficient release and discharge to the association from all claims for payments so paid.

(5) Without qualifying any other right to setoff or lien, and subject to any contractual provision, if the principal is indebted to the association, the association has a right to setoff against the account.

**History.**—s. 2, ch. 79-21.

**1665.281 Pledge to association of savings accounts in joint tenancy.—**The pledge or hypothecation to any association or federal association of all or part of a savings account in joint tenancy signed by any tenant or tenants whether minor or adult, upon whose signature or signatures withdrawals may be made from the account shall, unless the terms of the savings account provide specifically to the contrary, be a valid pledge and transfer to the association of that part of the account pledged or



hypothecated, and shall not operate to sever or terminate the joint and survivorship ownership of all or any part of the account.

**History.**—s. 28, ch. 69-39; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**§665.291 Accounts of administrators, executors, guardians, custodians, trustees, and other fiduciaries.**—Any association or federal association may accept savings accounts in the name of any administrator, executor, custodian, conservator, guardian, trustee, or other fiduciary for a named beneficiary or beneficiaries. Any such fiduciary shall have power to vote as a member as if the membership were held absolutely, to open and to make additions to, and to withdraw any such account in whole or in part. The withdrawal value of any such account, and earnings thereon, or other rights relating thereto may be paid or delivered, in whole or in part, to such fiduciary without regard to any notice to the contrary as long as such fiduciary is living. The payment or delivery to any such fiduciary or a receipt or acquittance signed by any such fiduciary to whom any such payment or any such delivery of right is made shall be a valid and sufficient release and discharge of an association for the payment or delivery so made. Whenever a person holding an account in a fiduciary capacity dies and no written notice of the revocation or termination of the fiduciary relationship shall have been given to an association and the association has no written notice of any other disposition of the beneficial estate, the withdrawal value of such account, and earnings thereon, or other rights relating thereto may, at the option of an association, be paid or delivered, in whole or in part, to the beneficiary or beneficiaries. Whenever an account shall be opened by any person, describing himself in opening such account as trustee for another and no other or further notice of the existence and terms of a legal and valid trust than such description shall have been given in writing to such association, in the event of the death of the person so described as trustee, the withdrawal value of such account or any part thereof, together with the earnings thereon, may be paid to the person for whom the account was thus described to have been opened. The payment or delivery to any such beneficiary, beneficiaries or designated person, or a receipt or acquittance signed by any such beneficiary, beneficiaries or designated person for any such payment or delivery shall be a valid and sufficient release and discharge of an association for the payment or delivery so made. No association paying any such fiduciary, beneficiary or designated person in accordance with the provisions of this section shall thereby be liable for any estate, inheritance or succession taxes which may be due this state.

**History.**—s. 29, ch. 69-39; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**§665.301 Accounts of incompetents.**—When a savings account is held in any association or federal association by a person who becomes incompetent and an adjudication of incompetency has been made by a court of competent jurisdiction, such an associa-

tion may pay or deliver the withdrawal value of such savings account and any earnings that may have accrued thereon to the guardian for such person upon proof of his appointment and qualification; provided that if such association has received no written notice and is not on actual notice that such savings account holder has been adjudicated incompetent, it may pay or deliver such funds to such holder in accordance with the provisions of the savings account contract, and the receipt or acquittance of such holder therefor shall be a valid and sufficient release and discharge of the association for the payment or delivery so made.

**History.**—s. 30, ch. 69-39; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**§665.311 Accounts of deceased nonresidents.**—When a savings account is held in any association or federal association by a person residing in another state or country, the account, together with additions thereto and earnings thereon, or any part thereof, shall be exempt from any taxation otherwise imposed by this state and may be paid to the administrator or executor appointed in the state or country where the account holder resided at the time of death, provided such administrator or executor has furnished the association with authenticated copies of his letters and of the order of the court which issued the letters to him authorizing him to collect, receive, and remove the personal estate, and an affidavit by the administrator or executor that to his knowledge no letters then are outstanding in this state and no petition for letters by an heir, legatee, devisee or creditor of the decedent is pending on the estate in this state, and that there are no creditors of the estate in this state. Upon payment or delivery to such representative after receipt of the affidavit and authenticated copies, the association is released and discharged to the same extent as if the payment or delivery had been made to a legally qualified resident executor or administrator, and is not required to see to the application or disposition of the property. No action at law or in equity shall be maintained against the association for payment made in accordance with this section.

**History.**—s. 31, ch. 69-39; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**§665.321 Savings accounts as legal investments.**—

(1) **LEGAL INVESTMENTS.**—Administrators, executors, custodians, conservators, guardians, trustees and other fiduciaries of every kind and nature, insurance companies, business and manufacturing companies, banks, trust companies, credit unions and other types of similar financial organizations, charitable, educational, eleemosynary and public corporations, funds and organizations, and municipalities and other public corporations and bodies, and public officials hereby are specifically authorized and empowered to invest funds held by them without any order of any court, in savings accounts of savings associations which are under state supervision and in accounts of federal associations organized under the laws of the United States and under

federal supervision, and such investments shall be deemed and held to be legal investments for such funds. However, the investment of public funds and the funds of municipalities and other public corporations and bodies and public officials shall be subject to the same requirements relating to the deposit and pledge of securities to secure such investments as may be provided from time to time by law or regulation with respect to the deposit of such funds in banks, except to the extent that said savings accounts may be insured by the United States or an agency or instrumentality thereof.

(2) **SECURITY.**—Whenever, under the laws of this state or otherwise, a deposit of securities is required for any purpose, the savings accounts and accounts made legal investments by this section shall be acceptable for such deposits to the extent such savings accounts and accounts made legal by this section are insured by the United States or an agency or instrumentality thereof, and whenever, under the laws of this state or otherwise, a bond is required with security, such bond may be furnished, and the savings accounts and accounts made legal investments by this section in the amount of such bond, when deposited therewith, shall be acceptable as security without other security.

(3) **PROVISIONS SUPPLEMENTAL.**—The provisions of this section are supplemental to any and all other laws relating to and declaring what shall be legal investments for the persons, fiduciaries, corporations, organizations and officials referred to in this section, and the laws relating to the deposit of securities and the making and filing of bonds for any purpose.

**History.**—s. 32, ch. 69-39; s. 1, ch. 72-226; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**665.331 Earnings.**—An association may pay earnings on its savings accounts from sources available for payment of earnings at such rate and at such times as shall be determined by resolution of its board of directors. All savings account holders shall participate equally in earnings pro rata to the withdrawal value of their respective accounts, except that an association may classify its savings accounts according to the character, amount, or duration thereof, or regularity of additions thereto, and may agree in advance to pay an additional or different rate of earnings as authorized by the department which shall not exceed 3 percent over and above the rate of earnings paid on all savings accounts based on such classification, and shall regulate such earnings in such manner that each savings account in the same classification shall receive the same ratable portion of such additional earnings. Earnings shall be declared on the withdrawal value of each savings account at the beginning of the account period, plus additions thereto made during the period (less amounts previously withdrawn and noticed for withdrawal, which for earnings purposes shall be deducted from the latest previous additions thereto) computed at the declared rate for the time the funds have been invested, determined as next provided. The date of investment shall be the date of actual receipt by the association of an account or an addition to an account, except that if the board of direc-

tors shall so determine, accounts in one or more classifications or additions thereto received by the association on or before a date not later than the 20th day of the month (unless the day determined is not a business day, in which case it may be the next succeeding business day) shall receive earnings as if invested on the first day of the month in which such payments were received; if the board shall make such determination, it also shall determine that payments received subsequent to such determination date shall either receive earnings as if invested on the first day of the next succeeding month, or receive earnings from the date of actual receipt by the association. Unless the department shall issue its approval in writing, no earnings shall be declared or paid for an accounting period unless the allocation to the general reserve for the preceding accounting period required by s. 665.201 or approved by the department thereunder has been made. Notwithstanding the provisions of the second sentence of this section, the board of directors, by resolution, may determine that earnings shall not be paid on any savings account which has a withdrawal value of a specified amount less than \$50 or which by written agreement is intended to be closed within a specified period less than 15 months from the date on which such savings account is opened, provided that an exception may be made and earnings paid on savings accounts opened pursuant to s. 665.231. The directors shall determine by resolution the method of calculating the amount of any earnings on savings accounts as herein provided, and the time or times when earnings are to be declared, paid or credited.

**History.**—s. 33, ch. 69-39; ss. 12, 35, ch. 69-106; s. 1, ch. 73-224; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**665.341 Withdrawal.**—Any savings account member or his authorized representative may at any time present a written application for withdrawal of all or any part of his savings accounts. No member shall have on file in any one association more than one application at a time. Every application shall request immediate withdrawal of a stated amount in accordance with this section. Any member may cancel his application at any time in whole or in part by a writing. Every association shall pay or number, date, and file in the order of actual receipt every withdrawal application. Withdrawals shall be paid in the order of actual receipt of applications, except as provided in this section. Upon receipt of a withdrawal request signed by the person or persons authorized to withdraw by the savings account contract or by operation of law, an association shall pay such amount in the form of cash, one or more checks or similar instruments payable to the order of such person or persons or to the order of others as directed, or transfer of credits to the account or accounts of others in the institution as directed, but not in excess of the withdrawal value of such savings account or accounts, together with any earnings which may have been declared and may have accrued thereon for the current period. If an association so elects, it may at any time pay in full each and every application as presented. It shall not, however, pay some in full unless it pays every application on file

in full, except by paying all applications on file on the rotation system prescribed in this section. The board of directors, however, shall have an absolute right to pay upon any application not exceeding \$200 to any one savings account member in any 1 month in any order. No association can obligate itself to pay withdrawals on any plan other than as provided in this chapter. Savings account holders who have filed written applications for withdrawal shall remain savings account members so long as their applications remain on file. No earnings shall be declared upon that portion of an account which has been noticed for withdrawal, which for earnings purposes is required to be deducted from the latest previous additions to such account, so long as such application is on file. The rotation system for payment of withdrawals is as follows: On the first day of each month, each application which has been on file since the first day of the preceding month and which is reached in order shall be paid \$1,000 on account, or in full if the amount noticed for withdrawal or the unpaid balance of such application is less than \$1,000. Each such application for more than \$1,000 so paid shall be deemed refiled as if filed on that day. Such limited payment on the first day of each month and such renumbering shall take place on the first day of each subsequent month as long as there are applications unpaid. At least one-third of the receipts of an association from its members during the preceding calendar month shall be applied on the first day of each month to the payment of applications which have been on file since the first day of the preceding month. Any association may apply to withdrawals an amount larger than one-third of such receipts, but cannot obligate itself to do so. When an application to withdraw is reached for payment as above provided, a written notice shall be sent to the applicant by mail at his last address recorded on the books and unless the applicant shall apply in person or in writing for such withdrawal within 30 days from the date of such notice, no payment on account of such application shall be made and such application shall be canceled. In no event shall an association voluntarily or involuntarily delay or postpone the whole or partial payment of the value of any savings account pursuant to a written withdrawal application by a savings account member for a period exceeding 30 days following the receipt of such application without first securing written permission, in the case of an association the accounts of which are not insured by the Federal Savings and Loan Insurance Corporation, from the department, or in the case of an association the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, from the said corporation.

**History.**—s. 34, ch. 69-39; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**§665.351 Redemption.**—At any time funds are on hand for the purpose, the association shall have the right to redeem by lot or otherwise, as the board of directors may determine, all or any part of any of its savings accounts on an earnings date by giving 30 days' notice by registered mail addressed to each affected account holder at his last address as record-

ed on the books of the association. No association shall redeem any of its savings accounts when the association is in an impaired condition or when it has applications for withdrawal which have been on file more than 30 days and have not been reached for payment. The redemption price of savings accounts redeemed shall be the full value of the account redeemed, as determined by the board of directors, but in no event shall the redemption price be less than the withdrawal value. If the aforesaid notice of redemption shall have been duly given, and if on or before the redemption date the funds necessary for such redemption shall have been set aside so as to be and continue to be available therefor, earnings upon the accounts called for redemption shall cease to accrue from and after the earnings date specified as the redemption date, and all rights with respect to such accounts shall forthwith, after such redemption date, terminate, except only any right of account holder of record to receive the redemption price without interest. All savings account books or certificates evidencing former savings accounts which have been validly called for redemption must be tendered for payment within 10 years from the date of redemption designated in the redemption notice, otherwise they shall be canceled, the funds set aside for such accounts shall become the property of the association, and all claims of such former account holders against the association shall be barred forever.

**History.**—s. 35, ch. 69-39; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**§665.361 Investments.**—Savings associations shall have power to invest in securities as follows:

(1) **INVESTMENTS NOT SUBJECT TO LIMITATION.**—Direct obligations of the United States and obligations of federal agencies which are fully guaranteed as to payment of principal and interest by the United States; stock or obligations of any Federal Home Loan Bank, the Federal Savings and Loan Insurance Corporation, the Federal National Mortgage Association, the Government National Mortgage Association, or any successor thereto; obligations issued or guaranteed by the International Bank for Reconstruction and Development or by the Inter-American Development Bank; demand, time or savings deposits, shares or accounts of any financial institution the accounts of which are insured by a federal agency; and banker's acceptances which are eligible for purchase by federal reserve banks;

(2) **INVESTMENTS SUBJECT TO AN AGGREGATE LIMITATION OF 25 PERCENT OF TOTAL ASSETS OF THE INVESTING ASSOCIATION.**—Obligations of federal agencies which are not guaranteed by the United States; general obligations and revenue obligations of any state of the United States or their political subdivisions and municipalities; corporate obligations of any corporation which is not an affiliate of the investing association, provided such obligations are nonconvertible and are issued by a corporation which is listed on a recognized exchange;

(3) **INVESTMENTS SUBJECT TO AN AGGREGATE LIMITATION OF 1 PERCENT OF TOTAL ASSETS OF THE INVESTING ASSOCIATION.**—



Stock, obligations, or other securities of service organizations which assist in furthering or facilitating the association's purposes, powers, or community responsibilities;

(4) **INVESTMENTS SUBJECT TO AN AGGREGATE LIMITATION OF 5 PERCENT OF THE NET WORTH OF THE INVESTING ASSOCIATION.**—Up to 5 percent of the new worth of the investing association may be used to invest in or purchase bonds or other evidences of indebtedness of the State of Israel;

(5) **SPECIAL PROVISION.**—None of the securities or obligations described shall be eligible for investment in any amount unless current as to all payments of principal and interest, and unless rated in one of the four highest investment grades by a recognized investment rating service or otherwise supported as to investment quality and marketability by a credit rating file compiled and maintained in current status by the investing association.

**History.**—s. 36, ch. 69-39; ss. 12, 35, ch. 69-106; s. 1, ch. 71-90; s. 1, ch. 73-285; s. 1, ch. 76-154; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**665.371 Required liquidity.**—No association shall invest in any security, other than in liquid assets, or in any loan at any time when its liquid assets are less than 5 percent of its savings liability unless the department shall have issued written approval.

**History.**—s. 37, ch. 69-39; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**665.381 Investment in loans.**—Every savings association shall have power to invest in loans and other investments as follows:

(1) **SAVINGS ACCOUNT LOANS.**—Loans secured by its savings accounts to the extent of the withdrawal value thereof.

(2) **REAL ESTATE LOANS.**—Real estate loans in an amount not exceeding the value of the security, subject to the following conditions:

(a) No association shall make a real estate loan to one borrower if the sum of:

1. The amount of such loan; and
2. The total balances of all outstanding real estate loans owed to such association by such borrower

exceeds an amount equal to 10 percent of such association's savings liability or an amount equal to the sum of such association's reserves for losses and undivided profits, whichever amount is less, except that any such loan may be made if the sum of 1. and 2. does not exceed \$100,000;

(b) An association may:

1. Participate with one or more financial institutions, entities having a tax exemption under s. 501(a) of the Internal Revenue Code, or approved Federal Housing Administration mortgagees, in any real estate loan of the type in which such association is authorized to invest on its own account, provided that the participating interest of such association is not subordinated or inferior to any other participating interest; and

2. Participate in such real estate loans with other than financial institutions or those entities de-

scribed, provided that the participating interest of such association is superior to the participating interests of such other participants;

(c) The aggregate balances outstanding of real estate loans on real estate located outside the primary lending area of an association shall at no time exceed 20 percent of the assets of the association, except that loans insured or guaranteed in whole or in part by the United States, the president or a federal agency and loans in which an association owns or has purchased no more than 75 percent participation interest shall not be subject to this restriction; and

(d) As an annual average, based on monthly computations, at least 60 percent of assets other than liquid assets shall be invested in either direct reduction real estate loans on home property or direct reduction real estate loans on primarily residential property, or both. In determining whether 60 percent of assets are invested in direct reduction real estate loans on home property, only those direct reduction real estate loans on home property which do not exceed a maximum of \$75,000 and which do not exceed 90 percent of the security value will be considered in the computation. In the case of direct reduction real estate loans on primarily residential property, only loans amounting to 80 percent or less of the value of the security, including participating interest in such loans, will be considered in the computation.

(3) **LOANS SECURED BY LOANS.**—Loans secured by the pledge of loans or investments, the assignment of which need not be recorded, of a type in which the association is authorized to invest, provided that the loans and investments so pledged shall be subject to all restrictions and requirements which would be applicable were the association to invest directly in such loans or investments.

<sup>2</sup>(4) **IMPROVEMENT LOANS.**—Property improvement loans made pursuant to the provisions of any title of the National Housing Act, and, subject to any limitation as to maximum loan amount which may be prescribed by the department for all associations, other loans, secured or unsecured, to home owners and other property owners for the maintenance, repair, alteration, modernization, landscaping, improvement, including new construction, furnishing, or equipment of their properties, at an interest rate not exceeding 18 percent simple interest per annum. Such interest shall not be precomputed.

<sup>2</sup>(5) **MOBILE HOME LOANS.**—Loans made for the purpose of mobile home financing, subject to any limitation as to maximum loan amount which may be prescribed by the department for all associations, at an interest rate not exceeding 18 percent simple interest per annum. Such interest shall not be precomputed. For the purposes of this subsection, "mobile home" shall mean a movable accommodation used or designed for use as living quarters.

(6) **BUSINESS PROPERTY.**—Such real property or interests therein as the directors may deem necessary or convenient for the conduct of the business of the association, which for the purposes of this chapter shall be deemed to include the ownership of stock of a wholly owned subsidiary corporation having as its exclusive activity the ownership and man-

agement of such property or interests, but the amount so invested shall not exceed the sum of the reserves and undivided profits of the association, provided that the department may authorize a greater amount to be so invested.

(7) **PURCHASE OF REAL ESTATE.**—An amount not exceeding the lesser of the sum of its reserves and undivided profits or 5 percent of its assets, in the purchase of real estate within its primary lending area for the purpose of producing income or for inventory and sale or for improvement including the erection of buildings thereon, for sale or rental purposes, and such an association may hold, sell, lease, operate or otherwise exercise the rights of an owner of any such property. Merchantable title to all real estate acquired under this subsection shall be taken and held in the name of the association and such title immediately shall be recorded in accordance with the laws of this state.

**History.**—s. 38, ch. 69-39; ss. 12, 35, ch. 69-106; s. 1, ch. 71-93; s. 1, ch. 74-55; s. 3, ch. 76-168; s. 1, ch. 77-179; s. 1, ch. 77-457; s. 4, ch. 78-40; s. 11, ch. 79-274.

**1Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**2Note.**—This subsection as amended by ch. 79-274 applies "only to loans or advances of credit made on or subsequent to" July 1, 1979, "and shall not be construed as diminishing the force and effect of any laws applying to loans or advances of credit completed prior to that date."

**1665.391 Loan plans.**—Real estate loans eligible for investment by an association under this chapter may be written upon the following plan, or upon any other loan plan approved by the department:

(1) **APPRAISAL.**—No investment in a real estate loan shall be made until a qualified person or persons approved by the board of directors shall have made a physical inspection and submitted a signed appraisal of the value of the real estate securing such loan.

(2) **PAYMENTS.**—Payments on real estate loans shall be applied first to the payment of interest on the unpaid balance of the loan and the remainder on the reduction of principal; provided that if the loan is in default in any manner, payments may be applied by the association as provided in the loan contract. All real estate loans may be prepaid in part or in full, at any time. On loans to occupants of home property or to borrowers who intend to occupy home property and on any loan of less than \$100,000, the association shall not charge for such privilege of anticipatory payment an amount greater than 2 percent of the amount of such anticipatory payment. Unless otherwise agreed in writing, any prepayment of principal may, at the option of the association, be applied on the final installment of the note or other obligation until fully paid, and thereafter on the installments in the inverse order of their maturity.

(3) **EVIDENCE OF LOAN.**—Every loan shall be evidenced by a note or instrument of obligation for the amount of the loan. The note or instrument shall specify the amount, rate of interest and terms of repayment including any penalty or charge for late payment, and may contain all other terms of the loan contract.

(4) **SECURITY INSTRUMENT.**—Every real estate loan shall be secured by a mortgage, deed of trust or other transaction or instrument constituting a first lien or claim, or the full equivalent thereof, upon the real estate securing the loan, according

to any lawful and recognized practice which is suited to the transaction. Any such instrument or transaction constituting a first lien or claim is herein termed a "mortgage." Such mortgage shall provide specifically for full protection to the association with respect to such loan and additional advances and the usual insurance risks, ground rents, taxes, assessments, other governmental levies, maintenance, and repairs. It may provide for an assignment of rents, and if such assignment is made, any such assignment shall be absolute upon the borrower's default, becoming operative upon written demand made by the association. All such mortgages shall be recorded in accordance with the law of this state.

(5) **LIEN OF MORTGAGE.**—Any mortgage that can be made by an association under the provisions of this chapter may be made to secure existing debts or obligations, to secure debts or obligations created simultaneously with the execution of the mortgage, or to secure future advances pursuant to s. 697.04. All such debts, obligations, and future advances shall, from and as of the time the mortgage is filed for record as provided by the law of this state, be secured by such mortgage equally with, and have the same priority over the rights of all persons who subsequent to the recording of such mortgage acquire any rights in or liens upon the mortgaged real estate as, the debts and obligations secured thereby at the time of the filing of the mortgage for record; except that the mortgagor or his successor in title is authorized to file for record, and the same shall be recorded, a notice limiting the amount of optional future advances secured by such mortgage to not less than the amount actually advanced at the time of such filing, provided a copy of such filing is also filed with the mortgagee.

(6) **ADVANCES FOR TAXES, ETC.**—An association may pay taxes, assessments, ground rents, insurance premiums, and other similar charges for the protection of its real estate loans. All such payments shall be added to the unpaid balance of the loan and shall be equally secured by the first lien on the property as provided above. An association may require life insurance to be assigned as additional collateral upon any real estate loan. In such event, the association shall obtain a first lien upon such policy and may advance premiums thereon. Such premium advances shall be added to the unpaid balance of the loan and shall be equally secured by the first lien on the property as provided above.

(7) **PROVISIONS FOR TAXES, INSURANCE, ETC.**—An association may require the borrower to pay monthly in advance, in addition to interest or interest and principal payments, the equivalent of one-twelfth of the estimated annual taxes, assessments, insurance premiums, ground rents, and other charges upon the real estate securing a loan, or any of such charges, so as to enable the association to pay such charges as they become due from the funds so received. The amount of such monthly charges may be increased or decreased so as to provide reasonably for the payment of the estimated annual taxes, assessments, insurance premiums, and other charges. The association at its option may hold such funds in trust and commingle them with other such funds and use the same for such purposes, or place such

funds in savings accounts and withdraw and use the same for such purposes, or hold such funds in open account and commingle them with its own funds and advance like amounts for such purposes, or credit such funds as received to the mortgage account and advance a like amount for the purposes stated. If such funds are held in trust or invested in savings accounts, the amounts shall be pledged to further secure the indebtedness and, if held in open account or credited to the loan account, the amounts when advanced for the purposes stated shall be secured by the mortgage with the same priority as the original amount advanced under the mortgage. The association shall have no obligation to pay interest, earnings or other increment to the borrower upon such monthly payments, nor to invest the same for the benefit of the borrower, unless such funds have been placed in a savings account or accounts. Every association shall keep a record of the status of taxes, assessments, insurance premiums, ground rents, and other charges on all real estate securing its loans and on all real and other property owned by it.

**History.**—s. 39, ch. 69-39; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 3, ch. 78-40.

**1Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1665.395 Collection of fines, interest or premiums on loans made by building and loan associations.**—No fines, interest or premiums paid on loans made by any building and loan association shall be deemed usurious, and the same may be collected as debts of like amount are now collected by law in this state, and according to the terms and stipulations of the agreement between the association and the borrower.

**History.**—s. 8, ch. 4158, 1893; GS 2755; RGS 4242; CGL 6192; s. 2, ch. 63-318; s. 3, ch. 76-168; s. 1, ch. 77-457.

**1Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**Note.**—Former ss. 668.09, 665.161.  
cf.—Ch. 687 Interest and usury.

#### **1665.401 Loan expenses.**—

(1) **FEES AND CHARGES.**—Every association may require borrowing members to pay all reasonable expenses incurred in connection with the making, closing, disbursing, extending, readjusting, or renewing of real estate loans. Without limiting the generality of the foregoing, such expenses may include appraisal, attorney, abstract, recording, and registration fees, title examination, title insurance, loan insurance, credit report, survey, drawing of papers, escrow services, loan closing costs, and taxes or charges imposed upon or in connection with the making and recording of any loan. Every association also may require borrowing members to pay the cost of all other necessary and incidental services rendered by the association or by others in connection with real estate and other loans in such reasonable amounts as may be fixed by the board of directors. Without limiting the generality of the foregoing, such costs may include the costs of services of inspectors, engineers, and architects. Such initial charges may be collected by the association from the borrower and paid to any persons, including any director, officer, or employee of the association rendering such services, or paid directly by the borrower. In

lieu of such initial charges to cover such expenses and costs, an association may make a reasonable charge, part or all of which may be retained by the association which renders such service, or part or all of which may be paid to others who render such services. The fees and charges authorized by s. 665.391 and this section shall be in addition to interest authorized by law, and shall not be deemed to be a part of the interest collected or agreed to be paid on such loans within the meaning of any law of this state which limits the rate of interest which may be exacted in any transaction. No director, officer, or employee of an association shall receive any fee or other compensation of any kind in connection with procuring any loan for an association, except for services actually rendered as above provided.

(2) **SETTLEMENT STATEMENT.**—The association shall furnish a loan settlement statement to each borrower upon the closing of the loan, indicating in detail the charges and fees such borrower has paid or obligated himself to pay to the association or to any other person in connection with such loan. A copy of such statement shall be retained in the records of the association.

**History.**—s. 40, ch. 69-39; s. 3, ch. 76-168; s. 1, ch. 77-457.

**1Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

#### **1665.411 Dealing with successors in interest.**

—In the case of any investment made by an association in a real estate loan, in the event the ownership of the real estate security or any part thereof becomes vested in a person other than the party or parties originally executing the security instruments, and provided there is not an agreement in writing to the contrary, an association may, without notice to such party or parties, deal with such successor or successors in interest with reference to said mortgage and the debt thereby secured in the same manner as with such party or parties, and may forbear to sue or may extend time for payment of or otherwise modify the terms of the debt secured thereby, without discharging or in any way affecting the original liability of such party or parties thereunder or upon the debt thereby secured.

**History.**—s. 41, ch. 69-39; s. 3, ch. 76-168; s. 1, ch. 77-457.

**1Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1665.421 Right to act to avoid loss.**—Nothing in this chapter or the statute law of the state shall be construed as denying to an association the right to invest its funds, operate a business, manage or deal in property, or take any other action over whatever period of time may reasonably be necessary to avoid loss on a loan or investment theretofore made or an obligation created in good faith.

**History.**—s. 42, ch. 69-39; s. 3, ch. 76-168; s. 1, ch. 77-457.

**1Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

#### **1665.431 Supervisory power of department.**—

The department shall have general supervision over all associations, service organizations the principal offices of which are located in this state and which are principally owned by one or more thrift institutions, and corporations which are subject to the pro-



visions of this chapter. It shall enforce the purposes of this chapter by use of the powers herein conferred and by reference to the court when required.

**History.**—s. 43, ch. 69-39; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

#### **1665.441 Branch offices.—**

(1) **DEFINITION.**—A “branch office” is a legally established place of business of the association other than the home office authorized by the board of directors and approved by the department, at which savings accounts and loan payments may be accepted, application for loans may be received, account books and membership certificates may be issued, and loans may be closed.

(2) **SUBJECT TO HOME OFFICE.**—Each association shall be operated from the home office. All branch offices shall be subject to direction from the home office.

(3) **APPROVAL OF ESTABLISHMENT.**—Each application for approval of the establishment and maintenance of a branch office shall state the proposed location thereof, the need therefor, the functions to be performed therein, the estimated volume of business thereof, the estimated annual expense thereof, and the mode of payment therefor. Each such application shall be accompanied by a budget of the association for the current earnings period and for the next succeeding semiannual period, which reflects the estimated additional expense of the maintenance of such a branch office. Upon the receipt by the department of such an application, it shall determine whether the establishment and maintenance of such office will unduly injure any properly conducted existing association or federal association in the community where such branch office is proposed to be established. If it finds that no undue injury is likely to result and that the establishment and maintenance of such branch office is advisable, it may approve the application.

(4) **REVOCATION OF APPROVAL.**—The department may for reasonable cause revoke its approval of the maintenance of any branch office by an order to the association fixing a reasonable time after which the association shall cease to use and maintain such branch office.

**History.**—s. 44, ch. 69-39; ss. 12, 35, ch. 69-106; s. 3, ch. 73-285; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 7, ch. 78-95.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1665.442 Facilities.**—With the exception of a home office, principal place of business, or branch office, an association organized under or subject to this chapter may with the prior approval of the department, and pursuant to rules promulgated hereunder, establish and operate facilities authorized by the department which will increase the viability of such association in promoting thrift and home financing.

**History.**—s. 7, ch. 73-285; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior

to that date.

**1665.445 Saturday closing.**—Any building and loan association or savings and loan association lawfully doing business in the state, whether chartered under state or federal statutes, may be closed on any one or more Saturdays upon the adoption of a resolution to such effect by a majority vote of the board of directors. Any one or more of such Saturdays shall, with respect to any such building and loan association or savings and loan association which shall be closed thereon in accordance with the provisions of this section, constitute a legal holiday for all purposes whatsoever.

**History.**—s. 1, ch. 59-49; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**Note.**—Former s. 665.072.

#### **1665.451 Reports and examinations.—**

(1) **ANNUAL REPORT.**—On or before the last day of the first month of the fiscal year, every association shall make an annual written report to the department, upon a form to be prescribed and furnished by the department, of its affairs and operations, which shall include a complete statement of its financial condition, including a statement of income and expense since its last previous similar report, for the 12 months ending on December 31 of the previous year. Every such report shall be verified by the president and treasurer.

(2) **OTHER REPORTS.**—Every association also shall make such other reports as the department may from time to time require, which shall be in such form and filed on such date as it may prescribe and shall, if required by it, be verified in the same manner as the annual report.

(3) **ANNUAL AUDIT AND EXAMINATION.**—The department shall, at least once each year, without previous notice, examine or cause an examination to be made into the affairs of every association subject to this chapter. If an association is not audited at least once each year in a manner satisfactory to the department, the examination of such association shall include an audit.

(4) **EXAMINATIONS BY FEDERAL AGENCIES.**—In lieu of such examination, the department may accept any examination made by a Federal Home Loan Bank, the Federal Home Loan Bank Board, or by the Federal Savings and Loan Insurance Corporation. Two copies of any audit, signed and certified by the auditor making such audit, shall be filed promptly with the department.

(5) **ADDITIONAL EXAMINATIONS; REPORTS.**—Whenever, in the judgment of the department, the condition of any association renders it necessary or expedient to make an extra examination or audit or to devote any extraordinary attention to affairs of the association, the department shall cause the same to be done. A full and complete copy of the report of all examinations and audits shall be furnished to the association examined. Such report of examination or audit shall be presented by the president to the board of directors at its next regular or special meeting.

(6) **APPRAISALS BY DEPARTMENT.**—The department is authorized in connection with any ex-

amination or audit of any association to cause to be made appraisals of real estate held by the association or securing the association's assets when specific facts or information with respect to real estate held, secured loans or lending, or when in its opinion the association's policies, practices, operating results and trends, give evidence that an association's appraisals may be excessive, that lending or investment may be of a marginal nature, that appraisal policies and practices may not conform with generally accepted and established professional standards, or that real estate held by the association or assets secured by real estate are overvalued. In lieu of causing such appraisals to be made, the department may accept any appraisal caused to be made by a Federal Home Loan Bank, the Federal Home Loan Bank Board, or by the Federal Savings and Loan Insurance Corporation or other insuring agency of an insured association. Unless otherwise ordered by the department, appraisal of real estate in connection with any examination or audit pursuant to this section shall be made by a professional appraiser or appraisers selected by the department, and the cost of such appraisal shall be paid promptly by such association directly to such appraiser or appraisers upon receipt by the association of a statement of such cost bearing the written approval of the department. A copy of the report of each appraisal caused to be made by the department pursuant to this subsection shall be furnished to the association within a reasonable time, not to exceed 60 days, following the completion of such appraisals, and may in the case of an insured association be furnished to the insuring agency.

(7) **ACCESSIBILITY OF RECORDS TO DEPARTMENT; ISSUANCE OF SUMMONS, ADMINISTRATION OF OATHS, EXAMINATION OF WITNESSES.**—The department, or its examiners or auditors shall have free access to all books and papers of an association or a service organization the principal office of which is located in this state and which is principally owned by one or more thrift institutions, which relate to its business and books and papers kept by any officer, agent, or employee, relating to or upon which any record of its business is kept, and may summon witnesses and administer oaths or affirmations in the examination of the directors, officers, agents, or employees of any such association, service organization or any other person in relation to its affairs, transactions, and conditions, and may require and compel the production of records, books, papers, contracts, or other documents by court order, if not voluntarily produced.

**History.**—s. 45, ch. 69-39; ss. 12, 35, ch. 69-106; s. 1, ch. 73-49; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**'665.461 Enforcement and conservatorship.—**

(1) **DEPARTMENT'S ORDER TO DISCONTINUE ILLEGAL PRACTICES.**—If the department, as a result of any examination or from any report made to it, shall find that any association is violating the provisions of its certificate of incorporation or bylaws, or the laws of this state or of the United States, or any lawful order or regulation of the department, it shall order discontinuance of such violation and

conformance with all requirements of law. Such order shall specify the effective date thereof, which may be immediate or at a later date, and such order shall remain in effect until withdrawn by the department, or until terminated by a court order. Such order of the department, upon application made on or after the effective date thereof by the department to a court of general jurisdiction in the county in which the home office of the association is located, shall be enforced *ex parte* and without notice by an order to comply entered by said court. Such proceedings shall be given precedence over other cases pending in such court, and shall in every way be expedited. Any association affected by such order of the department shall, after receipt thereof, have the right to apply within 30 days to any such court for an immediate hearing and order suspending the order of the department until such time as the hearing has been completed. The hearing of such application to the court shall be upon such notice to the department as the court shall provide. Whether upon application by the department or by the association, the court shall have power to and shall adjudicate the question and enter the proper order or orders and enforce the same.

(2) **CONSERVATOR.**—If the department, as a result of any examination or from any report made to it believes that the public interest may be served by the appointment of a conservator, and if it shall find that any association:

- (a) Is in an impaired condition;
- (b) Is engaging in practices which threaten to result in an impaired condition; or
- (c) Is in violation of an order or injunction, as authorized by this section, which has become final in that time to appeal has expired without appeal or a final order entered from which there can be no appeal,

the department may appoint a conservator for such association, which may be the department, or its agent or any other person, and upon such appointment shall apply immediately to a court of general jurisdiction in the county in which the home office of the association is located for confirmation of such appointment, and such court shall have exclusive jurisdiction to determine the issues and all related matters. Such proceedings shall be given precedence over other cases pending in such court and shall in every way be expedited. Such court shall confirm such appointment if it shall find that one or more such grounds exist, and a certified copy of the order of the court confirming such appointment shall be evidence thereof. The conservator shall have the power and authority provided in this chapter and such other power and authority as may be expressed in the order of the court. The conservator shall endeavor promptly to remedy the situation complained of by the department in its application for confirmation of such appointment. Within 6 months of the date of such appointment, or within 12 months if the court shall extend such 6 months' period, such association shall be returned to the board of directors thereof and thereafter shall be managed and operated as if no conservator had been appointed, or a receiver shall be appointed as hereinafter provided.

If the department, or its agent, or examiner is appointed conservator it shall receive no additional compensation, but if another person is appointed, then the compensation of the conservator, as determined by the court, shall be paid by the association. A certified copy of the order of the court discharging such conservator and returning such association to the directors thereof shall be sufficient evidence thereof.

(3) **CONSERVATOR; POWERS OF DIRECTORS, OFFICERS AND MEMBERS.**—Any conservator appointed shall have all the right, powers, and privileges possessed by the officers, board of directors, and members of the association.

(4) **SPECIAL COUNSEL OR EXPERTS; SPECIAL EXPENSES.**—The conservator shall not retain special counsel or other experts, incur any expense other than normal operating expenses, or liquidate assets except in the ordinary course of operations.

(5) **REMOVAL OF OFFICERS OR DIRECTORS.**—The directors and officers shall remain in office and the employees shall remain in their respective positions, but the conservator may remove any director, officer, or employee, providing the order of removal of a director or officer shall be approved in writing by the department.

(6) **OPERATION OF BUSINESS CONTINUED.**—While the association is in the charge of a conservator, members of such association shall continue to make payments to the association in accordance with the terms and conditions of their contracts, and the conservator, in his discretion, may permit savings account members to withdraw their accounts from the association pursuant to the provisions of this chapter or under and subject to such rules and regulations as the department may prescribe. The conservator shall have power to accept savings accounts and additions to savings accounts, but any such amounts received by the conservator may be segregated if the department shall so order in writing. If so ordered, such amounts shall not be subject to offset and shall not be used to liquidate any indebtedness of such association existing at the time the conservator was appointed for it or any subsequent indebtedness incurred for the purposes of liquidating the indebtedness of any such association existing at the time such conservator was appointed. All expenses of the association during such conservatorship shall be paid by the association.

**History.**—s. 46, ch. 69-39; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 7, ch. 78-95.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

#### **665.471 Receivership.**—

(1) **APPOINTMENT OF RECEIVER.**—If the department shall find that any association:

- (a) Is in an impaired condition;
- (b) Is engaging in practices which threaten to result in an impaired condition; or
- (c) Is in violation of an order or injunction, as provided in s. 665.461, which has become final in that the time to appeal has expired without appeal or a final order entered from which there can be no

appeal,

the department may appoint a receiver for such association, which may be the department, its agent or any other person, and upon such appointment shall apply immediately to a court of general jurisdiction in the county in which the home office of the association is located for confirmation of such appointment, and such court shall have exclusive jurisdiction to determine the issues and all related matters. Such proceedings shall be given precedence over other cases pending in such court, and shall in every way be expedited. The court shall confirm the appointment if it shall find that one or more such grounds exist. A certified copy of the order of the court confirming such appointment shall be evidence thereof. In the case of an insured association, the appointment by the department of a receiver under this section shall constitute an official determination of a public authority of this state pursuant to which a receiver is appointed for the purpose of liquidation as contemplated by and within the meaning of s. 401(d) of the National Housing Act of 1934, as amended, if, within 10 days after the date the application of the department is filed, confirmation of such appointment or denial of appointment has not been issued by the court. Such receiver shall have all the powers and authority of a conservator plus the power to liquidate, and shall have such other powers and authority as may be expressed in the order of the court. If the department, or its agent, or examiner is appointed receiver, it shall receive no additional compensation, but if another person is appointed, then the compensation of the receiver, as determined by the court, shall be paid from the assets of the association.

(2) **APPOINTMENT OF FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION AS RECEIVER OR CORECEIVER.**—If the association is an institution insured by the Federal Savings and Loan Insurance Corporation, the Federal Savings and Loan Insurance Corporation shall be tendered appointment as receiver or coreceiver. If it accepts such appointment, it may, nevertheless, make loans on the security of or purchase at public or private sale any part or all of the assets of the association of which it is receiver or coreceiver, provided such loan or purchase is approved by such court.

(3) **PROCEDURE.**—The procedure in such receivership action shall be in all other respects in accordance with the practice in such court, including all rights of appeal and review. The directors, officers and attorneys of an association in office at the time of the initiation of any proceeding under s. 665.461 or this section are expressly authorized to contest any such proceeding and shall be reimbursed for reasonable expenses and attorney fees by the association or from its assets. Any court having any such proceeding before it shall allow and order the payment of reasonable expenses and attorney's fees for such directors, officers and attorneys.

**History.**—s. 47, ch. 69-39; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior



to that date.

**1665.481 Correction of wrongdoings by unimpaired institution.**—No conservator or receiver shall be appointed, or private property seized, with respect to an association which is not in an impaired condition if the alleged wrongdoing can be otherwise corrected as provided in this chapter or otherwise as provided by law.

**History.**—s. 48, ch. 69-39; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1665.491 Right to declaratory judgment.**—At any time after any controversy has arisen between the department and an association with respect to any question of law or regulation, or with respect to any question involving immeasurable or irreparable damage to the association, and prior to an administrative or a judicial hearing, the association or the department may apply to any court of competent jurisdiction in the county in which the home office of the association is located for a declaratory judgment as to such question, and such court shall have and shall take jurisdiction and decide the controversy on its merits in accordance with the weight of the evidence, and such court shall have full power to enforce its orders.

**History.**—s. 49, ch. 69-39; ss. 12, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

#### **1665.501 Foreign associations.—**

(1) **DEFINED.**—For the purposes of this section, the term "foreign association" shall include any person, firm, company, association, fiduciary, partnership or corporation, by whatever name called, actually engaged in the business of a savings association, which is not organized under the provisions of this chapter or the laws of the United States, as now or hereafter amended, the principal business office of which is located outside the territorial limits of this state.

(2) **DOING BUSINESS.**—No foreign association shall do any business of a savings association within this state or maintain an office in this state for the purpose of doing such business unless an application is made to the department for permission to do such business in this state which is approved by it.

(3) **UNAPPROVED FOREIGN ASSOCIATIONS.**—The department is authorized, empowered and directed to obtain an injunction or to take any other action necessary to prevent any foreign association from doing any business of a savings association in this state without its approval.

(4) **ACTIVITIES NOT CONSIDERED "DOING BUSINESS."**—For the purposes of this section and any other law of this state prohibiting, limiting, or regulating the doing of business in this state by foreign associations or foreign corporations of any type, any federal association the principal office of which is located outside this state, and any foreign association which is subject to state or federal supervision, or both, which by law is subject to periodic examination by such supervisory authority and to a requirement of periodic audit, shall not be considered to be doing business in this state by reason of engaging in

any of the following activities:

(a) The purchase, acquisition, holding, sale, assignment, transfer, collecting and enforcement of obligations or any interest therein secured by real estate mortgages or other instruments in the nature of a mortgage, covering real property located in this state, or the foreclosure of such instruments, or the acquisition of title to such property by foreclosure, or otherwise, as a result of default under such instruments, or the holding, protection, rental, maintenance and operation of said property so acquired, or the disposition thereof; provided that such associations shall not hold, own or operate said property for a period exceeding 5 years without securing the department's approval.

(b) The advertising or solicitation of savings accounts, or the making of any representations with respect thereto in this state through the media of the mail, radio, television, magazines, newspapers or any other media which are published or circulated within this state, provided that such advertising, solicitation or the making of such representations shall be accurately descriptive of the fact, and provided further, that if such advertising, solicitation or the making of such representations shall contain any reference to insurance or guaranty of accounts, such shall comply with the provisions of s. 665.214(6).

(5) **SERVICE OF PROCESS AND SUIT.**—Any foreign association or federal association described in subsection (4) which engages in any of the activities described in paragraph (a) thereof pursuant to the provisions of this section shall in any connection therewith be subject to suit in the courts of this state by this state and the citizens of this state, and service on such association shall be effected by serving the secretary of state of this state, provided that the provisions of this section shall have no other application to the question of whether any foreign association or federal association is subject to service of process and suit in this state as a result of the transaction of business or other activities in this state.

**History.**—s. 50, ch. 69-39; ss. 12, 35, ch. 69-106; s. 10, ch. 73-152; s. 3, ch. 76-168; s. 216, ch. 77-104; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1665.511 Federal savings associations.**—Federal savings associations or federal savings and loan associations, incorporated pursuant to the laws of the United States, as now or hereafter amended, are not foreign corporations or foreign associations. Unless federal laws or regulations provide otherwise, federal associations and the members thereof shall possess all of the rights, powers, privileges, benefits, immunities and exemptions that are now provided or that hereafter may be provided by the laws of this state for associations organized under the laws of this state and for the members thereof. This provision is additional and supplemental to any provision which, by specific reference, is applicable to federal associations and the members thereof.

**History.**—s. 51, ch. 69-39; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

to that date.

**1665.53 Grandfather clause.**—This chapter shall not impair or affect any act done, offense committed or right accruing, accrued, or acquired, or liability, penalty, forfeiture or punishment incurred prior to June 2, 1969, but the same may be enjoyed, asserted, enforced, prosecuted or inflicted, as fully and to the same extent as if this chapter had not been passed.

**History.**—s. 53, ch. 69-39; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1665.54 Conformity.**—

(1) **ALL THRIFT AND HOME-FINANCING ORGANIZATIONS SUBJECT TO PROVISIONS OF ACT.**—All persons accepting moneys from the public and engaged in home financing, whether or not incorporated, and every corporation heretofore incorporated under the statutes of this state which has for its purpose the promotion of thrift and the financing of homes, by whatever name known, as defined in s. 665.021(23), shall at the time this act becomes effective be subject to the provisions of the chapter and shall be deemed to exist hereunder. However, nothing contained in this chapter shall be construed to require any building and loan association heretofore organized under the laws of this state and existing on June 2, 1969, to become an insured association as herein defined or to change its name.

(2) **CORPORATIONS HERETOFORE INCORPORATED; CONFORMANCE TO CH. 665.**—The name, rights, powers, privileges, and immunities of every such corporation heretofore incorporated in this state shall be governed, controlled, construed, extended, limited and determined by the provisions of this chapter to the same extent and effect as if such corporation had been incorporated pursuant hereto. The articles of association, certificate of incorporation, or charter, however entitled, bylaws and constitution, or other rules of every such corporation heretofore made or existing are hereby modified, altered, and amended to conform to the provisions of the chapter, with or without the issuance or approval by the department of conformed copies of such documents, and the same are declared void to the extent that the same are inconsistent with the provisions of this chapter; except that the obligations of any such existing corporation, whether between such corporation and its members, or any of them, or any other person or persons, or any valid contract between the members of any such corporation, or between such corporation and any other person or persons, existing on June 2, 1969, shall not be in any way impaired by the provisions of this chapter, and, with such exception, every such corporation shall possess the rights, powers, privileges, and immunities and shall be subject to the duties, liabilities, disabilities, and restrictions conferred and imposed by this chapter, notwithstanding anything to the contrary in its certificate of incorporation, bylaws, constitution, or rules.

**History.**—s. 54, ch. 69-39; ss. 12, 35, ch. 69-106; s. 165, ch. 71-355; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective

July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1665.55 Definitions for ss. 665.56-665.64.**—As used in ss. 665.56-665.64:

(1) "Lessee" means a person contracting with a lessor for the use of a safe-deposit box.

(2) "Lessor" means a building and loan association or savings and loan association renting safe-deposit facilities.

(3) "Safe-deposit box" means a safe-deposit box, vault, or other safe-deposit receptacle maintained by a lessor, and the rules relating thereto apply to property or documents kept in the building and loan association's or savings and loan association's vault.

**History.**—s. 1, ch. 70-295; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1665.56 Authority to engage in leasing safe-deposit facilities.**—A building and loan association or savings and loan association may maintain and lease safe-deposit boxes and may accept property or documents for safekeeping if, except in the case of night depositories, it issues a receipt therefor.

**History.**—s. 1, ch. 70-295; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1665.57 Access by fiduciaries.**—When a safe-deposit box is made available by a lessor to one or more persons acting as fiduciaries, the lessor may, except as otherwise expressly provided in the lease or the writings pursuant to which such fiduciaries are acting, allow access thereto as follows:

(1) By any one or more of the persons acting as executors or administrators.

(2) By any one or more of the persons otherwise acting as fiduciaries, when authorized in writing signed by all other persons so acting.

(3) By any agent authorized in writing signed by all of the persons acting as fiduciaries.

**History.**—s. 1, ch. 70-295; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1665.58 Effect of lessee's death or incompetence.**—When a lessor without knowledge of the death or of an adjudication of legal incompetence of the lessee deals with his agent pursuant to a written power of attorney signed by such lessee, the transaction binds the lessee's estate and the lessee.

**History.**—s. 1, ch. 70-295; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1665.59 Search procedure on death of lessee.**—If satisfactory proof of the death of the lessee is presented, a lessor shall permit the person named in a court order for the purpose or, if no order has been served upon the lessor, the spouse, a parent, an adult descendant, or a person named as an executor in a copy of a purported will produced by him to open and examine the contents of a safe-deposit box leased by a decedent, or any documents delivered by a decedent for safekeeping, in the presence of an officer of the lessor; and the lessor, if so requested by such person, must deliver:

(1) Any writing purporting to be a will of the decedent to the court having probate jurisdiction in the county wherein the building and loan association or savings and loan association is located;

(2) Any writing purporting to be a deed to a burial plot or give burial instructions to the person making the request for a search; and

(3) Any document purporting to be an insurance policy on the life of the decedent to the beneficiary named therein;

but no other contents shall be removed pursuant to this section.

**History.**—s. 1, ch. 70-295; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1665.60 Lease to minor.**—A building and loan association or savings and loan association may lease a safe-deposit box to, and in connection therewith deal with, a minor with the same effect as if leasing to and dealing with a person of full legal capacity.

**History.**—s. 1, ch. 70-295; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

cf.—s. 1.01 Definition of minor.

**1665.61 Delivery of safe-deposit box contents or property held in safekeeping to personal representative.**—

(1) The lessor shall immediately deliver to a resident personal representative, upon presentation of a certified copy of his letters of authority, all property deposited with it by the decedent for safekeeping, and it shall grant him access to any safe-deposit box in the decedent's name and permit him to remove from such box any part or all of the contents thereof.

(2) If a personal foreign representative of a deceased lessee has been appointed by a court of any other state, a lessor may, at its discretion, after 3 months from the issuance to such foreign personal representative of his letters of authority, deliver to such foreign personal representative all properties deposited with it for safekeeping and the contents of any safe-deposit box in the name of the decedent, if at such time the lessor has not received written notice of the appointment of a personal representative in this state, and such delivery shall be a valid discharge of the lessor for all property or contents so delivered. Such foreign personal representative shall furnish the lessor with an affidavit setting forth facts showing the domicile of the deceased lessee to be other than this state and stating that there are no unpaid creditors of the deceased lessee in this state, together with a certified copy of his letters of authority. A lessor making delivery pursuant to this subsection shall maintain in its files a receipt executed by such foreign personal representative which itemizes in detail all property so delivered.

(3) No lessor shall be liable for damages or penalty by reason of any delivery made pursuant to this section.

**History.**—s. 1, ch. 70-295; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

to that date.

**1665.62 Access to safe-deposit boxes leased in two or more names.**—

(1) When specifically provided in the lease or rental agreement covering safe-deposit boxes heretofore or hereafter rented or leased in the names of two or more lessees that access to said safe-deposit box shall be granted to either lessee, or to either or the survivor, access to said safe-deposit box shall be granted to:

(a) Either or any of said lessees, regardless of whether or not the other lessee or lessees or any of them is living or is competent, or

(b) The executor or administrator of the estate of either or any of said lessees who is deceased or the guardian of the property of either or any of said lessees who is incompetent, and in either such case, the provisions of s. 665.57 shall apply, and the signature on the safe-deposit entry or access record (or the receipt of acquittance, in the case of property or documents otherwise held for safekeeping) shall be a valid and sufficient release and discharge to the lessor for granting access to such safe-deposit box or for the delivery of such property or documents otherwise held for safekeeping.

(2) No lessor shall be held liable for damages or penalty by reason of any access granted or delivery made pursuant to this section.

**History.**—s. 1, ch. 70-295; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1665.63 Adverse claims to contents of safe-deposit box.**—

(1) An adverse claim to the contents of a safe-deposit box or to property held in safekeeping is not sufficient to require the lessor to deny access to its lessee unless:

(a) The lessor is directed to do so by a court order issued in an action in which the lessee is served with process and named as a party by a name which identifies him with the name in which the safe-deposit box is leased or the property held; or

(b) The safe-deposit box is leased or the property is held in the name of a lessee with the addition of words indicating that the contents or property are held in a fiduciary capacity, and the adverse claim is supported by a written statement of facts disclosing that it is made by or on behalf of a beneficiary and that there is reason to know that the fiduciary will misappropriate the trust property.

(2) A claim is an adverse claim when:

(a) One of several lessees claims, contrary to the terms of the lease, an exclusive right of access;

(b) One or more persons claim a right of access as agents or officers of a lessee to the exclusion of others as agents or officers; or

(c) It is claimed that a lessee is the same person as one using another name.

**History.**—s. 1, ch. 70-295; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**1665.64 Special remedies for nonpayment of rent.**—

(1) If the rental due on a safe-deposit box has not



been paid for 6 months, the lessor may send a notice by registered mail to the last known address of the lessee stating that the safe-deposit box will be opened and its contents stored at the expense of the lessee unless payment of the rental is made within 30 days. If the rental is not paid within 30 days from the mailing of the notice, the box may be opened in the presence of an officer of the lessor and a notary public who is not a director, officer, employee, or stockholder of the lessor. The contents shall be sealed in a package by a notary public who shall write on the outside the name of the lessee and the date of the opening. The notary public shall execute a certificate reciting the name of the lessee, the date of the opening of the box, and a list of its contents. The certificate shall be included in the package, and a copy of the certificate shall be sent by registered mail to the last known address of the lessee. The package shall then be placed in the general vaults of the lessor at a rental not exceeding the rental previously charged for the box.

(2) If the contents of the safe-deposit box have not been claimed within 1 year of the mailing of the certificate, the lessor may send a further notice to the last known address of the lessee stating that, unless the accumulated charges are paid within 30 days, the contents of the box will be sold at public auction at a specified time and place or, in the case of securities listed on a stock exchange, will be sold upon the exchange on or after a specified date and that unsalable items will be destroyed. The time, place, and manner of sale shall also be posted conspicuously on the premises of the lessor and advertised once in a newspaper of general circulation in the community. If the articles are not claimed, they may then be sold in accordance with the notice. The balance of the proceeds, after deducting accumulated charges, including the expenses of advertising and conducting the sale, shall be deposited to the credit of the lessee in any account maintained by him. If no account is maintained, said balance shall be deemed a deposit account with the bank or trust company operating the safe-deposit facility, and shall be identified on the books of the bank as arising from the sale of contents of a safe-deposit box.

(3) Any documents or writings of a private nature having little or no apparent value need not be offered for sale, but, unless claimed by the owner, shall be retained for the period specified for unclaimed contents, after which they may be destroyed.

**History.**—s. 1, ch. 70-295; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**§665.701 Capital stock associations; power and limitations on sale and issuance of stock; characteristics of capital stock; loans secured by capital stock prohibited.—**

(1) **CAPITAL STOCK ASSOCIATIONS; GENERAL PURPOSE AND POWERS.**—A capital stock savings and loan association, hereinafter referred to as a "capital stock association," is a financial institution incorporated under the provisions of ss. 665.701-665.717, having for its purposes the encouragement of thrift and home financing, the accumulation of funds through the issuance and sale of its capital

stock, the acceptance of savings deposits and such other accounts as may be authorized by the department for mutual savings and loan associations, hereinafter referred to as "mutual associations," and the loaning of funds so accumulated in accordance with the powers conveyed by this chapter.

(2) **CAPITAL STOCK.—**

(a) **Common stock.**—A capital stock association may issue the shares of stock authorized by its articles of incorporation and none other. Capital stock shall have the par value stated in the articles of incorporation and, with the prior approval of the department, may consist of common stock and preferred stock, which may be divided into classes and classes into series. Each kind, class, and series may have such distinguishing characteristics, including designations, preferences, or restrictions as regards dividends, redemption, voting powers, or restrictions or qualifications of voting powers, as are imposed in the articles of incorporation. Such provisions of the articles of incorporation which shall control in any case in which any vote or consent of stockholders is now or hereafter required by statute unless such statute shall expressly provide to the contrary.

(b) **Preferred stock.**—With the prior approval of the department, shares of preferred or special stock of any class may be divided by number from time to time into, and issued in, designated series. Such shares of preferred or special stock of any class or series thereof shall have such relative rights and preferences with regard to dividend rates, redemption rights, conversion privileges, voting power, and other distinguishing characteristics, as shall be stated and expressed with respect to such class or series, either in the articles of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors of the corporation.

(c) **Consideration for issuance of stock.**—Except for stock issued pursuant to a plan of merger, consolidation, or conversion from a mutual to a stock association or other type of reorganization which has been approved by the department, the consideration for the issuance of voting common capital stock shall be paid in cash. The par value thereof shall be maintained as the permanent capital of the association, and any excess shall be credited to paid-in surplus which shall not be available for dividends or other distribution to stockholders, except upon liquidation.

(d) **Permanent capital.**—Except as provided herein, the total of the par values of all outstanding shares of voting common capital stock shall be the permanent capital of the association and shall not be retired until final liquidation of the association. No association shall reduce its outstanding voting common capital stock without first obtaining the consent of the department. Such consent shall be withheld if the reduction will cause the par value of outstanding voting common capital stock to be less than the minimum required by this chapter or result in less than adequate net worth, as provided in s. 665.707(3).

(e) **Preemptive rights.**—Unless otherwise provided by the articles of incorporation, every stockholder, upon the sale for cash of any new stock of the same kind, class, or series as that which he already

holds, shall have the right to purchase his pro rata share thereof, as nearly as may be done without issuance of fractional shares, at the price at which it is offered to others, which price must be in excess of par.

(f) *Capital stock as security for loan prohibited.*—An association shall not make a loan secured by the pledge of its capital stock.

**History.**—s. 2, ch. 73-224; s. 3, ch. 76-168; s. 1, ch. 77-174; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

#### **1665.702 Stockholders' meetings; notice; voting rights; quorum; proxy.—**

(1) **ANNUAL MEETING; NOTICE; PLACE OF HOLDING MEETINGS.**—The annual meeting of stockholders shall be held during the time prescribed in s. 665.091(1). Whenever the provisions of this chapter, the articles of incorporation, or the bylaws require or authorize the stockholders to take any action at an annual or special meeting, a notice of such meeting, signed by the secretary or other officer permitted by the bylaws, shall be mailed to each stockholder entitled to vote at such meeting, at his address as it appears on the records of the corporation, not less than 10 or more than 60 days before the date set for such meeting. The articles of incorporation or bylaws may require that such notice also be published in one or more newspapers. The notice shall state the purpose of the meeting and the time and place it is to be held. Such notice shall be sufficient for said meeting and any adjournment thereof unless otherwise provided in the articles of incorporation or bylaws. If any stockholder shall transfer any of his stock after notice, it shall not be necessary to notify the transferee. Such meetings shall be held within the state and within the county in which the home office of the association is located. Any stockholder may waive notice of any meeting either before, at, or after the meeting.

(2) **STOCKHOLDERS' RECORD DATE.**—The directors may, unless prohibited by the articles of incorporation or the bylaws, fix a date not more than 60 days prior to the date set for such meetings as the record date as of which the stockholders of record who have the right to and are entitled to notice of and to vote at such meeting and any adjournment thereof shall be determined.

(3) **VOTING RIGHTS.**—Unless otherwise provided in the articles of incorporation, every such stockholder shall be entitled at such meeting, and upon each proposal presented at such meeting, to one vote for each share of voting stock recorded in his name on the books of the corporation on the record date fixed as above provided or, if no such record date was fixed, on the day of meeting. The books of record of stockholders shall be produced at any stockholders' meeting upon the request of any stockholder.

(4) **QUORUM.**—Unless the articles of incorporation or bylaws otherwise provide for a larger number to constitute a quorum, the stockholders entitled to vote a majority of the stock shall constitute a quorum at any stockholders' meeting.

(5) **PROXY.**—At any meeting of said stockholders or any adjournment thereof, any stockholder of record having the right and entitled to vote thereat

may be represented and vote by a proxy appointed by an instrument in writing. In the event that any such instrument shall designate two or more persons to act as proxies, a majority of such persons present at the meeting or, if only one be present, that one, shall have all of the powers conferred by the instrument upon all the persons so designated unless the instrument shall otherwise provide.

**History.**—s. 2, ch. 73-224; s. 3, ch. 76-168; s. 1, ch. 77-174; s. 1, ch. 77-457.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

#### **1665.703 Directors.—**

(1) **NUMBER.**—The business of the corporation shall be managed and its corporate powers exercised by a board of directors. The board shall consist of not less than 5 or more than 15 adult natural persons who shall be elected by a plurality of the votes cast at the annual meeting of stockholders.

(2) **TERM OF OFFICE.**—At the first annual meeting, the stockholders shall by majority vote divide the directors into three classes of as nearly equal numbers as possible. The term of office of directors of the first class shall expire at the annual meeting next after the first election; of the second class, 1 year thereafter; and of the third class, 2 years thereafter. At each annual election thereafter directors shall be chosen for a full term of 3 years to succeed those whose terms expire.

(3) **QUALIFICATIONS; CITIZENSHIP AND RESIDENCY REQUIREMENTS; AUTOMATIC REMOVAL FROM OFFICE.**—Every director must, during his whole term of service, be a citizen of the United States, and at least three-fifths of the directors must have resided in this state for at least 1 year preceding their election and must be residents therein during their continuance in office. Except with the written consent of the department, no person shall be eligible for election or serve as a director or officer of a capital stock association who has been adjudicated a bankrupt or convicted of a criminal offense involving dishonesty or a breach of trust. A director or officer shall automatically cease to be a director when he is adjudicated a bankrupt or convicted of a criminal offense involving dishonesty or a breach of trust. However, no action of the board of directors shall be invalidated through the participation of such director in such action.

(4) **DIRECTOR'S OATH.**—Each director, upon assuming office, shall take an oath that he will, so far as the duty devolves on him, diligently and honestly administer the affairs of such capital stock association and will not knowingly violate, or willfully permit to be violated, any of the provisions of this chapter.

(5) **DIRECTORS' MEETINGS.**—The board of directors of each capital stock association shall hold a meeting at least once every 2 months at such time and place in the county in which the home office is located as shall be fixed by the bylaws of such association or by a majority vote of the board of directors.

(6) **VACANCIES ON BOARD.**—Vacancies on the board of directors may be filled as provided in s. 665.131(5), (7).

**History.**—s. 2, ch. 73-224; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 5, ch. 78-40.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior

to that date.

**'665.704 Power to incorporate capital stock association; organizational requirements; application; minimum capital; departmental action on application.—**

(1) **POWER TO ORGANIZE CAPITAL STOCK ASSOCIATION.**—When authorized by the Department of Banking and Finance as provided herein, a capital stock association may be incorporated under the laws of this state by five or more adult natural persons, a majority of whom are residents of this state, for the purpose of promoting thrift and home finance.

(2) **APPLICATION TO ORGANIZE.**—The written application for authority to organize a capital stock association shall be filed with the department and shall include:

(a) The name and the proposed location of the principal office of the proposed association.

(b) Such detailed financial and biographical information for each incorporator and subscriber as the department may require.

(c) The total amount of capital stock proposed and subscribed together with the name and address of each subscriber.

(d) Such economic data, projections of business volume, and income, expense, and other information as the department may require.

(e) A complete set of fingerprints taken by an authorized law enforcement officer of each organizing incorporator, proposed director, and proposed managing officer and each person subscribing to 5 percent or more of the voting stock. Such fingerprints shall be submitted by the department to appropriate law enforcement agencies for processing.

The application for authority to organize shall be filed with the department in triplicate and shall be accompanied by a filing fee in the same amount required for organization of a mutual association pursuant to this chapter.

(3) **DEPARTMENTAL ACTION ON APPLICATION.**—Upon receipt of an application to organize a capital stock association the department shall proceed as provided in s. 665.031.

**History.**—s. 2, ch. 73-224; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 4, ch. 79-144.  
**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**'665.705 Authorization to engage in savings and loan business required.—**

(1) After approval by the department of the application for authority to organize, the proposed capital stock association shall:

(a) File with the department its articles of incorporation and bylaws for approval.

(b) File with the department a statement in such form and with such supporting data and proof as it may require, showing that the entire capital, including paid-in surplus has been fully and unconditionally paid in lawful money and that the funds representing such capital and paid-in surplus, less sums spent with the approval of the department for land, building, supplies, fixtures, equipment, and organization, are on hand and that it has acquired insurance of accounts as provided in this chapter.

(2) If the department finds that the proposed savings and loan corporation has in good faith complied with all the requirements of law, it shall, within 30 days after the filing of the statement specified in paragraph (b) of subsection (1), issue, in duplicate, under its official seal, a certificate of authorization to transact a general savings and loan business, transmitting one copy to the savings and loan association and placing one copy in the department file. Said certificate shall state that the association named therein is authorized to transact a general savings and loan business. The savings and loan association shall cause said certificate to be published one time in some newspaper of general circulation published in the city or county where the savings and loan company is located.

(3) No savings and loan association shall, until it has received its certificate of authorization:

(a) Transact any savings and loan business.

(b) Incur any indebtedness except that allowed under paragraph (b) of subsection (1).

(4) Upon failure to comply with subsection (1) within 12 months after the approval of the application for authority to organize, such right shall automatically terminate. However, the department, for good cause, on written application filed before the expiration of said 12 months' period, may extend the time within which the savings and loan corporation may be organized for a period not exceeding 12 months.

(5) Upon the failure to open for business within 30 days after the issuance of the certificate of authorization, the right to transact business will automatically terminate. However, the department may for good cause extend such period for a reasonable time.

(6) Upon opening for business, a savings and loan association shall have the power to engage in a general savings and loan business and to exercise, subject to law and the approval of the department, all such incidental powers as may reasonably promote its general savings and loan business.

**History.**—s. 2, ch. 73-224; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**'665.706 Articles of incorporation, content; approval by department; filing; bylaws.—**

(1) **ARTICLES OF INCORPORATION, CONTENTS.**—The articles of incorporation shall contain:

(a) The name of the proposed association which shall comply with s. 665.051.

(b) The general nature of the business to be transacted or a statement that the corporation may engage in any activity or business permitted under this chapter. Such statement shall authorize all such activities and business by the corporation.

(c) The amount of capital stock authorized, showing the maximum number of shares of par value common stock and of preferred stock, and of every kind, class, or series of each, together with the distinguishing characteristics and the par value of all shares.

(d) The amount of capital with which the corporation will begin business, which shall not be less



than the amount required by the department pursuant to s. 665.707.

(e) A provision that the corporation is to have perpetual existence unless existence is terminated pursuant to this chapter.

(f) The initial street address of the home office of the corporation, which shall be in this state.

(g) The number of directors, which shall not be less than 5 or more than 15, and the names and street addresses of the members of the first board of directors who, unless otherwise provided by the articles of incorporation, the bylaws, or this chapter, shall hold office for the term set forth in s. 665.703(2) or until their successors are elected or appointed and have qualified.

(h) The name and street address of each person signing the articles of incorporation as a subscriber and the number of shares subscribed.

(i) Any provision which the incorporators may choose to insert for the regulation of the business and for the conduct of affairs of the corporation and any provision creating, dividing, limiting, or regulating the powers of the corporation, the directors, and the stockholders or any class of the stockholders, including, but not limited to, provisions for cumulative voting for directors, provisions governing the issuance of stock certificates to replace lost or destroyed certificates, and a list of officers.

(2) **ARTICLES OF INCORPORATION MUST BE APPROVED BEFORE FILING.**—The articles of incorporation shall be in writing, subscribed to by five or more persons competent to contract, acknowledged by all of the subscribers before an officer authorized to take acknowledgments, and submitted to the Department of Banking and Finance for its approval. Upon approval, the department shall place the following legend upon the articles of incorporation and affix the seal of the Office of the Comptroller of Florida thereto. The legend shall in substance read: "Approved by the Department of Banking and Finance this ..... day of ....., ..... (herein the name and signature of the head of the department)." Thereafter the articles of incorporation shall be filed with the Department of State.

(3) **BYLAWS.**—Unless the articles of incorporation provide otherwise, the board of directors shall have authority to adopt or amend bylaws that do not conflict with bylaws that may have been adopted by the stockholders. The bylaws shall be for the government of the corporation, subordinate only to the articles of incorporation and the laws of the United States and of this state. No bylaws or amendments thereto shall be adopted until approved by the department.

**History.**—s. 2, ch. 73-224; s. 3, ch. 76-168; s. 1, ch. 77-174; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

#### **§665.707 Minimum capital; adequate net worth.**

(1) **MINIMUM CAPITAL.**—The minimum capital of a capital stock association shall be the sum of the par value of all shares of voting common capital stock and shall not be less than:

(a) One hundred and fifty thousand dollars in communities having not more than 10,000 inhabitants.

(b) Four hundred and fifty thousand dollars in communities having more than 10,000 but not more than 100,000 inhabitants.

(c) Seven hundred and fifty thousand dollars in communities having more than 100,000 inhabitants.

However, the department may in its discretion require a larger amount. The population of the community shall be determined by the department based upon the latest federal census.

(2) **PAID-IN SURPLUS.**—In addition to the minimum capital required by subsection (1), the subscribers shall pay an additional amount equal to not less than 20 percent of the par value of the stock subscribed, which shall be credited to paid-in surplus and may be used to offset losses from operations. Such minimum capital and surplus may be used for the reserves required by law as permitted by the department.

(3) **ADEQUATE NET WORTH.**—After organization or conversion, each capital stock association shall maintain an adequate net worth structure appropriate for the conduct of its business and the protection of its depositors. The net worth adequacy of a capital stock association shall be determined by the department after evaluating the character of management, the liquidity or quality of assets, history of earnings and the retention thereof, the potential volatility of the deposit structure, and the association's capacity to furnish the broadest service to the public.

**History.**—s. 2, ch. 73-224; s. 3, ch. 76-168; s. 1, ch. 77-174; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

cf.—s. 11.031 Official census.

#### **§665.708 Power to accept savings deposits.**

In addition to the capital stock provided for in its articles of incorporation, a capital stock association may accept such savings deposits or other accounts as are authorized by its board of directors and approved by the department. The deposits and other accounts may be used for fixed, minimum, or indefinite periods of time of not less than 30 days and may be classified by the board of directors so that different rates of interest are payable on different classes of deposits or other accounts according to the character, amount, duration, required notice of intention to withdraw, or the regularity of additions required to be made on the deposits or other accounts. The department shall not permit a corporation organized pursuant to ss. 665.701-665.717 to pay a higher rate of interest than the rates permissible for mutual associations to pay on classified accounts pursuant to s. 665.331. The savings deposits or other accounts may be evidenced by certificates of deposit, passbooks, or such other evidence of deposit or account as the board of directors prescribes. A capital stock association may pay interest on its deposits or other accounts from any sources available for such payment at such rate and at such times and for such time or notice periods as are determined by resolution of its board of directors. The board of directors shall determine by resolution the method of calculating the interest on deposits or other accounts and the

time when, and manner in which, interest is to be paid or credited.

**History.**—s. 2, ch. 73-224; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**§665.709 Dividend limitations.**—Before and following the declaration of any dividend to holders of capital stock, a capital stock association shall have net worth totaling at least 5 percent of the outstanding amount of its savings deposits. If a capital stock association results from conversion of an association pursuant to s. 665.710, a dividend shall not be declared during the 2-year period immediately following the conversion if payment of the dividend would result in the reduction of net worth below the amount which existed at the time of conversion. Unless the department issues its approval in writing, no dividend shall be declared or paid for an accounting period unless the allocation to the general reserve, required by s. 665.201, for the preceding accounting period has been made.

**History.**—s. 2, ch. 73-224; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**§665.710 Power of state or federal mutual association to convert to capital stock association; procedure; approval of department required; minutes of meeting; succession.**—

(1) **POWER TO CONVERT; PROCEDURES; APPROVAL OF PLAN OF CONVERSION BY DEPARTMENT AND MEMBERS.**—If the board of directors determines, and the department concurs, that a substantial business benefit to the association will or may result, and if federal law, regulations, or administrative rulings authorize federal associations to convert to capital stock associations, the voting members of a mutual association organized pursuant to this chapter, or otherwise subject to the provisions of this chapter, or a federal mutual association located in Florida may vote to convert the association into a total or partial capital stock association by adopting a plan of conversion which is approved by the department. The plan of conversion must be approved at a meeting of voting members called to consider such action by a vote of 51 percent or more of the total number of votes eligible to be cast, unless federal law permits a lesser percentage of votes for a federal mutual association to convert, in which case that percentage shall control. The department may approve or disapprove the plan of conversion in its discretion, but it shall not approve the plan unless it finds that the plan is fair and equitable to members of the association and that the interest of the savings account holders and the public are adequately protected. Notice of the meeting, giving the time, place, and purpose thereof, together with a proxy statement and proxy form approved by the department covering all matters to be brought before the meeting shall be mailed at least 30 days prior thereto to the department and to each voting member at his last address as shown on the books of the association.

(2) **MINUTES OF MEETING.**—Copies of the minutes of the meeting of members, verified by the affidavit of the secretary or assistant secretary of the

association, shall be filed in the office of the department and with the Federal Home Loan Bank Board within a reasonable time after the meeting. When so filed, the verified copies of the minutes are presumptive evidence of the holding of the meeting and of the action taken.

(3) **FILING OF ARTICLES OF INCORPORATION AND COMMITMENT FOR INSURANCE OF ACCOUNTS.**—The directors of the association shall execute and file with the supervisory authority proposed articles of incorporation as provided for in s. 665.706, together with an application for conversion and a firm commitment for, or evidence of, insurance of deposits and other accounts of a withdrawable type. The articles shall contain a statement that the corporation resulted from the conversion of a state or federal mutual association to a capital stock association. Approval by the department shall be affixed to the articles of incorporation. An authenticated copy of the articles of incorporation shall be filed in the Department of State and one copy of the articles of incorporation and the certificate of incorporation shall be returned to the association. The association shall cease to be a mutual association at the time and on the date specified in the approved articles of incorporation.

(4) **SUCCESSION.**—Upon conversion of a mutual association, the legal existence of the association shall not terminate, but the capital stock association shall be a continuation of the entity of the mutual association, and all property of the mutual association, including its rights, titles, and interests in and to all property of whatever kind, whether real, personal, or mixed, things in action, and every right, privilege, interest, and asset of every conceivable value or benefit then existing or pertaining to it, or which would inure to it, immediately, by act of law and without any conveyance or transfer and without any further act or deed, shall vest and remain in the capital stock association into which the mutual association has converted itself. The capital stock association shall have, hold, and enjoy the same in its own right as fully and to the same extent as the same was possessed, held, and enjoyed by the mutual association. The capital stock association, upon the taking effect of the conversion, shall continue to have and succeed to all the rights, obligations, and relations of the mutual association. All pending actions and other judicial proceedings to which the mutual association is a party shall not be abated or discontinued by reason of the conversion but may be prosecuted to final judgment, order, or decree in the same manner as if the conversion had not been made, and the capital stock association resulting from the conversion may continue the actions in its corporate name as a mutual association. Any judgment, order, or decree may be rendered for or against it which might have been rendered for or against the mutual association theretofore involved in the proceedings.

**History.**—s. 2, ch. 73-224; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 7, ch. 78-95; s. 172, ch. 79-164.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior

to that date.

**§665.711 Conversion of stock association to federal association; procedure.—**

(1) **POWER TO CONVERT; PROCEDURE.**—A capital stock association may vote to convert itself into a federal savings and loan association at any legal meeting called to consider the action. The required vote to effect the conversion shall be not less than 51 percent of all the votes cast in person or by proxy at the meeting of stockholders. Notice of the meeting, giving the time, place and purpose thereof, together with a proxy statement and proxy form, covering all matters properly brought before the meeting shall be mailed at least 30 days prior thereto to the department and the Federal Home Loan Bank Board and to each stockholder at his last address as shown on the books of the association. A copy of the minutes of the proceedings of the meeting, verified by the affidavit of the secretary or an assistant secretary of the association, shall be filed in the office of the department within ten days after the date of the meeting. When filed, a verified copy of the proceedings of the meeting is presumptive evidence of the holding of the meeting and of the action taken.

(2) **COMPLETION OF CONVERSION.**—Within 3 months after the date of the meeting, the association shall take such further action, in the manner prescribed and authorized by the laws of the United States, as shall make it a federal savings and loan association. Three copies of the charter issued by the Federal Home Loan Bank Board, or three copies of a certificate showing the organization of the association as a federal association, certified by the secretary or an assistant secretary of the Federal Home Loan Bank Board shall be filed with the department. Upon the payment of the fees prescribed by law, the department shall note the filing upon each of the copies and shall retain one copy in its office, file one copy in the Department of State, and return one copy to the association. The failure to file the instruments with the department shall not affect the validity of the conversion. Upon the grant to any association of a charter by the Federal Home Loan Bank Board, the association shall cease to be an association incorporated under this act and shall no longer be subject to the supervision and control of the department. All the provisions regarding property and other rights contained in s. 665.710(4) apply to the conversion of a capital stock association into a federal savings and loan association.

**History.**—s. 2, ch. 73-224; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**§665.712 Plan of conversion; mandatory and permissive requirements.—**

(1) **MANDATORY PROVISIONS.**—The plan of conversion must provide:

- (a) That each savings account holder of the mutual association will receive a withdrawable account in the capital stock association equal in amount to his withdrawable account in the mutual association.
- (b) That each savings account holder of record as provided in paragraph (c) will be entitled to receive

voting common stock or rights to purchase voting common stock.

(c) If the department fixes a record date, that the record date for determining savings account holders is used.

(d) With particularity, the business purpose to be accomplished by the conversion.

The plan shall contain such other information and be in such form as required by the department to enable it to determine whether the plan is fair and equitable to members of the association and that the interest of the savings account holders and the public is adequately protected.

(2) **PERMISSIVE CONTENTS OF PLAN OF CONVERSION.**—A plan of conversion will not be considered unfair or inequitable merely because it contains provisions which provide:

(a) That shares of stock will be issued to savings account holders with or without cost.

(b) That shares of stock will be issued with cost to all savings account holders and that no stock will be issued without cost.

(c) That savings account holders, including or excluding past savings account holders, will have a right to purchase shares of voting common stock at the fair market value thereof.

(d) That savings account holders will or will not have preemptive rights to all stock proposed to be issued.

(e) That those persons who were savings account holders during a particular number of years have preemptive rights to purchase voting common stock at the fair market value thereof.

(f) That employment contracts are provided for officers and employees of the association.

(g) That not more than 15 percent of the voting common stock proposed to be issued pursuant to the plan of conversion is reserved by the association for stock options for officers and employees.

**History.**—s. 2, ch. 73-224; s. 3, ch. 76-168; s. 1, ch. 77-174; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**§665.713 Record date.**—Annually, during the month of January, a statewide record date for determining the respective interests of account holders may be published by the department. Such date shall be not more than 18 months prior to its publication.

**History.**—s. 2, ch. 73-224; s. 3, ch. 76-168; s. 1, ch. 77-457.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**§665.714 Hearings on conversion plans; costs.**

—All costs to the department resulting from hearings on conversion plans shall be paid by the association making application for conversion.

**History.**—s. 2, ch. 73-224; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 7, ch. 78-95.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**§665.715 Acquisition of control over an existing association.**

—In any case in which a person or group of persons propose to purchase or acquire voting common stock of any capital stock association, which purchase or acquisition would cause such person or group of persons to have control, as defined in



s. 665.716(2), of said association, such person or group of persons shall first make application to the department for a certificate of approval of such purchase or acquisition. The application shall contain the name and address of the proposed new owner or owners of voting common stock, and the department shall issue said certificate of approval only after it has become satisfied that the proposed new owner or owners of voting common stock are qualified by character, experience, and financial responsibility to control said association in a legal and proper manner and that the interest of the stockholders, depositors, and creditors of the association and the interest of the public generally will not be jeopardized by the proposed purchase or acquisition of voting common stock. Any such person or persons required to submit an application pursuant to this section shall file with the department a complete set of fingerprints taken by an authorized law enforcement officer, and such fingerprints shall be submitted by the department to appropriate law enforcement agencies for processing.

**History.**—s. 2, ch. 73-224; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 5, ch. 79-144.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

#### **§665.716 Restrictions on acquisition of control of capital stock associations.—**

(1) **DEFINITIONS.**—As used in this section, unless the context otherwise requires:

(a) “Business organization” or “company” means any corporation, partnership, trust, joint stock company, or similar organization, but does not include any company the majority of the stock of which is owned by the United States or this state, by an officer of the United States or this state in his official capacity, or by an instrumentality of the United States or this state.

(b) “Savings and loan holding company” means any company which directly or indirectly controls a savings and loan association or controls any other company which is a savings and loan holding company by virtue of this section.

(c) “Person” means an individual or company.

(d) “Subsidiary” of a person means any company which is controlled by such person or by a company which is a subsidiary of such person by virtue of this section.

(2) **CONTROL DEEMED TO EXIST.**—For purposes of this section, a business organization shall be deemed to have control of a savings and loan association or any other business organization if the business organization:

(a) Directly or indirectly, or acting in concert with one or more persons or through one or more subsidiaries, owns, controls, holds with powers to vote, or holds proxies representing, more than 25 percent of the voting common stock of such savings and loan association or other business organization.

(b) Controls in any manner the election of a majority of the directors of such savings and loan association or other business organization.

(c) Exercises a controlling influence over the management or policies of such savings and loan association or other business organization.

(3) **RESTRICTIONS ON OWNERSHIP OR CONTROL.**—

(a) Unless organized pursuant to the laws of Florida and not controlled by a business organization organized under the laws of another jurisdiction, no business organization shall, either directly or indirectly, control any savings and loan association located in Florida.

(b) No business organization which is a bank or trust company or subsidiary of a bank or trust company or a bank holding company according to federal law or regulation or a subsidiary of a bank holding company shall, either directly or indirectly, acquire or own any of the capital stock of any savings and loan association located in Florida. However, a bank or trust company located within or without the territorial boundaries of Florida may accept capital stock of a capital stock savings and loan association as collateral for a loan and may acquire said stock to satisfy the loan. If a bank or trust company acquires the capital stock of a savings and loan association in partial or complete satisfaction of a loan it shall divest itself of the stock within a reasonable period of time which shall not exceed 2 years unless a longer period of time is approved by the department. However, if a law regulating banks fixes a shorter period of time, then the shorter period shall prevail.

(c) No business organization which controls or seeks to control any capital stock association located in Florida shall engage in any business activity which has not been determined by the department or prescribed by regulation to be a proper incident to the operation of a capital stock association and which is, or may be deemed to be, detrimental to savings account holders by the department, nor shall it control or be controlled by any business organization whose business activities have not been determined by the department or prescribed by regulation to be a proper incident to the operation of a capital stock association and which is, or may be deemed to be, detrimental to savings account holders by the department.

(d) The following are deemed to be proper incidents to the operation of a capital stock association:

1. Furnishing or performing management services for a subsidiary savings and loan association.

2. Holding, managing, or liquidating assets owned by, or acquired from, a subsidiary savings and loan association.

3. Holding or managing properties used or occupied by a subsidiary savings and loan association.

(e) Such business organizations may furnish or perform such other services or engage in such other activities as the department may approve or prescribe by regulation as being proper incidents to the operation of capital stock associations and not detrimental to the interests of savings account holders therein.

(f) No business organization shall acquire control of a capital stock association located in Florida without first obtaining the prior written approval of the department. Prior to such acquisitions, such business organization shall file an application with the department containing such information as the department may require and as will aid it in determining that the acquisition will not be detrimental to the public interest.

(g) Each savings and loan holding company and

each subsidiary thereof shall file such reports as the department may require from time to time. Each savings and loan holding company and each subsidiary thereof shall be subject to such examinations as the department shall prescribe. The cost of such examinations shall be assessed against such holding company and paid to the state treasurer who shall credit such amount to a special bank and trust company trust fund to be used to administer this chapter.

**History.**—s. 2, ch. 73-224; s. 3, ch. 76-168; s. 1, ch. 77-457.

**<sup>1</sup>Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

**<sup>1</sup>665.717 Inconsistent provisions of this chapter.**—In the event of inconsistency between the provisions of ss. 665.701-665.717, and other provisions of this chapter, such other provisions, to the extent of the inconsistency, shall be construed to be applicable to mutual associations. The department shall resolve all ambiguities, inconsistencies, or omissions by rules or regulations which will provide maximum safety to savings account holders or depositors.

**History.**—s. 2, ch. 73-224; s. 3, ch. 76-168; s. 1, ch. 77-457.

**<sup>1</sup>Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

# TITLE XXXIX

## COMMERCIAL RELATIONS

### CHAPTER 671

#### UNIFORM COMMERCIAL CODE: GENERAL PROVISIONS

##### ARTICLE 1

Note.—Pursuant to s. 69, ch. 69-353, the editors have altered the numbers of all sections making up this chapter by deleting the digit and hyphen immediately following the decimal point. The purpose is to conform the numbering of the Code sections with the decimal numbering system used in other chapters of the Florida Statutes. The visual relationship between Florida Statutes section numbers and Code section number is not destroyed by this alteration; the digit preceding the decimal point coincides with the Code article number, and the digits following the decimal point coincide with the Code section numbers.

#### PART I SHORT TITLE, CONSTRUCTION, APPLICATION, AND SUBJECT MATTER (ss. 671.101-671.109)

#### PART II GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION (ss. 671.201-671.208)

##### PART I

##### SHORT TITLE, CONSTRUCTION, APPLICATION, AND SUBJECT MATTER

- 671.101 Short title.
- 671.102 Purposes; rules of construction; variation by agreement.
- 671.103 Supplementary general principles of law applicable.
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- 671.108 Severability.
- 671.109 Section captions.

**671.101 Short title.**—Chapters 671-679 shall be known and may be cited as the "Uniform Commercial Code."

History.—s. 1, ch. 65-254.  
Note.—s. 1-101, U.C.C.

**671.102 Purposes; rules of construction; variation by agreement.**—

(1) This code shall be liberally construed and applied to promote its underlying purposes and policies.

(2) Underlying purposes and policies of this code are:

(a) To simplify, clarify and modernize the law governing commercial transactions;

(b) To permit the continued expansion of commercial practices through custom, usage and agreement of the parties;

(c) To make uniform the law among the various jurisdictions.

(3) The effect of provisions of this code may be varied by agreement, except as otherwise provided in this code and except that the obligations of good faith, diligence, reasonableness and care prescribed by this code may not be disclaimed by agreement but the parties may by agreement determine the standards by which the performance of such obligations is to be measured if such standards are not manifestly unreasonable.

(4) The presence in certain provisions of this code of the words "unless otherwise agreed" or words of similar import does not imply that the effect of other provisions may not be varied by agreement under subsection (3).

(5) In this code unless the context otherwise requires:

(a) Words in the singular number include the plural, and in the plural include the singular;

(b) Words of the masculine gender include the feminine and the neuter, and when the sense so indicates words of the neuter gender may refer to any gender.

History.—s. 1, ch. 65-254.

Note.—s. 1-102, U.C.C.; supersedes ss. 678.53, 614.31.

**671.103 Supplementary general principles of law applicable.**—Unless displaced by the particular provisions of this code, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions.

History.—s. 1, ch. 65-254.

Note.—s. 1-103, U.C.C.; supersedes ss. 678.52, 673.17, 614.20.



**671.104 Construction against implicit repeal.**

—This code being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

History.—s. 1, ch. 65-254.

Note.—s. 1-104, U.C.C.

**671.105 Territorial application of the code; parties' power to choose applicable law.—**

(1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement this code applies to transactions bearing an appropriate relation to this state.

(2) Where one of the following provisions of this code specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

(a) Rights of sellers' creditors against sold goods. (s. 672.402)

(b) Applicability of the chapter on bank deposits and collections. (s. 674.102)

(c) Bulk transfers subject to the chapter on bulk transfers. (s. 676.102)

(d) Applicability of the chapter on investment securities. (s. 678.106)

<sup>1</sup>(e) Perfection provisions of the chapter on secured transactions. (s. 679.103)

History.—s. 1, ch. 65-254; s. 1, ch. 79-398.

Note.—As amended, effective January 1, 1980.

Note.—s. 1-105, U.C.C.

**671.106 Remedies to be liberally administered.—**

(1) The remedies provided by this code shall be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special nor penal damages may be had except as specifically provided in this code or by other rule of law.

(2) Any right or obligation declared by this code is enforceable by action unless the provision declaring it specifies a different and limited effect.

History.—s. 1, ch. 65-254.

Note.—s. 1-106, U.C.C.

**671.107 Waiver or renunciation of claim or right after breach.—**Any claim or right arising out of an alleged breach can be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party.

History.—s. 1, ch. 65-254.

Note.—s. 1-107, U.C.C.; supersedes ss. 675.28, 675.30.

**671.108 Severability.—**If any provision or clause of this code or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of

the code which can be given effect without the invalid provision or application, and to this end the provisions of this code are declared to be severable.

History.—s. 1, ch. 65-254.

Note.—s. 1-108, U.C.C.

**671.109 Section captions.—**Section captions are parts of this code.

History.—s. 1, ch. 65-254.

Note.—s. 1-109, U.C.C.

## PART II

## GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION

671.201 General definitions.

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671.205 Course of dealing and usage of trade.

671.206 Statute of frauds for kinds of personal property not otherwise covered.

671.207 Performance or acceptance under reservation of rights.

671.208 Option to accelerate at will.

**671.201 General definitions.—**Subject to additional definitions contained in the subsequent chapters of this code which are applicable to specific chapters or parts thereof, and unless the context otherwise requires, in this code:

(1) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, setoff, suit in equity and any other proceedings in which rights are determined.

(2) "Aggrieved party" means a party entitled to resort to a remedy.

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this code (ss. 671.205 and 672.208). Whether an agreement has legal consequences is determined by the provisions of this code, if applicable; otherwise by the law of contracts (s. 671.103). (Compare "Contract.")

(4) "Bank" means any person engaged in the business of banking.

(5) "Bearer" means the person in possession of an instrument, document of title, or security payable to bearer or indorsed in blank.

(6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence.

<sup>1</sup>(9) "Buyer in ordinary course of business" means

a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. All persons who sell minerals or the like (including oil and gas) at wellhead or minehead shall be deemed to be persons in the business of selling goods of that kind. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(10) A term or clause is "conspicuous" when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: NON-NEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is conspicuous if it is in larger or other contrasting type or color. But in a telegram any stated term is conspicuous. Whether a term or clause is conspicuous or not is for decision by the court.

(11) "Contract" means the total legal obligation which results from the parties' agreement as affected by this code and any other applicable rules of law. (Compare "Agreement.")

(12) "Creditor" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.

(13) "Defendant" includes a person in the position of defendant in a cross-action or counterclaim.

(14) "Delivery" with respect to instruments, documents of title, chattel paper or securities means voluntary transfer of possession.

(15) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

(16) "Fault" means wrongful act, omission or breach.

(17) "Fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of this code to the extent that under a particular agreement or document unlike units are treated as equivalents.

(18) "Genuine" means free of forgery or counterfeiting.

(19) "Good faith" means honesty in fact in the conduct or transaction concerned.

(20) "Holder" means a person who is in possession of a document of title or an instrument or an

investment security drawn, issued or indorsed to him or to his order or to bearer or in blank.

(21) To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

(22) "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) A person is "insolvent" who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due or is insolvent within the meaning of the Federal Bankruptcy Law.

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government as a part of its currency.

(25) A person has "notice" of a fact when

(a) He has actual knowledge of it; or

(b) He has received a notice or notification of it; or

(c) From all the facts and circumstances known to him at the time in question he has reason to know that it exists.

A person "knows" or has "knowledge" of a fact when he has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this code.

(26) A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person "receives" a notice or notification when

(a) It comes to his attention; or

(b) It is duly delivered at the place of business through which the contract was made or at any other place held out by him as the place for receipt of such communications.

(27) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

(28) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(29) "Party," as distinct from "third party,"

means a person who has engaged in a transaction or made an agreement within this code.

(30) "Person" includes an individual or an organization (See s. 671.102).

(31) "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(32) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, issue or reissue, gift or any other voluntary transaction creating an interest in property.

(33) "Purchaser" means a person who takes by purchase.

(34) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(35) "Representative" includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

(36) "Rights" includes remedies.

(37) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (s. 672.401) is limited in effect to a reservation of a security interest. The term also includes any interest of a buyer of accounts or chattel paper which is subject to chapter 679. The special property interest of a buyer of goods on identification of such goods to a contract for sale under s. 672.401 is not a security interest, but a buyer may also acquire a security interest by complying with chapter 679. Unless a lease or consignment is intended as security, reservation of title thereunder is not a security interest, but a consignment is in any event subject to the provisions on consignment sales (s. 672.326). Whether a lease is intended as security is to be determined by the facts of each case; however, (a) the inclusion of an option to purchase does not of itself make the lease one intended for security, and (b) an agreement that upon compliance with the terms of the lease the lessee shall become or has the option to become the owner of the property for no additional consideration or for a nominal consideration does make the lease one intended for security.

(38) "Send" in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.

(39) "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(40) "Surety" includes guarantor.

(41) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(42) "Term" means that portion of an agreement

which relates to a particular matter.

(43) "Unauthorized" signature or indorsement means one made without actual, implied or apparent authority and includes a forgery.

(44) "Value." Except as otherwise provided with respect to negotiable instruments and bank collections (ss. 673.303, 674.208 and 674.209), a person gives value for rights if he acquires them:

(a) In return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection; or

(b) As security for or in total or partial satisfaction of a preexisting claim; or

(c) By accepting delivery pursuant to a preexisting contract for purchase; or

(d) Generally, in return for any consideration sufficient to support a simple contract.

(45) "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.

(46) "Written" or "writing" includes printing, typewriting or any other intentional reduction to tangible form.

**History.**—s. 1, ch. 65-254; s. 1, ch. 78-222; s. 2, ch. 79-398.

**Note.**—As amended, effective January 1, 1980.

**Note.**—s. 1-201, U.C.C.; supersedes ss. 614.02, 673.01, 674.01, 674.07, 674.28, 674.29, 674.30, 678.54.

**671.202 Prima facie evidence by third-party documents.**—A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party shall be prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 1-202, U.C.C.

**671.203 Obligation of good faith.**—Every contract or duty within this code imposes an obligation of good faith in its performance or enforcement.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 1-203, U.C.C.; supersedes ss. 678.54, 614.02(11).

**671.204 Time; reasonable time; "seasonably."**—

(1) Whenever this code requires any action to be taken within a reasonable time, any time which is not manifestly unreasonable may be fixed by agreement.

(2) What is a reasonable time for taking any action depends on the nature, purpose and circumstances of such action.

(3) An action is taken "seasonably" when it is taken at or within the time agreed or if no time is agreed at or within a reasonable time.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 1-204, U.C.C.; supersedes s. 674.01.

**671.205 Course of dealing and usage of trade.**—

(1) A "course of dealing" is a sequence of previous conduct between the parties to a particular transaction which is fairly to be regarded as establishing a common basis of understanding for inter-



preting their expressions and other conduct.

(2) A "usage of trade" is any practice or method of dealing having such regularity of observance in a place, vocation or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage are to be proved as facts. If it is established that such a usage is embodied in a written trade code or similar writing the interpretation of the writing is for the court.

(3) A course of dealing between parties and any usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware give particular meaning to and supplement or qualify terms of an agreement.

(4) The express terms of an agreement and an applicable course of dealing or usage of trade shall be construed wherever reasonable as consistent with each other; but when such construction is unreasonable express terms control both course of dealing and usage of trade and course of dealing controls usage of trade.

(5) An applicable usage of trade in the place where any part of performance is to occur shall be used in interpreting the agreement as to that part of the performance.

(6) Evidence of a relevant usage of trade offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise to the latter.

History.—s. 1, ch. 65-254.

Note.—s. 1-205, U.C.C.; supersedes s. 674.01.

**671.206 Statute of frauds for kinds of personal property not otherwise covered.—**

(1) Except in the cases described in subsection (2) of this section a contract for the sale of personal property is not enforceable by way of action or de-

fense beyond \$5,000 in amount or value of remedy unless there is some writing which indicates that a contract for sale has been made between the parties at a defined or stated price, reasonably identifies the subject matter, and is signed by the party against whom enforcement is sought or by his authorized agent.

(2) Subsection (1) of this section does not apply to contracts for the sale of goods (s. 672.201) nor of securities (s. 678.319) nor to security agreements (s. 679.203).

History.—s. 1, ch. 65-254.

Note.—s. 1-206, U.C.C.; supersedes s. 725.02.

**671.207 Performance or acceptance under reservation of rights.—**A party who with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice," "under protest" or the like are sufficient.

History.—s. 1, ch. 65-254.

Note.—s. 1-207, U.C.C.

**671.208 Option to accelerate at will.—**A term providing that one party or his successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or "when he deems himself insecure" or in words of similar import shall be construed to mean that he shall have power to do so only if he in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against whom the power has been exercised.

History.—s. 1, ch. 65-254.

Note.—s. 1-208, U.C.C.; supersedes s. 674.03(3).

## CHAPTER 672

## UNIFORM COMMERCIAL CODE: SALES

## ARTICLE 2

Note.—Pursuant to s. 69, ch. 69-353, the editors have altered the numbers of all sections making up this chapter by deleting the digit and hyphen immediately following the decimal point. The purpose is to conform the numbering of the Code sections with the decimal numbering system used in other chapters of the Florida Statutes. The visual relationship between Florida Statutes section numbers and Code section number is not destroyed by this alteration; the digit preceding the decimal point coincides with the Code article number, and the digits following the decimal point coincide with the Code section numbers.

PART I SHORT TITLE, GENERAL CONSTRUCTION, AND SUBJECT MATTER  
(ss. 672.101-672.107)

PART II FORM, FORMATION, AND READJUSTMENT OF CONTRACT  
(ss. 672.201-672.210)

PART III GENERAL OBLIGATION AND CONSTRUCTION OF CONTRACT  
(ss. 672.301-672.328)

PART IV TITLE, CREDITORS, AND GOOD FAITH PURCHASERS  
(ss. 672.401-672.403)

PART V PERFORMANCE (ss. 672.501-672.515)

PART VI BREACH, REPUDIATION, AND EXCUSE (ss. 672.601-672.616)

PART VII REMEDIES (ss. 672.701-672.724)

## PART I

SHORT TITLE, GENERAL CONSTRUCTION,  
AND SUBJECT MATTER

- 672.101 Short title.
- 672.102 Scope; certain security and other transactions excluded from this chapter.
- 672.103 Definitions and index of definitions.
- 672.104 Definitions: "merchant"; "between merchants"; "financing agency."
- 672.105 Definitions: transferability; "goods"; "future" goods; "lot"; "commercial unit."
- 672.106 Definitions: "contract"; "agreement"; "contract for sale"; "sale"; "present sale"; "conforming" to contract; "termination"; "cancellation."
- 672.107 Goods to be severed from realty; recording.

**672.101 Short title.**—Chapter 672 shall be known and may be cited as the "Uniform Commercial Code—Sales."

History.—s. 1, ch. 65-254.

Note.—s. 2-101, U.C.C.

**672.102 Scope; certain security and other transactions excluded from this chapter.**—Unless the context otherwise requires, this chapter applies to transactions in goods; it does not apply to any transaction which although in the form of an unconditional contract to sell or present sale is intended to operate only as a security transaction nor does this chapter impair or repeal any statute regulating

sales to consumers, farmers or other specified classes of buyers.

History.—s. 1, ch. 65-254.

Note.—s. 2-102, U.C.C.

**672.103 Definitions and index of definitions.**—

(1) In this chapter unless the context otherwise requires:

(a) "Buyer" means a person who buys or contracts to buy goods.

(b) "Good faith" in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.

(c) "Receipt" of goods means taking physical possession of them.

(d) "Seller" means a person who sells or contracts to sell goods.

(2) Other definitions applying to this chapter, or to specified parts thereof, and the sections in which they appear are:

"Acceptance," s. 672.606.

"Banker's credit," s. 672.325.

"Between merchants," s. 672.104.

"Cancellation," s. 672.106(4).

"Commercial unit," s. 672.105.

"Confirmed credit," s. 672.325.

"Conforming to contract," s. 672.106.

"Contract for sale," s. 672.106.

"Cover," s. 672.712.

"Entrusting," s. 672.403.

"Financing agency," s. 672.104.

"Future goods," s. 672.105.

"Goods," s. 672.105.

"Identification," s. 672.501.

"Installment contract," s. 672.612.

"Letter of credit," s. 672.325.

"Lot," s. 672.105.

"Merchant," s. 672.104.

"Overseas," s. 672.323.

"Person in position of seller," s. 672.707.

"Present sale," s. 672.106.

"Sale," s. 672.106.

"Sale on approval," s. 672.326.

"Sale or return," s. 672.326.

"Termination," s. 672.106.

(3) The following definitions in other chapters apply to this chapter:

"Check," s. 673.104.

"Consignee," s. 677.102.

"Consignor," s. 677.102.

"Consumer goods," s. 679.109.

"Dishonor," s. 673.507.

"Draft," s. 673.104.

(4) In addition chapter 671 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

History.—s. 1, ch. 65-254.

Note.—s. 2-103, U.C.C.

#### **672.104 Definitions: "merchant"; "between merchants"; "financing agency."—**

(1) "Merchant" means a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill.

(2) "Financing agency" means a bank, finance company or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller's draft or making advances against it or by merely taking it for collection whether or not documents of title accompany the draft. "Financing agency" includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (s. 672.707).

(3) "Between merchants" means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants.

History.—s. 1, ch. 65-254.

Note.—s. 2-104, U.C.C.

#### **672.105 Definitions: transferability; "goods"; "future" goods; "lot"; "commercial unit."—**

(1) "Goods" means all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities (chapter 678) and things in action. "Goods" also includes the unborn young of animals and growing crops and other identified things attached to realty as described in the section on goods to be severed from realty (s. 672.107).

(2) Goods must be both existing and identified before any interest in them can pass. Goods which

are not both existing and identified are "future" goods. A purported present sale of future goods or of any interest therein operates as a contract to sell.

(3) There may be a sale of a part interest in existing identified goods.

(4) An undivided share in an identified bulk of fungible goods is sufficiently identified to be sold although the quantity of the bulk is not determined. Any agreed proportion of such a bulk or any quantity thereof agreed upon by number, weight or other measure may to the extent of the seller's interest in the bulk be sold to the buyer who then becomes an owner in common.

(5) "Lot" means a parcel or a single article which is the subject matter of a separate sale or delivery, whether or not it is sufficient to perform the contract.

(6) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of sale and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article (as a machine) or a set of articles (as a suite of furniture or an assortment of sizes) or a quantity (as a bale, gross, or carload) or any other unit treated in use or in the relevant market as a single whole.

History.—s. 1, ch. 65-254.

Note.—s. 2-105, U.C.C.; supersedes s. 678.54.

#### **672.106 Definitions: "contract"; "agreement"; "contract for sale"; "sale"; "present sale"; "conforming" to contract; "termination"; "cancellation."—**

(1) In this chapter unless the context otherwise requires "contract" and "agreement" are limited to those relating to the present or future sale of goods. "Contract for sale" includes both a present sale of goods and a contract to sell goods at a future time. A "sale" consists in the passing of title from the seller to the buyer for a price (s. 672.401). A "present sale" means a sale which is accomplished by the making of the contract.

(2) Goods or conduct including any part of a performance are "conforming" or conform to the contract when they are in accordance with the obligations under the contract.

(3) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the contract otherwise than for its breach. On termination, all obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.

(4) "Cancellation" occurs when either party puts an end to the contract for breach by the other and its effect is the same as that of "termination" except that the canceling party also retains any remedy for breach of the whole contract or any unperformed balance.

History.—s. 1, ch. 65-254.

Note.—s. 2-106, U.C.C.

#### **672.107 Goods to be severed from realty; recording.—**

<sup>1</sup>(1) A contract for the sale of minerals or the like (including oil and gas) or a structure or its materials to be removed from realty is a contract for the sale of goods within this chapter if they are to be severed



by the seller, but until severance a purported present sale thereof which is not effective as a transfer of an interest in land is effective only as a contract to sell.

<sup>1</sup>(2) A contract for the sale apart from the land of growing crops or other things attached to realty and capable of severance without material harm thereto but not described in subsection (1) or of timber to be cut is a contract for the sale of goods within this chapter whether the subject matter is to be severed by the buyer or by the seller even though it forms part of the realty at the time of contracting, and the parties can by identification effect a present sale before severance.

(3) The provisions of this section are subject to any third-party rights provided by the law relating to realty records, and the contract for sale may be executed and recorded as a document transferring an interest in land and shall then constitute notice to third parties of the buyer's rights under the contract for sale.

**History.**—s. 1, ch. 65-254; s. 3, ch. 79-398.

**Note.**—As amended, effective January 1, 1980.

**Note.**—s. 2-107; U.C.C.

## PART II

### FORM, FORMATION, AND READJUSTMENT OF CONTRACT

- 672.201 Formal requirements; statute of frauds.
- 672.202 Final written expression; parol or extrinsic evidence.
- 672.203 Seals inoperative.
- 672.204 Formation in general.
- 672.205 Firm offers.
- 672.206 Offer and acceptance in formation of contract.
- 672.207 Additional terms in acceptance or confirmation.
- 672.208 Course of performance or practical construction.
- 672.209 Modification, rescission and waiver.
- 672.210 Delegation of performance; assignment of rights.

#### 672.201 Formal requirements; statute of frauds.—

(1) Except as otherwise provided in this section a contract for the sale of goods for the price of \$500 or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such writing.

(2) Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection (1) against such party unless written notice of objection to its contents is given within 10 days after it is received.

(3) A contract which does not satisfy the require-

ments of subsection (1) but which is valid in other respects is enforceable:

(a) If the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement; or

(b) If the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted; or

(c) With respect to goods for which payment has been made and accepted or which have been received and accepted (s. 672.606).

**History.**—s. 1, ch. 65-254.

**Note.**—s. 2-201, U.C.C.

**672.202 Final written expression; parol or extrinsic evidence.**—Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

(1) By course of dealing or usage of trade (s. 671.205) or by course of performance (s. 672.208); and

(2) By evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 2-202, U.C.C.

**672.203 Seals inoperative.**—The affixing of a seal to a writing evidencing a contract for sale or an offer to buy or sell goods does not constitute the writing a sealed instrument and the law with respect to sealed instruments does not apply to such a contract or offer.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 2-203, U.C.C.

#### 672.204 Formation in general.—

(1) A contract for sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract.

(2) An agreement sufficient to constitute a contract for sale may be found even though the moment of its making is undetermined.

(3) Even though one or more terms are left open a contract for sale does not fail for indefiniteness if the parties have intended to make a contract and there is a reasonably certain basis for giving an appropriate remedy.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 2-204, U.C.C.

**672.205 Firm offers.**—An offer by a merchant to buy or sell goods in a signed writing which by its terms gives assurance that it will be held open is not revocable, for lack of consideration, during the time

stated or if no time is stated for a reasonable time, but in no event may such period of irrevocability exceed 3 months; but any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

History.—s. 1, ch. 65-254.  
Note.—s. 2-205, U.C.C.

#### **672.206 Offer and acceptance in formation of contract.—**

(1) Unless otherwise unambiguously indicated by the language or circumstances:

(a) An offer to make a contract shall be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances;

(b) An order or other offer to buy goods for prompt or current shipment shall be construed as inviting acceptance either by a prompt promise to ship or by the prompt or current shipment of conforming or nonconforming goods, but such a shipment of nonconforming goods does not constitute an acceptance if the seller seasonably notifies the buyer that the shipment is offered only as an accommodation to the buyer.

(2) Where the beginning of a requested performance is a reasonable mode of acceptance an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance.

History.—s. 1, ch. 65-254.  
Note.—s. 2-206, U.C.C.

#### **672.207 Additional terms in acceptance or confirmation.—**

(1) A definite and seasonable expression of acceptance or a written confirmation which is sent within a reasonable time operates as an acceptance even though it states terms additional to or different from those offered or agreed upon, unless acceptance is expressly made conditional on assent to the additional or different terms.

(2) The additional terms are to be construed as proposals for addition to the contract. Between merchants such terms become part of the contract unless:

(a) The offer expressly limits acceptance to the terms of the offer;

(b) They materially alter it; or

(c) Notification of objection to them has already been given or is given within a reasonable time after notice of them is received.

(3) Conduct by both parties which recognizes the existence of a contract is sufficient to establish a contract for sale although the writings of the parties do not otherwise establish a contract. In such case the terms of the particular contract consist of those terms on which the writings of the parties agree, together with any supplementary terms incorporated under any other provisions of this code.

History.—s. 1, ch. 65-254.  
Note.—s. 2-207, U.C.C.

#### **672.208 Course of performance or practical construction.—**

(1) Where the contract for sale involves repeated occasions for performance by either party with knowledge of the nature of the performance and opportunity for objection to it by the other, any course

of performance accepted or acquiesced in without objection shall be relevant to determine the meaning of the agreement.

(2) The express terms of the agreement and any such course of performance, as well as any course of dealing and usage of trade, shall be construed whenever reasonable as consistent with each other; but when such construction is unreasonable, express terms shall control course of performance and course of performance shall control both course of dealing and usage of trade (s. 671.205).

(3) Subject to the provisions of the next section on modification and waiver, such course of performance shall be relevant to show a waiver or modification of any term inconsistent with such course of performance.

History.—s. 1, ch. 65-254.  
Note.—s. 2-208, U.C.C.

#### **672.209 Modification, rescission and waiver.—**

(1) An agreement modifying a contract within this chapter needs no consideration to be binding.

(2) A signed agreement which excludes modification or rescission except by a signed writing cannot be otherwise modified or rescinded, but except as between merchants such a requirement on a form supplied by the merchant must be separately signed by the other party.

(3) The requirements of the statute of frauds section of this chapter (s. 672.201) must be satisfied if the contract as modified is within its provisions.

(4) Although an attempt at modification or rescission does not satisfy the requirements of subsection (2) or (3) it can operate as a waiver.

(5) A party who has made a waiver affecting an executory portion of the contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver.

History.—s. 1, ch. 65-254.  
Note.—s. 2-209, U.C.C.

#### **672.210 Delegation of performance; assignment of rights.—**

(1) A party may perform his duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having his original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.

(2) Unless otherwise agreed all rights of either seller or buyer can be assigned except where the assignment would materially change the duty of the other party, or increase materially the burden or risk imposed on him by his contract, or impair materially his chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of the assignor's due performance of his entire obligation can be assigned despite agreement otherwise.

(3) Unless the circumstances indicate the contrary a prohibition of assignment of "the contract" is to be construed as barring only the delegation to

the assignee of the assignor's performance.

(4) An assignment of "the contract" or of "all my rights under the contract" or an assignment in similar general terms is an assignment of rights and unless the language or the circumstances (as in an assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor and its acceptance by the assignee constitutes a promise by him to perform those duties. This promise is enforceable by either the assignor or the other party to the original contract.

(5) The other party may treat any assignment which delegates performance as creating reasonable grounds for insecurity and may without prejudice to his rights against the assignor demand assurances from the assignee (s. 672.609).

History.—s. 1, ch. 65-254.  
Note.—s. 2-210, U.C.C.

### PART III

#### GENERAL OBLIGATION AND CONSTRUCTION OF CONTRACT

- 672.301 General obligations of parties.
- 672.302 Unconscionable contract or clause.
- 672.303 Allocation or division of risks.
- 672.304 Price payable in money, goods, realty, or otherwise.
- 672.305 Open price term.
- 672.306 Output, requirements and exclusive dealings.
- 672.307 Delivery in single lot or several lots.
- 672.308 Absence of specified place for delivery.
- 672.309 Absence of specific time provisions; notice of termination.
- 672.310 Open time for payment or running of credit; authority to ship under reservation.
- 672.311 Options and cooperation respecting performance.
- 672.312 Warranty of title and against infringement; buyer's obligation against infringement.
- 672.313 Express warranties by affirmation, promise, description, sample.
- 672.314 Implied warranty; merchantability; usage of trade.
- 672.315 Implied warranty; fitness for particular purpose.
- 672.316 Exclusion or modification of warranties.
- 672.317 Cumulation and conflict of warranties express or implied.
- 672.318 Third-party beneficiaries of warranties express or implied.
- 672.319 "F.O.B." and "F.A.S." terms.
- 672.320 C.I.F. and C.&F. terms.
- 672.321 C.I.F. or C. & F.; "net landed weights"; "payment on arrival"; warranty of condition on arrival.
- 672.322 Delivery "ex-ship."
- 672.323 Form of bill of lading required in overseas shipment; "overseas."
- 672.324 "No arrival, no sale" term.
- 672.325 "Letter of credit" term; "confirmed credit."
- 672.326 Sale on approval and sale or return; consignment sales and rights of creditors.

- 672.327 Special incidents of sale on approval and sale or return.
- 672.328 Sale by auction.

**672.301 General obligations of parties.**—The obligation of the seller is to transfer and deliver and that of the buyer is to accept and pay in accordance with the contract.

History.—s. 1, ch. 65-254.  
Note.—s. 2-301, U.C.C.

**672.302 Unconscionable contract or clause.**—

(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(2) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.

History.—s. 1, ch. 65-254.  
Note.—s. 2-302, U.C.C.

**672.303 Allocation or division of risks.**—Where this chapter allocates a risk or a burden as between the parties "unless otherwise agreed," the agreement may not only shift the allocation but may also divide the risk or burden.

History.—s. 1, ch. 65-254.  
Note.—s. 2-303, U.C.C.

**672.304 Price payable in money, goods, realty, or otherwise.**—

(1) The price can be made payable in money or otherwise. If it is payable in whole or in part in goods each party is a seller of the goods which he is to transfer.

(2) Even though all or part of the price is payable in an interest in realty the transfer of the goods and the seller's obligations with reference to them are subject to this chapter, but not the transfer of the interest in realty or the transferor's obligations in connection therewith.

History.—s. 1, ch. 65-254.  
Note.—s. 2-304, U.C.C.

**672.305 Open price term.**—

(1) The parties if they so intend can conclude a contract for sale even though the price is not settled. In such a case the price is a reasonable price at the time for delivery if:

- (a) Nothing is said as to price; or
- (b) The price is left to be agreed by the parties and they fail to agree; or
- (c) The price is to be fixed in terms of some agreed market or other standard as set or recorded by a third person or agency and it is not so set or recorded.

(2) A price to be fixed by the seller or by the buyer means a price for him to fix in good faith.

(3) When a price left to be fixed otherwise than



by agreement of the parties fails to be fixed through fault of one party the other may at his option treat the contract as canceled or himself fix a reasonable price.

(4) Where, however, the parties intend not to be bound unless the price be fixed or agreed and it is not fixed or agreed there is no contract. In such a case the buyer must return any goods already received or if unable so to do must pay their reasonable value at the time of delivery and the seller must return any portion of the price paid on account.

History.—s. 1, ch. 65-254.  
Note.—s. 2-305, U.C.C.

#### **672.306 Output, requirements and exclusive dealings.—**

(1) A term which measures the quantity by the output of the seller or the requirements of the buyer means such actual output or requirements as may occur in good faith, except that no quantity unreasonably disproportionate to any stated estimate or in the absence of a stated estimate to any normal or otherwise comparable prior output or requirements may be tendered or demanded.

(2) A lawful agreement by either the seller or the buyer for exclusive dealing in the kind of goods concerned imposes unless otherwise agreed an obligation by the seller to use best efforts to supply the goods and by the buyer to use best efforts to promote their sale.

History.—s. 1, ch. 65-254.  
Note.—s. 2-306, U.C.C.

**672.307 Delivery in single lot or several lots.**—Unless otherwise agreed all goods called for by a contract for sale must be tendered in a single delivery and payment is due only on such tender but where the circumstances give either party the right to make or demand delivery in lots the price if it can be apportioned may be demanded for each lot.

History.—s. 1, ch. 65-254.  
Note.—s. 2-307, U.C.C.

**672.308 Absence of specified place for delivery.**—Unless otherwise agreed:

(1) The place for delivery of goods is the seller's place of business or if he has none his residence; but

(2) In a contract for sale of identified goods which to the knowledge of the parties at the time of contracting are in some other place, that place is the place for their delivery; and

(3) Documents of title may be delivered through customary banking channels.

History.—s. 1, ch. 65-254.  
Note.—s. 2-308, U.C.C.

**672.309 Absence of specific time provisions; notice of termination.—**

(1) The time for shipment or delivery or any other action under a contract if not provided in this chapter or agreed upon shall be a reasonable time.

(2) Where the contract provides for successive performances but is indefinite in duration it is valid for a reasonable time but unless otherwise agreed may be terminated at any time by either party.

(3) Termination of a contract by one party except on the happening of an agreed event requires that reasonable notification be received by the other par-

ty and an agreement dispensing with notification is invalid if its operation would be unconscionable.

History.—s. 1, ch. 65-254.  
Note.—s. 2-309, U.C.C.

**672.310 Open time for payment or running of credit; authority to ship under reservation.**—Unless otherwise agreed:

(1) Payment is due at the time and place at which the buyer is to receive the goods even though the place of shipment is the place of delivery; and

(2) If the seller is authorized to send the goods he may ship them under reservation, and may tender the documents of title, but the buyer may inspect the goods after their arrival before payment is due unless such inspection is inconsistent with the terms of the contract (s. 672.513); and

(3) If delivery is authorized and made by way of documents of title otherwise than by subsection (2) then payment is due at the time and place at which the buyer is to receive the documents regardless of where the goods are to be received; and

(4) Where the seller is required or authorized to ship the goods on credit the credit period runs from the time of shipment but post-dating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period.

History.—s. 1, ch. 65-254.  
Note.—s. 2-310, U.C.C.

**672.311 Options and cooperation respecting performance.—**

(1) An agreement for sale which is otherwise sufficiently definite (s. 672.204(3)) to be a contract is not made invalid by the fact that it leaves particulars of performance to be specified by one of the parties. Any such specification must be made in good faith and within limits set by commercial reasonableness.

(2) Unless otherwise agreed specifications relating to assortment of the goods are at the buyer's option and except as otherwise provided in s. 672.319(1)(c) and (3) specifications or arrangements relating to shipment are at the seller's option.

(3) Where such specification would materially affect the other party's performance but is not seasonably made or where one party's cooperation is necessary to the agreed performance of the other but is not seasonably forthcoming, the other party in addition to all other remedies:

(a) Is excused for any resulting delay in his own performance; and

(b) May also either proceed to perform in any reasonable manner or after the time for a material part of his own performance treat the failure to specify or to cooperate as a breach by failure to deliver or accept the goods.

History.—s. 1, ch. 65-254.  
Note.—s. 2-311, U.C.C.

**672.312 Warranty of title and against infringement; buyer's obligation against infringement.—**

(1) Subject to subsection (2) there is in a contract for sale a warranty by the seller that:

(a) The title conveyed shall be good, and its transfer rightful; and

(b) The goods shall be delivered free from any security interest or other lien or encumbrance of

which the buyer at the time of contracting has no knowledge.

(2) A warranty under subsection (1) will be excluded or modified only by specific language or by circumstances which give the buyer reason to know that the person selling does not claim title in himself or that he is purporting to sell only such right or title as he or a third person may have.

(3) Unless otherwise agreed a seller who is a merchant regularly dealing in goods of the kind warrants that the goods shall be delivered free of the rightful claim of any third person by way of infringement or the like but a buyer who furnishes specifications to the seller must hold the seller harmless against any such claim which arises out of compliance with the specifications.

History.—s. 1, ch. 65-254.  
Note.—s. 2-312, U.C.C.

#### **672.313 Express warranties by affirmation, promise, description, sample.—**

(1) Express warranties by the seller are created as follows:

(a) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

(b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

(c) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

(2) It is not necessary to the creation of an express warranty that the seller use formal words such as "warrant" or "guarantee" or that he have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty.

History.—s. 1, ch. 65-254.  
Note.—s. 2-313, U.C.C.

#### **672.314 Implied warranty; merchantability; usage of trade.—**

(1) Unless excluded or modified (s. 672.316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.

(2) Goods to be merchantable must be at least such as:

(a) Pass without objection in the trade under the contract description; and

(b) In the case of fungible goods, are of fair average quality within the description; and

(c) Are fit for the ordinary purposes for which such goods are used; and

(d) Run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and

(e) Are adequately contained, packaged, and la-

beled as the agreement may require; and

(f) Conform to the promises or affirmations of fact made on the container or label if any.

(3) Unless excluded or modified (s. 672.316) other implied warranties may arise from course of dealing or usage of trade.

History.—s. 1, ch. 65-254.  
Note.—s. 2-314, U.C.C.

#### **672.315 Implied warranty; fitness for particular purpose.—**

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose.

History.—s. 1, ch. 65-254.  
Note.—s. 2-315, U.C.C.; supersedes s. 578.13.

#### **672.316 Exclusion or modification of warranties.—**

(1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; but subject to the provisions of this chapter on parol or extrinsic evidence (s. 672.202) negation or limitation is inoperative to the extent that such construction is unreasonable.

(2) Subject to subsection (3), to exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous. Language to exclude all implied warranties of fitness is sufficient if it states, for example, that "There are no warranties which extend beyond the description on the face hereof."

(3) Notwithstanding subsection (2):

(a) Unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is," "with all faults" or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty; and

(b) When the buyer before entering into the contract has examined the goods or the sample or model as fully as he desired or has refused to examine the goods there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to him; and

(c) An implied warranty can also be excluded or modified by course of dealing or course of performance or usage of trade.

(d) In a transaction involving the sale of cattle or hogs, there shall be no implied warranty that the cattle or hogs are free from sickness or disease. However, no exemption shall apply in cases where the seller knowingly sells cattle or hogs that are diseased.

(4) Remedies for breach of warranty can be limited in accordance with the provisions of this chapter on liquidation or limitation of damages and on contractual modification of remedy (ss. 672.718 and 672.719).

(5) The procurement, processing, storage, distribution, or use of whole blood, plasma, blood products, and blood derivatives for the purpose of injecting or transfusing the same, or any of them, into the human body for any purpose whatsoever is declared to be the rendering of a service by any person participating therein and does not constitute a sale, whether or not any consideration is given therefor, and the implied warranties of merchantability and fitness for a particular purpose shall not be applicable as to a defect that cannot be detected or removed by a reasonable use of scientific procedures or techniques.

**History.**—s. 1, ch. 65-254; s. 1, ch. 69-157; s. 1, ch. 79-141.

**Note.**—s. 2-316, U.C.C.

**672.317 Cumulation and conflict of warranties express or implied.**—Warranties whether express or implied shall be construed as consistent with each other and as cumulative, but if such construction is unreasonable the intention of the parties shall determine which warranty is dominant. In ascertaining that intention the following rules apply:

(1) Exact or technical specifications displace an inconsistent sample or model or general language of description.

(2) A sample from an existing bulk displaces inconsistent general language of description.

(3) Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 2-317, U.C.C.

**672.318 Third-party beneficiaries of warranties express or implied.**—A seller's warranty whether express or implied extends to any natural person who is in the family or household of his buyer, who is a guest in his home or who is an employee, servant or agent of his buyer if it is reasonable to expect that such person may use, consume or be affected by the goods and who is injured in person by breach of the warranty. A seller may not exclude nor limit the operation of this section.

**History.**—s. 1, ch. 65-254; s. 1, ch. 67-574.

**Note.**—s. 2-318, U.C.C.

**672.319 "F.O.B." and "F.A.S." terms.**—

(1) Unless otherwise agreed the term "F.O.B." (which means "free on board") at a named place, even though used only in connection with the stated price, is a delivery term under which:

(a) When the term is "F.O.B. the place of shipment," the seller must at that place ship the goods in the manner provided in this chapter (s. 672.504) and bear the expense and risk of putting them into the possession of the carrier; or

(b) When the term is "F.O.B. the place of destination," the seller must at his own expense and risk transport the goods to that place and there tender delivery of them in the manner provided in this chapter (s. 672.503);

(c) When under either (a) or (b) the term is also "F.O.B. vessel, car or other vehicle," the seller must in addition at his own expense and risk load the goods on board. If the term is "F.O.B. vessel" the buyer must name the vessel and in an appropriate case the seller must comply with the provisions of

this chapter on the form of bill of lading (s. 672.323).

(2) Unless otherwise agreed the term "F.A.S. vessel" (which means "free alongside") at a named port, even though used only in connection with the stated price, is a delivery term under which the seller must:

(a) At his own expense and risk deliver the goods alongside the vessel in the manner usual in that port or on a dock designated and provided by the buyer; and

(b) Obtain and tender a receipt for the goods in exchange for which the carrier is under a duty to issue a bill of lading.

(3) Unless otherwise agreed in any case falling within subsection (1)(a) or (c) or subsection (2) the buyer must seasonably give any needed instructions for making delivery, including when the term is "F.A.S." or "F.O.B. the loading berth of the vessel" and in an appropriate case its name and sailing date. The seller may treat the failure of needed instructions as a failure of cooperation under this chapter (s. 672.311). He may also at his option move the goods in any reasonable manner preparatory to delivery or shipment.

(4) Under the term "F.O.B. vessel" or "F.A.S." unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 2-319, U.C.C.

**672.320 C.I.F. and C.&F. terms.**—

(1) The term "C.I.F." means that the price includes in a lump sum the cost of the goods and the insurance and freight to the named destination. The term "C. & F." or "C.F." means that the price so includes cost and freight to the named destination.

(2) Unless otherwise agreed and even though used only in connection with the stated price and destination, the term C.I.F. destination or its equivalent requires the seller at his own expense and risk to:

(a) Put the goods into the possession of a carrier at the port for shipment and obtain a negotiable bill or bills of lading covering the entire transportation to the named destination; and

(b) Load the goods and obtain a receipt from the carrier (which may be contained in the bill of lading) showing that the freight has been paid or provided for; and

(c) Obtain a policy or certificate of insurance, including any war risk insurance, of a kind and on terms then current at the port of shipment in the usual amount, in the currency of the contract, shown to cover the same goods covered by the bill of lading and providing for payment of loss to the order of the buyer or for the account of whom it may concern; but the seller may add to the price the amount of the premium for any such war risk insurance; and

(d) Prepare an invoice of the goods and procure any other documents required to effect shipment or to comply with the contract; and

(e) Forward and tender with commercial promptness all the documents in due form and with any indorsement necessary to perfect the buyer's rights.

(3) Unless otherwise agreed the term C. & F. or



its equivalent has the same effect and imposes upon the seller the same obligations and risks as a C.I.F. term except the obligation as to insurance.

(4) Under the term C.I.F. or C. & F. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents.

History.—s. 1, ch. 65-254.

Note.—s. 2-320, U.C.C.

**672.321 C.I.F. or C. & F.; "net landed weights"; "payment on arrival"; warranty of condition on arrival.**—Under a contract containing a term C.I.F. or C. & F.:

(1) Where the price is based on or is to be adjusted according to "net landed weights," "delivered weights," "out turn" quantity or quality or the like, unless otherwise agreed the seller must reasonably estimate the price. The payment due on tender of the documents called for by the contract is the amount so estimated, but after final adjustment of the price a settlement must be made with commercial promptness.

(2) An agreement described in subsection (1) or any warranty of quality or condition of the goods on arrival places upon the seller the risk of ordinary deterioration, shrinkage and the like in transportation but has no effect on the place or time of identification to the contract for sale or delivery or on the passing of the risk of loss.

(3) Unless otherwise agreed where the contract provides for payment on or after arrival of the goods the seller must before payment allow such preliminary inspection as is feasible; but if the goods are lost delivery of the documents and payment are due when the goods should have arrived.

History.—s. 1, ch. 65-254.

Note.—s. 2-321, U.C.C.

**672.322 Delivery "ex-ship."**—

(1) Unless otherwise agreed a term for delivery of goods "ex-ship" (which means from the carrying vessel) or in equivalent language is not restricted to a particular ship and requires delivery from a ship which has reached a place at the named port of destination where goods of the kind are usually discharged.

(2) Under such a term unless otherwise agreed:

(a) The seller must discharge all liens arising out of the carriage and furnish the buyer with a direction which puts the carrier under a duty to deliver the goods; and

(b) The risk of loss does not pass to the buyer until the goods leave the ship's tackle or are otherwise properly unloaded.

History.—s. 1, ch. 65-254.

Note.—s. 2-322, U.C.C.

**672.323 Form of bill of lading required in overseas shipment; "overseas."**—

(1) Where the contract contemplates overseas shipment and contains a term "C.I.F." or "C. & F. or F.O.B. vessel," the seller unless otherwise agreed must obtain a negotiable bill of lading stating that the goods have been loaded on board or, in the case of a term "C.I.F." or "C. & F.," received for shipment.

(2) Where in a case within subsection (1) a bill of

lading has been issued in a set of parts, unless otherwise agreed if the documents are not to be sent from abroad the buyer may demand tender of the full set; otherwise only one part of the bill of lading need be tendered. Even if the agreement expressly requires a full set:

(a) Due tender of a single part is acceptable within the provisions of this chapter on cure of improper delivery (s. 672.508(1)); and

(b) Even though the full set is demanded, if the documents are sent from abroad the person tendering an incomplete set may nevertheless require payment upon furnishing an indemnity which the buyer in good faith deems adequate.

(3) A shipment by water or by air or a contract contemplating such shipment is "overseas" insofar as by usage of trade or agreement it is subject to the commercial, financing or shipping practices characteristic of international deep-water commerce.

History.—s. 1, ch. 65-254.

Note.—s. 2-323, U.C.C.

**672.324 "No arrival, no sale" term.**—Under a term "no arrival, no sale" or terms of like meaning, unless otherwise agreed:

(1) The seller must properly ship conforming goods and if they arrive by any means he must tender them on arrival but he assumes no obligation that the goods will arrive unless he has caused the nonarrival; and

(2) Where without fault of the seller the goods are in part lost or have so deteriorated as no longer to conform to the contract or arrive after the contract time, the buyer may proceed as if there had been casualty to identified goods (s. 672.613).

History.—s. 1, ch. 65-254.

Note.—s. 2-324, U.C.C.

**672.325 "Letter of credit" term; "confirmed credit."**—

(1) Failure of the buyer seasonably to furnish an agreed letter of credit is a breach of the contract for sale.

(2) The delivery to seller of a proper letter of credit suspends the buyer's obligation to pay. If the letter of credit is dishonored, the seller may on seasonable notification to the buyer require payment directly from him.

(3) Unless otherwise agreed the term "letter of credit" or "banker's credit" in a contract for sale means an irrevocable credit issued by a financing agency of good repute and, where the shipment is overseas, of good international repute. The term "confirmed credit" means that the credit must also carry the direct obligation of such an agency which does business in the seller's financial market.

History.—s. 1, ch. 65-254.

Note.—s. 2-325, U.C.C.

**672.326 Sale on approval and sale or return; consignment sales and rights of creditors.**—

(1) Unless otherwise agreed, if delivered goods may be returned by the buyer even though they conform to the contract, the transaction is:

(a) A "sale on approval" if the goods are delivered primarily for use, and

(b) A "sale or return" if the goods are delivered primarily for resale.

(2) Except as provided in subsection (3), goods held on approval are not subject to the claims of the buyer's creditors until acceptance; goods held on sale or return are subject to such claims while in the buyer's possession.

(3) Where goods are delivered to a person for sale and such person maintains a place of business at which he deals in goods of the kind involved, under a name other than the name of the person making delivery, then with respect to claims of creditors of the person conducting the business the goods are deemed to be on sale or return. The provisions of this subsection are applicable even though an agreement purports to reserve title to the person making delivery until payment or resale or uses such words as "on consignment" or "on memorandum." However, this subsection is not applicable if the person making delivery:

(a) Complies with an applicable law providing for a consignor's interest or the like to be evidenced by a sign, or

(b) Establishes that the person conducting the business is generally known by his creditors to be substantially engaged in selling the goods of others, or

(c) Complies with the filing provisions of the chapter on secured transactions (chapter 679).

(4) Any "or return" term of a contract for sale is to be treated as a separate contract for sale within the statute of frauds section of this chapter (s. 672.201) and as contradicting the sale aspect of the contract within the provisions of this chapter on parol or extrinsic evidence (s. 672.202).

History.—s. 1, ch. 65-254.

Note.—s. 2-326, U.C.C.

#### **672.327 Special incidents of sale on approval and sale or return.—**

(1) Under a sale on approval unless otherwise agreed:

(a) Although the goods are identified to the contract the risk of loss and the title do not pass to the buyer until acceptance; and

(b) Use of the goods consistent with the purpose of trial is not acceptance but failure seasonably to notify the seller of election to return the goods is acceptance, and if the goods conform to the contract acceptance of any part is acceptance of the whole; and

(c) After due notification of election to return, the return is at the seller's risk and expense but a merchant buyer must follow any reasonable instructions.

(2) Under a sale or return unless otherwise agreed:

(a) The option to return extends to the whole or any commercial unit of the goods while in substantially their original condition, but must be exercised seasonably; and

(b) The return is at the buyer's risk and expense.

History.—s. 1, ch. 65-254.

Note.—s. 2-327, U.C.C.

#### **672.328 Sale by auction.—**

(1) In a sale by auction if goods are put up in lots each lot is the subject of a separate sale.

(2) A sale by auction is complete when the auc-

tioneer so announces by the fall of the hammer or in other customary manner. Where a bid is made while the hammer is falling in acceptance of a prior bid the auctioneer may in his discretion reopen the bidding or declare the goods sold under the bid on which the hammer was falling.

(3) Such a sale is with reserve unless the goods are in explicit terms put up without reserve. In an auction with reserve the auctioneer may withdraw the goods at any time until he announces completion of the sale. In an auction without reserve, after the auctioneer calls for bids on an article or lot, that article or lot cannot be withdrawn unless no bid is made within a reasonable time. In either case a bidder may retract his bid until the auctioneer's announcement of completion of the sale, but a bidder's retraction does not revive any previous bid.

(4) If the auctioneer knowingly receives a bid on the seller's behalf or the seller makes or procures such a bid, and notice has not been given that liberty for such bidding is reserved, the buyer may at his option avoid the sale or take the goods at the price of the last good faith bid prior to the completion of the sale. This subsection shall not apply to any bid at a forced sale.

History.—s. 1, ch. 65-254.

Note.—s. 2-328, U.C.C.

### **PART IV**

#### **TITLE, CREDITORS, AND GOOD FAITH PURCHASERS**

672.401 Passing of title; reservation for security; limited application of this section.

672.402 Rights of seller's creditors against sold goods.

672.403 Power to transfer; good faith purchase of goods; "entrusting."

**672.401 Passing of title; reservation for security; limited application of this section.—**Each provision of this chapter with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this chapter and matters concerning title become material the following rules apply:

(1) Title to goods cannot pass under a contract for sale prior to their identification to the contract (s. 672.501), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by this code. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of the chapter on secured transactions (chapter 679), title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

(2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, despite any reser-

vation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading:

(a) If the contract requires or authorizes the seller to send the goods to the buyer but does not require him to deliver them at destination, title passes to the buyer at the time and place of shipment; but

(b) If the contract requires delivery at destination, title passes on tender there.

(3) Unless otherwise explicitly agreed where delivery is to be made without moving the goods:

(a) If the seller is to deliver a document of title, title passes at the time when and the place where he delivers such documents; or

(b) If the goods are at the time of contracting already identified and no documents are to be delivered, title passes at the time and place of contracting.

(4) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance reverts title to the goods in the seller. Such reversion occurs by operation of law and is not a "sale."

History.—s. 1, ch. 65-254.  
Note.—s. 2-401, U.C.C.

#### **672.402 Rights of seller's creditors against sold goods.—**

(1) Except as provided in subsections (2) and (3), rights of unsecured creditors of the seller with respect to goods which have been identified to a contract for sale are subject to the buyer's rights to recover the goods under this chapter (ss. 672.502 and 672.716).

(2) A creditor of the seller may treat a sale or an identification of goods to a contract for sale as void if as against him a retention of possession by the seller is fraudulent under any rule of law of the state where the goods are situated, except that retention of possession in good faith and current course of trade by a merchant-seller for a commercially reasonable time after a sale or identification is not fraudulent.

(3) Nothing in this chapter shall be deemed to impair the rights of creditors of the seller:

(a) Under the provisions of the chapter on secured transactions (chapter 679); or

(b) Where identification to the contract or delivery is made not in current course of trade but in satisfaction of or as security for a preexisting claim for money, security or the like and is made under circumstances which under any rule of law of the state where the goods are situated would apart from this chapter constitute the transaction a fraudulent transfer or voidable preference.

History.—s. 1, ch. 65-254.  
Note.—s. 2-402, U.C.C.

#### **672.403 Power to transfer; good faith purchase of goods; "entrusting."—**

(1) A purchaser of goods acquires all title which his transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods

have been delivered under a transaction of purchase the purchaser has such power even though:

(a) The transferor was deceived as to the identity of the purchaser, or

(b) The delivery was in exchange for a check which is later dishonored, or

(c) It was agreed that the transaction was to be a "cash sale," or

(d) The delivery was procured through fraud punishable as larcenous under the criminal law.

(2) Any entrusting of possession of goods to a merchant who deals in goods of that kind gives him power to transfer all rights of the entruster to a buyer in ordinary course of business.

(3) "Entrusting" includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties to the delivery or acquiescence and regardless of whether the procurement of the entrusting or the possessor's disposition of the goods have been such as to be larcenous under the criminal law.

(4) The rights of other purchasers of goods and of lien creditors are governed by the chapters on secured transactions (chapter 679), bulk transfers (chapter 676) and documents of title (chapter 677).

History.—s. 1, ch. 65-254.  
Note.—s. 2-403, U.C.C.; supersedes s. 673.09.

### **PART V**

#### **PERFORMANCE**

672.501 Insurable interest in goods; manner of identification of goods.

672.502 Buyer's right to goods on seller's insolvency.

672.503 Manner of seller's tender of delivery.

672.504 Shipment by seller.

672.505 Seller's shipment under reservation.

672.506 Rights of financing agency.

672.507 Effect of seller's tender; delivery on condition.

672.508 Cure by seller of improper tender or delivery; replacement.

672.509 Risk of loss in the absence of breach.

672.510 Effect of breach on risk of loss.

672.511 Tender of payment by buyer; payment by check.

672.512 Payment by buyer before inspection.

672.513 Buyer's right to inspection of goods.

672.514 When documents deliverable on acceptance; when on payment.

672.515 Preserving evidence of goods in dispute.

#### **672.501 Insurable interest in goods; manner of identification of goods.—**

(1) The buyer obtains a special property and an insurable interest in goods by identification of existing goods as goods to which the contract refers even though the goods so identified are nonconforming and he has an option to return or reject them. Such identification can be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement identification occurs:

(a) When the contract is made if it is for the sale of goods already existing and identified;

(b) If the contract is for the sale of future goods



other than those described in paragraph (c), when goods are shipped, marked or otherwise designated by the seller as goods to which the contract refers;

(c) When the crops are planted or otherwise become growing crops or the young are conceived if the contract is for the sale of unborn young to be born within 12 months after contracting or for the sale of crops to be harvested within 12 months or the next normal harvest season after contracting whichever is longer.

(2) The seller retains an insurable interest in goods so long as title to or any security interest in the goods remains in him and where the identification is by the seller alone he may until default or insolvency or notification to the buyer that the identification is final substitute other goods for those identified.

(3) Nothing in this section impairs any insurable interest recognized under any other statute or rule of law.

History.—s. 1, ch. 65-254.  
Note.—s. 2-501, U.C.C.

#### **672.502 Buyer's right to goods on seller's insolvency.—**

(1) Subject to subsection (2) and even though the goods have not been shipped a buyer who has paid a part or all of the price of goods in which he has a special property under the provisions of the immediately preceding section may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if the seller becomes insolvent within ten days after receipt of the first installment on their price.

(2) If the identification creating his special property has been made by the buyer he acquires the right to recover the goods only if they conform to the contract for sale.

History.—s. 1, ch. 65-254.  
Note.—s. 2-502, U.C.C.

#### **672.503 Manner of seller's tender of delivery.—**

(1) Tender of delivery requires that the seller put and hold conforming goods at the buyer's disposition and give the buyer any notification reasonably necessary to enable him to take delivery. The manner, time and place for tender are determined by the agreement and this chapter, and in particular:

(a) Tender must be at a reasonable hour, and if it is of goods they must be kept available for the period reasonably necessary to enable the buyer to take possession; but

(b) Unless otherwise agreed the buyer must furnish facilities reasonably suited to the receipt of the goods.

(2) Where the case is within the next section respecting shipment tender requires that the seller comply with its provisions.

(3) Where the seller is required to deliver at a particular destination tender requires that he comply with subsection (1) and also in any appropriate case tender documents as described in subsections (4) and (5) of this section.

(4) Where goods are in the possession of a bailee and are to be delivered without being moved:

(a) Tender requires that the seller either tender a negotiable document of title covering such goods or

procure acknowledgment by the bailee of the buyer's right to possession of the goods; but

(b) Tender to the buyer of a nonnegotiable document of title or of a written direction to the bailee to deliver is sufficient tender unless the buyer seasonably objects, and receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the nonnegotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

(5) Where the contract requires the seller to deliver documents:

(a) He must tender all such documents in correct form, except as provided in this chapter with respect to bills of lading in a set (s. 672.323(2)); and

(b) Tender through customary banking channels is sufficient and dishonor of a draft accompanying the documents constitutes nonacceptance or rejection.

History.—s. 1, ch. 65-254.  
Note.—s. 2-503, U.C.C.

**672.504 Shipment by seller.**—Where the seller is required or authorized to send the goods to the buyer and the contract does not require him to deliver them at a particular destination, then unless otherwise agreed he must:

(1) Put the goods in the possession of such a carrier and make such a contract for their transportation as may be reasonable having regard to the nature of the goods and other circumstances of the case; and

(2) Obtain and promptly deliver or tender in due form any document necessary to enable the buyer to obtain possession of the goods or otherwise required by the agreement or by usage of trade; and

(3) Promptly notify the buyer of the shipment.

Failure to notify the buyer under subsection (3) or to make a proper contract under subsection (1) is a ground for rejection only if material delay or loss ensues.

History.—s. 1, ch. 65-254.  
Note.—s. 2-504, U.C.C.

#### **672.505 Seller's shipment under reservation.—**

(1) Where the seller has identified goods to the contract by or before shipment:

(a) His procurement of a negotiable bill of lading to his own order or otherwise reserves in him a security interest in the goods. His procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller's expectation of transferring that interest to the person named.

(b) A nonnegotiable bill of lading to himself or his nominee reserves possession of the goods as security but except in a case of conditional delivery (s. 672.507(2)) a nonnegotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession of the bill of lading.

(2) When shipment by the seller with reservation of a security interest is in violation of the contract

for sale it constitutes an improper contract for transportation within the preceding section but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller's powers as a holder of a negotiable document.

**History.**—s. 1, ch. 65-254.  
**Note.**—s. 2-505, U.C.C.

#### **672.506 Rights of financing agency.—**

(1) A financing agency by paying or purchasing for value a draft which relates to a shipment of goods acquires to the extent of the payment or purchase and in addition to its own rights under the draft and any document of title securing it any rights of the shipper in the goods including the right to stop delivery and the shipper's right to have the draft honored by the buyer.

(2) The right to reimbursement of a financing agency which has in good faith honored or purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant document which was apparently regular on its face.

**History.**—s. 1, ch. 65-254.  
**Note.**—s. 2-506, U.C.C.

#### **672.507 Effect of seller's tender; delivery on condition.—**

(1) Tender of delivery is a condition to the buyer's duty to accept the goods and, unless otherwise agreed, to his duty to pay for them. Tender entitles the seller to acceptance of the goods and to payment according to the contract.

(2) Where payment is due and demanded on the delivery to the buyer of goods or documents of title, his right as against the seller to retain or dispose of them is conditional upon his making the payment due.

**History.**—s. 1, ch. 65-254.  
**Note.**—s. 2-507, U.C.C.

#### **672.508 Cure by seller of improper tender or delivery; replacement.—**

(1) Where any tender or delivery by the seller is rejected because nonconforming and the time for performance has not yet expired, the seller may seasonably notify the buyer of his intention to cure and may then within the contract time make a conforming delivery.

(2) Where the buyer rejects a nonconforming tender which the seller had reasonable grounds to believe would be acceptable with or without money allowance the seller may if he seasonably notifies the buyer have a further reasonable time to substitute a conforming tender.

**History.**—s. 1, ch. 65-254.  
**Note.**—s. 2-508, U.C.C.

#### **672.509 Risk of loss in the absence of breach.—**

(1) Where the contract requires or authorizes the seller to ship the goods by carrier:

(a) If it does not require him to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even though the shipment is under reservation (s. 672.505); but

(b) If it does require him to deliver them at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there duly so tendered as to enable the buyer to take delivery.

(2) Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer:

(a) On his receipt of a negotiable document of title covering the goods; or

(b) On acknowledgment by the bailee of the buyer's right to possession of the goods; or

(c) After his receipt of a nonnegotiable document of title or other written direction to deliver, as provided in s. 672.503(4)(b).

(3) In any case not within subsection (1) or (2), the risk of loss passes to the buyer on his receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.

(4) The provisions of this section are subject to contrary agreement of the parties and to the provisions of this chapter on sale on approval (s. 672.327) and on effect of breach on risk of loss (s. 672.510).

**History.**—s. 1, ch. 65-254.  
**Note.**—s. 2-509, U.C.C.

#### **672.510 Effect of breach on risk of loss.—**

(1) Where a tender or delivery of goods so fails to conform to the contract as to give a right of rejection the risk of their loss remains on the seller until cure or acceptance.

(2) Where the buyer rightfully revokes acceptance he may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as having rested on the seller from the beginning.

(3) Where the buyer as to conforming goods already identified to the contract for sale repudiates or is otherwise in breach before risk of their loss has passed to him, the seller may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as resting on the buyer for a commercially reasonable time.

**History.**—s. 1, ch. 65-254.  
**Note.**—s. 2-510, U.C.C.

#### **672.511 Tender of payment by buyer; payment by check.—**

(1) Unless otherwise agreed tender of payment is a condition to the seller's duty to tender and complete any delivery.

(2) Tender of payment is sufficient when made by any means or in any manner current in the ordinary course of business unless the seller demands payment in legal tender and gives any extension of time reasonably necessary to procure it.

(3) Subject to the provisions of this code on the effect of an instrument on an obligation (s. 673.802), payment by check is conditional and is defeated as between the parties by dishonor of the check on due presentment.

**History.**—s. 1, ch. 65-254.  
**Note.**—s. 2-511, U.C.C.

#### **672.512 Payment by buyer before inspection.—**

(1) Where the contract requires payment before inspection nonconformity of the goods does not ex-

cuse the buyer from so making payment unless:

(a) The nonconformity appears without inspection; or

(b) Despite tender of the required documents the circumstances would justify injunction against honor under the provisions of this code (s. 675.114).

(2) Payment pursuant to subsection (1) does not constitute an acceptance of goods or impair the buyer's right to inspect or any of his remedies.

History.—s. 1, ch. 65-254.

Note.—s. 2-512, U.C.C.

#### **672.513 Buyer's right to inspection of goods.—**

(1) Unless otherwise agreed and subject to subsection (3), where goods are tendered or delivered or identified to the contract for sale, the buyer has a right before payment or acceptance to inspect them at any reasonable place and time and in any reasonable manner. When the seller is required or authorized to send the goods to the buyer, the inspection may be after their arrival.

(2) Expenses of inspection must be borne by the buyer but may be recovered from the seller if the goods do not conform and are rejected.

(3) Unless otherwise agreed and subject to the provisions of this chapter on C.I.F. contracts (s. 672.321(3)), the buyer is not entitled to inspect the goods before payment of the price when the contract provides:

(a) For delivery "C.O.D." or on other like terms; or

(b) For payment against documents of title, except where such payment is due only after the goods are to become available for inspection.

(4) A place or method of inspection fixed by the parties is presumed to be exclusive but unless otherwise expressly agreed it does not postpone identification or shift the place for delivery or for passing the risk of loss. If compliance becomes impossible, inspection shall be as provided in this section unless the place or method fixed was clearly intended as an indispensable condition failure of which avoids the contract.

History.—s. 1, ch. 65-254.

Note.—s. 2-513, U.C.C.

**672.514 When documents deliverable on acceptance; when on payment.—**Unless otherwise agreed documents against which a draft is drawn are to be delivered to the drawee on acceptance of the draft if it is payable more than 3 days after presentment; otherwise, only on payment.

History.—s. 1, ch. 65-254.

Note.—s. 2-514, U.C.C.

**672.515 Preserving evidence of goods in dispute.—**In furtherance of the adjustment of any claim or dispute:

(1) Either party on reasonable notification to the other and for the purpose of ascertaining the facts and preserving evidence has the right to inspect, test and sample the goods including such of them as may be in the possession or control of the other; and

(2) The parties may agree to a third-party inspec-

tion or survey to determine the conformity or condition of the goods and may agree that the findings shall be binding upon them in any subsequent litigation or adjustment.

History.—s. 1, ch. 65-254.

Note.—s. 2-515, U.C.C.

## **PART VI**

### **BREACH, REPUDIATION, AND EXCUSE**

- 672.601 Buyer's rights on improper delivery.
- 672.602 Manner and effect of rightful rejection.
- 672.603 Merchant buyer's duties as to rightfully rejected goods.
- 672.604 Buyer's options as to salvage of rightfully rejected goods.
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- 672.606 What constitutes acceptance of goods.
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- 672.609 Right to adequate assurance of performance.
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- 672.612 "Installment contract"; breach.
- 672.613 Casualty to identified goods.
- 672.614 Substituted performance.
- 672.615 Excuse by failure of presupposed conditions.
- 672.616 Procedure on notice claiming excuse.

**672.601 Buyer's rights on improper delivery.**  
—Subject to the provisions of this chapter on breach in installment contracts (s. 672.612) and unless otherwise agreed under the sections on contractual limitations of remedy (ss. 672.718 and 672.719), if the goods or the tender of delivery fail in any respect to conform to the contract, the buyer may:

- (1) Reject the whole; or
- (2) Accept the whole; or
- (3) Accept any commercial unit or units and reject the rest.

History.—s. 1, ch. 65-254.

Note.—s. 2-601, U.C.C.

**672.602 Manner and effect of rightful rejection.—**

(1) Rejection of goods must be within a reasonable time after their delivery or tender. It is ineffective unless the buyer seasonably notifies the seller.

(2) Subject to the provisions of the two following sections on rejected goods (ss. 672.603 and 672.604):

(a) After rejection any exercise of ownership by the buyer with respect to any commercial unit is wrongful as against the seller; and

(b) If the buyer has before rejection taken physical possession of goods in which he does not have a security interest under the provisions of this chapter (s. 672.711(3)), he is under a duty after rejection to hold them with reasonable care at the seller's dispo-



sition for a time sufficient to permit the seller to remove them; but

(c) The buyer has no further obligations with regard to goods rightfully rejected.

(3) The seller's rights with respect to goods wrongfully rejected are governed by the provisions of this chapter on seller's remedies in general (s. 672.703).

**History.**—s. 1, ch. 65-254.

**Note.**—s. 2-602, U.C.C.

#### **672.603 Merchant buyer's duties as to rightfully rejected goods.—**

(1) Subject to any security interest in the buyer (s. 672.711(3)) when the seller has no agent or place of business at the market of rejection a merchant buyer is under a duty after rejection of goods in his possession or control to follow any reasonable instructions received from the seller with respect to the goods and in the absence of such instructions to make reasonable efforts to sell them for the seller's account if they are perishable or threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

(2) When the buyer sells goods under subsection (1), he is entitled to reimbursement from the seller or out of the proceeds for reasonable expenses of caring for and selling them, and if the expenses include no selling commission then to such commission as is usual in the trade or if there is none to a reasonable sum not exceeding 10 percent on the gross proceeds.

(3) In complying with this section the buyer is held only to good faith and good faith conduct hereunder is neither acceptance nor conversion nor the basis of an action for damages.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 2-603, U.C.C.

**672.604 Buyer's options as to salvage of rightfully rejected goods.—**Subject to the provisions of the immediately preceding section on perishables if the seller gives no instructions within a reasonable time after notification of rejection the buyer may store the rejected goods for the seller's account or reship them to him or resell them for the seller's account with reimbursement as provided in the preceding section. Such action is not acceptance or conversion.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 2-604, U.C.C.

#### **672.605 Waiver of buyer's objections by failure to particularize.—**

(1) The buyer's failure to state in connection with rejection a particular defect which is ascertainable by reasonable inspection precludes him from relying on the unstated defect to justify rejection or to establish breach:

(a) Where the seller could have cured it if stated seasonably; or

(b) Between merchants when the seller has after rejection made a request in writing for a full and final written statement of all defects on which the buyer proposes to rely.

(2) Payment against documents made without reservation of rights precludes recovery of the pay-

ment for defects apparent on the face of the documents.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 2-605, U.C.C.

#### **672.606 What constitutes acceptance of goods.—**

(1) Acceptance of goods occurs when the buyer:

(a) After a reasonable opportunity to inspect the goods signifies to the seller that the goods are conforming or that he will take or retain them in spite of their nonconformity; or

(b) Fails to make an effective rejection (s. 672.602(1)), but such acceptance does not occur until the buyer has had a reasonable opportunity to inspect them; or

(c) Does any act inconsistent with the seller's ownership; but if such act is wrongful as against the seller it is an acceptance only if ratified by him.

(2) Acceptance of a part of any commercial unit is acceptance of that entire unit.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 2-606, U.C.C.

#### **672.607 Effect of acceptance; notice of breach; burden of establishing breach after acceptance; notice of claim or litigation to person answerable over.—**

(1) The buyer must pay at the contract rate for any goods accepted.

(2) Acceptance of goods by the buyer precludes rejection of the goods accepted and if made with knowledge of a nonconformity cannot be revoked because of it unless the acceptance was on the reasonable assumption that the nonconformity would be seasonably cured but acceptance does not of itself impair any other remedy provided by this chapter for nonconformity.

(3) Where a tender has been accepted:

(a) The buyer must within a reasonable time after he discovers or should have discovered any breach notify the seller of breach or be barred from any remedy; and

(b) If the claim is one for infringement or the like (s. 672.312(3)) and the buyer is sued as a result of such a breach he must so notify the seller within a reasonable time after he receives notice of the litigation or be barred from any remedy over for liability established by the litigation.

(4) The burden is on the buyer to establish any breach with respect to the goods accepted.

(5) Where the buyer is sued for breach of a warranty or other obligation for which his seller is answerable over:

(a) He may give his seller written notice of the litigation. If the notice states that the seller may come in and defend and that if the seller does not do so he will be bound in any action against him by his buyer by any determination of fact common to the two litigations, then unless the seller after seasonable receipt of the notice does come in and defend he is so bound.

(b) If the claim is one for infringement or the like (s. 672.312(3)) the original seller may demand in writing that his buyer turn over to him control of the litigation including settlement or else be barred from any remedy over and if he also agrees to bear

all expense and to satisfy any adverse judgment, then unless the buyer after seasonable receipt of the demand does turn over control the buyer is so barred.

(6) The provisions of subsections (3), (4) and (5) apply to any obligation of a buyer to hold the seller harmless against infringement or the like (s. 672.312(3)).

History.—s. 1, ch. 65-254.

Note.—s. 2-607, U.C.C.

#### **672.608 Revocation of acceptance in whole or in part.—**

(1) The buyer may revoke his acceptance of a lot or commercial unit whose nonconformity substantially impairs its value to him if he has accepted it:

(a) On the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured; or

(b) Without discovery of such nonconformity if his acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the seller's assurances.

(2) Revocation of acceptance must occur within a reasonable time after the buyer discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by their own defects. It is not effective until the buyer notifies the seller of it.

(3) A buyer who so revokes has the same rights and duties with regard to the goods involved as if he had rejected them.

History.—s. 1, ch. 65-254.

Note.—s. 2-608, U.C.C.

#### **672.609 Right to adequate assurance of performance.—**

(1) A contract for sale imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party the other may in writing demand adequate assurance of due performance and until he receives such assurance may if commercially reasonable suspend any performance for which he has not already received the agreed return.

(2) Between merchants the reasonableness of grounds for insecurity and the adequacy of any assurance offered shall be determined according to commercial standards.

(3) Acceptance of any improper delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

(4) After receipt of a justified demand failure to provide within a reasonable time not exceeding 30 days such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of the contract.

History.—s. 1, ch. 65-254.

Note.—s. 2-609, U.C.C.

**672.610 Anticipatory repudiation.**—When either party repudiates the contract with respect to a performance not yet due the loss of which will substantially impair the value of the contract to the other, the aggrieved party may:

(1) For a commercially reasonable time await

performance by the repudiating party; or

(2) Resort to any remedy for breach (s. 672.703 or s. 672.711), even though he has notified the repudiating party that he would await the latter's performance and has urged retraction; and

(3) In either case suspend his own performance or proceed in accordance with the provisions of this chapter on the seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods (s. 672.704).

History.—s. 1, ch. 65-254.

Note.—s. 2-610, U.C.C.

#### **672.611 Retraction of anticipatory repudiation.—**

(1) Until the repudiating party's next performance is due he can retract his repudiation unless the aggrieved party has since the repudiation canceled or materially changed his position or otherwise indicated that he considers the repudiation final.

(2) Retraction may be by any method which clearly indicates to the aggrieved party that the repudiating party intends to perform, but must include any assurance justifiably demanded under the provisions of this chapter (s. 672.609).

(3) Retraction reinstates the repudiating party's rights under the contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation.

History.—s. 1, ch. 65-254.

Note.—s. 2-611, U.C.C.

#### **672.612 "Installment contract"; breach.—**

(1) An "installment contract" is one which requires or authorizes the delivery of goods in separate lots to be separately accepted, even though the contract contains a clause "each delivery is a separate contract" or its equivalent.

(2) The buyer may reject any installment which is nonconforming if the nonconformity substantially impairs the value of that installment and cannot be cured or if the nonconformity is a defect in the required documents; but if the nonconformity does not fall within subsection (3) and the seller gives adequate assurance of its cure the buyer must accept that installment.

(3) Whenever nonconformity or default with respect to one or more installments substantially impairs the value of the whole contract there is a breach of the whole. But the aggrieved party reinstates the contract if he accepts a nonconforming installment without seasonably notifying of cancellation or if he brings an action with respect only to past installments or demands performance as to future installments.

History.—s. 1, ch. 65-254.

Note.—s. 2-612, U.C.C.

**672.613 Casualty to identified goods.**—Where the contract requires for its performance goods identified when the contract is made, and the goods suffer casualty without fault of either party before the risk of loss passes to the buyer, or in a proper case under a "no arrival, no sale" term (s. 672.324) then:

(1) If the loss is total the contract is avoided; and

(2) If the loss is partial or the goods have so deteriorated as no longer to conform to the contract the buyer may nevertheless demand inspection and at

his option either treat the contract as avoided or accept the goods with due allowance from the contract price for the deterioration or the deficiency in quantity but without further right against the seller.

History.—s. 1, ch. 65-254.  
Note.—s. 2-613, U.C.C.

#### 672.614 Substituted performance.—

(1) Where without fault of either party the agreed berthing, loading, or unloading facilities fail or an agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable but a commercially reasonable substitute is available, such substitute performance must be tendered and accepted.

(2) If the agreed means or manner of payment fails because of domestic or foreign governmental regulation, the seller may withhold or stop delivery unless the buyer provides a means or manner of payment which is commercially a substantial equivalent. If delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the buyer's obligation unless the regulation is discriminatory, oppressive or predatory.

History.—s. 1, ch. 65-254.  
Note.—s. 2-614, U.C.C.

**672.615 Excuse by failure of presupposed conditions.**—Except so far as a seller may have assumed a greater obligation and subject to the preceding section on substituted performance:

(1) Delay in delivery or nondelivery in whole or in part by a seller who complies with subsections (2) and (3) is not a breach of his duty under a contract for sale if performance as agreed has been made impracticable by the occurrence of a contingency the nonoccurrence of which was a basic assumption on which the contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order whether or not it later proves to be invalid.

(2) Where the causes mentioned in subsection (1) affect only a part of the seller's capacity to perform, he must allocate production and deliveries among his customers but may at his option include regular customers not then under contract as well as his own requirements for further manufacture. He may so allocate in any manner which is fair and reasonable.

(3) The seller must notify the buyer seasonably that there will be delay or nondelivery and, when allocation is required under subsection (2), of the estimated quota thus made available for the buyer.

History.—s. 1, ch. 65-254.  
Note.—s. 2-615, U.C.C.

#### 672.616 Procedure on notice claiming excuse.—

(1) Where the buyer receives notification of a material or indefinite delay or an allocation justified under the preceding section he may by written notification to the seller as to any delivery concerned, and where the prospective deficiency substantially impairs the value of the whole contract under the provisions of this chapter relating to breach of installment contracts (s. 672.612), then also as to the whole:

(a) Terminate and thereby discharge any unexe-

cuted portion of the contract; or

(b) Modify the contract by agreeing to take his available quota in substitution.

(2) If after receipt of such notification from the seller the buyer fails so to modify the contract within a reasonable time not exceeding 30 days the contract lapses with respect to any deliveries affected.

(3) The provisions of this section may not be negated by agreement except in so far as the seller has assumed a greater obligation under the preceding section.

History.—s. 1, ch. 65-254.  
Note.—s. 2-616, U.C.C.

## PART VII

### REMEDIES

- 672.701 Remedies for breach of collateral contracts not impaired.
- 672.702 Seller's remedies on discovery of buyer's insolvency.
- 672.703 Seller's remedies in general.
- 672.704 Seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods.
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- 672.721 Remedies for fraud.
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- 672.723 Proof of market price; time and place.
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**672.701 Remedies for breach of collateral contracts not impaired.**—Remedies for breach of any obligation or promise collateral or ancillary to a



contract for sale are not impaired by the provisions of this chapter.

History.—s. 1, ch. 65-254.  
Note.—s. 2-701, U.C.C.

**672.702 Seller's remedies on discovery of buyer's insolvency.—**

(1) Where the seller discovers the buyer to be insolvent he may refuse delivery except for cash including payment for all goods theretofore delivered under the contract, and stop delivery under this chapter (s. 672.705).

(2) Where the seller discovers that the buyer has received goods on credit while insolvent he may reclaim the goods upon demand made within 10 days after the receipt, but if misrepresentation of solvency has been made to the particular seller in writing within 3 months before delivery the 10-day limitation does not apply. Except as provided in this subsection the seller may not base a right to reclaim goods on the buyer's fraudulent or innocent misrepresentation of solvency or of intent to pay.

(3) The seller's right to reclaim under subsection (2) is subject to the rights of a buyer in ordinary course or other good faith purchaser under this chapter (s. 672.403). Successful reclamation of goods excludes all other remedies with respect to them.

History.—s. 1, ch. 65-254; s. 4, ch. 79-398.

Note.—As amended, effective January 1, 1980.

Note.—s. 2-702, U.C.C.

**672.703 Seller's remedies in general.—**Where the buyer wrongfully rejects or revokes acceptance of goods or fails to make a payment due on or before delivery or repudiates with respect to a part or the whole, then with respect to any goods directly affected and, if the breach is of the whole contract (s. 672.612), then also with respect to the whole undelivered balance, the aggrieved seller may:

- (1) Withhold delivery of such goods;
- (2) Stop delivery by any bailee as hereafter provided (s. 672.705);
- (3) Proceed under the next section respecting goods still unidentified to the contract;
- (4) Resell and recover damages as hereafter provided (s. 672.706);
- (5) Recover damages for nonacceptance (s. 672.708) or in a proper case the price (s. 672.709);
- (6) Cancel.

History.—s. 1, ch. 65-254.

Note.—s. 2-703, U.C.C.

**672.704 Seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods.—**

(1) An aggrieved seller under the preceding section may:

- (a) Identify to the contract conforming goods not already identified if at the time he learned of the breach they are in his possession or control;
- (b) Treat as the subject of resale goods which have demonstrably been intended for the particular contract even though those goods are unfinished.

(2) Where the goods are unfinished an aggrieved seller may in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization either complete the manufacture and wholly identify the goods to the contract or

cease manufacture and resell for scrap or salvage value or proceed in any other reasonable manner.

History.—s. 1, ch. 65-254.  
Note.—s. 2-704, U.C.C.

**672.705 Seller's stoppage of delivery in transit or otherwise.—**

(1) The seller may stop delivery of goods in the possession of a carrier or other bailee when he discovers the buyer to be insolvent (s. 672.702) and may stop delivery of carload, truckload, planeload or larger shipments of express or freight when the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods.

(2) As against such buyer the seller may stop delivery until:

- (a) Receipt of the goods by the buyer; or
- (b) Acknowledgment to the buyer by any bailee of the goods except a carrier that the bailee holds the goods for the buyer; or
- (c) Such acknowledgment to the buyer by a carrier by reshipment or as warehouseman; or
- (d) Negotiation to the buyer of any negotiable document of title covering the goods.

(3)(a) To stop delivery the seller must so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After such notification the bailee must hold and deliver the goods according to the directions of the seller but the seller is liable to the bailee for any ensuing charges or damages.

(c) If a negotiable document of title has been issued for goods the bailee is not obliged to obey a notification to stop until surrender of the document.

(d) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

History.—s. 1, ch. 65-254.

Note.—s. 2-705, U.C.C.; supersedes s. 678.51.

**672.706 Seller's resale including contract for resale.—**

(1) Under the conditions stated in s. 672.703 on seller's remedies, the seller may resell the goods concerned or the undelivered balance thereof. Where the resale is made in good faith and in a commercially reasonable manner the seller may recover the difference between the resale price and the contract price together with any incidental damages allowed under the provisions of this chapter (s. 672.710), but less expenses saved in consequence of the buyer's breach.

(2) Except as otherwise provided in subsection (3) or unless otherwise agreed resale may be at public or private sale including sale by way of one or more contracts to sell or of identification to an existing contract of the seller. Sale may be as a unit or in parcels and at any time and place and on any terms but every aspect of the sale including the method, manner, time, place and terms must be commercially reasonable. The resale must be reasonably identified as referring to the broken contract, but it is not necessary that the goods be in existence or that any or all of them have been identified to the contract before the breach.

(3) Where the resale is at private sale the seller

must give the buyer reasonable notification of his intention to resell.

(4) Where the resale is at public sale:

(a) Only identified goods can be sold except where there is a recognized market for a public sale of futures in goods of the kind; and

(b) It must be made at a usual place or market for public sale if one is reasonably available and except in the case of goods which are perishable or threaten to decline in value speedily the seller must give the buyer reasonable notice of the time and place of the resale; and

(c) If the goods are not to be within the view of those attending the sale the notification of sale must state the place where the goods are located and provide for their reasonable inspection by prospective bidders; and

(d) The seller may buy.

(5) A purchaser who buys in good faith at a resale takes the goods free of any rights of the original buyer even though the seller fails to comply with one or more of the requirements of this section.

(6) The seller is not accountable to the buyer for any profit made on any resale. A person in the position of a seller (s. 672.707) or a buyer who has rightfully rejected or justifiably revoked acceptance must account for any excess over the amount of his security interest, as hereinafter defined (s. 672.711(3)).

**History.**—s. 1, ch. 65-254.

**Note.**—s. 2-706, U.C.C.

#### **672.707 "Person in the position of a seller."**—

(1) A "person in the position of a seller" includes as against a principal an agent who has paid or become responsible for the price of goods on behalf of his principal or anyone who otherwise holds a security interest or other right in goods similar to that of a seller.

(2) A person in the position of a seller may as provided in this chapter withhold or stop delivery (s. 672.705) and resell (s. 672.706) and recover incidental damages (s. 672.710).

**History.**—s. 1, ch. 65-254.

**Note.**—s. 2-707, U.C.C.

#### **672.708 Seller's damages for nonacceptance or repudiation.**—

(1) Subject to subsection (2) and to the provisions of this chapter with respect to proof of market price (s. 672.723), the measure of damages for nonacceptance or repudiation by the buyer is the difference between the market price at the time and place for tender and the unpaid contract price together with any incidental damages provided in this chapter (s. 672.710), but less expenses saved in consequence of the buyer's breach.

(2) If the measure of damages provided in subsection (1) is inadequate to put the seller in as good a position as performance would have done then the measure of damages is the profit (including reasonable overhead) which the seller would have made from full performance by the buyer, together with any incidental damages provided in this chapter (s. 672.710), due allowance for costs reasonably in-

curred and due credit for payments or proceeds of resale.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 2-708, U.C.C.

#### **672.709 Action for the price.**—

(1) When the buyer fails to pay the price as it becomes due the seller may recover, together with any incidental damages under the next section, the price:

(a) Of goods accepted or of conforming goods lost or damaged within a commercially reasonable time after risk of their loss has passed to the buyer; and

(b) Of goods identified to the contract if the seller is unable after reasonable effort to resell them at a reasonable price or the circumstances reasonably indicate that such effort will be unavailing.

(2) Where the seller sues for the price he must hold for the buyer any goods which have been identified to the contract and are still in his control except that if resale becomes possible he may resell them at any time prior to the collection of the judgment. The net proceeds of any such resale must be credited to the buyer and payment of the judgment entitles him to any goods not resold.

(3) After the buyer has wrongfully rejected or revoked acceptance of the goods or has failed to make a payment due or has repudiated (s. 672.610), a seller who is held not entitled to the price under this section shall nevertheless be awarded damages for nonacceptance under the preceding section.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 2-709, U.C.C.

**672.710 Seller's incidental damages.**—Incidental damages to an aggrieved seller include any commercially reasonable charges, expenses or commissions incurred in stopping delivery, in the transportation, care and custody of goods after the buyer's breach, in connection with return or resale of the goods or otherwise resulting from the breach.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 2-710, U.C.C.

#### **672.711 Buyer's remedies in general; buyer's security interest in rejected goods.**—

(1) Where the seller fails to make delivery or repudiates or the buyer rightfully rejects or justifiably revokes acceptance then with respect to any goods involved, and with respect to the whole if the breach goes to the whole contract (s. 672.612), the buyer may cancel and whether or not he has done so may in addition to recovering so much of the price as has been paid:

(a) "Cover" and have damages under the next section as to all the goods affected whether or not they have been identified to the contract; or

(b) Recover damages for nondelivery as provided in this chapter (s. 672.713).

(2) Where the seller fails to deliver or repudiates the buyer may also:

(a) If the goods have been identified recover them as provided in this chapter (s. 672.502); or

(b) In a proper case obtain specific performance or replevy the goods as provided in this chapter (s. 672.716).

(3) On rightful rejection or justifiable revocation of acceptance a buyer has a security interest in goods

in his possession or control for any payments made on their price and any expenses reasonably incurred in their inspection, receipt, transportation, care and custody and may hold such goods and resell them in like manner as an aggrieved seller (s. 672.706).

History.—s. 1, ch. 65-254.  
Note.—s. 2-711, U.C.C.

**672.712 "Cover"; buyer's procurement of substitute goods.—**

(1) After a breach within the preceding section the buyer may "cover" by making in good faith and without unreasonable delay any reasonable purchase of or contract to purchase goods in substitution for those due from the seller.

(2) The buyer may recover from the seller as damages the difference between the cost of cover and the contract price together with any incidental or consequential damages as hereinafter defined (s. 672.715), but less expenses saved in consequence of the seller's breach.

(3) Failure of the buyer to effect cover within this section does not bar him from any other remedy.

History.—s. 1, ch. 65-254.  
Note.—s. 2-712, U.C.C.

**672.713 Buyer's damages for nondelivery or repudiation.—**

(1) Subject to the provisions of this chapter with respect to proof of market price (s. 672.723), the measure of damages for nondelivery or repudiation by the seller is the difference between the market price at the time when the buyer learned of the breach and the contract price together with any incidental and consequential damages provided in this chapter (s. 672.715), but less expenses saved in consequence of the seller's breach.

(2) Market price is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

History.—s. 1, ch. 65-254.  
Note.—s. 2-713, U.C.C.

**672.714 Buyer's damages for breach in regard to accepted goods.—**

(1) Where the buyer has accepted goods and given notification (s. 672.607(3)) he may recover as damages for any nonconformity of tender the loss resulting in the ordinary course of events from the seller's breach as determined in any manner which is reasonable.

(2) The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount.

(3) In a proper case any incidental and consequential damages under the next section may also be recovered.

History.—s. 1, ch. 65-254.  
Note.—s. 2-714, U.C.C.

**672.715 Buyer's incidental and consequential damages.—**

(1) Incidental damages resulting from the seller's breach include expenses reasonably incurred in inspection, receipt, transportation and care and cus-

tody of goods rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach.

(2) Consequential damages resulting from the seller's breach include:

(a) Any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

(b) Injury to person or property proximately resulting from any breach of warranty.

History.—s. 1, ch. 65-254.  
Note.—s. 2-715, U.C.C.

**672.716 Buyer's right to specific performance or replevin.—**

(1) Specific performance may be decreed where the goods are unique or in other proper circumstances.

(2) The decree for specific performance may include such terms and conditions as to payment of the price, damages, or other relief as the court may deem just.

(3) The buyer has a right of replevin for goods identified to the contract if after reasonable effort he is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered.

History.—s. 1, ch. 65-254.  
Note.—s. 2-716, U.C.C.

**672.717 Deduction of damages from the price.—**The buyer on notifying the seller of his intention to do so may deduct all or any part of the damages resulting from any breach of the contract from any part of the price still due under the same contract.

History.—s. 1, ch. 65-254.  
Note.—s. 2-717, U.C.C.

**672.718 Liquidation or limitation of damages; deposits.—**

(1) Damages for breach by either party may be liquidated in the agreement but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. A term fixing unreasonably large liquidated damages is void as a penalty.

(2) Where the seller justifiably withholds delivery of goods because of the buyer's breach, the buyer is entitled to restitution of any amount by which the sum of his payments exceeds:

(a) The amount to which the seller is entitled by virtue of terms liquidating the seller's damages in accordance with subsection (1), or

(b) In the absence of such terms, 20 percent of the value of the total performance for which the buyer is obligated under the contract or \$500, whichever is smaller.

(3) The buyer's right to restitution under subsection (2) is subject to offset to the extent that the seller establishes:



(a) A right to recover damages under the provisions of this chapter other than subsection (1), and

(b) The amount or value of any benefits received by the buyer directly or indirectly by reason of the contract.

(4) Where a seller has received payment in goods their reasonable value or the proceeds of their resale shall be treated as payments for the purposes of subsection (2); but if the seller has notice of the buyer's breach before reselling goods received in part performance, his resale is subject to the conditions laid down in this chapter on resale by an aggrieved seller (s. 672.706).

History.—s. 1, ch. 65-254.

Note.—s. 2-718, U.C.C.

#### **672.719 Contractual modification or limitation of remedy.—**

(1) Subject to the provisions of subsections (2) and (3) of this section and of the preceding section on liquidation and limitation of damages:

(a) The agreement may provide for remedies in addition to or in substitution for those provided in this chapter and may limit or alter the measure of damages recoverable under this chapter, as by limiting the buyer's remedies to return of the goods and repayment of the price or to repair and replacement of nonconforming goods or parts; and

(b) Resort to a remedy as provided is optional unless the remedy is expressly agreed to be exclusive, in which case it is the sole remedy.

(2) Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this code.

(3) Consequential damages may be limited or excluded unless the limitation or exclusion is unconscionable. Limitation of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable but limitation of damages where the loss is commercial is not.

History.—s. 1, ch. 65-254.

Note.—s. 2-719, U.C.C.

**672.720 Effect of "cancellation" or "rescission" on claims for antecedent breach.—**Unless the contrary intention clearly appears, expressions of "cancellation" or "rescission" of the contract or the like shall not be construed as a renunciation or discharge of any claim in damages for an antecedent breach.

History.—s. 1, ch. 65-254.

Note.—s. 2-720, U.C.C.

**672.721 Remedies for fraud.—**Remedies for material misrepresentation or fraud include all remedies available under this chapter for nonfraudulent breach. Neither rescission or a claim for rescission of the contract for sale nor rejection or return of the goods shall bar or be deemed inconsistent with a claim for damages or other remedy.

History.—s. 1, ch. 65-254.

Note.—s. 2-721, U.C.C.

**672.722 Who can sue third parties for injury to goods.—**Where a third party so deals with goods which have been identified to a contract for sale as to cause actionable injury to a party to that contract:

(1) A right of action against the third party is in either party to the contract for sale who has title to or a security interest or a special property or an insurable interest in the goods; and if the goods have been destroyed or converted a right of action is also in the party who either bore the risk of loss under the contract for sale or has since the injury assumed that risk as against the other;

(2) If at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the contract for sale and there is no arrangement between them for disposition of the recovery, his suit or settlement is, subject to his own interest, as a fiduciary for the other party to the contract;

(3) Either party may with the consent of the other sue for the benefit of whom it may concern.

History.—s. 1, ch. 65-254.

Note.—s. 2-722, U.C.C.

#### **672.723 Proof of market price; time and place.—**

(1) If an action based on anticipatory repudiation comes to trial before the time for performance with respect to some or all of the goods, any damages based on market price (s. 672.708 or s. 672.713) shall be determined according to the price of such goods prevailing at the time when the aggrieved party learned of the repudiation.

(2) If evidence of a price prevailing at the times or places described in this chapter is not readily available the price prevailing within any reasonable time before or after the time described or at any other place which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the cost of transporting the goods to or from such other place.

(3) Evidence of a relevant price prevailing at a time or place other than the one described in this chapter offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise.

History.—s. 1, ch. 65-254.

Note.—s. 2-723, U.C.C.

**672.724 Admissibility of market quotations.—**Whenever the prevailing price or value of any goods regularly bought and sold in any established commodity market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of such market shall be admissible in evidence. The circumstances of the preparation of such a report may be shown to affect its weight but not its admissibility.

History.—s. 1, ch. 65-254.

Note.—s. 2-724, U.C.C.

## CHAPTER 673

## UNIFORM COMMERCIAL CODE: COMMERCIAL PAPER

## ARTICLE 3

Note.—Pursuant to s. 69, ch. 69-353, the editors have altered the numbers of all sections making up this chapter by deleting the digit and hyphen immediately following the decimal point. The purpose is to conform the numbering of the Code sections with the decimal numbering system used in other chapters of the Florida Statutes. The visual relationship between Florida Statutes section numbers and Code section number is not destroyed by this alteration; the digit preceding the decimal point coincides with the Code article number, and the digits following the decimal point coincide with the Code section numbers.

PART I SHORT TITLE, FORM AND INTERPRETATION  
(ss. 673.101-673.122)

PART II TRANSFER AND NEGOTIATION (ss. 673.201-673.208)

PART III RIGHTS OF A HOLDER (ss. 673.301-673.307)

PART IV LIABILITY OF PARTIES (ss. 673.401-673.419)

PART V PRESENTMENT, NOTICE OF DISHONOR, AND PROTEST  
(ss. 673.501-673.511)

PART VI DISCHARGE (ss. 673.601-673.606)

PART VII ADVICE OF INTERNATIONAL SIGHT DRAFT (s. 673.701)

PART VIII MISCELLANEOUS (ss. 673.801-673.805)

PART I

SHORT TITLE, FORM AND  
INTERPRETATION

- 673.101 Short title.
- 673.102 Definitions and index of definitions.
- 673.103 Limitations on scope of chapter.
- 673.104 Form of negotiable instruments; "draft"; "check"; "certificate of deposit"; "note."
- 673.105 When promise or order unconditional.
- 673.106 Sum certain.
- 673.107 Money.
- 673.108 Payable on demand.
- 673.109 Definite time.
- 673.110 Payable to order.
- 673.111 Payable to bearer.
- 673.112 Terms and omissions not affecting negotiability.
- 673.113 Seal.
- 673.114 Date, antedating, postdating.
- 673.115 Incomplete instruments.
- 673.116 Instruments payable to two or more persons.
- 673.117 Instruments payable with words of description.
- 673.118 Ambiguous terms and rules of construction.
- 673.119 Other writings affecting instrument.
- 673.120 Instruments "payable through" bank.
- 673.121 Instruments payable at bank.
- 673.122 Accrual of cause of action.

673.101 Short title.—Chapter 673 shall be

known and may be cited as the "Uniform Commercial Code—Commercial Paper."

History.—s. 1, ch. 65-254.

Note.—s. 3-101, U.C.C.

673.102 Definitions and index of definitions.—

(1) In this chapter unless the context otherwise requires:

(a) "Issue" means the first delivery of an instrument to a holder or a remitter.

(b) An "order" is a direction to pay and must be more than an authorization or request. It must identify the person to pay with reasonable certainty. It may be addressed to one or more such persons jointly or in the alternative but not in succession.

(c) A "promise" is an undertaking to pay and must be more than an acknowledgment of an obligation.

(d) "Secondary party" means a drawer or endorser.

(e) "Instrument" means a negotiable instrument.

(2) Other definitions applying to this chapter and the sections in which they appear are:

"Acceptance," s. 673.410.

"Accommodation party," s. 673.415.

"Alteration," s. 673.407.

"Certificate of deposit," s. 673.104.

"Certification," s. 673.411.

"Check," s. 673.104.

"Definite time," s. 673.109.

"Dishonor," s. 673.507.

"Draft," s. 673.104.

"Holder in due course," s. 673.202.

"Negotiation," s. 673.202.

"Note," s. 673.104.

"Notice of dishonor," s. 673.508.

"On demand," s. 673.108.

"Presentment," s. 673.504.

"Protest," s. 673.509.

"Restrictive Indorsement," s. 673.205.

"Signature," s. 673.401.

(3) The following definitions in other chapters (of this code) apply to this chapter:

"Account," s. 674.104.

"Banking day," s. 674.104.

"Clearinghouse," s. 674.104.

"Collecting bank," s. 674.105.

"Customer," s. 674.104.

"Depository bank," s. 674.105.

"Documentary draft," s. 674.104.

"Intermediary bank," s. 674.105.

"Item," s. 674.104.

"Midnight deadline," s. 674.104.

"Payor bank," s. 674.105.

(4) In addition chapter 671 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 3-102, U.C.C.; supersedes ss. 674.02(5), 676.01, 674.01.

### 673.103 Limitations on scope of chapter.—

(1) This chapter does not apply to money, documents of title or investment securities.

(2) The provisions of this chapter are subject to the provisions of the chapter on bank deposits and collections (chapter 674) and secured transactions (chapter 679).

**History.**—s. 1, ch. 65-254.

**Note.**—s. 3-103, U.C.C.

### 673.104 Form of negotiable instruments; "draft"; "check"; "certificate of deposit"; "note."—

(1) Any writing to be a negotiable instrument within this chapter must:

(a) Be signed by the maker or drawer; and

(b) Contain an unconditional promise or order to pay a sum certain in money and no other promise, order, obligation or power given by the maker or drawer except as authorized by this chapter; and

(c) Be payable on demand or at a definite time; and

(d) Be payable to order or to bearer.

(2) A writing which complies with the requirements of this section is:

(a) A "draft" ("bill of exchange") if it is an order;

(b) A "check" if it is a draft drawn on a bank and payable on demand;

(c) A "certificate of deposit" if it is an acknowledgment by a bank of receipt of money with an engagement to repay it;

(d) A "note" if it is a promise other than a certificate of deposit.

(3) As used in other chapters of this code, and as the context may require, the terms "draft," "check," "certificate of deposit" and "note" may refer to instruments which are not negotiable within this chapter as well as to instruments which are so negotiable.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 3-104, U.C.C.; supersedes ss. 674.02, 674.06, 674.12, 676.01, 676.47, 676.48.

### 673.105 When promise or order unconditional.—

(1) A promise or order otherwise unconditional is not made conditional by the fact that the instrument:

(a) Is subject to implied or constructive conditions; or

(b) States its consideration, whether performed or promised, or the transaction which gave rise to the instrument, or that the promise or order is made or the instrument matures in accordance with or "as per" such transaction; or

(c) Refers to or states that it arises out of a separate agreement or refers to a separate agreement for rights as to prepayment or acceleration; or

(d) States that it is drawn under a letter of credit; or

(e) States that it is secured, whether by mortgage, reservation of title or otherwise; or

(f) Indicates a particular account to be debited or any other fund or source from which reimbursement is expected; or

(g) Is limited to payment out of a particular fund or the proceeds of a particular source, if the instrument is issued by a government or governmental agency or unit; or

(h) Is limited to payment out of the entire assets of a partnership, unincorporated association, trust or estate by or on behalf of which the instrument is issued.

(2) A promise or order is not unconditional if the instrument:

(a) States that it is subject to or governed by any other agreement; or

(b) States that it is to be paid only out of a particular fund or source except as provided in this section.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 3-105, U.C.C.; supersedes s. 675.04.

### 673.106 Sum certain.—

(1) The sum payable is a sum certain even though it is to be paid:

(a) With stated interest or by stated installments; or

(b) With stated different rates of interest before and after default or a specified date; or

(c) With a stated discount or addition if paid before or after the date fixed for payment; or

(d) With exchange or less exchange, whether at a fixed rate or at the current rate; or

(e) With costs of collection or an attorney's fee or both upon default.

(2) Nothing in this section shall validate any term which is otherwise illegal.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 3-106, U.C.C.; supersedes ss. 674.03, 674.07(5).

### 673.107 Money.—

(1) An instrument is payable in money if the medium of exchange in which it is payable is money at the time the instrument is made. An instrument payable in "currency" or "current funds" is payable in money.

(2) A promise or order to pay a sum stated in a foreign currency is for a sum certain in money and, unless a different medium of payment is specified in the instrument, may be satisfied by payment of that



number of dollars which the stated foreign currency will purchase at the buying sight rate for that currency on the day on which the instrument is payable or, if payable on demand, on the day of demand. If such an instrument specifies a foreign currency as the medium of payment the instrument is payable in that currency.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 3-107, U.C.C.; supersedes s. 674.07(5).

**673.108 Payable on demand.**—Instruments payable on demand include those payable at sight or on presentation and those in which no time for payment is stated.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 3-108, U.C.C.; supersedes s. 674.09.

**673.109 Definite time.**—

(1) An instrument is payable at a definite time if by its terms it is payable:

(a) On or before a stated date or at a fixed period after a stated date; or

(b) At a fixed period after sight; or

(c) At a definite time subject to any acceleration; or

(d) At a definite time subject to extension at the option of the holder, or to extension to a further definite time at the option of the maker or acceptor or automatically upon or after a specified act or event.

(2) An instrument which by its terms is otherwise payable only upon an act or event uncertain as to time of occurrence is not payable at a definite time even though the act or event has occurred.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 3-109, U.C.C.; supersedes ss. 674.05, 674.19(3).

**673.110 Payable to order.**—

(1) An instrument is payable to order when by its terms it is payable to the order or assigns of any person therein specified with reasonable certainty, or to him or his order, or when it is conspicuously designated on its face as "exchange" or the like and names a payee. It may be payable to the order of:

(a) The maker or drawer; or

(b) The drawee; or

(c) A payee who is not maker, drawer or drawee; or

(d) Two or more payees together or in the alternative; or

(e) An estate, trust or fund, in which case it is payable to the order of the representative of such estate, trust or fund or his successors; or

(f) An office, or an officer by his title as such in which case it is payable to the principal but the incumbent of the office or his successors may act as if he or they were the holder; or

(g) A partnership or unincorporated association, in which case it is payable to the partnership or association and may be indorsed or transferred by any person thereto authorized.

(2) An instrument not payable to order is not made so payable by such words as "payable upon return of this instrument properly indorsed."

(3) An instrument made payable both to order

and to bearer is payable to order unless the bearer words are handwritten or typewritten.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 3-110, U.C.C.; supersedes s. 674.10.

**673.111 Payable to bearer.**—An instrument is payable to bearer when by its terms it is payable to:

(1) Bearer or the order of bearer; or

(2) A specified person or bearer; or

(3) "Cash" or the order of "cash," or any other indication which does not purport to designate a specific payee.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 3-111, U.C.C.; supersedes s. 674.11.

**673.112 Terms and omissions not affecting negotiability.**—

(1) The negotiability of an instrument is not affected by:

(a) The omission of a statement of any consideration or of the place where the instrument is drawn or payable; or

(b) A statement that collateral has been given to secure obligations either on the instrument or otherwise of an obligor on the instrument or that in case of default on those obligations the holder may realize on or dispose of the collateral; or

(c) A promise or power to maintain or protect collateral or to give additional collateral; or

(d) A term authorizing a confession of judgment on the instrument if it is not paid when due; or

(e) A term purporting to waive the benefit of any law intended for the advantage or protection of any obligor; or

(f) A term in a draft providing that the payee by indorsing or cashing it acknowledges full satisfaction of an obligation of the drawer; or

(g) A statement in a draft drawn in a set of parts (s. 673.801) to the effect that the order is effective only if no other part has been honored.

(2) Nothing in this section shall validate any term which is otherwise illegal.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 3-112, U.C.C.; supersedes ss. 674.06, 674.07.

**673.113 Seal.**—An instrument otherwise negotiable is within this chapter even though it is under a seal.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 3-113, U.C.C.; supersedes s. 674.07(4).

**673.114 Date, antedating, postdating.**—

(1) The negotiability of an instrument is not affected by the fact that it is undated, antedated or postdated.

(2) Where an instrument is antedated or postdated the time when it is payable is determined by the stated date if the instrument is payable on demand or at a fixed period after date.

(3) Where the instrument or any signature thereon is dated, the date is presumed to be correct.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 3-114, U.C.C.; supersedes ss. 674.07(1), 674.13, 674.14, 674.19.

**673.115 Incomplete instruments.**—

(1) When a paper whose contents at the time of signing show that it is intended to become an instrument is signed while still incomplete in any necessary respect it cannot be enforced until completed,

but when it is completed in accordance with authority given it is effective as completed.

(2) If the completion is unauthorized the rules as to material alteration apply (s. 673.407), even though the paper was not delivered by the maker or drawer; but the burden of establishing that any completion is unauthorized is on the party so asserting.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 3-115, U.C.C.; supersedes ss. 674.15-674.17.

**673.116 Instruments payable to two or more persons.**—An instrument payable to the order of two or more persons:

(1) If in the alternative is payable to any one of them and may be negotiated, discharged or enforced by any of them who has possession of it;

(2) If not in the alternative is payable to all of them and may be negotiated, discharged or enforced only by all of them.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 3-116, U.C.C.; supersedes s. 674.44.

**673.117 Instruments payable with words of description.**—An instrument made payable to a named person with the addition of words describing him:

(1) As agent or officer of a specified person is payable to his principal but the agent or officer may act as if he were the holder;

(2) As any other fiduciary for a specified person or purpose is payable to the payee and may be negotiated, discharged or enforced by him;

(3) In any other manner is payable to the payee unconditionally and the additional words are without effect on subsequent parties.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 3-117, U.C.C.; supersedes s. 674.45.

**673.118 Ambiguous terms and rules of construction.**—The following rules apply to every instrument:

(1) Where there is doubt whether the instrument is a draft or a note the holder may treat it as either. A draft drawn on the drawer is effective as a note.

(2) Handwritten terms control typewritten and printed terms, and typewritten control printed.

(3) Words control figures except that if the words are ambiguous figures control.

(4) Unless otherwise specified a provision for interest means interest at the judgment rate at the place of payment from the date of the instrument, or if it is undated from the date of issue.

(5) Unless the instrument otherwise specifies two or more persons who sign as maker, acceptor or drawer or indorser and as a part of the same transaction are jointly and severally liable even though the instrument contains such words as "I promise to pay."

(6) Unless otherwise specified consent to extension authorizes a single extension for not longer than the original period. A consent to extension, expressed in the instrument, is binding on secondary parties and accommodation makers. A holder may not exercise his option to extend an instrument over the objection of a maker or acceptor or other party

who in accordance with s. 673.604 tenders full payment when the instrument is due.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 3-118, U.C.C.; supersedes ss. 674.19, 674.70.

**673.119 Other writings affecting instrument.**—

(1) As between the obligor and his immediate obligee or any transferee the terms of an instrument may be modified or affected by any other written agreement executed as a part of the same transaction, except that a holder in due course is not affected by any limitation of his rights arising out of the separate written agreement if he had no notice of the limitation when he took the instrument.

(2) A separate agreement does not affect the negotiability of an instrument.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 3-119, U.C.C.

**673.120 Instruments "payable through" bank.**—An instrument which states that it is "payable through" a bank or the like designates that bank as a collecting bank to make presentment but does not of itself authorize the bank to pay the instrument.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 3-120, U.C.C.

**673.121 Instruments payable at bank.**—A note or acceptance which states that it is payable at a bank is not of itself an order or authorization to the bank to pay it.

**History.**—s. 1, ch. 65-254.

**Note.**—The official 1962 text was drafted in two alternatives (A and B). Alternative B was adopted in Florida.

**Note.**—s. 3-121, U.C.C.; supersedes s. 675.04.

**673.122 Accrual of cause of action.**—

(1) A cause of action against a maker or an acceptor accrues:

(a) In the case of a time instrument on the day after maturity;

(b)1. In the case of a demand instrument other than a note payable on demand, upon its date or, if no date is stated, on the date of issue.

2. In the case of a note payable on demand, as provided in s. 95.031(1).

(2) A cause of action against the obligor of a demand or time certificate of deposit accrues upon demand, but demand on a time certificate may not be made until on or after the date of maturity.

(3) A cause of action against a drawer of a draft or an indorser of any instrument accrues upon demand following dishonor of the instrument. Notice of dishonor is a demand.

(4) Unless an instrument provides otherwise, interest runs at the rate provided by law for a judgment:

(a) In the case of a maker, acceptor or other primary obligor of a demand instrument, from the date of demand;

(b) In all other cases from the date of accrual of the cause of action.

**History.**—s. 1, ch. 65-254; s. 1, ch. 77-54.

**Note.**—s. 3-122, U.C.C.

## PART II

## TRANSFER AND NEGOTIATION

- 673.201 Transfer; right to indorsement.
- 673.202 Negotiation.
- 673.203 Wrong or misspelled name.
- 673.204 Special indorsement; blank indorsement.
- 673.205 Restrictive indorsements.
- 673.206 Effect of restrictive indorsement.
- 673.207 Negotiation effective although it may be rescinded.
- 673.208 Reacquisition.

**673.201 Transfer; right to indorsement.—**

(1) Transfer of an instrument vests in the transferee such rights as the transferor has therein, except that a transferee who has himself been a party to any fraud or illegality affecting the instrument or who as a prior holder had notice of a defense or claim against it cannot improve his position by taking from a later holder in due course.

(2) A transfer of a security interest in an instrument vests the foregoing rights in the transferee to the extent of the interest transferred.

(3) Unless otherwise agreed any transfer for value of an instrument not then payable to bearer gives the transferee the specifically enforceable right to have the unqualified indorsement of the transferor. Negotiation takes effect only when the indorsement is made and until that time there is no presumption that the transferee is the owner.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 3-201, U.C.C.; supersedes ss. 674.30, 674.51, 674.60.

**673.202 Negotiation.—**

(1) Negotiation is the transfer of an instrument in such form that the transferee becomes a holder. If the instrument is payable to order it is negotiated by delivery with any necessary indorsement; if payable to bearer it is negotiated by delivery.

(2) An indorsement must be written by or on behalf of the holder and on the instrument or on a paper so firmly affixed thereto as to become a part thereof.

(3) An indorsement is effective for negotiation only when it conveys the entire instrument or any unpaid residue. If it purports to be of less it operates only as a partial assignment.

(4) Words of assignment, condition, waiver, guaranty, limitation or disclaimer of liability and the like accompanying an indorsement do not affect its character as an indorsement.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 3-202, U.C.C.; supersedes ss. 674.33-674.35.

**673.203 Wrong or misspelled name.**—Where an instrument is made payable to a person under a misspelled name or one other than his own he may indorse in that name or his own or both; but signature in both names may be required by a person paying or giving value for the instrument.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 3-203, U.C.C.; supersedes s. 674.46.

**673.204 Special indorsement; blank indorsement.—**

(1) A special indorsement specifies the person to whom or to whose order it makes the instrument payable. Any instrument specially indorsed becomes payable to the order of the special indorsee and may be further negotiated only by his indorsement.

(2) An indorsement in blank specifies no particular indorsee and may consist of a mere signature. An instrument payable to order and indorsed in blank becomes payable to bearer and may be negotiated by delivery alone until specially indorsed.

(3) The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 3-204, U.C.C.; supersedes ss. 674.12, 674.36-674.39, 674.44.

**673.205 Restrictive indorsements.**—An indorsement is restrictive which either:

- (1) Is conditional; or
- (2) Purports to prohibit further transfer of the instrument; or
- (3) Includes the words "for collection," "for deposit," "pay any bank," or like terms signifying a purpose of deposit or collection; or
- (4) Otherwise states that it is for the benefit or use of the indorser or of another person.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 3-205, U.C.C.; supersedes ss. 674.39, 674.42.

**673.206 Effect of restrictive indorsement.—**

(1) No restrictive indorsement prevents further transfer or negotiation of the instrument.

(2) An intermediary bank, or a payor bank which is not the depositary bank, is neither given notice nor otherwise affected by a restrictive indorsement of any person except the bank's immediate transferor or the person presenting for payment.

(3) Except for an intermediary bank, any transferee under an indorsement which is conditional or includes the words "for collection," "for deposit," "pay any bank," or like terms (s. 673.205(1),(3)) must pay or apply any value given by him for or on the security of the instrument consistently with the indorsement and to the extent that he does so he becomes a holder for value. In addition such transferee is a holder in due course if he otherwise complies with the requirements of s. 673.302 on what constitutes a holder in due course.

(4) The first taker under an indorsement for the benefit of the indorser or another person (s. 673.205(4)) must pay or apply any value given by him for or on the security of the instrument consistently with the indorsement and to the extent that he does so he becomes a holder for value. In addition such taker is a holder in due course if he otherwise complies with the requirements of s. 673.302 on what constitutes a holder in due course. A later holder for value is neither given notice nor otherwise affected by such restrictive indorsement unless he has knowledge that a fiduciary or other person has negotiated



the instrument in any transaction for his own benefit or otherwise in breach of duty (s. 673.304(2)).

**History.**—s. 1, ch. 65-254.

**Note.**—s. 3-206, U.C.C.; supersedes ss. 674.39, 674.40, 674.42, 674.49.

### **673.207 Negotiation effective although it may be rescinded.—**

(1) Negotiation is effective to transfer the instrument although the negotiation is:

- (a) Made by an infant, a corporation exceeding its powers, or any other person without capacity; or
- (b) Obtained by fraud, duress or mistake of any kind; or
- (c) Part of an illegal transaction; or
- (d) Made in breach of duty.

(2) Except as against a subsequent holder in due course such negotiation is in an appropriate case subject to rescission, the declaration of a constructive trust or any other remedy permitted by law.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 3-207, U.C.C.; supersedes ss. 674.24, 674.60, 674.61.

**673.208 Reacquisition.**—Where an instrument is returned to or reacquired by a prior party he may cancel any indorsement which is not necessary to his title and reissue or further negotiate the instrument, but any intervening party is discharged as against the reacquiring party and subsequent holders not in due course and if his indorsement has been canceled is discharged as against subsequent holders in due course as well.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 3-208, U.C.C.; supersedes ss. 674.50, 674.52, 675.29.

## **PART III**

### **RIGHTS OF A HOLDER**

**673.301** Rights of a holder.

**673.302** Holder in due course.

**673.303** Taking for value.

**673.304** Notice to purchaser.

**673.305** Rights of a holder in due course.

**673.306** Rights of one not holder in due course.

**673.307** Burden of establishing signatures, defenses and due course.

**673.301 Rights of a holder.**—The holder of an instrument whether or not he is the owner may transfer or negotiate it and, except as otherwise provided in s. 673.603 on payment or satisfaction, discharge it or enforce payment in his own name.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 3-301, U.C.C.; supersedes s. 674.53.

### **673.302 Holder in due course.—**

(1) A holder in due course is a holder who takes the instrument:

- (a) For value; and
- (b) In good faith; and
- (c) Without notice that it is overdue or has been dishonored or of any defense against or claim to it on the part of any person.

(2) A payee may be a holder in due course.

(3) A holder does not become a holder in due course of an instrument:

- (a) By purchase of it at judicial sale or by taking it under legal process; or

- (b) By acquiring it in taking over an estate; or
- (c) By purchasing it as part of a bulk transaction not in regular course of business of the transferor.

(4) A purchaser of a limited interest can be a holder in due course only to the extent of the interest purchased.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 3-302, U.C.C.; supersedes s. 674.54.

**673.303 Taking for value.**—A holder takes the instrument for value:

- (1) To the extent that the agreed consideration has been performed or that he acquires a security interest in or a lien on the instrument otherwise than by legal process; or
- (2) When he takes the instrument in payment of or as security for an antecedent claim against any person whether or not the claim is due; or

(3) When he gives a negotiable instrument for it or makes an irrevocable commitment to a third person.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 3-303, U.C.C.; supersedes ss. 674.28-674.30, 674.56.

### **673.304 Notice to purchaser.—**

(1) The purchaser has notice of a claim or defense if:

- (a) The instrument is so incomplete, bears such visible evidence of forgery or alteration, or is otherwise so irregular as to call into question its validity, terms or ownership or to create an ambiguity as to the party to pay; or
- (b) The purchaser has notice that the obligation of any party is voidable in whole or in part, or that all parties have been discharged.

(2) The purchaser has notice of a claim against the instrument when he has knowledge that a fiduciary has negotiated the instrument in payment of or as security for his own debt or in any transaction for his own benefit or otherwise in breach of duty.

(3) The purchaser has notice that an instrument is overdue if he has reason to know:

- (a) That any part of the principal amount is overdue or that there is an uncured default in payment of another instrument of the same series; or
- (b) That acceleration of the instrument has been made; or

(c) That he is taking a demand instrument after demand has been made or more than a reasonable length of time after its issue. A reasonable time for a check drawn and payable within the states and territories of the United States and the District of Columbia is presumed to be 30 days.

(4) Knowledge of the following facts does not of itself give the purchaser notice of a defense or claim:

- (a) That the instrument is antedated or postdated;

(b) That it was issued or negotiated in return for an executory promise or accompanied by a separate agreement, unless the purchaser has notice that a defense or claim has arisen from the terms thereof;

(c) That any party has signed for accommodation;

(d) That an incomplete instrument has been completed, unless the purchaser has notice of any improper completion;

(e) That any person negotiating the instrument is or was a fiduciary;

(f) That there has been default in payment of interest on the instrument or in payment of any other instrument, except one of the same series.

(5) The filing or recording of a document does not of itself constitute notice within the provisions of this chapter to a person who would otherwise be a holder in due course.

(6) To be effective notice must be received at such time and in such manner as to give a reasonable opportunity to act on it.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 3-304, U.C.C.; supersedes ss. 674.48, 674.54, 674.55, 674.57, 674.58.

**673.305 Rights of a holder in due course.**—To the extent that a holder is a holder in due course he takes the instrument free from:

(1) All claims to it on the part of any person; and

(2) All defenses of any party to the instrument with whom the holder has not dealt except:

(a) Infancy, to the extent that it is a defense to a simple contract; and

(b) Such other incapacity, or duress, or illegality of the transaction, as renders the obligation of the party a nullity; and

(c) Such misrepresentation as has induced the party to sign the instrument with neither knowledge nor reasonable opportunity to obtain knowledge of its character or its essential terms; and

(d) Discharge in insolvency proceedings; and

(e) Any other discharge of which the holder has notice when he takes the instrument.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 3-305, U.C.C.; supersedes ss. 674.17, 674.18, 674.59.

**673.306 Rights of one not holder in due course.**—Unless he has the rights of a holder in due course any person takes the instrument subject to:

(1) All valid claims to it on the part of any person; and

(2) All defenses of any party which would be available in an action on a simple contract; and

(3) The defenses of want or failure of consideration, nonperformance of any condition precedent, nondelivery, or delivery for a special purpose (s. 673.408); and

(4) The defense that he or a person through whom he holds the instrument acquired it by theft, or that payment or satisfaction to such holder would be inconsistent with the terms of a restrictive indorsement. The claim of any third person to the instrument is not otherwise available as a defense to any party liable thereon unless the third person himself defends the action for such party.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 3-306, U.C.C.; supersedes ss. 674.18, 674.31, 674.60, 674.61.

**673.307 Burden of establishing signatures, defenses and due course.**—

(1) Unless specifically denied in the pleadings each signature on an instrument is admitted. When the effectiveness of a signature is put in issue:

(a) The burden of establishing it is on the party claiming under the signature; but

(b) The signature is presumed to be genuine or authorized except where the action is to enforce the obligation of a purported signer who has died or be-

come incompetent before proof is required.

(2) When signatures are admitted or established, production of the instrument entitles a holder to recover on it unless the defendant establishes a defense.

(3) After it is shown that a defense exists a person claiming the rights of a holder in due course has the burden of establishing that he or some person under whom he claims is in all respects a holder in due course.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 3-307, U.C.C.; supersedes s. 674.61.

## PART IV

### LIABILITY OF PARTIES

673.401 Signature.

673.402 Signature in ambiguous capacity.

673.403 Signature by authorized representative.

673.404 Unauthorized signatures.

673.405 Impostors; signature in name of payee.

673.406 Negligence contributing to alteration or unauthorized signature.

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673.416 Contract of guarantor.

673.417 Warranties on presentment and transfer.

673.418 Finality of payment or acceptance.

673.419 Conversion of instrument; innocent representative.

#### 673.401 Signature.—

(1) No person is liable on an instrument unless his signature appears thereon.

(2) A signature is made by use of any name, including any trade or assumed name, upon an instrument, or by any word or mark used in lieu of a written signature.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 3-401, U.C.C.; supersedes s. 674.20.

#### 673.402 Signature in ambiguous capacity.—

Unless the instrument clearly indicates that a signature is made in some other capacity it is an indorsement.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 3-402, U.C.C.; supersedes ss. 674.19(6), 674.65.

#### 673.403 Signature by authorized representative.—

(1) A signature may be made by an agent or other representative, and his authority to make it may be established as in other cases of representation. No particular form of appointment is necessary to establish such authority.

(2) An authorized representative who signs his own name to an instrument:

(a) Is personally obligated if the instrument neither names the person represented nor shows that

the representative signed in a representative capacity;

(b) Except as otherwise established between the immediate parties, is personally obligated if the instrument names the person represented but does not show that the representative signed in a representative capacity, or if the instrument does not name the person represented but does show that the representative signed in a representative capacity.

(3) Except as otherwise established the name of an organization preceded or followed by the name and office of an authorized individual is a signature made in a representative capacity.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 3-403, U.C.C.; supersedes ss. 674.21-674.23.

#### **673.404 Unauthorized signatures.—**

(1) Any unauthorized signature is wholly inoperative as that of the person whose name is signed unless he ratifies it or is precluded from denying it; but it operates as the signature of the unauthorized signer in favor of any person who in good faith pays the instrument or takes it for value.

(2) Any unauthorized signature may be ratified for all purposes of this chapter. Such ratification does not of itself affect any rights of the person ratifying against the actual signer.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 3-404, U.C.C.; supersedes s. 674.25.

#### **673.405 Impostors; signature in name of payee.—**

(1) An indorsement by any person in the name of a named payee is effective if:

(a) An impostor by use of the mails or otherwise has induced the maker or drawer to issue the instrument to him or his confederate in the name of the payee; or

(b) A person signing as or on behalf of a maker or drawer intends the payee to have no interest in the instrument; or

(c) An agent or employee of the maker or drawer has supplied him with the name of the payee intending the latter to have no such interest.

(2) Nothing in this section shall affect the criminal or civil liability of the person so indorsing.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 3-405, U.C.C.; supersedes s. 674.11(3).

**673.406 Negligence contributing to alteration or unauthorized signature.—**Any person who by his negligence substantially contributes to a material alteration of the instrument or to the making of an unauthorized signature is precluded from asserting the alteration or lack of authority against a holder in due course or against a drawee or other payor who pays the instrument in good faith and in accordance with the reasonable commercial standards of the drawee's or payor's business.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 3-406, U.C.C.

#### **673.407 Alteration.—**

(1) Any alteration of an instrument is material which changes the contract of any party thereto in any respect, including any such change in:

(a) The number or relations of the parties; or

(b) An incomplete instrument, by completing it

otherwise than as authorized; or

(c) The writing as signed, by adding to it or by removing any part of it.

(2) As against any person other than a subsequent holder in due course:

(a) Alteration by the holder which is both fraudulent and material discharges any party whose contract is thereby changed unless that party assents or is precluded from asserting the defense;

(b) No other alteration discharges any party and the instrument may be enforced according to its original tenor, or as to incomplete instruments according to the authority given.

(3) A subsequent holder in due course may in all cases enforce the instrument according to its original tenor, and when an incomplete instrument has been completed, he may enforce it as completed.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 3-407, U.C.C.; supersedes ss. 674.16, 674.17, 675.32.

**673.408 Consideration.—**Want or failure of consideration is a defense as against any person not having the rights of a holder in due course (s. 673.305), except that no consideration is necessary for an instrument or obligation thereon given in payment of or as security for an antecedent obligation of any kind. Nothing in this section shall be taken to displace any statute outside this code under which a promise is enforceable notwithstanding lack or failure of consideration. Partial failure of consideration is a defense pro tanto whether or not the failure is in an ascertained or liquidated amount.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 3-408, U.C.C.; supersedes ss. 674.27, 674.28, 674.31.

#### **673.409 Draft not an assignment.—**

(1) A check or other draft does not of itself operate as an assignment of any funds in the hands of the drawee available for its payment, and the drawee is not liable on the instrument until he accepts it.

(2) Nothing in this section shall affect any liability in contract, tort or otherwise arising from any letter of credit or other obligation or representation which is not an acceptance.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 3-409, U.C.C.; supersedes ss. 676.01, 676.52.

#### **673.410 Definition and operation of acceptance.—**

(1) Acceptance is the drawee's signed engagement to honor the draft as presented. It must be written on the draft, and may consist of his signature alone. It becomes operative when completed by delivery or notification.

(2) A draft may be accepted although it has not been signed by the drawer or is otherwise incomplete or is overdue or has been dishonored.

(3) Where the draft is payable at a fixed period after sight and the acceptor fails to date his acceptance the holder may complete it by supplying a date in good faith.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 3-410, U.C.C.; supersedes ss. 676.05, 676.07, 676.09, 674.01, 676.06, 676.08, 676.27-676.35, 676.15.

#### **673.411 Certification of a check.—**

(1) Certification of a check is acceptance. Where a holder procures certification the drawer and all prior indorsers are discharged.



(2) Unless otherwise agreed a bank has no obligation to certify a check.

(3) A bank may certify a check before returning it for lack of proper indorsement. If it does so the drawer is discharged.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 3-411, U.C.C.; supersedes ss. 676.50, 676.51.

#### **673.412 Acceptance varying draft.—**

(1) Where the drawee's proffered acceptance in any manner varies the draft as presented the holder may refuse the acceptance and treat the draft as dishonored in which case the drawee is entitled to have his acceptance canceled.

(2) The terms of the draft are not varied by an acceptance to pay at any particular bank or place in the United States, unless the acceptance states that the draft is to be paid only at such bank or place.

(3) Where the holder assents to an acceptance varying the terms of the draft each drawer and indorser who does not affirmatively assent is discharged.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 3-412, U.C.C.; supersedes ss. 676.10, 676.11.

#### **673.413 Contract of maker, drawer and acceptor.—**

(1) The maker or acceptor engages that he will pay the instrument according to its tenor at the time of his engagement or as completed pursuant to s. 673.115 on incomplete instruments.

(2) The drawer engages that upon dishonor of the draft and any necessary notice of dishonor or protest he will pay the amount of the draft to the holder or to any indorser who takes it up. The drawer may disclaim this liability by drawing without recourse.

(3) By making, drawing or accepting the party admits as against all subsequent parties including the drawee the existence of the payee and his then capacity to indorse.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 3-413, U.C.C.; supersedes ss. 674.62-674.64.

#### **673.414 Contract of indorser; order of liability.—**

(1) Unless the indorsement otherwise specifies (as by such words as "without recourse") every indorser engages that upon dishonor and any necessary notice of dishonor and protest he will pay the instrument according to its tenor at the time of his indorsement to the holder or to any subsequent indorser who takes it up, even though the indorser who takes it up was not obligated to do so.

(2) Unless they otherwise agree indorsers are liable to one another in the order in which they indorse, which is presumed to be the order in which their signatures appear on the instrument.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 3-414, U.C.C.; supersedes ss. 674.41, 674.47, 674.68, 674.69.

#### **673.415 Contract of accommodation party.—**

(1) An accommodation party is one who signs the instrument in any capacity for the purpose of lending his name to another party to it.

(2) When the instrument has been taken for value before it is due the accommodation party is liable in the capacity in which he has signed even though the taker knows of the accommodation.

(3) As against a holder in due course and without notice of the accommodation oral proof of the accommodation is not admissible to give the accommodation party the benefit of discharges dependent on his character as such. In other cases the accommodation character may be shown by oral proof.

(4) An indorsement which shows that it is not in the chain of title is notice of its accommodation character.

(5) An accommodation party is not liable to the party accommodated, and if he pays the instrument has a right of recourse on the instrument against such party.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 3-415, U.C.C.; supersedes ss. 674.31, 674.32, 674.66.

#### **673.416 Contract of guarantor.—**

(1) "Payment guaranteed" or equivalent words added to a signature mean that the signer engages that if the instrument is not paid when due he will pay it according to its tenor without resort by the holder to any other party.

(2) "Collection guaranteed" or equivalent words added to a signature mean that the signer engages that if the instrument is not paid when due he will pay it according to its tenor, but only after the holder has reduced his claim against the maker or acceptor to judgment and execution has been returned unsatisfied, or after the maker or acceptor has become insolvent or it is otherwise apparent that it is useless to proceed against him.

(3) Words of guaranty which do not otherwise specify guarantee payment.

(4) No words of guaranty added to the signature of a sole maker or acceptor affect his liability on the instrument. Such words added to the signature of one of two or more makers or acceptors create a presumption that the signature is for the accommodation of the others.

(5) When words of guaranty are used presentment, notice of dishonor and protest are not necessary to charge the user.

(6) Any guaranty written on the instrument is enforceable notwithstanding any statute of frauds.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 3-416, U.C.C.

#### **673.417 Warranties on presentment and transfer.—**

(1) Any person who obtains payment or acceptance and any prior transferor warrants to a person who in good faith pays or accepts that:

(a) He has a good title to the instrument or is authorized to obtain payment or acceptance on behalf of one who has a good title; and

(b) He has no knowledge that the signature of the maker or drawer is unauthorized, except that this warranty is not given by a holder in due course acting in good faith:

1. To a maker with respect to the maker's own signature; or

2. To a drawer with respect to the drawer's own signature, whether or not the drawer is also the drawee; or

3. To an acceptor of a draft if the holder in due course took the draft after the acceptance or obtained the acceptance without knowledge that the

drawer's signature was unauthorized; and

(c) The instrument has not been materially altered, except that this warranty is not given by a holder in due course acting in good faith:

1. To the maker of a note; or

2. To the drawer of a draft whether or not the drawer is also the drawee; or

3. To the acceptor of a draft with respect to an alteration made prior to the acceptance if the holder in due course took the draft after the acceptance, even though the acceptance provided "payable as originally drawn" or equivalent terms; or

4. To the acceptor of a draft with respect to an alteration made after the acceptance.

(2) Any person who transfers an instrument and receives consideration warrants to his transferee and if the transfer is by indorsement to any subsequent holder who takes the instrument in good faith that:

(a) He has a good title to the instrument or is authorized to obtain payment or acceptance on behalf of one who has a good title and the transfer is otherwise rightful; and

(b) All signatures are genuine or authorized; and

(c) The instrument has not been materially altered; and

(d) No defense of any party is good against him; and

(e) He has no knowledge of any insolvency proceeding instituted with respect to the maker or acceptor or the drawer of an unaccepted instrument.

(3) By transferring "without recourse" the transferor limits the obligation stated in subsection (2)(d) to a warranty that he has no knowledge of such a defense.

(4) A selling agent or broker who does not disclose the fact that he is acting only as such gives the warranties provided in this section, but if he makes such disclosure warrants only his good faith and authority.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 3-417, U.C.C.; supersedes ss. 674.67, 674.71.

#### **673.418 Finality of payment or acceptance.—**

Except for recovery of bank payments as provided in the chapter on bank deposits and collections (chapter 674) and except for liability for breach of warranty on presentment under the preceding section, payment or acceptance of any instrument is final in favor of a holder in due course, or a person who has in good faith changed his position in reliance on the payment.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 3-418 U.C.C.; supersedes s. 674.64.

#### **673.419 Conversion of instrument; innocent representative.—**

(1) An instrument is converted when:

(a) A drawee to whom it is delivered for acceptance refuses to return it on demand; or

(b) Any person to whom it is delivered for payment refuses on demand either to pay or to return it; or

(c) It is paid on a forged indorsement.

(2) In an action against a drawee under subsection (1) the measure of the drawee's liability is the face amount of the instrument. In any other action

under subsection (1) the measure of liability is presumed to be the face amount of the instrument.

(3) Subject to the provisions of this code concerning restrictive indorsements a representative, including a depositary or collecting bank, who has in good faith and in accordance with the reasonable commercial standards applicable to the business of such representative dealt with an instrument or its proceeds on behalf of one who was not the true owner is not liable in conversion or otherwise to the true owner beyond the amount of any proceeds remaining in his hands.

(4) An intermediary bank or payor bank which is not a depositary bank is not liable in conversion solely by reason of the fact that proceeds of an item indorsed restrictively (ss. 673.205 and 673.206) are not paid or applied consistently with the restrictive indorsement of an indorser other than its immediate transferor.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 3-419, U.C.C.; supersedes s. 676.08.

### **PART V**

#### **PRESENTMENT, NOTICE OF DISHONOR, AND PROTEST**

673.501 When presentment, notice of dishonor, and protest necessary or permissible.

673.502 Unexcused delay; discharge.

673.503 Time of presentment.

673.504 How presentment made.

673.505 Rights of party to whom presentment is made.

673.506 Time allowed for acceptance or payment.

673.507 Dishonor; holder's right of recourse; term allowing re-presentment.

673.508 Notice of dishonor.

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673.510 Evidence of dishonor and notice of dishonor.

673.511 Waived or excused presentment, protest, or notice of dishonor, or delay therein.

#### **673.501 When presentment, notice of dishonor, and protest necessary or permissible.—**

(1) Unless excused (s. 673.511) presentment is necessary to charge secondary parties as follows:

(a) Presentment for acceptance is necessary to charge the drawer and indorsers of a draft where the draft so provides, or is payable elsewhere than at the residence or place of business of the drawee, or its date of payment depends upon such presentment. The holder may at his option present for acceptance any other draft payable at a stated date;

(b) Presentment for payment is necessary to charge any indorser;

(c) In the case of any drawer, the acceptor of a draft payable at a bank or the maker of a note payable at a bank, presentment for payment is necessary, but failure to make presentment discharges such drawer, acceptor or maker only as stated in s. 673.502(1)(b).

(2) Unless excused (s. 673.511):

(a) Notice of any dishonor is necessary to charge any indorser;

(b) In the case of any drawer, the acceptor of a

draft payable at a bank or the maker of a note payable at a bank, notice of any dishonor is necessary, but failure to give such notice discharges such drawer, acceptor or maker only as stated in s. 673.502(1)(b).

(3) Unless excused (s. 673.511) protest of any dishonor is necessary to charge the drawer and indorsers of any draft which on its face appears to be drawn or payable outside of the states and territories of the United States and the District of Columbia. The holder may at his option make protest of any dishonor of any other instrument and in the case of a foreign draft may on insolvency of the acceptor before maturity make protest for better security.

(4) Notwithstanding any provision of this section, neither presentment nor notice of dishonor nor protest is necessary to charge an indorser who has indorsed an instrument after maturity.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 3-501, U.C.C.; supersedes ss. 674.72, 675.06, 675.27, 676.02, 676.12, 676.13, 676.17-676.19, 676.22, 676.23, 676.49.

#### **673.502 Unexcused delay; discharge.—**

(1) Where without excuse any necessary presentment or notice of dishonor is delayed beyond the time when it is due:

(a) Any indorser is discharged; and

(b) Any drawer or the acceptor of a draft payable at a bank or the maker of a note payable at a bank who because the drawee or payor bank becomes insolvent during the delay is deprived of funds maintained with the drawee or payor bank to cover the instrument may discharge his liability by written assignment to the holder of his rights against the drawee or payor bank in respect of such funds, but such drawer, acceptor or maker is not otherwise discharged.

(2) Where without excuse a necessary protest is delayed beyond the time when it is due any drawer or indorser is discharged.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 3-502, U.C.C.; supersedes ss. 674.09, 674.72, 675.06, 676.13, 676.17, 676.19, 676.49.

#### **673.503 Time of presentment.—**

(1) Unless a different time is expressed in the instrument the time for any presentment is determined as follows:

(a) Where an instrument is payable at or a fixed period after a stated date any presentment for acceptance must be made on or before the date it is payable;

(b) Where an instrument is payable after sight it must either be presented for acceptance or negotiated within a reasonable time after date or issue whichever is later;

(c) Where an instrument shows the date on which it is payable presentment for payment is due on that date;

(d) Where an instrument is accelerated presentment for payment is due within a reasonable time after the acceleration;

(e) With respect to the liability of any secondary party presentment for acceptance or payment of any other instrument is due within a reasonable time after such party becomes liable thereon.

(2) A reasonable time for presentment is determined by the nature of the instrument, any usage of banking or trade and the facts of the particular case.

In the case of an uncertified check which is drawn and payable within the United States and which is not a draft drawn by a bank the following are presumed to be reasonable periods within which to present for payment or to initiate bank collection:

(a) With respect to the liability of the drawer, 30 days after date or issue whichever is later; and

(b) With respect to the liability of an indorser, 7 days after his indorsement.

(3) Where any presentment is due on a day which is not a full business day for either the person making presentment or the party to pay or accept, presentment is due on the next following day which is a full business day for both parties.

(4) Presentment to be sufficient must be made at a reasonable hour, and if at a bank during its banking day.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 3-503, U.C.C.; supersedes ss. 674.73, 674.75, 674.78, 675.03, 676.13, 676.15, 676.49, 674.01.

#### **673.504 How presentment made.—**

(1) Presentment is a demand for acceptance or payment made upon the maker, acceptor, drawee or other payor by or on behalf of the holder.

(2) Presentment may be made:

(a) By mail, in which event the time of presentment is determined by the time of receipt of the mail; or

(b) Through a clearinghouse; or

(c) At the place of acceptance or payment specified in the instrument or if there be none at the place of business or residence of the party to accept or pay. If neither the party to accept or pay nor anyone authorized to act for him is present or accessible at such place presentment is excused.

(3) It may be made:

(a) To any one of two or more makers, acceptors, drawees or other payors; or

(b) To any person who has authority to make or refuse the acceptance or payment.

(4) A draft accepted or a note made payable at a bank in the United States must be presented at such bank.

(5) In the cases described in s. 674.210 presentment may be made in the manner and with the result stated in that section.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 3-504, U.C.C.; supersedes ss. 674.75, 674.76, 674.80, 674.81, 676.14.

#### **673.505 Rights of party to whom presentment is made.—**

(1) The party to whom presentment is made may without dishonor require:

(a) Exhibition of the instrument; and

(b) Reasonable identification of the person making presentment and evidence of his authority to make it if made for another; and

(c) That the instrument be produced for acceptance or payment at a place specified in it, or if there be none at any place reasonable in the circumstances; and

(d) A signed receipt on the instrument for any partial or full payment and its surrender upon full payment.

(2) Failure to comply with any such requirement invalidates the presentment but the person presenting has a reasonable time in which to comply and the



time for acceptance or payment runs from the time of compliance.

History.—s. 1, ch. 65-254.

Note.—s. 3-505, U.C.C.; supersedes s. 674.77.

#### **673.506 Time allowed for acceptance or payment.—**

(1) Acceptance may be deferred without dishonor until the close of the next business day following presentment. The holder may also in a good faith effort to obtain acceptance and without either dishonor of the instrument or discharge of secondary parties allow postponement of acceptance for an additional business day.

(2) Except as a longer time is allowed in the case of documentary drafts drawn under a letter of credit, and unless an earlier time is agreed to by the party to pay, payment of an instrument may be deferred without dishonor pending reasonable examination to determine whether it is properly payable, but payment must be made in any event before the close of business on the day of presentment.

History.—s. 1, ch. 65-254.

Note.—s. 3-506, U.C.C.; supersedes s. 676.07.

#### **673.507 Dishonor; holder's right of recourse; term allowing re-presentment.—**

(1) An instrument is dishonored when:

(a) A necessary or optional presentment is duly made and due acceptance or payment is refused or cannot be obtained within the prescribed time or in case of bank collections the instrument is seasonably returned by the midnight deadline (s. 674.301); or

(b) Presentment is excused and the instrument is not duly accepted or paid.

(2) Subject to any necessary notice of dishonor and protest, the holder has upon dishonor an immediate right of recourse against the drawers and indorsers.

(3) Return of an instrument for lack of proper indorsement is not dishonor.

(4) A term in a draft or an indorsement thereof allowing a stated time for re-presentment in the event of any dishonor of the draft by nonacceptance if a time draft or by nonpayment if a sight draft gives the holder as against any secondary party bound by the term an option to waive the dishonor without affecting the liability of the secondary party and he may present again up to the end of the stated time.

History.—s. 1, ch. 65-254.

Note.—s. 3-507, U.C.C.; supersedes ss. 675.01, 676.17.

#### **673.508 Notice of dishonor.—**

(1) Notice of dishonor may be given to any person who may be liable on the instrument by or on behalf of the holder or any party who has himself received notice, or any other party who can be compelled to pay the instrument. In addition an agent or bank in whose hands the instrument is dishonored may give notice to his principal or customer or to another agent or bank from which the instrument was received.

(2) Any necessary notice must be given by a bank before its midnight deadline and by any other person before midnight of the third business day after dishonor or receipt of notice of dishonor.

(3) Notice may be given in any reasonable manner. It may be oral or written and in any terms which

identify the instrument and state that it has been dishonored. A misdescription which does not mislead the party notified does not vitiate the notice. Sending the instrument bearing a stamp, ticket or writing stating that acceptance or payment has been refused or sending a notice of debit with respect to the instrument is sufficient.

(4) Written notice is given when sent although it is not received.

(5) Notice to one partner is notice to each although the firm has been dissolved.

(6) When any party is in insolvency proceedings instituted after the issue of the instrument notice may be given either to the party or to the representative of his estate.

(7) When any party is dead or incompetent notice may be sent to his last known address or given to his personal representative.

(8) Notice operates for the benefit of all parties who have rights on the instrument against the party notified.

History.—s. 1, ch. 65-254.

Note.—s. 3-508, U.C.C.; supersedes ss. 675.07-675.21.

#### **673.509 Protest; noting for protest.—**

(1) A protest is a certificate of dishonor made under the hand and seal of a United States consul or vice consul or a notary public or other person authorized to certify dishonor by the law of the place where dishonor occurs. It may be made upon information satisfactory to such person.

(2) The protest must identify the instrument and certify either that due presentment has been made or the reason why it is excused and that the instrument has been dishonored by nonacceptance or nonpayment.

(3) The protest may also certify that notice of dishonor has been given to all parties or to specified parties.

(4) Subject to subsection (5) any necessary protest is due by the time that notice of dishonor is due.

(5) If, before protest is due, an instrument has been noted for protest by the officer to make protest, the protest may be made at any time thereafter as of the date of the noting.

History.—s. 1, ch. 65-254.

Note.—s. 3-509, U.C.C.; supersedes ss. 676.20, 676.21, 676.23, 676.25.

**673.510 Evidence of dishonor and notice of dishonor.—**The following are admissible as evidence and create a presumption of dishonor and of any notice of dishonor therein shown:

(1) A document regular in form as provided in the preceding section which purports to be a protest;

(2) The purported stamp or writing of the drawee, payor bank or presenting bank on the instrument or accompanying it stating that acceptance or payment has been refused for reasons consistent with dishonor;

(3) Any book or record of the drawee, payor bank, or any collecting bank kept in the usual course of business which shows dishonor, even though there is no evidence of who made the entry.

History.—s. 1, ch. 65-254.

Note.—s. 3-510, U.C.C.

**673.511 Waived or excused presentment, protest, or notice of dishonor, or delay therein.—**

(1) Delay in presentment, protest or notice of dishonor is excused when the party is without notice that it is due or when the delay is caused by circumstances beyond his control and he exercises reasonable diligence after the cause of the delay ceases to operate.

(2) Presentment or notice or protest as the case may be is entirely excused when:

(a) The party to be charged has waived it expressly or by implication either before or after it is due; or

(b) Such party has himself dishonored the instrument or has countermanded payment or otherwise has no reason to expect or right to require that the instrument be accepted or paid; or

(c) By reasonable diligence the presentment or protest cannot be made or the notice given.

(3) Presentment is also entirely excused when:

(a) The maker, acceptor or drawee of any instrument except a documentary draft is dead or in insolvency proceedings instituted after the issue of the instrument; or

(b) Acceptance or payment is refused but not for want of proper presentment.

(4) Where a draft has been dishonored by nonacceptance a later presentment for payment and any notice of dishonor and protest for nonpayment are excused unless in the meantime the instrument has been accepted.

(5) A waiver of protest is also a waiver of presentment and of notice of dishonor even though protest is not required.

(6) Where a waiver of presentment or notice or protest is embodied in the instrument itself it is binding upon all parties; but where it is written above the signature of an indorser it binds him only.

*History.*—s. 1, ch. 65-254.

*Note.*—s. 3-511, U.C.C.; supersedes ss. 674.82-674.84, 675.22, 675.23-675.25, 676.03, 676.16-676.18, 676.24.

**PART VI****DISCHARGE**

673.601 Discharge of parties.

673.602 Effect of discharge against holder in due course.

673.603 Payment or satisfaction.

673.604 Tender of payment.

673.605 Cancellation and renunciation.

673.606 Impairment of recourse or of collateral.

**673.601 Discharge of parties.—**

(1) The extent of the discharge of any party from liability on an instrument is governed by the sections on:

(a) Payment or satisfaction (s. 673.603); or

(b) Tender of payment (s. 673.604); or

(c) Cancellation or renunciation (s. 673.605); or

(d) Impairment of right of recourse or of collateral (s. 673.606); or

(e) Reacquisition of the instrument by a prior party (s. 673.208); or

(f) Fraudulent and material alteration (s. 673.407); or

(g) Certification of a check (s. 673.411); or

(h) Acceptance varying a draft (s. 673.412); or

(i) Unexcused delay in presentment or notice of dishonor or protest (s. 673.502).

(2) Any party is also discharged from his liability on an instrument to another party by any other act or agreement with such party which would discharge his simple contract for the payment of money.

(3) The liability of all parties is discharged when any party who has himself no right of action or recourse on the instrument:

(a) Reacquires the instrument in his own right; or

(b) Is discharged under any provision of this chapter, except as otherwise provided with respect to discharge for impairment of recourse or of collateral (s. 673.606).

*History.*—s. 1, ch. 65-254.

*Note.*—s. 3-601, U.C.C.; supersedes ss. 675.28, 675.29.

**673.602 Effect of discharge against holder in due course.**—No discharge of any party provided by this chapter is effective against a subsequent holder in due course unless he has notice thereof when he takes the instrument.

*History.*—s. 1, ch. 65-254.

*Note.*—s. 3-602, U.C.C.

**673.603 Payment or satisfaction.—**

(1) The liability of any party is discharged to the extent of his payment or satisfaction to the holder even though it is made with knowledge of a claim of another person to the instrument unless prior to such payment or satisfaction the person making the claim either supplies indemnity deemed adequate by the party seeking the discharge or enjoins payment or satisfaction by order of a court of competent jurisdiction in an action in which the adverse claimant and the holder are parties. This subsection does not, however, result in the discharge of the liability:

(a) Of a party who in bad faith pays or satisfies a holder who acquired the instrument by theft or who (unless having the rights of a holder in due course) holds through one who so acquired it; or

(b) Of a party (other than an intermediary bank or a payor bank which is not a depository bank) who pays or satisfies the holder of an instrument which has been restrictively indorsed in a manner not consistent with the terms of such restrictive indorsement.

(2) Payment or satisfaction may be made with the consent of the holder by any person including a stranger to the instrument. Surrender of the instrument to such a person gives him the rights of a transferee (s. 673.201).

*History.*—s. 1, ch. 65-254.

*Note.*—s. 3-603, U.C.C.; supersedes ss. 674.53, 675.05, 675.28, 675.29, 676.36-676.40.

**673.604 Tender of payment.—**

(1) Any party making tender of full payment to a holder when or after it is due is discharged to the extent of all subsequent liability for interest, costs and attorney's fees.

(2) The holder's refusal of such tender wholly discharges any party who has a right of recourse against the party making the tender.

(3) Where the maker or acceptor of an instrument payable otherwise than on demand is able and ready to pay at every place of payment specified in the instrument when it is due, it is equivalent to tender.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 3-604, U.C.C.; supersedes ss. 674.72, 675.28.

#### **673.605 Cancellation and renunciation.—**

(1) The holder of an instrument may even without consideration discharge any party:

(a) In any manner apparent on the face of the instrument or the indorsement, as by intentionally canceling the instrument or the party's signature by destruction or mutilation, or by striking out the party's signature; or

(b) By renouncing his rights by a writing signed and delivered or by surrender of the instrument to the party to be discharged.

(2) Neither cancellation nor renunciation without surrender of the instrument affects the title thereto.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 3-605, U.C.C.; supersedes ss. 674.50, 675.28, 675.30, 675.31.

#### **673.606 Impairment of recourse or of collateral.—**

(1) The holder discharges any party to the instrument to the extent that without such party's consent the holder:

(a) Without express reservation of rights releases or agrees not to sue any person against whom the party has to the knowledge of the holder a right of recourse or agrees to suspend the right to enforce against such person the instrument or collateral or otherwise discharges such person, except that failure or delay in effecting any required presentment, protest or notice of dishonor with respect to any such person does not discharge any party as to whom presentment, protest or notice of dishonor is effective or unnecessary; or

(b) Unjustifiably impairs any collateral for the instrument given by or on behalf of the party or any person against whom he has a right of recourse.

(2) By express reservation of rights against a party with a right of recourse the holder preserves:

(a) All his rights against such party as of the time when the instrument was originally due; and

(b) The right of the party to pay the instrument as of that time; and

(c) All rights of such party to recourse against others.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 3-606, U.C.C.; supersedes s. 675.28.

### **PART VII**

#### **ADVICE OF INTERNATIONAL SIGHT DRAFT**

**673.701** Letter of advice of international sight draft.

#### **673.701 Letter of advice of international sight draft.—**

(1) A "letter of advice" is a drawer's communication to the drawee that a described draft has been drawn.

(2) Unless otherwise agreed when a bank receives from another bank a letter of advice of an international sight draft the drawee bank may immediately debit the drawer's account and stop the running of interest pro tanto. Such a debit and any resulting credit to any account covering outstanding drafts leaves in the drawer full power to stop payment or otherwise dispose of the amount and creates no trust or interest in favor of the holder.

(3) Unless otherwise agreed and except where a draft is drawn under a credit issued by the drawee, the drawee of an international sight draft owes the drawer no duty to pay an unadvised draft but if it does so and the draft is genuine, may appropriately debit the drawer's account.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 3-701, U.C.C.

### **PART VIII**

#### **MISCELLANEOUS**

**673.801** Drafts in a set.

**673.802** Effect of instrument on obligation for which it is given.

**673.803** Notice to third party.

**673.804** Lost, destroyed or stolen instruments.

**673.805** Instruments not payable to order or to bearer.

#### **673.801 Drafts in a set.—**

(1) Where a draft is drawn in a set of parts, each of which is numbered and expressed to be an order only if no other part has been honored, the whole of the parts constitutes one draft but a taker of any part may become a holder in due course of the draft.

(2) Any person who negotiates, indorses or accepts a single part of a draft drawn in a set thereby becomes liable to any holder in due course of that part as if it were the whole set, but as between different holders in due course to whom different parts have been negotiated the holder whose title first accrues has all rights to the draft and its proceeds.

(3) As against the drawee the first presented part of a draft drawn in a set is the part entitled to payment, or if a time draft to acceptance and payment. Acceptance of any subsequently presented part renders the drawee liable thereon under subsection (2). With respect both to a holder and to the drawer payment of a subsequently presented part of a draft payable at sight has the same effect as payment of a check notwithstanding an effective stop-order (s. 674.407).

(4) Except as otherwise provided in this section, where any part of a draft in a set is discharged by payment or otherwise the whole draft is discharged.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 3-801, U.C.C.; supersedes ss. 676.41-676.46.

#### **673.802 Effect of instrument on obligation for which it is given.—**

(1) Unless otherwise agreed where an instrument is taken for an underlying obligation:

(a) The obligation is pro tanto discharged if a bank is drawer, maker or acceptor of the instrument and there is no recourse on the instrument against the underlying obligor; and



(b) In any other case the obligation is suspended pro tanto until the instrument is due or if it is payable on demand until its presentment. If the instrument is dishonored action may be maintained on either the instrument or the obligation; discharge of the underlying obligor on the instrument also discharges him on the obligation.

(2) The taking in good faith of a check which is not postdated does not of itself so extend the time on the original obligation as to discharge a surety.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 3-802, U.C.C.

**673.803 Notice to third party.**—Where a defendant is sued for breach of an obligation for which a third person is answerable over under this chapter he may give the third person written notice of the litigation, and the person notified may then give similar notice to any other person who is answerable over to him under this chapter. If the notice states that the person notified may come in and defend and that if the person notified does not do so he will in any action against him by the person giving the notice be bound by any determination of fact common to the 2 litigations, then unless after reasonable receipt of the notice the person notified does come in

and defend he is so bound.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 3-803, U.C.C.

**673.804 Lost, destroyed or stolen instruments.**—The owner of an instrument which is lost, whether by destruction, theft or otherwise, may maintain an action in his own name and recover from any party liable thereon upon due proof of his ownership, the facts which prevent his production of the instrument and its terms. The court may require security indemnifying the defendant against loss by reason of further claims on the instrument.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 3-804, U.C.C.

**673.805 Instruments not payable to order or to bearer.**—This chapter applies to any instrument whose terms do not preclude transfer and which is otherwise negotiable within this chapter but which is not payable to order or to bearer, except that there can be no holder in due course of such an instrument.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 3-805, U.C.C.

## CHAPTER 674

## UNIFORM COMMERCIAL CODE: BANK DEPOSITS AND COLLECTIONS

## ARTICLE 4

Note.—Pursuant to s. 69, ch. 69-353, the editors have altered the numbers of all sections making up this chapter by deleting the digit and hyphen immediately following the decimal point. The purpose is to conform the numbering of the Code sections with the decimal numbering system used in other chapters of the Florida Statutes. The visual relationship between Florida Statutes section numbers and Code section number is not destroyed by this alteration; the digit preceding the decimal point coincides with the Code article number, and the digits following the decimal point coincide with the Code section numbers.

## PART I GENERAL PROVISIONS AND DEFINITIONS (ss. 674.101-674.109)

PART II COLLECTION OF ITEMS; DEPOSITARY AND COLLECTING BANKS  
(ss. 674.201-674.214)

## PART III COLLECTION OF ITEMS; PAYOR BANKS (ss. 674.301-674.303)

PART IV RELATIONSHIP BETWEEN PAYOR BANK AND ITS CUSTOMER  
(ss. 674.401-674.407)

## PART V COLLECTION OF DOCUMENTARY DRAFTS (ss. 674.501-674.504)

## PART I

GENERAL PROVISIONS AND  
DEFINITIONS

- 674.101 Short title.
- 674.102 Applicability.
- 674.103 Variation by agreement; measure of damages; certain action constituting ordinary care.
- 674.104 Definitions and index of definitions.
- 674.105 "Depositary bank"; "Intermediary bank"; "Collecting bank"; "Payor bank"; "Presenting bank"; "Remitting bank".
- 674.106 Separate office of a bank.
- 674.107 Time of receipt of items.
- 674.108 Delays.
- 674.109 Process of posting.

**674.101 Short title.**—Chapter 674 shall be known and may be cited as the "Uniform Commercial Code—Bank Deposits and Collections."

**History.**—s. 1, ch. 65-254.

**Note.**—s. 4-101, U.C.C.

**674.102 Applicability.**—

(1) To the extent that items within this chapter are also within the scope of chapters 673 and 678, they are subject to the provisions of those chapters. In the event of conflict the provisions of this chapter govern those of chapter 673 but the provisions of chapter 678 govern those of this chapter.

(2) The liability of a bank for action or nonaction with respect to any item handled by it for purposes of presentment, payment or collection is governed by the law of the place where the bank is located. In the case of action or nonaction by or at a branch or separate office of a bank, its liability is governed by the law of the place where the branch or separate office is located.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 4-102, U.C.C.; supersedes s. 659.33.

**674.103 Variation by agreement; measure of damages; certain action constituting ordinary care.**—

(1) The effect of the provisions of this chapter may be varied by agreement except that no agreement can disclaim a bank's responsibility for its own lack of good faith or failure to exercise ordinary care or can limit the measure of damages for such lack or failure; but the parties may by agreement determine the standards by which such responsibility is to be measured if such standards are not manifestly unreasonable.

(2) Federal reserve regulations and operating letters, clearinghouse rules, and the like, have the effect of agreements under subsection (1), whether or not specifically assented to by all parties interested in items handled.

(3) Action or nonaction approved by this chapter or pursuant to federal reserve regulations or operating letters constitutes the exercise of ordinary care and, in the absence of special instructions, action or nonaction consistent with clearinghouse rules and the like or with a general banking usage not disapproved by this chapter, prima facie constitutes the exercise of ordinary care.

(4) The specification or approval of certain procedures by this chapter does not constitute disapproval of other procedures which may be reasonable under the circumstances.

(5) The measure of damages for failure to exercise ordinary care in handling an item is the amount of the item reduced by an amount which could not have been realized by the use of ordinary care, and where there is bad faith it includes other damages, if any, suffered by the party as a proximate consequence.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 4-103, U.C.C.; supersedes s. 659.33.

**674.104 Definitions and index of definitions.**—

(1) In this chapter unless the context otherwise requires:

(a) "Account" means any account with a bank and includes a checking, time, interest or savings account;

(b) "Afternoon" means the period of a day between noon and midnight;

(c) "Banking day" means that part of any day on which a bank is open to the public for carrying on substantially all of its banking functions;

(d) "Clearinghouse" means any association of banks or other payors regularly clearing items;

(e) "Customer" means any person having an account with a bank or for whom a bank has agreed to collect items and includes a bank carrying an account with another bank;

(f) "Documentary draft" means any negotiable or nonnegotiable draft with accompanying documents, securities or other papers to be delivered against honor of the draft;

(g) "Item" means any instrument or electronically recorded, stored, or transmitted message for the payment of money even though it is not negotiable, but does not include money, and a photographic or other similar reproduction of an item may be treated in all respects as the original item by any payor bank or nonbank payor of the item upon being furnished with an affidavit that the original item has been lost or destroyed and upon being furnished with security satisfactory to such payor;

(h) "Midnight deadline" with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later;

(i) "Properly payable" includes the availability of funds for payment at the time of decision to pay or dishonor;

(j) "Settle" means to pay in cash, by clearinghouse settlement, in a charge or credit or by remittance, or otherwise as instructed. A settlement may be either provisional or final;

(k) "Suspends payments" with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over or that it ceases or refuses to make payments in the ordinary course of business.

(2) Other definitions applying to this chapter and the sections in which they appear are:

"Collecting bank," s. 674.105.

"Depository bank," s. 674.105.

"Intermediary bank," s. 674.105.

"Payor bank," s. 674.105.

"Presenting bank," s. 674.105.

"Remitting bank," s. 674.105.

(3) The following definitions in other chapters apply to this chapter:

"Acceptance," s. 673.410.

"Certificate of deposit," s. 673.104.

"Certification," s. 673.411.

"Check," s. 673.104.

"Draft," s. 673.104.

"Holder in due course," s. 673.302.

"Notice of dishonor," s. 673.508.

"Presentment," s. 673.504.

"Protest," s. 673.509.

"Secondary party," s. 673.102.

(4) In addition chapter 671 contains general defi-

nitions and principles of construction and interpretation applicable throughout this chapter.

History.—s. 1, ch. 65-254; s. 1, ch. 71-44; s. 1, ch. 75-73.

Note.—s. 4-104, U.C.C.

**674.105 "Depository bank"; "Intermediary bank"; "Collecting bank"; "Payor bank"; "Presenting bank"; "Remitting bank".**—In this chapter unless the context otherwise requires:

(1) "Depository bank" means the first bank to which an item is transferred for collection even though it is also the payor bank;

(2) "Payor bank" means a bank by which an item is payable as drawn or accepted;

(3) "Intermediary bank" means any bank to which an item is transferred in course of collection except the depository or payor bank;

(4) "Collecting bank" means any bank handling the item for collection except the payor bank;

(5) "Presenting bank" means any bank presenting an item except a payor bank;

(6) "Remitting bank" means any payor or intermediary bank remitting for an item.

History.—s. 1, ch. 65-254.

Note.—s. 4-105, U.C.C.

**674.106 Separate office of a bank.**—A branch or separate office of a bank is a separate bank for the purpose of computing the time within which, and determining the place at or to which, action may be taken or notices or orders shall be given under this chapter and under chapter 673. The receipt of any notice or order by, or the knowledge of, one branch or separate office of a bank is not actual or constructive notice to, or knowledge of, any other branch or separate office of the same bank and does not impair the right of such other branch or separate office to be a holder in due course of an item.

History.—s. 1, ch. 65-254; s. 1, ch. 77-384; s. 173, ch. 79-164.

Note.—s. 4-106, U.C.C.

**674.107 Time of receipt of items.**—

(1) For the purpose of allowing time to process items, prove balances and make the necessary entries on its books to determine its position for the day, a bank may fix an afternoon hour of 2 p.m. or later as a cutoff hour for the handling of money and items and the making of entries on its books.

(2) Any item or deposit of money received on any day after a cutoff hour so fixed or after the close of the banking day may be treated as being received at the opening of the next banking day.

History.—s. 1, ch. 65-254.

Note.—s. 4-107, U.C.C.

cf.—s. 659.27 Transactions outside of regular banking hours or on holidays.  
s. 659.271 Permissive legal holidays; Wednesdays, Thursdays, or Saturdays.

**674.108 Delays.**—

(1) Unless otherwise instructed, a collecting bank in a good faith effort to secure payment may, in the case of specific items and with or without the approval of any person involved, waive, modify or extend time limits imposed or permitted by this code for a period not in excess of an additional banking day without discharge of secondary parties and without liability to its transferor or any prior party.

(2) Delay by a collecting bank or payor bank beyond time limits prescribed or permitted by this code



or by instructions is excused if caused by interruption of communication facilities, suspension of payments by another bank, war, emergency conditions or other circumstances beyond the control of the bank provided it exercises such diligence as the circumstances require.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 4-108, U.C.C.

**674.109 Process of posting.**—The “process of posting” means the usual procedure followed by a payor bank in determining to pay an item and in recording the payment including one or more of the following or other steps as determined by the bank:

- (1) Verification of any signature;
- (2) Ascertaining that sufficient funds are available;
- (3) Affixing a “paid” or other stamp;
- (4) Entering a charge or entry to a customer’s account;
- (5) Correcting or reversing an entry or erroneous action with respect to the item.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 4-109, U.C.C.; supersedes s. 676.55.

## PART II

### COLLECTION OF ITEMS; DEPOSITARY AND COLLECTING BANKS

- 674.201 Presumption and duration of agency status of collecting banks and provisional status of credits; applicability of chapter; item indorsed “pay any bank.”
- 674.202 Responsibility for collection; when action seasonable.
- 674.203 Effect of instructions.
- 674.204 Methods of sending and presenting; sending direct to payor bank.
- 674.205 Supplying missing indorsement; no notice from prior indorsement.
- 674.206 Transfer between banks.
- 674.207 Warranties of customer and collecting bank on transfer or presentment of items; time for claims.
- 674.208 Security interest of collecting bank in items, accompanying documents and proceeds.
- 674.209 When bank gives value for purposes of holder in due course.
- 674.210 Presentment by notice of item not payable by, through or at a bank; liability of secondary parties.
- 674.211 Media of remittance; provisional and final settlement in remittance cases.
- 674.212 Right of charge-back or refund.
- 674.213 Final payment of item by payor bank; when provisional debits and credits become final; when certain credits become available for withdrawal.
- 674.214 Insolvency and preference.

**674.201 Presumption and duration of agency status of collecting banks and provisional status of credits; applicability of chapter; item indorsed “pay any bank.”**—

- (1) Unless a contrary intent clearly appears and

prior to the time that a settlement given by a collecting bank for an item is or becomes final (s. 674.211(3) and ss. 674.212 and 674.213) the bank is an agent or subagent of the owner of the item and any settlement given for the item is provisional. This provision applies regardless of the form of indorsement or lack of indorsement and even though credit given for the item is subject to immediate withdrawal as of right or is in fact withdrawn; but the continuance of ownership of an item by its owner and any rights of the owner to proceeds of the item are subject to rights of a collecting bank such as those resulting from outstanding advances on the item and valid rights of setoff. When an item is handled by banks for purposes of presentment, payment and collection, the relevant provisions of this chapter apply even though action of parties clearly establishes that a particular bank has purchased the item and is the owner of it.

(2) After an item has been indorsed with the words “pay any bank” or the like, only a bank may acquire the rights of a holder:

(a) Until the item has been returned to the customer initiating collection; or

(b) Until the item has been specially indorsed by a bank to a person who is not a bank.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 4-201, U.C.C.

**674.202 Responsibility for collection; when action seasonable.**—

(1) A collecting bank must use ordinary care in:

- (a) Presenting an item or sending it for presentment; and

(b) Sending notice of dishonor or nonpayment or returning an item other than a documentary draft to the bank’s transferor or directly to the depositary bank under s. 674.212(2) after learning that the item has not been paid or accepted, as the case may be; and

(c) Settling for an item when the bank receives final settlement; and

(d) Making or providing for any necessary protest; and

(e) Notifying its transferor of any loss or delay in transit within a reasonable time after discovery thereof.

(2) A collecting bank taking proper action before its midnight deadline following receipt of an item, notice or payment acts seasonably; taking proper action within a reasonably longer time may be seasonable but the bank has the burden of so establishing.

(3) Subject to subsection (1)(a), a bank is not liable for the insolvency, neglect, misconduct, mistake or default of another bank or person or for loss or destruction of an item in transit or in the possession of others.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 4-202, U.C.C.; supersedes s. 674.74.

**674.203 Effect of instructions.**—Subject to the provisions of chapter 673 concerning conversion of instruments (s. 673.419) and the provisions of both chapter 673 and this chapter concerning restrictive indorsements only a collecting bank’s transferor can give instructions which affect the bank or constitute

notice to it and a collecting bank is not liable to prior parties for any action taken pursuant to such instructions or in accordance with any agreement with its transferor.

**History.**—s. 1, ch. 65-254.  
**Note.**—s. 4-203, U.C.C.

**674.204 Methods of sending and presenting; sending direct to payor bank.—**

(1) A collecting bank must send items by reasonably prompt method taking into consideration any relevant instructions, the nature of the item, the number of such items on hand, and the cost of collection involved and the method generally used by it or others to present such items.

(2) A collecting bank may send:

(a) Any item direct to the payor bank;  
(b) Any item to any nonbank payor if authorized by its transferor; and

(c) Any item other than documentary drafts to any nonbank payor, if authorized by federal reserve regulation or operating letter, clearinghouse rule, or the like.

(3) Presentment may be made by a presenting bank at a place where the payor bank has requested that presentment be made.

**History.**—s. 1, ch. 65-254.  
**Note.**—s. 4-204, U.C.C.

**674.205 Supplying missing indorsement; no notice from prior indorsement.—**

(1) A depository bank which has taken an item for collection may supply any indorsement of the customer which is necessary to title unless the item contains the words "payee's indorsement required" or the like. In the absence of such a requirement a statement placed on the item by the depository bank to the effect that the item was deposited by a customer or credited to his account is effective as the customer's indorsement.

(2) An intermediary bank, or payor bank which is not a depository bank, is neither given notice nor otherwise affected by a restrictive indorsement of any person except the bank's immediate transferor.

**History.**—s. 1, ch. 65-254.  
**Note.**—s. 4-205, U.C.C.

**674.206 Transfer between banks.—**Any agreed method which identifies the transferor bank is sufficient for the item's further transfer to another bank.

**History.**—s. 1, ch. 65-254.  
**Note.**—s. 4-206, U.C.C.

**674.207 Warranties of customer and collecting bank on transfer or presentment of items; time for claims.—**

(1) Each customer or collecting bank who obtains payment or acceptance of an item and each prior customer and collecting bank warrants to the payor bank or other payor who in good faith pays or accepts the item that:

(a) He has a good title to the item or is authorized to obtain payment or acceptance on behalf of one who has a good title; and

(b) He has no knowledge that the signature of the maker or drawer is unauthorized, except that this warranty is not given by any customer or collecting

bank that is a holder in due course and acts in good faith:

1. To a maker with respect to the maker's own signature; or

2. To a drawer with respect to the drawer's own signature, whether or not the drawer is also the drawee; or

3. To an acceptor of an item if the holder in due course took the item after the acceptance or obtained the acceptance without knowledge that the drawer's signature was unauthorized; and

(c) The item has not been materially altered, except that this warranty is not given by any customer or collecting bank that is a holder in due course and acts in good faith:

1. To the maker of a note; or

2. To the drawer of a draft whether or not the drawer is also the drawee; or

3. To the acceptor of an item with respect to an alteration made prior to the acceptance if the holder in due course took the item after the acceptance, even though the acceptance provided "payable as originally drawn" or equivalent terms; or

4. To the acceptor of an item with respect to an alteration made after the acceptance.

(2) Each customer and collecting bank who transfers an item and receives a settlement or other consideration for it warrants to his transferee and to any subsequent collecting bank who takes the item in good faith that:

(a) He has a good title to the item or is authorized to obtain payment or acceptance on behalf of one who has a good title and the transfer is otherwise rightful; and

(b) All signatures are genuine or authorized; and

(c) The item has not been materially altered; and

(d) No defense of any party is good against him; and

(e) He has no knowledge of any insolvency proceeding instituted with respect to the maker or acceptor or the drawer of an unaccepted item.

In addition each customer and collecting bank so transferring an item and receiving a settlement or other consideration engages that upon dishonor and any necessary notice of dishonor and protest he will take up the item.

(3) The warranties and the engagement to honor set forth in the two preceding subsections arise notwithstanding the absence of indorsement or words of guaranty or warranty in the transfer or presentment and a collecting bank remains liable for their breach despite remittance to its transferor. Damages for breach of such warranties or engagement to honor shall not exceed the consideration received by the customer or collecting bank responsible plus finance charges and expenses related to the item, if any.

(4) Unless a claim for breach of warranty under this section is made within a reasonable time after the person claiming learns of the breach, the person liable is discharged to the extent of any loss caused by the delay in making claim.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 4-207, U.C.C.; supersedes ss. 674.67, 674.71.

**674.208 Security interest of collecting bank in items, accompanying documents and proceeds.—**

(1) A bank has a security interest in an item and any accompanying documents or the proceeds of either:

(a) In case of an item deposited in an account to the extent to which credit given for the item has been withdrawn or applied;

(b) In case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given whether or not the credit is drawn upon and whether or not there is a right of charge-back; or

(c) If it makes an advance on or against the item.

(2) When credit which has been given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part the security interest remains upon all the items, any accompanying documents or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

(3) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents and proceeds. To the extent and so long as the bank does not receive final settlement for the item or give up possession of the item or accompanying documents for purposes other than collection, the security interest continues and is subject to the provisions of chapter 679 except that:

(a) No security agreement is necessary to make the security interest enforceable (s. 679.203(1)(b)); and

(b) No filing is required to perfect the security interest; and

(c) The security interest has priority over conflicting perfected security interests in the item, accompanying documents or proceeds.

History.—s. 1, ch. 65-254.

Note.—s. 4-208, U.C.C.

**674.209 When bank gives value for purposes of holder in due course.—**For purposes of determining its status as a holder in due course, the bank has given value to the extent that it has a security interest in an item provided that the bank otherwise complies with the requirements of s. 673.302 on what constitutes a holder in due course.

History.—s. 1, ch. 65-254.

Note.—s. 4-209, U.C.C.; supersedes s. 674.30.

**674.210 Presentment by notice of item not payable by, through or at a bank; liability of secondary parties.—**

(1) Unless otherwise instructed, a collecting bank may present an item not payable by, through or at a bank by sending to the party to accept or pay a written notice that the bank holds the item for acceptance or payment. The notice must be sent in time to be received on or before the day when presentment is due and the bank must meet any requirement of the party to accept or pay under s. 673.505 by the close of the bank's next banking day after it knows of the requirement.

(2) Where presentment is made by notice and neither honor nor request for compliance with a re-

quirement under s. 673.505 is received by the close of business on the day after maturity or in the case of demand items by the close of business on the third banking day after notice was sent, the presenting bank may treat the item as dishonored and charge any secondary party by sending him notice of the facts.

History.—s. 1, ch. 65-254.

Note.—s. 4-210, U.C.C.; supersedes s. 674.77.

**674.211 Media of remittance; provisional and final settlement in remittance cases.—**

(1) A collecting bank may take in settlement of an item:

(a) A check of the remitting bank or of another bank on any bank except the remitting bank; or

(b) A cashier's check or similar primary obligation of a remitting bank which is a member of or clears through a member of the same clearinghouse or group as the collecting bank; or

(c) Appropriate authority to charge an account of the remitting bank or of another bank with the collecting bank; or

(d) If the item is drawn upon or payable by a person other than a bank, a cashier's check, certified check or other bank check or obligation.

(2) If before its midnight deadline the collecting bank properly dishonors a remittance check or authorization to charge on itself or presents or forwards for collection a remittance instrument of or on another bank which is of a kind approved by subsection (1) or has not been authorized by it, the collecting bank is not liable to prior parties in the event of the dishonor of such check, instrument, or authorization.

(3) A settlement for an item by means of a remittance instrument or authorization to charge is or becomes a final settlement as to both the person making and the person receiving the settlement:

(a) If the remittance instrument or authorization to charge is of a kind approved by subsection (1) or has not been authorized by the person receiving the settlement and in either case the person receiving the settlement acts seasonably before its midnight deadline in presenting, forwarding for collection or paying the instrument or authorization—at the time the remittance instrument or authorization is finally paid by the payor by which it is payable;

(b) If the person receiving the settlement has authorized remittance by a nonbank check or obligation or by a cashier's check or similar primary obligation of or a check upon the payor or other remitting bank which is not of a kind approved by subsection (1)(b)—at the time of the receipt of such remittance check or obligation; or

(c) If in a case not covered by paragraphs (a) or (b) the person receiving the settlement fails to seasonably present, forward for collection, pay or return a remittance instrument or authorization to it to charge before its midnight deadline—at such midnight deadline.

History.—s. 1, ch. 65-254.

Note.—s. 4-211, U.C.C.

**674.212 Right of charge-back or refund.—**

(1) If a collecting bank has made provisional settlement with its customer for an item and itself fails



by reason of dishonor, suspension of payments by a bank or otherwise to receive a settlement for the item which is or becomes final, the bank may revoke the settlement given by it, charge back the amount of any credit given for the item to its customer's account or obtain refund from its customer whether or not it is able to return the items if by its midnight deadline or within a longer reasonable time after it learns the facts it returns the item or sends notification of the facts. These rights to revoke, charge back and obtain refund terminate if and when a settlement for the item received by the bank is or becomes final (ss. 674.211(3) and 674.213(2), (3)).

(2) Within the time and manner prescribed by this section and s. 674.301, an intermediary or payor bank, as the case may be, may return an unpaid item directly to the depository bank and may send for collection a draft on the depository bank and obtain reimbursement. In such case, if the depository bank has received provisional settlement for the item, it must reimburse the bank drawing the draft and any provisional credits for the item between banks shall become and remain final.

(3) A depository bank which is also the payor may charge back the amount of an item to its customer's account or obtain refund in accordance with the section governing return of an item received by a payor bank for credit on its books (s. 674.301).

(4) The right to charge back is not affected by:

(a) Prior use of the credit given for the item; or  
(b) Failure by any bank to exercise ordinary care with respect to the item but any bank so failing remains liable.

(5) A failure to charge back or claim refund does not affect other rights of the bank against the customer or any other party.

(6) If credit is given in dollars as the equivalent of the value of an item payable in a foreign currency the dollar amount of any charge-back or refund shall be calculated on the basis of the buying sight rate for the foreign currency prevailing on the day when the person entitled to the charge-back or refund learns that it will not receive payment in ordinary course.

History.—s. 1, ch. 65-254.  
Note.—s. 4-212, U.C.C.

**674.213 Final payment of item by payor bank; when provisional debits and credits become final; when certain credits become available for withdrawal.—**

(1) An item is finally paid by a payor bank when the bank has done any of the following, whichever happens first:

(a) Paid the item in cash; or  
(b) Settled for the item without reserving a right to revoke the settlement and without having such right under statute, clearinghouse rule or agreement; or

(c) Completed the process of posting the item to the indicated account of the drawer, maker or other person to be charged therewith; or

(d) Made a provisional settlement for the item and failed to revoke the settlement in the time and manner permitted by statute, clearinghouse rule or agreement and has not returned the item directly to the depository bank within the time and manner provided in s. 674.212(2). Upon a final payment un-

der paragraphs (b), (c) or (d) the payor bank shall be accountable for the amount of the item.

(2) If provisional settlement for an item between the presenting and payor banks is made through a clearinghouse or by debits or credits in an account between them, then to the extent that provisional debits or credits for the item are entered in accounts between the presenting and payor banks or between the presenting and successive prior collecting banks seriatim, they become final upon final payment of the item by the payor bank.

(3) If a collecting bank receives a settlement for an item which is or becomes final (ss. 674.211(3), 674.213(2)) the bank is accountable to its customer for the amount of the item and any provisional credit given for the item in an account with its customer becomes final.

(4) Subject to any right of the bank to apply the credit to an obligation of the customer, credit given by a bank for an item in an account with its customer becomes available for withdrawal as of right:

(a) In any case where the bank has received a provisional settlement for the item—when such settlement becomes final and the bank has had a reasonable time to learn that the settlement is final;

(b) In any case where the bank is both a depository bank and a payor bank and the item is finally paid—at the opening of the bank's second banking day following receipt of the item.

(5) A deposit of money in a bank is final when made but, subject to any right of the bank to apply the deposit to an obligation of the customer, the deposit becomes available for withdrawal as of right at the opening of the bank's next banking day following receipt of the deposit.

History.—s. 1, ch. 65-254; s. 1, ch. 67-172.  
Note.—s. 4-213, U.C.C.; supersedes s. 676.55.

**674.214 Insolvency and preference.—**

(1) Any item in or coming into the possession of a payor or collecting bank which suspends payment and which item is not finally paid shall be returned by the receiver, trustee or agent in charge of the closed bank to the presenting bank or the closed bank's customer.

(2) If a payor bank finally pays an item and suspends payments without making a settlement for the item with its customer or the presenting bank which settlement is or becomes final, the owner of the item has a preferred claim against the payor bank.

(3) If a payor bank gives or a collecting bank gives or receives a provisional settlement for an item and thereafter suspends payments, the suspension does not prevent or interfere with the settlement becoming final if such finality occurs automatically upon the lapse of certain time or the happening of certain events (ss. 674.211(3), 674.213(1)(d), (2), (3)).

(4) If a collecting bank receives from subsequent parties settlement for an item which settlement is or becomes final and suspends payments without making a settlement for the item with its customer which is or becomes final, the owner of the item has a preferred claim against such collecting bank.

History.—s. 1, ch. 65-254.  
Note.—s. 4-214, U.C.C.  
cf.—ss. 661.10-661.44 Re insolvency and liquidation of state banks or trust

companies; procedure, etc.

## PART III

## COLLECTION OF ITEMS; PAYOR BANKS

- 674.301 Deferred posting; recovery of payment by return of items; time of dishonor.
- 674.302 Payor bank's responsibility for late return of item.
- 674.303 When items subject to notice, stop-order, legal process or setoff; order in which items may be charged or certified.

**674.301 Deferred posting; recovery of payment by return of items; time of dishonor.—**

(1) Where an authorized settlement for a demand item (other than a documentary draft) received by a payor bank otherwise than for immediate payment over the counter has been made before midnight of the banking day of receipt the payor bank may revoke the settlement and recover any payment if before it has made final payment (s. 674.213(1)) and before its midnight deadline it:

- (a) Returns the item; or
- (b) Sends written notice of dishonor or nonpayment if the item is held for protest or is otherwise unavailable for return.

(2) If a demand item is received by a payor bank for credit on its books it may return such item or send notice of dishonor and may revoke any credit given or recover the amount thereof withdrawn by its customer, if it acts within the time limit and in the manner specified in the preceding subsection.

(3) Unless previous notice of dishonor has been sent an item is dishonored at the time when for purposes of dishonor it is returned or notice sent in accordance with this section.

(4) An item is returned:

(a) As to an item received through a clearinghouse, when it is delivered to the presenting or last collecting bank or to the clearinghouse or is sent or delivered in accordance with its rules; or

(b) In all other cases, when it is sent or delivered to the bank's customer or transferor or pursuant to his instructions.

History.—s. 1, ch. 65-254.

Note.—s. 4-301, U.C.C.; supersedes s. 676.55.

**674.302 Payor bank's responsibility for late return of item.—**In the absence of a valid defense such as breach of a presentment warranty (s. 674.207(1)), settlement effected or the like, if an item is presented on and received by a payor bank the bank is accountable for the amount of:

(1) A demand item other than a documentary draft whether properly payable or not if the bank, in any case where it is not also the depository bank, retains the item beyond midnight of the banking day of receipt without settling for it or, regardless of whether it is also the depository bank, does not pay or return the item or send notice of dishonor until after its midnight deadline; or

(2) Any other properly payable item unless within the time allowed for acceptance or payment of

that item the bank either accepts or pays the item or returns it and accompanying documents.

History.—s. 1, ch. 65-254.

Note.—s. 4-302, U.C.C.; supersedes s. 676.55.

**674.303 When items subject to notice, stop-order, legal process or setoff; order in which items may be charged or certified.—**

(1) Any knowledge, notice or stop-order received by, legal process served upon or setoff exercised by a payor bank, whether or not effective under other rules of law to terminate, suspend or modify the bank's right or duty to pay an item or to charge its customer's account for the item, comes too late to so terminate, suspend or modify such right or duty if the knowledge, notice, stop-order or legal process is received or served and a reasonable time for the bank to act thereon expires or the setoff is exercised after the bank has done any of the following:

- (a) Accepted or certified the item;
- (b) Paid the item in cash;
- (c) Settled for the item without reserving a right to revoke the settlement and without having such right under statute, clearinghouse rule or agreement;

(d) Completed the process of posting the item to the indicated account of the drawer, maker or other person to be charged therewith or otherwise has evidenced by examination of such indicated account and by action its decision to pay the item; or

(e) Become accountable for the amount of the item under s. 674.213(1)(d) and s. 674.302 dealing with the payor bank's responsibility for late return of items.

(2) Subject to the provisions of subsection (1) items may be accepted, paid, certified or charged to the indicated account of its customer in any order convenient to the bank.

History.—s. 1, ch. 65-254.

Note.—s. 4-303, U.C.C.; supersedes ss. 676.55, 659.26.

## PART IV

## RELATIONSHIP BETWEEN PAYOR BANK AND ITS CUSTOMER

- 674.401 When bank may charge customer's account.
- 674.402 Bank's liability to customer for wrongful dishonor.
- 674.403 Customer's right to stop payment; burden of proof of loss.
- 674.404 Bank not obligated to pay check more than 6 months old.
- 674.405 Death or incompetence of customer.
- 674.406 Customer's duty to discover and report unauthorized signature or alteration.
- 674.407 Payor bank's right to subrogation on improper payment.

**674.401 When bank may charge customer's account.—**

(1) As against its customer, a bank may charge against his account any item which is otherwise properly payable from that account even though the charge creates an overdraft.

(2) A bank which in good faith makes payment to

a holder may charge the indicated account of its customer according to:

- (a) The original tenor of his altered item; or
- (b) The tenor of his completed item, even though the bank knows the item has been completed unless the bank has notice that the completion was improper.

History.—s. 1, ch. 65-254.

Note.—s. 4-401, U.C.C.; supersedes ss. 674.15-674.17, 675.32.

**674.402 Bank's liability to customer for wrongful dishonor.**—A payor bank is liable to its customer for damages proximately caused by the wrongful dishonor of an item. When the dishonor occurs through mistake liability is limited to actual damages proved. If so proximately caused and proved damages may include damages for an arrest or prosecution of the customer or other consequential damages. Whether any consequential damages are proximately caused by the wrongful dishonor is a question of fact to be determined in each case.

History.—s. 1, ch. 65-254.

Note.—s. 4-402, U.C.C.; supersedes s. 659.33.

**674.403 Customer's right to stop payment; burden of proof of loss.**—

(1) A customer, or any person authorized to sign checks or make withdrawals on or from an account, may stop payment of any item payable, for or drawn against such customer's or customers' account but the same shall not be effective and the bank may disregard the same unless the order is in writing, is signed by such customer or authorized person, describes with certainty the item on which payment is to be stopped, and is served upon and received by an officer of the bank at the bankinghouse during regular banking hours and in such time and in such manner as to afford the bank a reasonable opportunity to act on it prior to the happening of any of the events described in s. 674.303, and in any event no bank shall be responsible or liable for failure to comply with any such order on the day the same is served upon or received by such bank unless such omission or failure to comply with the same on the day received result from the willful and intentional disregard of such order.

(2) An order may be disregarded by the bank 6 months after its receipt unless renewed in writing.

(3) The bank may be liable to its customer for the actual loss incurred by the customer resulting from the wrongful payment of an item contrary to a valid and binding stop-payment order, not exceeding the amount of the item unless the bank is guilty of gross negligence or unless such wrongful payment was made as a result of the willful and intentional disregard by the bank of such order. The burden of establishing the fact and amount of loss resulting from the wrongful payment of an item contrary to a binding stop-payment order is on the customer.

History.—Art. 10, s. 1, ch. 65-254.

Note.—The above section is not identical with the 1962 official U.C.C. text.

Note.—s. 4-403, U.C.C.; supersedes s. 659.32.

**674.404 Bank not obligated to pay check more than 6 months old.**—A bank is under no obligation to a customer having a checking account to pay a check, other than a certified check, which is

presented more than 6 months after its date, but it may charge its customer's account for a payment made thereafter in good faith.

History.—s. 1, ch. 65-254.

Note.—s. 4-404, U.C.C.; supersedes s. 659.31.

**674.405 Death or incompetence of customer.**—

(1) A payor or collecting bank's authority to accept, pay or collect an item or to account for proceeds of its collection if otherwise effective is not rendered ineffective by incompetence of a customer of either bank existing at the time the item is issued or its collection is undertaken if the bank does not know of an adjudication of incompetence. Neither death nor incompetence of a customer revokes such authority to accept, pay, collect or account until the bank knows of the fact of death or of an adjudication of incompetence and has reasonable opportunity to act on it.

(2) Even with knowledge a bank may for 10 days after the date of death pay or certify checks drawn on or prior to that date unless ordered to stop payment by a person claiming an interest in the account.

History.—s. 1, ch. 65-254.

Note.—s. 4-405, U.C.C.; supersedes ss. 659.39, 659.40.

**674.406 Customer's duty to discover and report unauthorized signature or alteration.**—

(1) When a bank sends to its customer a statement of account accompanied by items paid in good faith in support of the debit entries or holds the statement and items pursuant to a request or instructions of its customer or otherwise in a reasonable manner makes the statement and items available to the customer, the customer must exercise reasonable care and promptness to examine the statement and items to discover his unauthorized signature or any alteration on an item and must notify the bank promptly after discovery thereof.

(2) If the bank establishes that the customer failed with respect to an item to comply with the duties imposed on the customer by subsection (1) the customer is precluded from asserting against the bank:

(a) His unauthorized signature or any alteration on the item if the bank also establishes that it suffered a loss by reason of such failure; and

(b) An unauthorized signature or alteration by the same wrongdoer on any other item paid in good faith by the bank after the first item and statement was available to the customer for a reasonable period not exceeding 14 calendar days and before the bank receives notification from the customer of any such unauthorized signature or alteration.

(3) The preclusion under subsection (2) does not apply if the customer establishes lack of ordinary care on the part of the bank in paying the item(s).

(4) Without regard to care or lack of care of either the customer or the bank a customer who does not within 1 year from the time the statement and items are made available to the customer (subsection (1)) discover and report his unauthorized signature or any alteration on the face or back of the item or does not within 3 years from that time discover and report any unauthorized indorsement is precluded



from asserting against the bank such unauthorized signature or indorsement or such alteration.

(5) If under this section a payor bank has a valid defense against a claim of a customer upon or resulting from payment of an item and waives or fails upon request to assert the defense the bank may not assert against any collecting bank or other prior party presenting or transferring the item a claim based upon the unauthorized signature or alteration giving rise to the customer's claim.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 4-406, U.C.C.; supersedes s. 659.37, cf.—s. 659.35 Limitations; statements as correct.

**674.407 Payor bank's right to subrogation on improper payment.**—If a payor bank has paid an item over the stop-payment order of the drawer or maker or otherwise under circumstances giving a basis for objection by the drawer or maker, to prevent unjust enrichment and only to the extent necessary to prevent loss to the bank by reason of its payment of the item, the payor bank shall be subrogated to the rights:

(1) Of any holder in due course on the item against the drawer or maker; and

(2) Of the payee or any other holder of the item against the drawer or maker either on the item or under the transaction out of which the item arose; and

(3) Of the drawer or maker against the payee or any other holder of the item with respect to the transaction out of which the item arose.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 4-407, U.C.C.; supersedes s. 659.34.

## PART V

### COLLECTION OF DOCUMENTARY DRAFTS

**674.501 Handling of documentary drafts; duty to send for presentment and to notify customer of dishonor.**

**674.502 Presentment of "on arrival" drafts.**

**674.503 Responsibility of presenting bank for documents and goods; report of reasons for dishonor; referee in case of need.**

**674.504 Privilege of presenting bank to deal with goods; security interest for expenses.**

**674.501 Handling of documentary drafts; duty to send for presentment and to notify customer of dishonor.**—A bank which takes a documentary draft for collection must present or send the draft and accompanying documents for presentment and upon learning that the draft has not been paid or accepted in due course must seasonably notify its customer of such fact even though it may have discounted or bought the draft or extended credit available for withdrawal as of right.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 4-501, U.C.C.

### **674.502 Presentment of "on arrival" drafts.**

When a draft or the relevant instructions require presentment "on arrival," "when goods arrive" or the like, the collecting bank need not present until in its judgment a reasonable time for arrival of the goods has expired. Refusal to pay or accept because the goods have not arrived is not dishonor; the bank must notify its transferor of such refusal but need not present the draft again until it is instructed to do so or learns of the arrival of the goods.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 4-502, U.C.C.

**674.503 Responsibility of presenting bank for documents and goods; report of reasons for dishonor; referee in case of need.**—Unless otherwise instructed and except as provided in chapter 675 a bank presenting a documentary draft:

(1) Must deliver the documents to the drawee on acceptance of the draft if it is payable more than 3 days after presentment; otherwise, only on payment; and

(2) Upon dishonor, either in the case of presentment for acceptance or presentment for payment, may seek and follow instructions from any referee in case of need designated in the draft or if the presenting bank does not choose to utilize his services it must use diligence and good faith to ascertain the reason for dishonor, must notify its transferor of the dishonor and of the results of its effort to ascertain the reasons therefor and must request instructions.

But the presenting bank is under no obligation with respect to goods represented by the documents except to follow any reasonable instructions seasonably received; it has a right to reimbursement for any expense incurred in following instructions and to prepayment of or indemnity for such expenses.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 4-503, U.C.C.; supersedes s. 676.04.

**674.504 Privilege of presenting bank to deal with goods; security interest for expenses.**

(1) A presenting bank which, following the dishonor of a documentary draft, has seasonably requested instructions but does not receive them within a reasonable time may store, sell, or otherwise deal with the goods in any reasonable manner.

(2) For its reasonable expenses incurred by action under subsection (1) the presenting bank has a lien upon the goods or their proceeds, which may be foreclosed in the same manner as an unpaid seller's lien.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 4-504, U.C.C.

## CHAPTER 675

## UNIFORM COMMERCIAL CODE: LETTERS OF CREDIT

## ARTICLE 5

Note.—Pursuant to s. 69, ch. 69-353, the editors have altered the numbers of all sections making up this chapter by deleting the digit and hyphen immediately following the decimal point. The purpose is to conform the numbering of the Code sections with the decimal numbering system used in other chapters of the Florida Statutes. The visual relationship between Florida Statutes section numbers and Code section number is not destroyed by this alteration; the digit preceding the decimal point coincides with the Code article number, and the digits following the decimal point coincide with the Code section numbers.

- 675.101 Short title.
- 675.102 Scope.
- 675.103 Definitions.
- 675.104 Formal requirements; signing.
- 675.105 Consideration.
- 675.106 Time and effect of establishment of credit.
- 675.107 Advice of credit; confirmation; error in statement of terms.
- 675.108 "Notation credit"; exhaustion of credit.
- 675.109 Issuer's obligation to its customer.
- 675.110 Availability of credit in portions; presenter's reservation of lien or claim.
- 675.111 Warranties on transfer and presentment.
- 675.112 Time allowed for honor or rejection; withholding honor or rejection by consent; "presenter."
- 675.113 Indemnities.
- 675.114 Issuer's duty and privilege to honor; right to reimbursement.
- 675.115 Remedy for improper dishonor or anticipatory repudiation.
- 675.116 Transfer and assignment.
- 675.117 Insolvency of bank holding funds for documentary credit.

**675.101 Short title.**—Chapter 675 shall be known and may be cited as the "Uniform Commercial Code—Letters of Credit."

History.—s. 1, ch. 65-254.  
Note.—s. 5-101, U.C.C.

**675.102 Scope.**—

- (1) This chapter applies:
  - (a) To a credit issued by a bank if the credit requires a documentary draft or a documentary demand for payment; and
  - (b) To a credit issued by a person other than a bank if the credit requires that the draft or demand for payment be accompanied by a document of title; and
  - (c) To a credit issued by a bank or other person if the credit is not within paragraphs (a) or (b) but conspicuously states that it is a letter of credit or is conspicuously so entitled.
- (2) Unless the engagement meets the requirements of subsection (1), this chapter does not apply to engagements to make advances or to honor drafts or demands for payment, to authorities to pay or purchase, to guarantees or to general agreements.
- (3) This chapter deals with some but not all of the rules and concepts of letters of credit as such rules or concepts have developed prior to this act or may hereafter develop. The fact that this chapter states a rule does not by itself require, imply or negate application of the same or a converse rule to a situa-

tion not provided for or to a person not specified by this chapter.

History.—s. 1, ch. 65-254.  
Note.—s. 5-102, U.C.C.

**675.103 Definitions.**—

(1) In this chapter unless the context otherwise requires:

(a) "Credit" or "letter of credit" means an engagement by a bank or other person made at the request of a customer and of a kind within the scope of this chapter (s. 675.102) that the issuer will honor drafts or other demands for payment upon compliance with the conditions specified in the credit. A credit shall clearly state whether it is revocable or irrevocable and in the absence of such statement shall be presumed to be irrevocable. The engagement may be either an agreement to honor or a statement that the bank or other person is authorized to honor.

(b) A "documentary draft" or a "documentary demand for payment" is one honor of which is conditioned upon the presentation of a document or documents. "Document" means any paper including document of title, security, invoice, certificate, notice of default and the like.

(c) An "issuer" is a bank or other person issuing a credit.

(d) A "beneficiary" of a credit is a person who is entitled under its terms to draw or demand payment.

(e) An "advising bank" is a bank which gives notification of the issuance of a credit by another bank.

(f) A "confirming bank" is a bank which engages either that it will itself honor a credit already issued by another bank or that such a credit will be honored by the issuer or a third bank.

(g) A "customer" is a buyer or other person who causes an issuer to issue a credit. The term also includes a bank which procures issuance or confirmation on behalf of that bank's customer.

(2) Other definitions applying to this chapter and the sections in which they appear are:

"Notation of credit," s. 675.108.

"Presenter," s. 675.112(3).

(3) Definitions in other chapters applying to this chapter and the sections in which they appear are:

"Accept" or "Acceptance," s. 673.410.

"Contract for sale," s. 672.106.

"Draft," s. 673.104.

"Holder in due course," s. 673.302.

"Midnight deadline," s. 674.104.

"Security," s. 678.102.

(4) In addition, chapter 671 contains general defi-

nitions and principles of construction and interpretation applicable throughout this chapter.

**History.**—s. 1, ch. 65-254.

**Note.**—The above section is not identical with the 1962 official U.C.C. text.

**Note.**—s. 5-103, U.C.C.; supersedes s. 676.06.

#### **675.104 Formal requirements; signing.—**

(1) Except as otherwise required in s. 675.102(1)(c) on scope, no particular form of phrasing is required for a credit. A credit must be in writing and signed by the issuer and a confirmation must be in writing and signed by the confirming bank. A modification of the terms of a credit or confirmation must be signed by the issuer or confirming bank.

(2) A telegram may be a sufficient signed writing if it identifies its sender by an authorized authentication. The authentication may be in code and the authorized naming of the issuer in an advice of credit is a sufficient signing.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 5-104, U.C.C.

**675.105 Consideration.**—No consideration is necessary to establish a credit or to enlarge or otherwise modify its terms.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 5-105, U.C.C.; supersedes ss. 674.27, 674.31.

#### **675.106 Time and effect of establishment of credit.—**

(1) Unless otherwise agreed a credit is established:

(a) As regards the customer as soon as a letter of credit is sent to him or the letter of credit or an authorized written advice of its issuance is sent to the beneficiary; and

(b) As regards the beneficiary when he receives a letter of credit or an authorized written advice of its issuance.

(2) Unless otherwise agreed once an irrevocable credit is established as regards the customer it can be modified or revoked only with the consent of the customer and once it is established as regards the beneficiary it can be modified or revoked only with his consent.

(3) Unless otherwise agreed after a revocable credit is established it may be modified or revoked by the issuer without notice to or consent from the customer or beneficiary.

(4) Notwithstanding any modification or revocation or a revocable credit any person authorized to honor or negotiate under the terms of the original credit is entitled to reimbursement for or honor of any draft or demand for payment duly honored or negotiated before receipt of notice of the modification or revocation and the issuer in turn is entitled to reimbursement from its customer.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 5-106, U.C.C.

#### **675.107 Advice of credit; confirmation; error in statement of terms.—**

(1) Unless otherwise specified an advising bank by advising a credit issued by another bank does not assume any obligation to honor drafts drawn or demands for payment made under the credit but it does assume obligation for the accuracy of its own statement.

(2) A confirming bank by confirming a credit be-

comes directly obligated on the credit to the extent of its confirmation as though it were its issuer and acquires the rights of an issuer.

(3) Even though an advising bank incorrectly advises the terms of a credit it has been authorized to advise the credit is established as against the issuer to the extent of its original terms.

(4) Unless otherwise specified the customer bears as against the issuer all risks of transmission and reasonable translation or interpretation of any message relating to a credit.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 5-107, U.C.C.

#### **675.108 "Notation credit"; exhaustion of credit.—**

(1) A credit which specifies that any person purchasing or paying drafts drawn or demands for payment made under it must note the amount of the draft or demand on the letter or advice of credit is a "notation credit."

(2) Under a notation credit:

(a) A person paying the beneficiary or purchasing a draft or demand for payment from him acquires a right to honor only if the appropriate notation is made and by transferring or forwarding for honor the documents under the credit such a person warrants to the issuer that the notation has been made; and

(b) Unless the credit or a signed statement that an appropriate notation has been made accompanies the draft or demand for payment the issuer may delay honor until evidence of notation has been procured which is satisfactory to it but its obligation and that of its customer continue for a reasonable time not exceeding 30 days to obtain such evidence.

(3) If the credit is not a notation credit:

(a) The issuer may honor complying drafts or demands for payment presented to it in the order in which they are presented and is discharged pro tanto by honor of any such draft or demand;

(b) As between competing good faith purchasers of complying drafts or demands the person first purchasing has priority over a subsequent purchaser even though the later purchased draft or demand has been first honored.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 5-108, U.C.C.

#### **675.109 Issuer's obligation to its customer.—**

(1) An issuer's obligation to its customer includes good faith and observance of any general banking usage but unless otherwise agreed does not include liability or responsibility:

(a) For performance of the underlying contract for sale or other transaction between the customer and the beneficiary; or

(b) For any act or omission of any person other than itself or its own branch or for loss or destruction of a draft, demand or document in transit or in the possession of others; or

(c) Based on knowledge or lack of knowledge of any usage of any particular trade.

(2) An issuer must examine documents with care so as to ascertain that on their face they appear to comply with the terms of the credit but unless otherwise agreed assumes no liability or responsibility for



the genuineness, falsification or effect of any document which appears on such examination to be regular on its face.

(3) A nonbank issuer is not bound by any banking usage of which it has no knowledge.

History.—s. 1, ch. 65-254.

Note.—s. 5-109, U.C.C.

**675.110 Availability of credit in portions; presenter's reservation of lien or claim.—**

(1) Unless otherwise specified a credit may be used in portions in the discretion of the beneficiary.

(2) Unless otherwise specified a person by presenting a documentary draft or demand for payment under a credit relinquishes upon its honor all claims to the documents and a person by transferring such draft or demand or causing such presentment authorizes such relinquishment. An explicit reservation of claim makes the draft or demand noncomplying.

History.—s. 1, ch. 65-254.

Note.—s. 5-110, U.C.C.

**675.111 Warranties on transfer and presentment.—**

(1) Unless otherwise agreed the beneficiary by transferring or presenting a documentary draft or demand for payment warrants to all interested parties that the necessary conditions of the credit have been complied with. This is in addition to any warranties arising under chapters 673, 674, 677 and 678.

(2) Unless otherwise agreed a negotiating, advising, confirming, collecting or issuing bank presenting or transferring a draft or demand for payment under a credit warrants only the matters warranted by a collecting bank under chapter 674 and any such bank transferring a document warrants only the matters warranted by an intermediary under chapters 677 and 678.

History.—s. 1, ch. 65-254.

Note.—s. 5-111, U.C.C.; supersedes s. 675.32.

**675.112 Time allowed for honor or rejection; withholding honor or rejection by consent; "presenter."—**

(1) A bank to which a documentary draft or demand for payment is presented under a credit may without dishonor of the draft, demand or credit:

(a) Defer honor until the close of the third banking day following receipt of the documents; and

(b) Further defer honor if the presenter has expressly or impliedly consented thereto.

Failure to honor within the time here specified constitutes dishonor of the draft or demand and of the credit.

(2) Upon dishonor the bank may unless otherwise instructed fulfill its duty to return the draft or demand and the documents by holding them at the disposal of the presenter and sending him an advice to that effect.

(3) "Presenter" means any person presenting a draft or demand for payment for honor under a credit even though that person is a confirming bank or

other correspondent which is acting under an issuer's authorization.

History.—s. 1, ch. 65-254.

Note.—s. 5-112, U.C.C.; supersedes s. 676.07.

**675.113 Indemnities.—**

(1) A bank seeking to obtain (whether for itself or another) honor, negotiation or reimbursement under a credit may give an indemnity to induce such honor, negotiation or reimbursement.

(2) An indemnity agreement inducing honor, negotiation or reimbursement:

(a) Unless otherwise explicitly agreed applies to defects in the documents but not in the goods; and

(b) Unless a longer time is explicitly agreed expires at the end of 10 business days following receipt of the documents by the ultimate customer unless notice of objection is sent before such expiration date. The ultimate customer may send notice of objection to the person from whom he received the documents and any bank receiving such notice is under a duty to send notice to its transferor before its midnight deadline.

History.—s. 1, ch. 65-254.

Note.—s. 5-113, U.C.C.

**675.114 Issuer's duty and privilege to honor; right to reimbursement.—**

(1) An issuer must honor a draft or demand for payment which complies with the terms of the relevant credit regardless of whether the goods or documents conform to the underlying contract for sale or other contract between the customer and the beneficiary. The issuer is not excused from honor of such a draft or demand by reason of an additional general term that all documents must be satisfactory to the issuer, but an issuer may require that specified documents must be satisfactory to it.

(2) Unless otherwise agreed when documents appear on their face to comply with the terms of a credit but a required document does not in fact conform to the warranties made on negotiation or transfer of a document of title (s. 677.507) or of a security (s. 678.306) or is forged or fraudulent or there is fraud in the transaction:

(a) The issuer must honor the draft or demand for payment if honor is demanded by a negotiating bank or other holder of the draft or demand which has taken the draft or demand under the credit and under circumstances which would make it a holder in due course (s. 673.302) and in an appropriate case would make it a person to whom a document of title has been duly negotiated (s. 677.502) or a bona fide purchaser of a security (s. 678.302); and

(b) In all other cases as against its customer, an issuer acting in good faith may honor the draft or demand for payment despite notification from the customer of fraud, forgery or other defect not apparent on the face of the documents but a court of appropriate jurisdiction may enjoin such honor.

(3) Unless otherwise agreed an issuer which has duly honored a draft or demand for payment is entitled to immediate reimbursement of any payment made under the credit and to be put in effectively

available funds not later than the day before maturity of any acceptance made under the credit.

**History.**—s. 1, ch. 65-254.

**Note.**—The above section is not identical with the 1962 official U.C.C. text.

**Note.**—s. 5-114, U.C.C.

#### **675.115 Remedy for improper dishonor or anticipatory repudiation.—**

(1) When an issuer wrongfully dishonors a draft or demand for payment presented under a credit the person entitled to honor has with respect to any documents the rights of a person in the position of a seller (s. 672.707) and may recover from the issuer the face amount of the draft or demand together with incidental damages under s. 672.710 on seller's incidental damages and interest but less any amount realized by resale or other use or disposition of the subject matter of the transaction. In the event no resale or other utilization is made the documents, goods or other subject matter involved in the transaction must be turned over to the issuer on payment of judgment.

(2) When an issuer wrongfully cancels or otherwise repudiates a credit before presentment of a draft or demand for payment drawn under it the beneficiary has the rights of a seller after anticipatory repudiation by the buyer under s. 672.610 if he learns of the repudiation in time reasonably to avoid procurement of the required documents. Otherwise the beneficiary has an immediate right of action for wrongful dishonor.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 5-115, U.C.C.

#### **675.116 Transfer and assignment.—**

(1) The right to draw under a credit can be transferred or assigned only when the credit is expressly designated as transferable or assignable.

(2) Even though the credit specifically states that it is nontransferable or nonassignable, the beneficiary may before performance of the conditions of the credit assign his right to proceeds. Such an assignment is an assignment of an account under chapter 679 on secured transactions and is governed by that chapter except that:

(a) The assignment is ineffective until the letter of credit or advice of credit is delivered to the assignee which delivery constitutes perfection of the security interest under chapter 679; and

(b) The issuer may honor drafts or demands for payment drawn under the credit until it receives a notification of the assignment signed by the benefici-

ary which reasonably identifies the credit involved in the assignment and contains a request to pay the assignee; and

(c) After what reasonably appears to be such a notification has been received, the issuer may without dishonor refuse to accept or pay even to a person otherwise entitled to honor until the letter of credit or advice of credit is exhibited to the issuer.

(3) Except where the beneficiary has effectively assigned his right to draw or his right to proceeds, nothing in this section limits his right to transfer or negotiate drafts or demands drawn under the credit.

**History.**—s. 1, ch. 65-254; s. 5, ch. 79-398.

**Note.**—As amended, effective January 1, 1980.

**Note.**—s. 5-116, U.C.C.

#### **675.117 Insolvency of bank holding funds for documentary credit.—**

(1) Where an issuer or an advising or confirming bank or a bank which has for a customer procured issuance of a credit by another bank becomes insolvent before final payment under the credit and the credit is one to which this chapter is made applicable by s. 675.102(1)(a) or (b) on scope, the receipt or allocation of funds or collateral to secure or meet obligations under the credit shall have the following results:

(a) To the extent of any funds or collateral turned over after or before the insolvency as indemnity against or specifically for the purpose of payment of drafts or demands for payment drawn under the designated credit, the drafts or demands are entitled to payment in preference over depositors or other general creditors of the issuers or bank; and

(b) On expiration of the credit or surrender of the beneficiary's rights under it unused any person who has given such funds or collateral is similarly entitled to return thereof; and

(c) A change to a general or current account with a bank if specifically consented to for the purpose of indemnity against or payment of drafts or demands for payment drawn under the designated credit falls under the same rules as if the funds had been drawn out in cash and then turned over with specific instructions.

(2) After honor or reimbursement under this section the customer or other person for whose account the insolvent bank has acted is entitled to receive the documents involved.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 5-117, U.C.C.

## CHAPTER 676

## UNIFORM COMMERCIAL CODE: BULK TRANSFERS

## ARTICLE 6

Note.—Pursuant to s. 69, ch. 69-353, the editors have altered the numbers of all sections making up this chapter by deleting the digit and hyphen immediately following the decimal point. The purpose is to conform the numbering of the Code sections with the decimal numbering system used in other chapters of the Florida Statutes. The visual relationship between Florida Statutes section numbers and Code section number is not destroyed by this alteration; the digit preceding the decimal point coincides with the Code article number, and the digits following the decimal point coincide with the Code section numbers.

- 676.101 Short title.
- 676.102 "Bulk transfers"; transfers of equipment; enterprises subject to this chapter; bulk transfers subject to this chapter.
- 676.103 Transfers excepted from this chapter.
- 676.104 Schedule of property, list of creditors.
- 676.105 Notice to creditors.
- 676.106 Application of the proceeds.
- 676.107 The notice.
- 676.108 Auction sales; "auctioneer."
- 676.109 What creditors protected; credit for payment to particular creditors.
- 676.110 Subsequent transfers.

**676.101 Short title.**—Chapter 676 shall be known and may be cited as the "Uniform Commercial Code—Bulk Transfers."

History.—s. 1, ch. 65-254.

Note.—s. 6-101, U.C.C.

**676.102 "Bulk transfers"; transfers of equipment; enterprises subject to this chapter; bulk transfers subject to this chapter.**—

(1) A "bulk transfer" is any transfer in bulk and not in the ordinary course of the transferor's business of a major part of the materials, supplies, merchandise or other inventory (s. 679.109) of an enterprise subject to this chapter.

(2) A transfer of a substantial part of the equipment (s. 679.109) of such an enterprise is a bulk transfer if it is made in connection with a bulk transfer of inventory, but not otherwise.

(3) The enterprises subject to this chapter are all those whose principal business is the sale of merchandise from stock, including those who manufacture what they sell, and those enterprises doing business as restaurants that are licensed by the Division of Hotels and Restaurants of the Department of Business Regulation.

(4) Except as limited by the following section all bulk transfers of goods located within this state are subject to this chapter.

History.—s. 1, ch. 65-254; s. 1, ch. 75-216.

Note.—s. 6-102, U.C.C.; supersedes s. 726.05.

**676.103 Transfers excepted from this chapter.**—The following transfers are not subject to this chapter:

- (1) Those made to give security for the performance of an obligation;
- (2) General assignments for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder;
- (3) Transfers in settlement or realization of a lien or other security interest;
- (4) Sales by executors, administrators, receivers,

trustees in bankruptcy, or any public officer under judicial process;

(5) Sales made in the course of judicial or administrative proceedings for the dissolution or reorganization of a corporation and of which notice is sent to the creditors of the corporation pursuant to order of the court or administrative agency;

(6) Transfers to a person maintaining a known place of business in this state who becomes bound to pay the debts of the transferor in full and gives public notice of that fact, and who is solvent after becoming so bound;

(7) A transfer to a new business enterprise organized to take over and continue the business, if public notice of the transaction is given and the new enterprise assumes the debts of the transferor and he receives nothing from the transaction except an interest in the new enterprise junior to the claims of creditors;

(8) Transfers of property which is exempt from execution.

Public notice under subsection (6) or subsection (7) may be given by publishing once a week for 2 consecutive weeks in a newspaper of general circulation where the transferor had its principal place of business in this state an advertisement including the names and addresses of the transferor and transferee and the effective date of the transfer.

History.—s. 1, ch. 65-254.

Note.—s. 6-103, U.C.C.; supersedes s. 726.05.

**676.104 Schedule of property, list of creditors.**—

(1) Except as provided with respect to auction sales (s. 676.108), a bulk transfer subject to this chapter is ineffective against any creditor of the transferor unless:

(a) The transferee requires the transferor to furnish a list of his existing creditors prepared as stated in this section; and

(b) The parties prepare a schedule of the property transferred sufficient to identify it; and

(c) The transferee preserves the list and schedule for 6 months next following the transfer and permits inspection of either or both and copying therefrom at all reasonable hours by any creditor of the transferor or files the list and schedule in the office of the clerk of the circuit court of the county where the transferor had his principal place of business.

(2) The list of creditors must be signed and sworn to or affirmed by the transferor or his agent. It must contain the names and business addresses of all creditors of the transferor, with the amounts when known, and also the names of all persons who are known to the transferor to assert claims against him even though such claims are disputed. If the trans-



feror is the obligor of an outstanding issue of bonds, debentures or the like as to which there is an indenture trustee, the list of creditors need include only the name and address of the indenture trustee and the aggregate outstanding principal amount of the issue.

(3) Responsibility for the completeness and accuracy of the list of creditors rests on the transferor, and the transfer is not rendered ineffective by errors or omissions therein unless the transferee is shown to have had knowledge.

(4) Any transferor who shall, concerning the list of creditors prescribed in subsection (1), knowingly or willfully make or deliver or cause to be made or delivered any statement of which any portion is false, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 1, ch. 65-254; s. 1, ch. 70-288; s. 675, ch. 71-136.

**Note.**—The above section is not identical with the 1962 official U.C.C. text.

**Note.**—s. 6-104, U.C.C.; supersedes s. 726.06.

**676.105 Notice to creditors.**—In addition to the requirements of the preceding section, any bulk transfer subject to this chapter except one made by auction sale (s. 676.108) is ineffective against any creditor of the transferor unless at least 10 days before he takes possession of the goods or pays for them, whichever happens first, the transferee gives notice of the transfer in the manner and to the persons hereafter provided (s. 676.107).

**History.**—s. 1, ch. 65-254.

**Note.**—s. 6-105, U.C.C.; supersedes s. 726.03.

**676.106 Application of the proceeds.**—In addition to the requirements of the two preceding sections:

(1) Upon every bulk transfer subject to this chapter for which new consideration becomes payable except those made by sale at auction it is the duty of the transferee to assure that such consideration is applied so far as necessary to pay those debts of the transferor which are either shown on the list furnished by the transferor (s. 676.104) or filed in writing in the place stated in the notice (s. 676.107) within 30 days after the mailing of such notice. This duty of the transferee runs to all the holders of such debts, and may be enforced by any of them for the benefit of all.

(2) If any of said debts are in dispute the necessary sum may be withheld from distribution until the dispute is settled or adjudicated.

(3) If the consideration payable is not enough to pay all of the said debts in full distribution shall be made pro rata.

(4) A transferee may within 10 days after taking possession of the goods, discharge his obligations under this section by an action in the circuit court for the county where the transferor had his principal place of business in this state interpleading all creditors in the list of creditors required by s. 676.104. In such event the court shall require the consideration to be deposited into the registry of the court and thereupon shall decree the goods to be free and clear

of the claims of such creditors and that such creditors should file their claims with the court.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 6-106, U.C.C.

#### **676.107 The notice.**—

(1) The notice to creditors (s. 676.105) shall state:

- (a) That a bulk transfer is about to be made; and
- (b) The names and business addresses of the transferor and transferee, and all other business names and addresses used by the transferor within 3 years last past so far as known to the transferee; and

(c) Whether or not all the debts of the transferor are to be paid in full as they fall due as a result of the transaction, and if so, the address to which creditors should send their bills.

(2) If the debts of the transferor are not to be paid in full as they fall due or if the transferee is in doubt on that point then the notice shall state further:

(a) The location and general description of the property to be transferred and the estimated total of the transferor's debts;

(b) The address where the schedule of property and list of creditors (s. 676.104) may be inspected;

(c) Whether the transfer is to pay existing debts and if so the amount of such debts and to whom owing;

(d) Whether the transfer is for new consideration and if so the amount of such consideration and the time and place of payment; and

(e) If for new consideration the time and place where creditors of the transferor are to file their claims.

(3) The notice in any case shall be to all persons shown on the list of creditors furnished by the transferor (s. 676.104) and to all other persons who are known by the transferee to hold or assert claims against the transferor, and shall be:

(a) Delivered personally or by registered or certified mail, and

(b) If the county in which the transferor resides has a population in excess of 200,000 persons according to the latest statewide decennial census, published one time in a daily newspaper of general circulation in such county.

**History.**—s. 1, ch. 65-254; s. 40, ch. 69-353; s. 2, ch. 70-288; s. 168, ch. 73-333.

**Note.**—The above section is not identical with the 1962 official U.C.C. text.

**Note.**—s. 6-107, U.C.C.; supersedes s. 726.03.

#### **676.108 Auction sales; "auctioneer."**—

(1) A bulk transfer is subject to this chapter even though it is by sale at auction, but only in the manner and with the results stated in this section.

(2) The transferor shall furnish a list of his creditors and assist in the preparation of a schedule of the property to be sold, both prepared as before stated (s. 676.104).

(3) The person or persons other than the transferor who direct, control or are responsible for the auction are collectively called the "auctioneer." The auctioneer shall:

(a) Receive and retain the list of creditors and prepare and retain the schedule of property for the period stated in this chapter (s. 676.104);

(b) Give notice of the auction personally or by registered or certified mail at least 10 days before it occurs to all persons shown on the list of creditors

and to all other persons who are known to him to hold or assert claims against the transferor; and

(c) Assure that the net proceeds of the auction are applied as provided in this chapter (s. 676.106).

(4) Failure of the auctioneer to perform any of these duties does not affect the validity of the sale or the title of the purchasers, but if the auctioneer knows that the auction constitutes a bulk transfer such failure renders the auctioneer liable to the creditors of the transferor as a class for the sums owing to them from the transferor up to but not exceeding the net proceeds of the auction. If the auctioneer consists of several persons their liability is joint and several.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 6-108, U.C.C.; supersedes s. 726.05.

**676.109 What creditors protected; credit for payment to particular creditors.—**

(1) The creditors of the transferor mentioned in this chapter are those holding claims based on transactions or events occurring before the bulk transfer, but creditors who become such after notice to creditors is given (ss. 676.105 and 676.107) are not entitled

to notice.

(2) Against the aggregate obligation imposed by the provisions of this chapter concerning the application of the proceeds (ss. 676.106 and 676.108(3)(c)) the transferee or auctioneer is entitled to credit for sums paid to particular creditors of the transferor, not exceeding the sums believed in good faith at the time of the payment to be properly payable to such creditors.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 6-109, U.C.C.

**676.110 Subsequent transfers.**—When the title of a transferee to property is subject to a defect by reason of his noncompliance with the requirements of this chapter, then:

(1) A purchaser of any of such property from such transferee who pays no value or who takes with notice of such noncompliance takes subject to such defect, but

(2) A purchaser for value in good faith and without such notice takes free of such defect.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 6-110, U.C.C.

## CHAPTER 677

## UNIFORM COMMERCIAL CODE: DOCUMENTS OF TITLE

## ARTICLE 7

Note.—Pursuant to s. 69, ch. 69-353, the editors have altered the numbers of all sections making up this chapter by deleting the digit and hyphen immediately following the decimal point. The purpose is to conform the numbering of the Code sections with the decimal numbering system used in other chapters of the Florida Statutes. The visual relationship between Florida Statutes section numbers and Code section number is not destroyed by this alteration; the digit preceding the decimal point coincides with the Code article number, and the digits following the decimal point coincide with the Code section numbers.

## PART I GENERAL (ss. 677.101-677.105)

PART II WAREHOUSE RECEIPTS: SPECIAL PROVISIONS  
(ss. 677.201-677.210)PART III BILLS OF LADING: SPECIAL PROVISIONS  
(ss. 677.301-677.309)PART IV WAREHOUSE RECEIPTS AND BILLS OF LADING: GENERAL  
OBLIGATIONS (ss. 677.401-677.404)PART V WAREHOUSE RECEIPTS AND BILLS OF LADING: NEGOTIATION  
AND TRANSFER (ss. 677.501-677.509)PART VI WAREHOUSE RECEIPTS AND BILLS OF LADING: MISCELLANEOUS  
PROVISIONS (ss. 677.601-677.603)

## PART I

## GENERAL

- 677.101 Short title.  
 677.102 Definitions and index of definitions.  
 677.103 Relation of chapter to treaty, statute, tariff, classification or regulation.  
 677.104 Negotiable and nonnegotiable warehouse receipt, bill of lading or other document of title.  
 677.105 Construction against negative implication.

**677.101 Short title.**—Chapter 677 shall be known and may be cited as the "Uniform Commercial Code—Documents of Title."

History.—s. 1, ch. 65-254.  
 Note.—s. 7-101, U.C.C.

**677.102 Definitions and index of definitions.**—

(1) In this chapter, unless the context otherwise requires:

(a) "Bailee" means the person who by a warehouse receipt, bill of lading or other document of title acknowledges possession of goods and contracts to deliver them.

(b) "Consignee" means the person named in a bill to whom or to whose order the bill promises delivery.

(c) "Consignor" means the person named in a bill as the person from whom the goods have been received for shipment.

(d) "Delivery order" means a written order to deliver goods directed to a warehouseman, carrier or other person who in the ordinary course of business issues warehouse receipts or bills of lading.

(e) "Document" means document of title as de-

fined in the general definitions in chapter 671 (s. 671.201).

(f) "Goods" means all things which are treated as movable for the purposes of a contract of storage or transportation.

(g) "Issuer" means a bailee who issues a document except that in relation to an unaccepted delivery order it means the person who orders the possessor of goods to deliver. Issuer includes any person for whom an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, notwithstanding that the issuer received no goods or that the goods were misdescribed or that in any other respect the agent or employee violated his instructions.

(h) "Warehouseman" is a person engaged in the business of storing goods for hire.

(2) Other definitions applying to this chapter or to specified parts thereof, and the sections in which they appear are:

"Duly negotiate," s. 677.501.

"Person entitled under the document," s. 677.403(4).

(3) Definitions in other chapters applying to this chapter and the sections in which they appear are:

"Contract for sale," s. 672.106.

"Overseas," s. 672.323.

"Receipt" of goods, s. 672.103.

(4) In addition chapter 671 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

History.—s. 1, ch. 65-254.

Note.—s. 7-102, U.C.C.; supersedes s. 678.54.

**677.103 Relation of chapter to treaty, statute, tariff, classification or regulation.**—To the extent that any treaty or statute of the United States, regulatory statute of this state or tariff, classification or



regulation filed or issued pursuant thereto is applicable, the provisions of this chapter are subject thereto.

**History.**—s. 1, ch. 65-254.  
**Note.**—s. 7-103, U.C.C.

**677.104 Negotiable and nonnegotiable warehouse receipt, bill of lading or other document of title.—**

(1) A warehouse receipt, bill of lading or other document of title is negotiable:

(a) If by its terms the goods are to be delivered to bearer or to the order of a named person; or

(b) Where recognized in overseas trade, if it runs to a named person or assigns.

(2) Any other document is nonnegotiable. A bill of lading in which it is stated that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against a written order signed by the same or another named person.

**History.**—s. 1, ch. 65-254.  
**Note.**—s. 7-104, U.C.C.; supersedes ss. 678.02-678.05.

**677.105 Construction against negative implication.**—The omission from either part II or part III of this chapter of a provision corresponding to a provision made in the other part does not imply that a corresponding rule of law is not applicable.

**History.**—s. 1, ch. 65-254.  
**Note.**—s. 7-105, U.C.C.

## PART II

### WAREHOUSE RECEIPTS: SPECIAL PROVISIONS

677.201 Who may issue a warehouse receipt; storage under government bond.

677.202 Form of warehouse receipt; essential terms; optional terms.

677.203 Liability of nonreceipt or misdescription.

677.204 Duty of care; contractual limitation of warehouseman's liability.

677.205 Title under warehouse receipt defeated in certain cases.

677.206 Termination of storage at warehouseman's option.

677.207 Goods must be kept separate; fungible goods.

677.208 Altered warehouse receipts.

677.209 Lien of warehouseman.

677.210 Enforcement of warehouseman's lien.

**677.201 Who may issue a warehouse receipt; storage under government bond.—**

(1) A warehouse receipt may be issued by any warehouseman.

(2) Where goods including distilled spirits and agricultural commodities are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods has like effect as a warehouse receipt even though issued by a per-

son who is the owner of the goods and is not a warehouseman.

**History.**—s. 1, ch. 65-254.  
**Note.**—s. 7-201, U.C.C.; supersedes s. 678.01.

**677.202 Form of warehouse receipt; essential terms; optional terms.—**

(1) A warehouse receipt need not be in any particular form.

(2) Unless a warehouse receipt embodies within its written or printed terms each of the following, the warehouseman is liable for damages caused by the omission to a person injured thereby:

(a) The location of the warehouse where the goods are stored;

(b) The date of issue of the receipt;

(c) The consecutive number of the receipt;

(d) A statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his order;

(e) The rate of storage and handling charges, except that where goods are stored under a field warehousing arrangement a statement of that fact is sufficient on a nonnegotiable receipt;

(f) A description of the goods or of the packages containing them;

(g) The signature of the warehouseman, which may be made by his authorized agent;

(h) If the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership; and

(i) A statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien or security interest (s. 677.209). If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.

(3) A warehouseman may insert in his receipt any other terms which are not contrary to the provisions of this code and do not impair his obligation of delivery (s. 677.403) or his duty of care (s. 677.204). Any contrary provisions shall be ineffective.

**History.**—s. 1, ch. 65-254.  
**Note.**—s. 7-202, U.C.C.; supersedes s. 678.02.

**677.203 Liability of nonreceipt or misdescription.—**

A party to or purchaser for value in good faith of a document of title other than a bill of lading relying in either case upon the description therein of the goods may recover from the issuer damages caused by the nonreceipt or misdescription of the goods, except to the extent that the document conspicuously indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, as where the description is in terms of marks or labels or kind, quantity or condition, or the receipt or description is qualified by "contents, condition and quality unknown," "said to contain" or the like, if such indication be true, or the party or purchaser otherwise has notice.

**History.**—s. 1, ch. 65-254.  
**Note.**—s. 7-203, U.C.C.; supersedes s. 678.20.

**677.204 Duty of care; contractual limitation of warehouseman's liability.—**

(1) A warehouseman is liable for damages for loss of or injury to the goods caused by his failure to exercise such care in regard to them as a reasonably careful man would exercise under like circumstances but unless otherwise agreed he is not liable for damages which could not have been avoided by the exercise of such care.

(2) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage, and setting forth a specific liability per article or item, or value per unit of weight, beyond which the warehouseman shall not be liable; provided, however, that such liability may on written request of the bailor at the time of signing such storage agreement or within a reasonable time after receipt of the warehouse receipt be increased on part or all of the goods thereunder, in which event increased rates may be charged based on such increased valuation, but that no such increase shall be permitted contrary to a lawful limitation of liability contained in the warehouseman's tariff, if any. No such limitation is effective with respect to the warehouseman's liability for conversion to his own use.

(3) This section does not impair or repeal any statute which imposes a higher responsibility upon the warehouseman or invalidates contractual limitations which would be permissible under this chapter.

**History.**—s. 1, ch. 65-254.

**Note.**—The above section is not identical with the 1962 official U.C.C. text.

**Note.**—s. 7-204, U.C.C.; supersedes ss. 678.03, 678.20.

**677.205 Title under warehouse receipt defeated in certain cases.**—A buyer in the ordinary course of business of fungible goods sold and delivered by a warehouseman who is also in the business of buying and selling such goods takes free of any claim under a warehouse receipt even though it has been duly negotiated.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 7-205, U.C.C.

**677.206 Termination of storage at warehouseman's option.—**

(1) A warehouseman may on notifying the person on whose account the goods are held and any other person known to claim an interest in the goods require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document, or, if no period is fixed, within a stated period not less than 30 days after the notification. If the goods are not removed before the date specified in the notification, the warehouseman may sell them in accordance with the provisions of the section on enforcement of a warehouseman's lien (s. 677.210).

(2) If a warehouseman in good faith believes that the goods are about to deteriorate or decline in value to less than the amount of his lien within the time prescribed in subsection (1) for notification, advertisement and sale, the warehouseman may specify in the notification any reasonable shorter time for removal of the goods and in case the goods are not removed, may sell them at public sale held not less

than 1 week after a single advertisement or posting.

(3) If as a result of a quality or condition of the goods of which the warehouseman had no notice at the time of deposit the goods are a hazard to other property or to the warehouse or to persons, the warehouseman may sell the goods at public or private sale without advertisement on reasonable notification to all persons known to claim an interest in the goods. If the warehouseman after a reasonable effort is unable to sell the goods he may dispose of them in any lawful manner and shall incur no liability by reason of such disposition.

(4) The warehouseman must deliver the goods to any person entitled to them under this chapter upon due demand made at any time prior to sale or other disposition under this section.

(5) The warehouseman may satisfy his lien from the proceeds of any sale or disposition under this section but must hold the balance for delivery on the demand of any person to whom he would have been bound to deliver the goods.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 7-206, U.C.C.; supersedes s. 678.34.

**677.207 Goods must be kept separate; fungible goods.—**

(1) Unless the warehouse receipt otherwise provides, a warehouseman must keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods except that different lots of fungible goods may be commingled.

(2) Fungible goods so commingled are owned in common by the persons entitled thereto and the warehouseman is severally liable to each owner for that owner's share. Where because of overissue a mass of fungible goods is insufficient to meet all the receipts which the warehouseman has issued against it, the persons entitled include all holders to whom overissued receipts have been duly negotiated.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 7-207, U.C.C.; supersedes ss. 678.22, 678.23.

**677.208 Altered warehouse receipts.**—Where a blank in a negotiable warehouse receipt has been filled in without authority, a purchaser for value and without notice of the want of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any receipt enforceable against the issuer according to its original tenor.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 7-208, U.C.C.; supersedes s. 678.13.

**677.209 Lien of warehouseman.—**

(1) A warehouseman has a lien against the bailor on the goods covered by a warehouse receipt or on the proceeds thereof in his possession for charges for storage or transportation (including demurrage and terminal charges), insurance, labor, or charges present or future in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for like charges or expenses in relation to other goods whenever deposited and it is stated in the receipt that a lien is claimed for charges and expenses in relation to other goods, the warehouseman also has a lien against him for such charges and

expenses whether or not the other goods have been delivered by the warehouseman. But against a person to whom a negotiable warehouse receipt is duly negotiated a warehouseman's lien is limited to charges in an amount or at a rate specified on the receipt or if no charges are so specified then to a reasonable charge for storage of the goods covered by the receipt subsequent to the date of the receipt.

(2) The warehouseman may also reserve a security interest against the bailor for a maximum amount specified on the receipt for charges other than those specified in subsection (1), such as for money advanced and interest. Such a security interest is governed by the chapter on secured transactions (chapter 679).

(3) A warehouseman's lien for charges and expenses under subsection (1) or a security interest under subsection (2) is also effective against any person who so entrusted the bailor with possession of the goods that a pledge of them by him to a good faith purchaser for value would have been valid but is not effective against a person as to whom the document confers no right in the goods covered by it under s. 677.503.

(4) A warehouseman loses his lien on any goods which he voluntarily delivers or which he unjustifiably refuses to deliver.

*History.*—s. 1, ch. 65-254.

*Note.*—s. 7-209, U.C.C.; supersedes ss. 678.27-678.32.

#### **677.210 Enforcement of warehouseman's lien.—**

(1) Except as provided in subsection (2), a warehouseman's lien may be enforced by public or private sale of the goods in block or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. Such notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the warehouseman is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the warehouseman either sells the goods in the usual manner in any recognized market therefor, or if he sells at the price current in such market at the time of his sale, or if he has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold, he has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to insure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

(2) A warehouseman's lien on goods other than goods stored by a merchant in the course of his business may be enforced only as follows:

(a) All persons known to claim an interest in the goods must be notified.

(b) The notification must be delivered in person or sent by registered or certified letter to the last known address of any person to be notified.

(c) The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a

specified time not less than 10 days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.

(d) The sale must conform to the terms of the notification.

(e) The sale must be held at the nearest suitable place to that where the goods are held or stored.

(f) After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for 2 weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account they are being held, and the time and place of the sale. The sale must take place at least 15 days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least 10 days before the sale in not less than 6 conspicuous places in the neighborhood of the proposed sale.

(3) Before any sale pursuant to this section any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section. In that event the goods must not be sold, but must be retained by the warehouseman subject to the terms of the receipt and this chapter.

(4) The warehouseman may buy at any public sale pursuant to this section.

(5) A purchaser in good faith of goods sold to enforce a warehouseman's lien takes the goods free of any rights of persons against whom the lien was valid, despite noncompliance by the warehouseman with the requirements of this section.

(6) The warehouseman may satisfy his lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom he would have been bound to deliver the goods.

(7) The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against his debtor.

(8) Where a lien is on goods stored by a merchant in the course of his business the lien may be enforced in accordance with either subsection (1) or subsection (2).

(9) The warehouseman is liable for damages caused by failure to comply with the requirements for sale under this section and in case of willful violation is liable for conversion.

*History.*—s. 1, ch. 65-254.

*Note.*—s. 7-210, U.C.C.; supersedes s. 678.33.

### **PART III**

#### **BILLS OF LADING: SPECIAL PROVISIONS**

- 677.301 Liability for nonreceipt or misdescription; "Said to contain"; "Shipper's load and count"; improper handling.
- 677.302 Through bills of lading and similar documents.
- 677.303 Diversion; reconsignment; change of instructions.



- 677.304 Bills of lading in a set.
- 677.305 Destination bills.
- 677.306 Altered bills of lading.
- 677.307 Lien of carrier.
- 677.308 Enforcement of carrier's lien.
- 677.309 Duty of care; contractual limitation of carrier's liability.

**677.301 Liability for nonreceipt or misdescription; "Said to contain"; "Shipper's load and count"; improper handling.—**

(1) A consignee of a nonnegotiable bill who has given value in good faith or a holder to whom a negotiable bill has been duly negotiated relying in either case upon the description therein of the goods, or upon the date therein shown, may recover from the issuer damages caused by the misdating of the bill or the nonreceipt or misdescription of the goods, except to the extent that the document indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, as where the description is in terms of marks or labels or kind, quantity, or condition or the receipt or description is qualified by "contents or condition of contents of packages unknown," "said to contain," "shipper's weight, load and count" or the like, if such indication be true.

(2) When goods are loaded by an issuer who is a common carrier, the issuer must count the packages of goods if package freight and ascertain the kind and quantity if bulk freight. In such cases "shipper's weight, load and count" or other words indicating that the description was made by the shipper are ineffective except as to freight concealed by packages.

(3) When bulk freight is loaded by a shipper who makes available to the issuer adequate facilities for weighing such freight, an issuer who is a common carrier must ascertain the kind and quantity within a reasonable time after receiving the written request of the shipper to do so. In such cases "shipper's weight" or other words of like purport are ineffective.

(4) The issuer may by inserting in the bill the words "shipper's weight, load and count" or other words of like purport indicate that the goods were loaded by the shipper; and if such statement be true the issuer shall not be liable for damages caused by the improper loading. But their omission does not imply liability for such damages.

(5) The shipper shall be deemed to have guaranteed to the issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition and weight, as furnished by him; and the shipper shall indemnify the issuer against damage caused by inaccuracies in such particulars. The right of the issuer to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 7-301, U.C.C.

cf.—s. 352.25 To receive, transport and deliver freight.

s. 352.26 Freight to be delivered according to terms and direction.

**677.302 Through bills of lading and similar documents.—**

(1) The issuer of a through bill of lading or other document embodying an undertaking to be performed in part by persons acting as its agents or by connecting carriers is liable to anyone entitled to recover on the document for any breach by such other persons or by a connecting carrier of its obligation under the document but to the extent that the bill covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation this liability may be varied by agreement of the parties.

(2) Where goods covered by a through bill of lading or other document embodying an undertaking to be performed in part by persons other than the issuer are received by any such person, he is subject with respect to his own performance while the goods are in his possession to the obligation of the issuer. His obligation is discharged by delivery of the goods to another such person pursuant to the document, and does not include liability for breach by any other such persons or by the issuer.

(3) The issuer of such through bill of lading or other document shall be entitled to recover from the connecting carrier or such other person in possession of the goods when the breach of the obligation under the document occurred, the amount it may be required to pay to anyone entitled to recover on the document therefor, as may be evidenced by any receipt, judgment, or transcript thereof, and the amount of any expense reasonably incurred by it in defending any action brought by anyone entitled to recover on the document therefor.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 7-302, U.C.C.

**677.303 Diversion; reconsignment; change of instructions.—**

(1) Unless the bill of lading otherwise provides, the carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods on instructions from:

(a) The holder of a negotiable bill; or

(b) The consignor on a nonnegotiable bill notwithstanding contrary instructions from the consignee; or

(c) The consignee on a nonnegotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the bill; or

(d) The consignee on a nonnegotiable bill if he is entitled as against the consignor to dispose of them.

(2) Unless such instructions are noted on a negotiable bill of lading, a person to whom the bill is duly negotiated can hold the bailee according to the original terms.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 7-303, U.C.C.

**677.304 Bills of lading in a set.—**

(1) Except where customary in overseas transportation, a bill of lading must not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.

(2) Where a bill of lading is lawfully drawn in a set of parts, each of which is numbered and expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitute one bill.

(3) Where a bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to whom the first due negotiation is made prevails as to both the document and the goods even though any later holder may have received the goods from the carrier in good faith and discharged the carrier's obligation by surrender of his part.

(4) Any person who negotiates or transfers a single part of a bill of lading drawn in a set is liable to holders of that part as if it were the whole set.

(5) The bailee is obliged to deliver in accordance with part IV of this chapter against the first presented part of a bill of lading lawfully drawn in a set. Such delivery discharges the bailee's obligation on the whole bill.

History.—s. 1, ch. 65-254.  
Note.—s. 7-304, U.C.C.

#### 677.305 Destination bills.—

(1) Instead of issuing a bill of lading to the consignor at the place of shipment a carrier may at the request of the consignor procure the bill to be issued at destination or at any other place designated in the request.

(2) Upon request of anyone entitled as against the carrier to control the goods while in transit and on surrender of any outstanding bill of lading or other receipt covering such goods, the issuer may procure a substitute bill to be issued at any place designated in the request.

History.—s. 1, ch. 65-254.  
Note.—s. 7-305, U.C.C.

**677.306 Altered bills of lading.**—An unauthorized alteration or filling in of a blank in a bill of lading leaves the bill enforceable according to its original tenor.

History.—s. 1, ch. 65-254.  
Note.—s. 7-306, U.C.C.; supersedes s. 678.13.

#### 677.307 Lien of carrier.—

(1) A carrier has a lien on the goods covered by a bill of lading for charges subsequent to the date of its receipt of the goods for storage or transportation (including demurrage and terminal charges) and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. But against a purchaser for value of a negotiable bill of lading a carrier's lien is limited to charges stated in the bill or the applicable tariffs, or if no charges are stated then to a reasonable charge.

(2) A lien for charges and expenses under subsection (1) on goods which the carrier was required by law to receive for transportation is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to subject the goods to such charges and expenses. Any other lien under subsection (1) is effective against the consignor and any person who permitted the bailor to have control or possession of

the goods unless the carrier had notice that the bailor lacked such authority.

(3) A carrier loses his lien on any goods which he voluntarily delivers or which he unjustifiably refuses to deliver.

History.—s. 1, ch. 65-254.  
Note.—s. 7-307, U.C.C.; supersedes ss. 678.27-678.32.

#### 677.308 Enforcement of carrier's lien.—

(1) A carrier's lien may be enforced by public or private sale of the goods, in block or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. Such notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the carrier either sells the goods in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold he has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

(2) Before any sale pursuant to this section any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section. In that event the goods must not be sold, but must be retained by the carrier subject to the terms of the bill and this chapter.

(3) The carrier may buy at any public sale pursuant to this section.

(4) A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods free of any rights of persons against whom the lien was valid, despite noncompliance by the carrier with the requirements of this section.

(5) The carrier may satisfy his lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom he would have been bound to deliver the goods.

(6) The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against his debtor.

(7) A carrier's lien may be enforced in accordance with either subsection (1) or the procedure set forth in s. 677.210(2).

(8) The carrier is liable for damages caused by failure to comply with the requirements for sale under this section and in case of willful violation is liable for conversion.

History.—s. 1, ch. 65-254.  
Note.—s. 7-308, U.C.C.; supersedes s. 678.33.

#### 677.309 Duty of care; contractual limitation of carrier's liability.—

(1) A carrier who issues a bill of lading whether

negotiable or nonnegotiable must exercise the degree of care in relation to the goods which a reasonably careful man would exercise under like circumstances. This subsection does not repeal or change any law or rule of law which imposes liability upon a common carrier for damages not caused by its negligence.

(2) Damages may be limited by a provision that the carrier's liability shall not exceed a value stated in the document if the carrier's rates are dependent upon value and the consignor by the carrier's tariff is afforded an opportunity to declare a higher value or a value as lawfully provided in the tariff, or where no tariff is filed he is otherwise advised of such opportunity; but no such limitation is effective with respect to the carrier's liability for conversion to its own use.

(3) Reasonable provisions as to the time and manner of presenting claims and instituting actions based on the shipment may be included in the bill of lading or tariff.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 7-309, U.C.C.; supersedes ss. 678.03, 678.20.

#### PART IV

#### WAREHOUSE RECEIPTS AND BILLS OF LADING: GENERAL OBLIGATIONS

677.401 Irregularities in issue of receipt or bill or conduct of issuer.

677.402 Duplicate receipt or bill; overissue.

677.403 Obligation of warehouseman or carrier to deliver; excuse.

677.404 No liability for good-faith delivery pursuant to receipt or bill.

**677.401 Irregularities in issue of receipt or bill or conduct of issuer.**—The obligations imposed by this chapter on an issuer apply to a document of title regardless of the fact that:

(1) The document may not comply with the requirements of this chapter or of any other law or regulation regarding its issue, form or content; or

(2) The issuer may have violated laws regulating the conduct of his business; or

(3) The goods covered by the document were owned by the bailee at the time the document was issued; or

(4) The person issuing the document does not come within the definition of warehouseman if it purports to be a warehouse receipt.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 7-401, U.C.C.; supersedes s. 678.20.

**677.402 Duplicate receipt or bill; overissue.**—Neither a duplicate nor any other document of title purporting to cover goods already represented by an outstanding document of the same issuer confers any right in the goods, except as provided in the case of bills in a set, overissue of documents for fungible goods and substitutes for lost, stolen or destroyed documents. But the issuer is liable for damages caused by his overissue or failure to identify a dupli-

cate document as such by conspicuous notation on its face.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 7-402, U.C.C.; supersedes s. 678.06.

**677.403 Obligation of warehouseman or carrier to deliver; excuse.**—

(1) The bailee must deliver the goods to a person entitled under the document who complies with subsections (2) and (3), unless and to the extent that the bailee establishes any of the following:

(a) Delivery of the goods to a person whose receipt was rightful as against the claimant;

(b) Damage to or delay, loss or destruction of the goods for which the bailee is not liable, but the burden of establishing negligence in such cases when value of such damage, delay, loss, or destruction exceeds \$10,000 is on the person entitled under the document.

(c) Previous sale or other disposition of the goods in lawful enforcement of a lien or on warehouseman's lawful termination of storage;

(d) The exercise by a seller of his right to stop delivery pursuant to the provisions of the chapter on sales (s. 672.705);

(e) A diversion, reconsignment or other disposition pursuant to the provisions of this chapter (s. 677.303) or tariff regulating such right;

(f) Release, satisfaction or any other fact affording a personal defense against the claimant;

(g) Any other lawful excuse.

(2) A person claiming goods covered by a document of title must satisfy the bailee's lien where the bailee so requests or where the bailee is prohibited by law from delivering the goods until the charges are paid.

(3) Unless the person claiming is one against whom the document confers no right under s. 677.503(1), he must surrender for cancellation or notation of partial deliveries any outstanding negotiable document covering the goods, and the bailee must cancel the document or conspicuously note the partial delivery thereon or be liable to any person to whom the document is duly negotiated.

(4) "Person entitled under the document" means holder in the case of a negotiable document, or the person to whom delivery is to be made by the terms of or pursuant to written instructions under a non-negotiable document.

**History.**—s. 1, ch. 65-254; s. 1, ch. 71-292.

**Note.**—s. 7-403, U.C.C.; supersedes ss. 678.08-678.12, 678.16, 678.19.

**677.404 No liability for good-faith delivery pursuant to receipt or bill.**—A bailee who in good faith including observance of reasonable commercial standards has received goods and delivered or otherwise disposed of them according to the terms of the document of title or pursuant to this chapter is not liable therefor. This rule applies even though the person from whom he received the goods had no authority to procure the document or to dispose of the goods and even though the person to whom he delivered the goods had no authority to receive them.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 7-404, U.C.C.; supersedes s. 678.10.



## PART V

## WAREHOUSE RECEIPTS AND BILLS OF LADING: NEGOTIATION AND TRANSFER

- 677.501 Form of negotiation and requirements of "Due negotiation."  
 677.502 Rights acquired by due negotiation.  
 677.503 Document of title to goods defeated in certain cases.  
 677.504 Rights acquired in the absence of due negotiation; effect of diversion; seller's stoppage of delivery.  
 677.505 Indorser not a guarantor for other parties.  
 677.506 Delivery without indorsement; right to compel indorsement.  
 677.507 Warranties on negotiation or transfer of receipt or bill.  
 677.508 Warranties of collecting bank as to documents.  
 677.509 Receipt or bill; when adequate compliance with commercial contract.

**677.501 Form of negotiation and requirements of "Due negotiation."**

(1) A negotiable document of title running to the order of a named person is negotiated by his indorsement and delivery. After his indorsement in blank or to bearer any person can negotiate it by delivery alone.

(2)(a) A negotiable document of title is also negotiated by delivery alone when by its original terms it runs to bearer.

(b) When a document running to the order of a named person is delivered to him the effect is the same as if the document had been negotiated.

(3) Negotiation of a negotiable document of title after it has been indorsed to a specified person requires indorsement by the special indorsee as well as delivery.

(4) A negotiable document of title is "duly negotiated" when it is negotiated in the manner stated in this section to a holder who purchases it in good faith without notice of any defense against or claim to it on the part of any person and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a money obligation.

(5) Indorsement of a nonnegotiable document neither makes it negotiable nor adds to the transferor's rights.

(6) The naming in a negotiable bill of a person to be notified of the arrival of the goods does not limit the negotiability of the bill nor constitute notice to a purchaser thereof of any interest of such person in the goods.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 7-501, U.C.C.; supersedes ss. 678.39-678.42, 678.49.

**677.502 Rights acquired by due negotiation.**

(1) Subject to the following section and to the provisions of s. 677.205 on fungible goods, a holder to whom a negotiable document of title has been duly negotiated acquires thereby:

- (a) Title to the document;
- (b) Title to the goods;
- (c) All rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and
- (d) The direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by him except those arising under the terms of the document or under this chapter. In the case of a delivery order the bailee's obligation accrues only upon acceptance and the obligation acquired by the holder is that the issuer and any indorser will procure the acceptance of the bailee.

(2) Subject to the following section, title and rights so acquired are not defeated by any stoppage of the goods represented by the document or by surrender of such goods by the bailee, and are not impaired even though the negotiation or any prior negotiation constituted a breach of duty or even though any person has been deprived of possession of the document by misrepresentation, fraud, accident, mistake, duress, loss, theft or conversion, or even though a previous sale or other transfer of the goods or document has been made to a third person.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 7-502, U.C.C.; supersedes ss. 678.43, 678.49-678.51.

**677.503 Document of title to goods defeated in certain cases.**

(1) A document of title confers no right in goods against a person who before issuance of the document had a legal interest or a perfected security interest in them and who neither:

(a) Delivered or entrusted them or any document of title covering them to the bailor or his nominee with actual or apparent authority to ship, store or sell or with power to obtain delivery under this chapter (s. 677.403) or with power of disposition under this code (ss. 672.403 and 679.307) or other statute or rule of law; nor

(b) Acquiesced in the procurement by the bailor or his nominee of any document of title.

(2) Title to goods based upon an unaccepted delivery order is subject to the rights of anyone to whom a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. Such a title may be defeated under the next section to the same extent as the rights of the issuer or a transferee from the issuer.

(3) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of anyone to whom a bill issued by the freight forwarder is duly negotiated; but delivery by the carrier in accordance with part IV of this chapter pursuant to its own bill of lading discharges the carrier's obligation to deliver.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 7-503, U.C.C.; supersedes s. 678.43.

**677.504 Rights acquired in the absence of due negotiation; effect of diversion; seller's stoppage of delivery.**

(1) A transferee of a document, whether negotiable or nonnegotiable, to whom the document has been delivered but not duly negotiated, acquires the

title and rights which his transferor had or had actual authority to convey.

(2) In the case of a nonnegotiable document, until but not after the bailee receives notification of the transfer, the rights of the transferee may be defeated:

(a) By those creditors of the transferor who could treat the sale as void under s. 672.402; or

(b) By a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of his rights; or

(c) As against the bailee by good faith dealings of the bailee with the transferor.

(3) A diversion or other change of shipping instructions by the consignor in a nonnegotiable bill of lading which causes the bailee not to deliver to the consignee defeats the consignee's title to the goods if they have been delivered to a buyer in ordinary course of business and in any event defeats the consignee's rights against the bailee.

(4) Delivery pursuant to a nonnegotiable document may be stopped by a seller under s. 672.705, and subject to the requirement of due notification there provided. A bailee honoring the seller's instructions is entitled to be indemnified by the seller against any resulting loss or expense.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 7-504, U.C.C.; supersedes ss. 678.43, 678.44.

**677.505 Indorser not a guarantor for other parties.**—The indorsement of a document of title issued by a bailee does not make the indorser liable for any default by the bailee or by previous indorsers.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 7-505, U.C.C.; supersedes s. 678.47.

**677.506 Delivery without indorsement; right to compel indorsement.**—The transferee of a negotiable document of title has a specifically enforceable right to have his transferor supply any necessary indorsement but the transfer becomes a negotiation only as of the time the indorsement is supplied.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 7-506, U.C.C.; supersedes s. 678.45.

**677.507 Warranties on negotiation or transfer of receipt or bill.**—Where a person negotiates or transfers a document of title for value otherwise than as a mere intermediary under the next following section, then unless otherwise agreed he warrants to his immediate purchaser only in addition to any warranty made in selling the goods:

(1) That the document is genuine; and  
(2) That he has no knowledge of any fact which would impair its validity or worth; and

(3) That his negotiation or transfer is rightful and fully effective with respect to the title to the document and the goods it represents.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 7-507, U.C.C.; supersedes s. 678.46.

**677.508 Warranties of collecting bank as to documents.**—A collecting bank or other intermediary known to be entrusted with documents on behalf of another or with collection of a draft or other claim against delivery of documents warrants by such de-

livery of the documents only its own good faith and authority. This rule applies even though the intermediary has purchased or made advances against the claim or draft to be collected.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 7-508, U.C.C.; supersedes s. 685.01.

**677.509 Receipt or bill; when adequate compliance with commercial contract.**—The question whether a document is adequate to fulfill the obligations of a contract for sale or the conditions of a credit is governed by the chapters on sales (chapter 672) and on letters of credit (chapter 675).

**History.**—s. 1, ch. 65-254.

**Note.**—s. 7-509, U.C.C.

## PART VI

### WAREHOUSE RECEIPTS AND BILLS OF LADING: MISCELLANEOUS PROVISIONS

**677.601** Lost and missing documents.

**677.602** Attachment of goods covered by a negotiable document.

**677.603** Conflicting claims; interpleader.

**677.601 Lost and missing documents.**—

(1) If a document has been lost, stolen or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with such order. If the document was negotiable the claimant must post security approved by the court to indemnify any person who may suffer loss as a result of nonsurrender of the document. If the document was not negotiable, such security may be required at the discretion of the court. The court may also in its discretion order payment of the bailee's reasonable costs and counsel fees.

(2) A bailee who without court order delivers goods to a person claiming under a missing negotiable document is liable to any person injured thereby, and if the delivery is not in good faith becomes liable for conversion. Delivery in good faith is not conversion if made in accordance with a filed classification or tariff or, where no classification or tariff is filed, if the claimant posts security with the bailee in an amount at least double the value of the goods at the time of posting to indemnify any person injured by the delivery who files a notice of claim within 1 year after the delivery.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 7-601, U.C.C.; supersedes s. 678.14.

**677.602 Attachment of goods covered by a negotiable document.**—Except where the document was originally issued upon delivery of the goods by a person who had no power to dispose of them, no lien attaches by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless the document be first surrendered to the bailee or its negotiation enjoined, and the bailee shall not be compelled to deliver the goods pursuant to process until the document is surrendered to him or im-

pounded by the court. One who purchases the document for value without notice of the process or injunction takes free of the lien imposed by judicial process.

History.—s. 1, ch. 65-254.

Note.—s. 7-602, U.C.C.; supersedes s. 678.25.

**677.603 Conflicting claims; interpleader.**—If more than one person claims title or possession of

the goods, the bailee is excused from delivery until he has had a reasonable time to ascertain the validity of the adverse claims or to bring an action to compel all claimants to interplead and may compel such interpleader, either in defending an action for nondelivery of the goods, or by original action, whichever is appropriate.

History.—s. 1, ch. 65-254.

Note.—s. 7-603, U.C.C.; supersedes ss. 678.16, 678.17.



## CHAPTER 678

## UNIFORM COMMERCIAL CODE: INVESTMENT SECURITIES

## ARTICLE 8

Note.—Pursuant to s. 69, ch. 69-353, the editors have altered the numbers of all sections making up this chapter by deleting the digit and hyphen immediately following the decimal point. The purpose is to conform the numbering of the Code sections with the decimal numbering system used in other chapters of the Florida Statutes. The visual relationship between Florida Statutes section numbers and Code section number is not destroyed by this alteration; the digit preceding the decimal point coincides with the Code article number, and the digits following the decimal point coincide with the Code section numbers.

## PART I SHORT TITLE AND GENERAL MATTERS (ss. 678.101-678.107)

## PART II ISSUE—ISSUER (ss. 678.201-678.208)

## PART III PURCHASE (ss. 678.301-678.320)

## PART IV REGISTRATION (ss. 678.401-678.406)

## PART I

## SHORT TITLE AND GENERAL MATTERS

- 678.101 Short title.
- 678.102 Definitions and index of definitions.
- 678.103 Issuer's lien.
- 678.104 Effect of overissue; "overissue."
- 678.105 Securities negotiable; presumptions.
- 678.106 Applicability.
- 678.107 Securities deliverable; action for price.

**678.101 Short title.**—Chapter 678 shall be known and may be cited as "Uniform Commercial Code—Investment Securities."

History.—s. 1, ch. 65-254.

Note.—s. 8-101, U.C.C.

**678.102 Definitions and index of definitions.**—

(1) In this chapter unless the context otherwise requires:

- (a) A "security" is an instrument which:
  - 1. Is issued in bearer or registered form; and
  - 2. Is of a type commonly dealt in upon securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment; and
  - 3. Is either one of a class or series or by its terms is divisible into a class or series of instruments; and
  - 4. Evidences a share, participation or other interest in property or in an enterprise or evidences an obligation of the issuer.

(b) A writing which is a security is governed by this chapter and not by Uniform Commercial Code-Commercial Paper even though it also meets the requirements of that chapter. This chapter does not apply to money.

(c) A security is in "registered form" when it specifies a person entitled to the security or to the rights it evidences and when its transfer may be registered upon books maintained for that purpose by or on behalf of an issuer or the security so states.

(d) A security is in "bearer form" when it runs to bearer according to its terms and not by reason of any indorsement.

(2) A "subsequent purchaser" is a person who

takes other than by original issue.

(3) A "clearing corporation" is a corporation:

(a) At least 90 percent of the capital stock of which is held by or for one or more persons, (other than individuals), each of whom:

1. Is subject to supervision or regulation pursuant to the provisions of federal or state banking laws or state insurance laws;

2. Is a broker, dealer, or investment company registered under the Securities Exchange Act of 1934 or the Investment Company Act of 1940; or

3. Is a national securities exchange or association registered under a statute of the United States such as the Securities Exchange Act of 1934,

and none of whom, other than a national securities exchange or association, holds in excess of 20 percent of the capital stock of such corporation; and

(b) Any remaining capital stock of which is held by individuals who have purchased such capital stock at or prior to the time of their taking office as directors of such corporation and who have purchased only so much of such capital stock as may be necessary to permit them to qualify as such directors.

(4) A "custodian bank" is any bank or trust company which is supervised and examined by state or federal authority having supervision over banks and which is acting as custodian for a clearing corporation.

(5) Other definitions applying to this chapter or to specified parts thereof and the sections in which they appear are:

"Adverse claim," s. 678.301.

"Bona fide purchaser," s. 678.302.

"Broker," s. 678.303.

"Guarantee of the signature," s. 678.402.

"Intermediary bank," s. 674.105.

"Issuer," s. 678.201.

"Overissue," s. 678.104.

(6) In addition chapter 671 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

History.—s. 1, ch. 65-254; s. 1, ch. 74-222.

Note.—s. 8-102, U.C.C.

cf.—s. 710.02 Definitions.

**678.103 Issuer's lien.**—A lien upon a security in favor of an issuer thereof is valid against a purchaser only if the right of the issuer to such lien is noted conspicuously on the security.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 8-103, U.C.C.; supersedes s. 614.17.

**678.104 Effect of overissue; "overissue."**—

(1) The provisions of this chapter which validate a security or compel its issue or reissue do not apply to the extent that validation, issue or reissue would result in overissue; but:

(a) If an identical security which does not constitute an overissue is reasonably available for purchase, the person entitled to issue or validation may compel the issuer to purchase and deliver such a security to him against surrender of the security, if any, which he holds; or

(b) If a security is not so available for purchase, the person entitled to issue or validation may recover from the issuer the price he or the last purchaser for value paid for it with interest from the date of his demand.

(2) "Overissue" means the issue of securities in excess of the amount which the issuer has corporate power to issue.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 8-104, U.C.C.

**678.105 Securities negotiable; presumptions.**—

(1) Securities governed by this chapter are negotiable instruments.

(2) In any action on a security:

(a) Unless specifically denied in the pleadings, each signature on the security or in a necessary indorsement is admitted;

(b) When the effectiveness of a signature is put in issue the burden of establishing it is on the party claiming under the signature but the signature is presumed to be genuine or authorized;

(c) When signatures are admitted or established production of the instrument entitles a holder to recover on it unless the defendant establishes a defense or a defect going to the validity of the security; and

(d) After it is shown that a defense or defect exists the plaintiff has the burden of establishing that he or some person under whom he claims is a person against whom the defense or defect is ineffective (s. 678.202).

**History.**—s. 1, ch. 65-254.

**Note.**—s. 8-105, U.C.C.

**678.106 Applicability.**—The validity of a security and the rights and duties of the issuer with respect to registration of transfer are governed by the law (including the conflict of laws rules) of the jurisdiction of organization of the issuer.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 8-106, U.C.C.

cf.—s. 610.091 Territorial application.

**678.107 Securities deliverable; action for price.**—

(1) Unless otherwise agreed and subject to any applicable law or regulation respecting short sales, a person obligated to deliver securities may deliver any security of the specified issue in bearer form or

registered in the name of the transferee or indorsed to him or in blank.

(2) When the buyer fails to pay the price as it comes due under a contract of sale the seller may recover the price:

(a) Of securities accepted by the buyer; and

(b) Of other securities if efforts at their resale would be unduly burdensome or if there is no readily available market for their resale.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 8-107, U.C.C.

## PART II

### ISSUE—ISSUER

678.201 "Issuer."

678.202 Issuer's responsibility and defenses; notice of defect or defense.

678.203 Staleness as notice of defects or defenses.

678.204 Effect of issuer's restrictions on transfer.

678.205 Effect of unauthorized signature on issue.

678.206 Completion or alteration of instrument.

678.207 Rights of issuer with respect to registered owners.

678.208 Effect of signature of authenticating trustee, registrar or transfer agent.

**678.201 "Issuer."**—

(1) With respect to obligations on or defenses to a security "issuer" includes a person who:

(a) Places or authorizes the placing of his name on a security (otherwise than as authenticating trustee, registrar, transfer agent or the like) to evidence that it represents a share, participation or other interest in his property or in an enterprise or to evidence his duty to perform an obligation evidenced by the security; or

(b) Directly or indirectly creates fractional interests in his rights or property which fractional interests are evidenced by securities; or

(c) Becomes responsible for or in place of any other person described as an issuer in this section.

(2) With respect to obligations on or defenses to a security a guarantor is an issuer to the extent of his guaranty whether or not his obligation is noted on the security.

(3) With respect to registration of transfer (part IV of this chapter) "issuer" means a person on whose behalf transfer books are maintained.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 8-201, U.C.C.; supersedes ss. 674.32, 674.62-674.64.

cf.—s. 710.02 Definitions.

**678.202 Issuer's responsibility and defenses; notice of defect or defense.**—

(1) Even against a purchaser for value and without notice, the terms of a security include those stated on the security and those made part of the security by reference to another instrument, indenture or document or to a constitution statute, ordinance, rule, regulation, order or the like to the extent that the terms so referred to do not conflict with the stated terms. Such a reference does not of itself charge a purchaser for value with notice of a defect going to the validity of the security even though the security expressly states that a person accepting it admits such notice.

(2)(a) A security other than one issued by a government or governmental agency or unit even though issued with a defect going to its validity is valid in the hands of a purchaser for value and without notice of the particular defect unless the defect involves a violation of constitutional provisions in which case the security is valid in the hands of a subsequent purchaser for value and without notice of the defect.

(b) The rule of (a) applies to an issuer which is a government or governmental agency or unit only if either there has been substantial compliance with the legal requirements governing the issue or the issuer has received a substantial consideration for the issue as a whole or for the particular security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security.

(3) Except as otherwise provided in the case of certain unauthorized signatures on issue (s. 678.205), lack of genuineness of a security is a complete defense even against a purchaser for value and without notice.

(4) All other defenses of the issuer including non-delivery and conditional delivery of the security are ineffective against a purchaser for value who has taken without notice of the particular defense.

(5) Nothing in this section shall be construed to affect the right of a party to a "when, as and if issued" or a "when distributed" contract to cancel the contract in the event of a material change in the character of the security which is the subject of the contract or in the plan or arrangement pursuant to which such security is to be issued or distributed.

History.—s. 1, ch. 65-254.

Note.—s. 8-202, U.C.C.; supersedes ss. 674.18, 674.25, 674.31, 674.58, 674.59, 674.62-674.64.

#### **678.203 Staleness as notice of defects or defenses.—**

(1) After an act or event which creates a right to immediate performance of the principal obligation evidenced by the security or which sets a date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is charged with notice of any defect in its issue or defense of the issuer:

(a) If the act or event is one requiring the payment of money or the delivery of securities or both on presentation or surrender of the security and such funds or securities are available on the date set for payment or exchange and he takes the security more than 1 year after that date; and

(b) If the act or event is not covered by paragraph (a) and he takes the security more than 2 years after the date set for surrender or presentation or the date on which such performance became due.

(2) A call which has been revoked is not within subsection (1).

History.—s. 1, ch. 65-254.

Note.—s. 8-203, U.C.C.; supersedes ss. 674.54(2), 674.55.

#### **678.204 Effect of issuer's restrictions on transfer.—**Unless noted conspicuously on the security a restriction on transfer imposed by the issuer

even though otherwise lawful is ineffective except against a person with actual knowledge of it.

History.—s. 1, ch. 65-254.

Note.—s. 8-204, U.C.C.; supersedes s. 614.17.

#### **678.205 Effect of unauthorized signature on issue.—**An unauthorized signature placed on a security prior to or in the course of issue is ineffective except that the signature is effective in favor of a purchaser for value and without notice of the lack of authority if the signing has been done by:

(1) An authenticating trustee, registrar, transfer agent or other person entrusted by the issuer with the signing of the security or of similar securities or their immediate preparation for signing; or

(2) An employee of the issuer or of any of the foregoing entrusted with responsible handling of the security.

History.—s. 1, ch. 65-254.

Note.—s. 8-205, U.C.C.; supersedes s. 674.25.

#### **678.206 Completion or alteration of instrument.—**

(1) Where a security contains the signatures necessary to its issue or transfer but is incomplete in any other respect:

(a) Any person may complete it by filling in the blanks as authorized; and

(b) Even though the blanks are incorrectly filled in, the security as completed is enforceable by a purchaser who took it for value and without notice of such incorrectness.

(2) A complete security which has been improperly altered even though fraudulently remains enforceable but only according to its original terms.

History.—s. 1, ch. 65-254.

Note.—s. 8-206, U.C.C.; supersedes ss. 674.16, 674.17, 675.32, 614.18.

#### **678.207 Rights of issuer with respect to registered owners.—**

(1) Prior to due presentment for registration of transfer of a security in registered form the issuer or indenture trustee may treat the registered owner as the person exclusively entitled to vote, to receive notifications and otherwise to exercise all the rights and powers of an owner.

(2) Nothing in this chapter shall be construed to affect the liability of the registered owner of a security for calls, assessments or the like.

History.—s. 1, ch. 65-254.

Note.—s. 8-207, U.C.C.; supersedes s. 614.05.

#### **678.208 Effect of signature of authenticating trustee, registrar or transfer agent.—**

(1) A person placing his signature upon a security as authenticating trustee, registrar, transfer agent or the like warrants to a purchaser for value without notice of the particular defect that:

(a) The security is genuine; and

(b) His own participation in the issue of the security is within his capacity and within the scope of the authorization received by him from the issuer; and

(c) He has reasonable grounds to believe that the security is in the form and within the amount the issuer is authorized to issue.

(2) Unless otherwise agreed, a person by so plac-



ing his signature does not assume responsibility for the validity of the security in other respects.

History.—s. 1, ch. 65-254.

Note.—s. 8-208, U.C.C.

### PART III

#### PURCHASE

- 678.301 Rights acquired by purchaser; "Adverse claim"; title acquired by bona fide purchaser.
- 678.302 "Bona fide purchaser."
- 678.303 "Broker."
- 678.304 Notice to purchaser of adverse claims.
- 678.305 Staleness as notice of adverse claims.
- 678.306 Warranties on presentment and transfer.
- 678.307 Effect of delivery without indorsement; right to compel indorsement.
- 678.308 Indorsement, how made; special indorsement; indorser not a guarantor; partial assignment.
- 678.309 Effect of indorsement without delivery.
- 678.310 Indorsement of security in bearer form.
- 678.311 Effect of unauthorized indorsement.
- 678.312 Effect of guaranteeing signature or indorsement.
- 678.313 When delivery to the purchaser occurs; purchaser's broker as holder.
- 678.314 Duty to deliver, when completed.
- 678.315 Action against purchaser based upon wrongful transfer.
- 678.316 Purchaser's right to requisites for registration of transfer on books.
- 678.317 Attachment or levy upon security.
- 678.318 No conversion by good faith delivery.
- 678.319 Statute of frauds.
- 678.320 Transfer or pledge within a central depository system.

**678.301 Rights acquired by purchaser; "Adverse claim"; title acquired by bona fide purchaser.—**

(1) Upon delivery of a security the purchaser acquires the rights in the security which his transferor had or had actual authority to convey except that a purchaser who has himself been a party to any fraud or illegality affecting the security or who as a prior holder had notice of an adverse claim cannot improve his position by taking from a later bona fide purchaser. "Adverse claim" includes a claim that a transfer was or would be wrongful or that a particular adverse person is the owner of or has an interest in the security.

(2) A bona fide purchaser in addition to acquiring the rights of a purchaser also acquires the security free of any adverse claim.

(3) A purchaser of a limited interest acquires rights only to the extent of the interest purchased.

History.—s. 1, ch. 65-254.

Note.—s. 8-301, U.C.C.; supersedes ss. 674.54, 674.59-674.61, 614.09.

**678.302 "Bona fide purchaser."**—A "bona fide purchaser" is a purchaser for value in good faith and

without notice of any adverse claim who takes delivery of a security in bearer form or of one in registered form issued to him or indorsed to him or in blank.

History.—s. 1, ch. 65-254.

Note.—s. 8-302, U.C.C.; supersedes s. 674.54.

**678.303 "Broker."**—"Broker" means a person engaged for all or part of his time in the business of buying and selling securities, who in the transaction concerned acts for, or buys a security from or sells a security to a customer. Nothing in this chapter determines the capacity in which a person acts for purposes of any other statute or rule to which such person is subject.

History.—s. 1, ch. 65-254.

Note.—s. 8-303, U.C.C.  
cf.—s. 710.03 Manner of making gifts.

**678.304 Notice to purchaser of adverse claims.—**

(1) A purchaser (including a broker for the seller or buyer but excluding an intermediary bank) of a security is charged with notice of adverse claims if:

(a) The security whether in bearer or registered form has been indorsed "for collection" or "for surrender" or for some other purpose not involving transfer; or

(b) The security is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor. The mere writing of a name on a security is not such a statement.

(2) The fact that the purchaser (including a broker for the seller or buyer) has notice that the security is held for a third person or is registered in the name of or indorsed by a fiduciary does not create a duty of inquiry into the rightfulness of the transfer or constitute notice of adverse claims. If, however, the purchaser (excluding an intermediary bank) has knowledge that the proceeds are being used or that the transaction is for the individual benefit of the fiduciary or otherwise in breach of duty, the purchaser is charged with notice of adverse claims.

History.—s. 1, ch. 65-254.

Note.—s. 8-304, U.C.C.; supersedes ss. 674.40, 674.58.

**678.305 Staleness as notice of adverse claims.**—An act or event which creates a right to immediate performance of the principal obligation evidenced by the security or which sets a date on or after which the security is to be presented or surrendered for redemption or exchange does not of itself constitute any notice of adverse claims except in the case of a purchaser:

(1) After 1 year from any date set for such presentment or surrender for redemption or exchange; or

(2) After 6 months from any date set for payment of money against presentation or surrender of the security if funds are available for payment on that date.

History.—s. 1, ch. 65-254.

Note.—s. 8-305, U.C.C.; supersedes ss. 674.54(2), 674.55.

**678.306 Warranties on presentment and transfer.—**

(1) A person who presents a security for registration of transfer or for payment or exchange warrants to the issuer that he is entitled to the registration,

payment or exchange. But a purchaser for value without notice of adverse claims who receives a new, reissued or reregistered security on registration of transfer warrants only that he has no knowledge of any unauthorized signature (s. 678.311) in a necessary indorsement.

(2) A person by transferring a security to a purchaser for value warrants only that:

- (a) His transfer is effective and rightful; and
- (b) The security is genuine and has not been materially altered; and
- (c) He knows no fact which might impair the validity of the security.

(3) Where a security is delivered by an intermediary known to be entrusted with delivery of the security on behalf of another or with collection of a draft or other claim against such delivery, the intermediary by such delivery warrants only his own good faith and authority even though he has purchased or made advances against the claim to be collected against the delivery.

(4) A pledgee or other holder for security who redelivers the security received, or after payment and on order of the debtor delivers that security to a third person makes only the warranties of an intermediary under subsection (3).

(5) A broker gives to his customer and to the issuer and a purchaser the warranties provided in this section and has the rights and privileges of a purchaser under this section. The warranties of and in favor of the broker acting as an agent are in addition to applicable warranties given by and in favor of his customer.

History.—s. 1, ch. 65-254.

Note.—s. 8-306, U.C.C.; supersedes ss. 674.67-674.69, 674.71, 614.13, 614.14.

**678.307 Effect of delivery without indorsement; right to compel indorsement.**—Where a security in registered form has been delivered to a purchaser without a necessary indorsement he may become a bona fide purchaser only as of the time the indorsement is supplied, but against the transferor the transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary indorsement supplied.

History.—s. 1, ch. 65-254.

Note.—s. 8-307, U.C.C.; supersedes ss. 674.51, 614.11.

**678.308 Indorsement, how made; special indorsement; indorser not a guarantor; partial assignment.**—

(1) An indorsement of a security in registered form is made when an appropriate person signs on it or on a separate document an assignment or transfer of the security or a power to assign or transfer it or when the signature of such person is written without more upon the back of the security.

(2) An indorsement may be in blank or special. An indorsement in blank includes an indorsement to bearer. A special indorsement specifies the person to whom the security is to be transferred, or who has power to transfer it. A holder may convert a blank indorsement into a special indorsement.

(3) "An appropriate person" in subsection (1) means:

- (a) The person specified by the security or by special indorsement to be entitled to the security; or

(b) Where the person so specified is described as a fiduciary but is no longer serving in the described capacity,—either that person or his successor; or

(c) Where the security or indorsement so specifies more than one person as fiduciaries and one or more are no longer serving in the described capacity,—the remaining fiduciary or fiduciaries, whether or not a successor has been appointed or qualified; or

(d) Where the person so specified is an individual and is without capacity to act by virtue of death, incompetence, infancy or otherwise,—his executor, administrator, guardian or like fiduciary; or

(e) Where the security or indorsement so specifies more than one person as tenants by the entirety or with right of survivorship and by reason of death all cannot sign,—the survivor or survivors; or

(f) A person having power to sign under applicable law or controlling instrument; or

(g) To the extent that any of the foregoing persons may act through an agent,—his authorized agent.

(4) Unless otherwise agreed the indorser by his indorsement assumes no obligation that the security will be honored by the issuer.

(5) An indorsement purporting to be only of part of a security representing units intended by the issuer to be separately transferable is effective to the extent of the indorsement.

(6) Whether the person signing is appropriate is determined as of the date of signing and an indorsement by such a person does not become unauthorized for the purposes of this chapter by virtue of any subsequent change of circumstances.

(7) Failure of a fiduciary to comply with a controlling instrument or with the law of the state having jurisdiction of the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer, does not render his indorsement unauthorized for the purposes of this chapter.

History.—s. 1, ch. 65-254.

Note.—s. 8-308, U.C.C.; supersedes ss. 674.34-674.38, 674.40, 674.66, 674.71, 614.22.

cf.—s. 610.021 Definitions.

**678.309 Effect of indorsement without delivery.**—An indorsement of a security whether special or in blank does not constitute a transfer until delivery of the security on which it appears or if the indorsement is on a separate document until delivery of both the document and the security.

History.—s. 1, ch. 65-254.

Note.—s. 8-309, U.C.C.; supersedes ss. 674.33, 614.03, 614.12.

**678.310 Indorsement of security in bearer form.**—An indorsement of a security in bearer form may give notice of adverse claims (s. 678.304) but does not otherwise affect any right to registration the holder may possess.

History.—s. 1, ch. 65-254.

Note.—s. 8-310, U.C.C.; supersedes s. 674.43.

**678.311 Effect of unauthorized indorsement.**—Unless the owner has ratified an unauthorized indorsement or is otherwise precluded from asserting its ineffectiveness:

- (1) He may assert its ineffectiveness against the issuer or any purchaser other than a purchaser for value and without notice of adverse claims who has

in good faith received a new, reissued or reregistered security on registration of transfer; and

(2) An issuer who registers the transfer of a security upon the unauthorized indorsement is subject to liability for improper registration (s. 678.404).

**History.**—s. 1, ch. 65-254.

**Note.**—s. 8-311, U.C.C.; supersedes s. 674.25.

**678.312 Effect of guaranteeing signature or indorsement.—**

(1) Any person guaranteeing a signature of an indorser of a security warrants that at the time of signing:

- (a) The signature was genuine; and
- (b) The signer was an appropriate person to indorse (s. 678.308); and
- (c) The signer had legal capacity to sign.

But the guarantor does not otherwise warrant the rightfulness of the particular transfer.

(2) Any person may guarantee an indorsement of a security and by so doing warrants not only the signature (subsection (1)) but also the rightfulness of the particular transfer in all respects. But no issuer may require a guarantee of indorsement as a condition to registration of transfer.

(3) The foregoing warranties are made to any person taking or dealing with the security in reliance on the guarantee and the guarantor is liable to such person for any loss resulting from breach of the warranties.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 8-312, U.C.C.

**678.313 When delivery to the purchaser occurs; purchaser's broker as holder.—**

(1) Delivery to a purchaser occurs when:

- (a) He or a person designated by him acquires possession of a security; or
- (b) His broker acquires possession of a security specially indorsed to or issued in the name of the purchaser; or
- (c) His broker sends him confirmation of the purchase and also by book entry or otherwise identifies a specific security in the broker's possession as belonging to the purchaser; or
- (d) With respect to an identified security to be delivered while still in the possession of a third person when that person acknowledges that he holds for the purchaser; or
- (e) Appropriate entries on the books of a clearing corporation are made under s. 678.320.

(2) The purchaser is the owner of a security held for him by his broker, but is not the holder except as specified in subsection (1)(b)-(c) and (e). Where a security is part of a fungible bulk the purchaser is the owner of a proportionate property interest in the fungible bulk.

(3) Notice of an adverse claim received by the broker or by the purchaser after the broker takes delivery as a holder for value is not effective either as to the broker or as to the purchaser. However, as between the broker and the purchaser the purchaser may demand delivery of an equivalent security as to

which no notice of an adverse claim has been received.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 8-313, U.C.C.; supersedes ss. 674.01, 614.02(2).

**678.314 Duty to deliver, when completed.—**

(1) Unless otherwise agreed where a sale of a security is made on an exchange or otherwise through brokers:

(a) The selling customer fulfills his duty to deliver when he places such a security in the possession of the selling broker or of a person designated by the broker or if requested causes an acknowledgment to be made to the selling broker that it is held for him; and

(b) The selling broker including a correspondent broker acting for a selling customer fulfills his duty to deliver by placing the security or a like security in the possession of the buying broker or a person designated by him or by effecting clearance of the sale in accordance with the rules of the exchange on which the transaction took place.

(2) Except as otherwise provided in this section and unless otherwise agreed, a transferor's duty to deliver a security under a contract of purchase is not fulfilled until he places the security in form to be negotiated by the purchaser in the possession of the purchaser or of a person designated by him or at the purchaser's request causes an acknowledgment to be made to the purchaser that it is held for him. Unless made on an exchange a sale to a broker purchasing for his own account is within this subsection and not within subsection (1).

**History.**—s. 1, ch. 65-254.

**Note.**—s. 8-314, U.C.C.

**678.315 Action against purchaser based upon wrongful transfer.—**

(1) Any person against whom the transfer of a security is wrongful for any reason, including his incapacity, may against anyone except a bona fide purchaser reclaim possession of the security or obtain possession of any new security evidencing all or part of the same rights or have damages.

(2) If the transfer is wrongful because of an unauthorized indorsement, the owner may also reclaim or obtain possession of the security or new security even from a bona fide purchaser if the ineffectiveness of the purported indorsement can be asserted against him under the provisions of this chapter on unauthorized indorsements (s. 678.311).

(3) The right to obtain or reclaim possession of a security may be specifically enforced and its transfer enjoined and the security impounded pending the litigation.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 8-315, U.C.C.; supersedes s. 614.09.

**678.316 Purchaser's right to requisites for registration of transfer on books.—**

Unless otherwise agreed the transferor must on due demand supply his purchaser with any proof of his authority to transfer or with any other requisite which may be necessary to obtain registration of the transfer of the security but if the transfer is not for value a transfer-



or need not do so unless the purchaser furnishes the necessary expenses. Failure to comply with a demand made within a reasonable time gives the purchaser the right to reject or rescind the transfer.

History.—s. 1, ch. 65-254.  
Note.—s. 8-316, U.C.C.

#### 678.317 Attachment or levy upon security.—

(1) No attachment or levy upon a security or any share or other interest evidenced thereby which is outstanding shall be valid until the security is actually seized by the officer making the attachment or levy but a security which has been surrendered to the issuer may be attached or levied upon at the source.

(2) A creditor whose debtor is the owner of a security shall be entitled to such aid from courts of appropriate jurisdiction, by injunction or otherwise, in reaching such security or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which cannot readily be attached or levied upon by ordinary legal process.

History.—s. 1, ch. 65-254.  
Note.—s. 8-317, U.C.C.; supersedes ss. 614.15, 614.16.  
cf.—s. 56.061 Property subject to execution.

**678.318 No conversion by good faith delivery.**—An agent or bailee who in good faith (including observance of reasonable commercial standards if he is in the business of buying, selling or otherwise dealing with securities) has received securities and sold, pledged or delivered them according to the instructions of his principal is not liable for conversion or for participation in breach of fiduciary duty although the principal had no right to dispose of them.

History.—s. 1, ch. 65-254.  
Note.—s. 8-318, U.C.C.  
cf.—s. 610.071 Nonliability of corporation or transfer agent.

**678.319 Statute of frauds.**—A contract for the sale of securities is not enforceable by way of action or defense unless:

(1) There is some writing signed by the party against whom enforcement is sought or by his authorized agent or broker sufficient to indicate that a contract has been made for sale of a stated quantity of described securities at a defined or stated price; or

(2) Delivery of the security has been accepted or payment has been made but the contract is enforceable under this provision only to the extent of such delivery or payment; or

(3) Within a reasonable time a writing in confirmation of the sale or purchase and sufficient against the sender under subsection (1) has been received by the party against whom enforcement is sought and he has failed to send written objection to its contents within 10 days after its receipt; or

(4) The party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract was made for sale of a stated quantity of described securities at a defined or stated price.

History.—s. 1, ch. 65-254.  
Note.—s. 8-319, U.C.C.

#### 678.320 Transfer or pledge within a central depository system.—

(1) If a security:

(a) Is in the custody of a clearing corporation or

of a custodian bank or a nominee of either subject to the instructions of the clearing corporation; and

(b) Is in bearer form or indorsed in blank by an appropriate person or registered in the name of the clearing corporation or custodian bank or a nominee of either; and

(c) Is shown on the account of a transferor or pledgor on the books of the clearing corporation;

then, in addition to other methods, a transfer or pledge of the security or any interest therein may be effected by the making of appropriate entries on the books of the clearing corporation reducing the account of the transferor or pledgor and increasing the account of the transferee or pledgee by the amount of the obligation or the number of shares or rights transferred or pledged.

(2) Under this section entries may be with respect to like securities or interests therein as a part of a fungible bulk and may refer merely to a quantity of a particular security without reference to the name of the registered owner, certificate or bond number or the like and, in appropriate cases, may be on a net basis taking into account other transfers or pledges of the same security.

(3) A transfer or pledge under this section has the effect of a delivery of a security in bearer form or duly indorsed in blank (s. 678.301) representing the amount of the obligation or the number of shares or rights transferred or pledged. If a pledge or the creation of a security interest is intended, the making of entries has the effect of a taking of delivery by the pledgee or a secured party (ss. 679.304 and 679.305). A transferee or pledgee under this section is a holder.

(4) A transfer or pledge under this section does not constitute a registration of transfer under part IV of this chapter.

(5) That entries made on the books of the clearing corporation as provided in subsection (1) are not appropriate does not affect the validity or effect of the entries nor the liabilities or obligations of the clearing corporation to any person adversely affected thereby.

History.—s. 1, ch. 65-254.  
Note.—s. 8-320, U.C.C.

## PART IV

### REGISTRATION

678.401 Duty of issuer to register transfer.

678.402 Assurance that indorsements are effective.

678.403 Limited duty of inquiry.

678.404 Liability and nonliability for registration.

678.405 Lost, destroyed and stolen securities.

678.406 Duty of authenticating trustee, transfer agent or registrar.

#### 678.401 Duty of issuer to register transfer.—

(1) Where a security in registered form is presented to the issuer with a request to register transfer, the issuer is under a duty to register the transfer as requested if:

(a) The security is indorsed by the appropriate person or persons (s. 678.308); and

(b) Reasonable assurance is given that those indorsements are genuine and effective (s. 678.402); and

(c) The issuer has no duty to inquire into adverse claims or has discharged any such duty (s. 678.403); and

(d) Any applicable law relating to the collection of taxes has been complied with; and

(e) The transfer is in fact rightful or is to a bona fide purchaser.

(2) Where an issuer is under a duty to register a transfer of a security the issuer is also liable to the person presenting it for registration or his principal for loss resulting from any unreasonable delay in registration or from failure or refusal to register the transfer.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 8-401, U.C.C.

#### **678.402 Assurance that indorsements are effective.—**

(1) The issuer may require the following assurance that each necessary indorsement (s. 678.308) is genuine and effective:

(a) In all cases, a guarantee of the signature (s. 678.312(1)) of the person indorsing; and

(b) Where the indorsement is by an agent, appropriate assurance of authority to sign;

(c) Where the indorsement is by a fiduciary, appropriate evidence of appointment or incumbency;

(d) Where there is more than one fiduciary, reasonable assurance that all who are required to sign have done so;

(e) Where the indorsement is by a person not covered by any of the foregoing, assurance appropriate to the case corresponding as nearly as may be to the foregoing.

(2) A "guarantee of the signature" in subsection (1) means a guarantee signed by or on behalf of a person reasonably believed by the issuer to be responsible. The issuer may adopt standards with respect to responsibility provided such standards are not manifestly unreasonable.

(3) "Appropriate evidence of appointment or incumbency" in subsection (1) means:

(a) In the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of that court or an officer thereof and dated within 60 days before the date of presentation for transfer; or

(b) In any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by the issuer to be responsible or in the absence of such a document or certificate other evidence reasonably deemed by the issuer to be appropriate. The issuer may adopt standards with respect to such evidence provided such standards are not manifestly unreasonable. The issuer is not charged with notice of the contents of any document obtained pursuant to this paragraph (b) except to the extent that the contents relate directly to the appointment or incumbency.

(4) The issuer may elect to require reasonable assurance beyond that specified in this section but if it does so and for a purpose other than that specified in subsection (3)(b) both requires and obtains a copy of a will, trust, indenture, articles of copartnership,

bylaws or other controlling instrument it is charged with notice of all matters contained therein affecting the transfer.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 8-402, U.C.C.

cf.—s. 610.051 Evidence of appointment or incumbency.

#### **678.403 Limited duty of inquiry.—**

(1) An issuer to whom a security is presented for registration is under a duty to inquire into adverse claims if:

(a) A written notification of an adverse claim is received at a time and in a manner which affords the issuer a reasonable opportunity to act on it prior to the issuance of a new, reissued or reregistered security and the notification identifies the claimant, the registered owner and the issue of which the security is a part and provides an address for communications directed to the claimant; or

(b) The issuer is charged with notice of an adverse claim from a controlling instrument which it has elected to require under s. 678.402(4).

(2) The issuer may discharge any duty of inquiry by any reasonable means, including notifying an adverse claimant by registered or certified mail at the address furnished by him or if there be no such address at his residence or regular place of business that the security has been presented for registration of transfer by a named person, and that the transfer will be registered unless within 30 days from the date of mailing the notification, either:

(a) An appropriate restraining order, injunction or other process issues from a court of competent jurisdiction; or

(b) An indemnity bond sufficient in the issuer's judgment to protect the issuer and any transfer agent, registrar or other agent of the issuer involved, from any loss which it or they may suffer by complying with the adverse claim is filed with the issuer.

(3) Unless an issuer is charged with notice of an adverse claim from a controlling instrument which it has elected to require under s. 678.402(4) or receives notification of an adverse claim under subsection (1), where a security presented for registration is indorsed by the appropriate person or persons the issuer is under no duty to inquire into adverse claims. In particular:

(a) An issuer registering a security in the name of a person who is a fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent, or correct description of the fiduciary relationship and thereafter the issuer may assume without inquiry that the newly registered owner continues to be the fiduciary until the issuer receives written notice that the fiduciary is no longer acting as such with respect to the particular security;

(b) An issuer registering transfer on an indorsement by a fiduciary is not bound to inquire whether the transfer is made in compliance with a controlling instrument or with the law of the state having jurisdiction of the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer; and

(c) The issuer is not charged with notice of the contents of any court record or file or other recorded or unrecorded document even though the document is in its possession and even though the transfer is

made on the indorsement of a fiduciary to the fiduciary himself or to his nominee.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 8-403, U.C.C.

cf.—s. 610.031 Registration in the name of a fiduciary.

s. 610.041 Assignment by a fiduciary.

s. 610.081 Nonliability of third persons.

#### **678.404 Liability and nonliability for registration.—**

(1) Except as otherwise provided in any law relating to the collection of taxes, the issuer is not liable to the owner or any other person suffering loss as a result of the registration of a transfer of a security if:

(a) There were on or with the security the necessary indorsements (s. 678.308); and

(b) The issuer had no duty to inquire into adverse claims or has discharged any such duty (s. 678.403).

(2) Where an issuer has registered a transfer of a security to a person not entitled to it the issuer on demand must deliver a like security to the true owner unless:

(a) The registration was pursuant to subsection (1); or

(b) The owner is precluded from asserting any claim for registering the transfer under s. 678.405(1); or

(c) Such delivery would result in overissue, in which case the issuer's liability is governed by s. 678.104.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 8-404, U.C.C.

cf.—s. 610.071 Nonliability of corporation or transfer agent.

#### **678.405 Lost, destroyed and stolen securities.—**

(1) Where a security has been lost, apparently destroyed or wrongfully taken and the owner fails to notify the issuer of that fact within a reasonable time after he has notice of it and the issuer registers a transfer of the security before receiving such a notification, the owner is precluded from asserting against the issuer any claim for registering the transfer under the preceding section or any claim to a new security under this section.

(2) Where the owner of a security claims that the security has been lost, destroyed or wrongfully taken, the issuer must issue a new security in place of the original security if the owner:

(a) So requests before the issuer has notice that the security has been acquired by a bona fide purchaser; and

(b) Files with the issuer a sufficient indemnity bond; and

(c) Satisfies any other reasonable requirements imposed by the issuer.

(3) If, after the issue of the new security, a bona fide purchaser of the original security presents it for registration of transfer, the issuer must register the transfer unless registration would result in overissue, in which event the issuer's liability is governed by s. 678.104. In addition to any rights on the indemnity bond, the issuer may recover the new security from the person to whom it was issued or any person taking under him except a bona fide purchaser.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 8-405, U.C.C.; supersedes s. 614.19.

#### **678.406 Duty of authenticating trustee, transfer agent or registrar.—**

(1) Where a person acts as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of transfers of its securities or in the issue of new securities or in the cancellation of surrendered securities:

(a) He is under a duty to the issuer to exercise good faith and due diligence in performing his functions; and

(b) He has with regard to the particular functions he performs the same obligation to the holder or owner of the security and has the same rights and privileges as the issuer has in regard to those functions.

(2) Notice to an authenticating trustee, transfer agent, registrar or other such agent is notice to the issuer with respect to the functions performed by the agent.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 8-406, U.C.C.



## CHAPTER 679

## UNIFORM COMMERCIAL CODE: SECURED TRANSACTIONS

## ARTICLE 9

Note.—Pursuant to s. 69, ch. 69-353, the editors have altered the numbers of all sections making up this chapter by deleting the digit and hyphen immediately following the decimal point. The purpose is to conform the numbering of the Code sections with the decimal numbering system used in other chapters of the Florida Statutes. The visual relationship between Florida Statutes section numbers and Code section number is not destroyed by this alteration; the digit preceding the decimal point coincides with the Code article number, and the digits following the decimal point coincide with the Code section numbers.

PART I SHORT TITLE, APPLICABILITY, AND DEFINITIONS  
(ss. 679.101-679.114)

PART II VALIDITY OF SECURITY AGREEMENT AND RIGHTS OF  
PARTIES THERETO (ss. 679.201-679.208)

PART III RIGHTS OF THIRD PARTIES; PERFECTED AND UNPERFECTED  
SECURITY INTERESTS; RULES OF PRIORITY (ss. 679.301-679.318)

PART IV FILING (ss. 679.401-679.408)

PART V DEFAULT (ss. 679.501-679.507)

PART I

SHORT TITLE, APPLICABILITY,  
AND DEFINITIONS

- 679.101 Short title.
- 679.102 Policy and subject matter of chapter.
- 679.103 Perfection of security interests in multiple state transactions.
- 679.104 Transactions excluded from chapter.
- 679.105 Definitions and index of definitions.
- 679.106 Definitions: "Account"; "General intangibles."
- 679.107 Definitions: "Purchase money security interest."
- 679.108 When after-acquired collateral not security for antecedent debt.
- 679.109 Classification of goods; "Consumer Goods"; "Equipment"; "Farm Products"; "Inventory."
- 679.110 Sufficiency of description.
- 679.111 Applicability of bulk transfer laws.
- 679.112 Where collateral is not owned by debtor.
- 679.113 Security interests arising under article on sales.
- 679.114 Consignment.

**679.101 Short title.**—Chapter 679 shall be known and may be cited as "Uniform Commercial Code—Secured Transactions."

**History.**—s. 1, ch. 65-254.  
**Note.**—s. 9-101, U.C.C.

**679.102 Policy and subject matter of chapter.**—

<sup>1</sup>(1) Except as otherwise provided in s. 679.104 on excluded transactions, this chapter applies:

(a) To any transaction (regardless of its form) which is intended to create a security interest in personal property or fixtures including goods, documents, instruments, general intangibles, chattel paper, or accounts; and also

(b) To any sale of accounts or chattel paper.

(2) This chapter applies to security interests created by contract including pledge, assignment, chattel mortgage, chattel trust, trust deed, factor's lien, equipment trust, conditional sale, trust receipt, other lien or title retention contract and lease or consignment intended as security. This chapter does not apply to statutory liens except as provided in s. 679.310.

(3) The application of this chapter to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this chapter does not apply.

**History.**—s. 1, ch. 65-254; s. 6, ch. 79-398.

<sup>1</sup>**Note.**—As amended, effective January 1, 1980.

**Note.**—s. 9-102, U.C.C.

**679.103 Perfection of security interests in multiple state transactions.**—

(1) DOCUMENTS, INSTRUMENTS, AND ORDINARY GOODS.—

(a) This subsection applies to documents and instruments and to goods other than those covered by a certificate of title described in subsection (2), mobile goods described in subsection (3), and minerals described in subsection (5).

(b) Except as otherwise provided in this subsection, perfection and the effect of perfection or non-perfection of a security interest in collateral are governed by the law of the jurisdiction where the collateral is when the last event occurs on which is based the assertion that the security interest is perfected or unperfected.

(c) If the parties to a transaction creating a purchase money security interest in goods in one jurisdiction understand at the time that the security interest attaches that the goods will be kept in another jurisdiction, then the law of the other jurisdiction governs the perfection and the effect of perfection or non-perfection of the security interest from the time it attaches until 30 days after the debtor receives possession of the goods and thereafter if the goods

are taken to the other jurisdiction before the end of the 30-day period.

(d) When collateral is brought into and kept in this state while subject to a security interest perfected under the law of the jurisdiction from which the collateral was removed, the security interest remains perfected, but if action is required by part III of this chapter to perfect the security interest:

1. If the action is not taken before the expiration of the period of perfection in the other jurisdiction or the end of 4 months after the collateral is brought into this state, whichever period first expires, the security interest becomes unperfected at the end of that period and is thereafter deemed to have been unperfected as against a person who became a purchaser after removal; or

2. If the action is taken before the expiration of the period specified in subparagraph 1., the security interest continues perfected thereafter;

3. For the purpose of priority over a buyer of consumer goods (subsection (2) of s. 679.307), the period of the effectiveness of a filing in the jurisdiction from which the collateral is removed is governed by the rules with respect to perfection in subparagraphs 1. and 2.

(2) CERTIFICATE OF TITLE.—

(a) This subsection applies to goods covered by a certificate of title issued under a statute of this state or of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection.

(b) Except as otherwise provided in this subsection, perfection and the effect of perfection or nonperfection of the security interest are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until 4 months after the goods are removed from that jurisdiction and thereafter until the goods are registered in another jurisdiction, but in any event not beyond surrender of the certificate. After the expiration of that period, the goods are not covered by the certificate of title within the meaning of this section.

(c) Except with respect to the rights of a buyer described in the next paragraph, a security interest, perfected in another jurisdiction otherwise than by notation on a certificate of title, in goods brought into this state and thereafter covered by a certificate of title issued by this state is subject to the rules stated in paragraph (d) of subsection (1).

(d) If goods are brought into this state while a security interest therein is perfected in any manner under the law of the jurisdiction from which the goods are removed and a certificate of title is issued by this state and the certificate does not show that the goods are subject to the security interest or that they may be subject to security interests not shown on the certificate, the security interest is subordinate to the rights of a buyer of the goods who is not in the business of selling goods of that kind to the extent that he gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest.

(3) ACCOUNTS, GENERAL INTANGIBLES AND MOBILE GOODS.—

(a) This subsection applies to accounts (other than an account described in subsection (5) on miner-

als) and general intangibles and to goods which are mobile and which are of a type normally used in more than one jurisdiction, such as motor vehicles, trailers, rolling stock, airplanes, shipping containers, road building and construction machinery and commercial harvesting machinery and the like, if the goods are equipment or are inventory leased or held for lease by the debtor to others, and are not covered by a certificate of title described in subsection (2).

(b) The law (including the conflict of laws rules) of the jurisdiction in which the debtor is located governs the perfection and the effect of perfection or nonperfection of the security interest.

(c) If, however, the debtor is located in a jurisdiction which is not a part of the United States, and which does not provide for perfection of the security interest by filing or recording in that jurisdiction, the law of the jurisdiction in the United States in which the debtor has its major executive office in the United States governs the perfection and the effect of perfection or nonperfection of the security interest through filing. In the alternative, if the debtor is located in a jurisdiction which is not a part of the United States or Canada and the collateral is accounts or general intangibles for money due or to become due, the security interest may be perfected by notification to the account debtor. As used in this paragraph, "United States" includes its territories and possessions and the Commonwealth of Puerto Rico.

(d) A debtor shall be deemed located at his place of business if he has one, at his chief executive office if he has more than one place of business, otherwise at his residence. If, however, the debtor is a foreign air carrier under the Federal Aviation Act of 1958, as amended, it shall be deemed located at the designated office of the agent upon whom service of process may be made on behalf of the foreign air carrier.

(e) A security interest perfected under the law of the jurisdiction of the location of the debtor is perfected until the expiration of 4 months after a change of the debtor's location to another jurisdiction, or until perfection would have ceased by the law of the first jurisdiction, whichever period first expires. Unless perfected in the new jurisdiction before the end of that period, it becomes unperfected thereafter and is deemed to have been unperfected as against a person who became a purchaser after the change.

(4) CHATTEL PAPER.—The rules stated for goods in subsection (1) apply to a possessory security interest in chattel paper. The rules stated for accounts in subsection (3) apply to a nonpossessory security interest in chattel paper, but the security interest may not be perfected by notification to the account debtor.

(5) MINERALS.—Perfection and the effect of perfection or nonperfection of a security interest which is created by a debtor who has an interest in minerals or the like (including oil and gas) before extraction and which attaches thereto as extracted, or which attaches to an account resulting from the

sale thereof at the wellhead or minehead are governed by the law (including the conflict of laws rules) of the jurisdiction wherein the wellhead or minehead is located.

<sup>1</sup>History.—s. 1, ch. 65-254; s. 7, ch. 79-398.

<sup>1</sup>Note.—As amended, effective January 1, 1980.

Note.—s. 9-103, U.C.C.

#### 679.104 Transactions excluded from chapter.

—This chapter does not apply:

<sup>1</sup>(1) To a security interest subject to any statute of the United States to the extent that such statute governs the rights of parties to and third parties affected by transactions in particular types of property; or

(2) To a landlord's lien; or

(3) To a lien given by statute or other rule of law for services or materials except as provided in s. 679.310 on priority of such liens; or

(4) To a transfer of a claim for wages, salary or other compensation of an employee; or

<sup>1</sup>(5) To a transfer by a government or governmental subdivision or agency; or

<sup>1</sup>(6) To a sale of accounts or chattel paper as part of a sale of the business out of which they arose, or an assignment of accounts or chattel paper which is for the purpose of collection only, or a transfer of a right to payment under a contract to an assignee who is also to do the performance under the contract or a transfer of a single account to an assignee in whole or partial satisfaction of a preexisting indebtedness; or

<sup>1</sup>(7) To a transfer of an interest or claim in or under any policy of insurance except as provided with respect to proceeds (s. 679.306) and priorities in proceeds (s. 679.312); or

<sup>1</sup>(8) To a right represented by a judgment (other than a judgment taken on a right to payment which was collateral); or

(9) To any right of setoff; or

(10) Except to the extent that provision is made for fixtures in s. 679.313, to the creation or transfer of an interest in or lien on real estate, including a lease or rents thereunder; or

<sup>1</sup>(11) To a transfer in whole or in part of any claim arising out of tort; or

<sup>1</sup>(12) To a transfer of any interest in any deposit account (s. 679.105(1)), except as provided with respect to proceeds (s. 679.306) and priorities on proceeds (s. 679.312).

<sup>1</sup>History.—s. 1, ch. 65-254; s. 8, ch. 79-398.

<sup>1</sup>Note.—Subsections (1), (5)-(8), and (11), as amended, and subsection (12), as created, effective January 1, 1980.

Note.—s. 9-104, U.C.C.

#### 679.105 Definitions and index of definitions.—

<sup>1</sup>(1) In this chapter unless the context otherwise requires:

(a) "Account debtor" means the person who is obligated on an account, chattel paper or general intangible;

(b) "Chattel paper" means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods, but a charter or other contract involving the use or hire of a vessel is not chattel paper. When a transaction is evidenced both by such a security agreement or a

lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper;

(c) "Collateral" means the property subject to a security interest, and includes accounts and chattel paper which have been sold;

(d) "Debtor" means the person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, and includes the seller of accounts or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any provision of the chapter dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires;

(e) "Deposit account" means a demand, time, savings, passbook, or like account maintained with a bank, savings and loan association, credit union, or like organization, other than an account evidenced by a certificate of deposit;

(f) "Document" means document of title as defined in the general definitions of chapter 671 (s. 671.201) and a receipt of the kind described in s. 677.201(2);

(g) "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests;

(h) "Goods" includes all things which are movable at the time the security interest attaches or which are fixtures (s. 679.313), but does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like (including oil and gas) before extraction. "Goods" also includes standing timber which is to be cut and removed under a conveyance or contract for sale, the unborn young of animals, and growing crops;

(i) "Instrument" means a negotiable instrument (defined in s. 673.104), or a security (defined in s. 678.102), or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary indorsement or assignment;

(j) "Mortgage" means an instrument deemed such under chapter 697;

(k) An advance is made "pursuant to a commitment" if the secured party has bound himself to make it, whether or not a subsequent event of default or other event not within his control has relieved or may relieve him from his obligation;

(l) "Security agreement" means an agreement which creates or provides for a security interest;

(m) "Secured party" means a lender, seller, or other person in whose favor there is a security interest, including a person to whom accounts or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement, or the like are represented by a trustee or other person, the representative is the secured party;

(n) "Transmitting utility" means any person primarily engaged in the railroad, street railway or trolley bus business, the electric or electronics communications transmission business, the transmission of goods by pipeline, or the transmission or the



production and transmission of electricity, steam, gas, or water, or the provision of sewer service.

<sup>1</sup>(2) Other definitions applying to this chapter and the sections in which they appear are:

"Account," s. 679.106

"Attach," s. 679.203

"Consumer goods," s. 679.109(1)

"Equipment," s. 679.109(2)

"Farm products," s. 679.109(3)

"Fixtures," s. 679.313

"General intangibles," s. 679.106

"Inventory," s. 679.109(4)

"Lien creditor," s. 679.301(3)

"Proceeds," s. 679.306(1)

"Purchase money security interest," s. 679.107

"United States," s. 679.103

<sup>1</sup>(3) The following definitions in other chapters apply to this chapter:

"Check," s. 673.104

"Contract for sale," s. 672.106

"Holder in due course," s. 673.302

"Note," s. 673.104

"Sale," s. 672.106

(4) In addition chapter 671 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

<sup>1</sup>(5) Nothing in this section shall be construed to alter, modify, or repeal any provision of the taxing laws of this state.

**History.**—s. 1, ch. 65-254; s. 9, ch. 79-398.

<sup>1</sup>**Note.**—Subsections (1)-(3), as amended, and subsection (5), as created, effective January 1, 1980.

**Note.**—s. 9-105, U.C.C.; supersedes s. 673.01.

**679.106 Definitions: "Account"; "General intangibles."**—"Account" means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper whether or not it has been earned by performance. "General intangibles" means any personal property (including things in action) other than goods, accounts, chattel paper, documents, instruments and money. All rights to payment earned or unearned under a charter or other contract involving the use or hire of a vessel and all rights incident to the charter or contract are accounts.

**History.**—s. 1, ch. 65-254; s. 10, ch. 79-398.

<sup>1</sup>**Note.**—As amended, effective January 1, 1980.

**Note.**—s. 9-106, U.C.C.

**679.107 Definitions: "Purchase money security interest."**—A security interest is a "purchase money security interest" to the extent that it is:

(1) Taken or retained by the seller of the collateral to secure all or part of its price; or

(2) Taken by a person who by making advances or incurring an obligation gives value to enable the debtor to acquire rights in or the use of collateral if such value is in fact so used.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 9-107, U.C.C.

**679.108 When after-acquired collateral not security for antecedent debt.**—Where a secured party makes an advance, incurs an obligation, releases a perfected security interest, or otherwise gives new value which is to be secured in whole or in part by after-acquired property his security interest in the after-acquired collateral shall be deemed to be

taken for new value and not as security for an antecedent debt if the debtor acquires his rights in such collateral either in the ordinary course of his business or under a contract or purchase made pursuant to the security agreement within a reasonable time after new value is given.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 9-108, U.C.C.; supersedes s. 85.30.

**679.109 Classification of goods; "Consumer Goods"; "Equipment"; "Farm Products"; "Inventory."**—Goods are:

(1) "Consumer goods" if they are used or bought for use primarily for personal, family or household purposes;

(2) "Equipment" if they are used or bought for use primarily in business (including farming or a profession) or by a debtor who is a nonprofit organization or a governmental subdivision or agency or if the goods are not included in the definitions of inventory, farm products or consumer goods;

(3) "Farm products" if they are crops or livestock or supplies used or produced in farming operations or if they are products of crops or livestock in their unmanufactured states (such as ginned cotton, wool-clip, maple syrup, milk and eggs), and if they are in the possession of a debtor engaged in raising, fattening, grazing or other farming operations. If goods are farm products they are neither equipment nor inventory;

(4) "Inventory" if they are held by a person who holds them for sale or lease or to be furnished under contracts of service or if he has so furnished them, or if they are raw materials, work in process or materials used or consumed in a business. Inventory of a person is not to be classified as his equipment.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 9-109, U.C.C.

**679.110 Sufficiency of description.**—For the purposes of this chapter any description of personal property or real estate is sufficient whether or not it is specific if it reasonably identifies what is described; except that a description of real estate in an instrument filed to perfect a security interest in crops growing or to be grown or goods which are or are to become fixtures shall be sufficient only if the filing or recording of the same constitutes constructive notice under the laws of this state, other than this chapter, which are applicable to the filing or recording of real estate mortgages, and a mailing or street address alone shall not be sufficient.

**History.**—s. 1, ch. 65-254; s. 1, ch. 67-264.

**Note.**—s. 9-110, U.C.C.; supersedes ss. 700.01, 85.30(1)(c), 699.08, 673.09.

**679.111 Applicability of bulk transfer laws.**—The creation of a security interest is not a bulk transfer under chapter 676 (see s. 676.103).

**History.**—s. 1, ch. 65-254.

**Note.**—s. 9-111, U.C.C.; supersedes Ch. 726.

**679.112 Where collateral is not owned by debtor.**—Unless otherwise agreed, when a secured party knows that collateral is owned by a person who is not the debtor, the owner of the collateral is entitled to receive from the secured party any surplus under s. 679.502(2) or under s. 679.504(1), and is not liable for the debt or for any deficiency after resale,

and he has the same right as the debtor:

- (1) To receive statements under s. 679.208;
- (2) To receive notice of and to object to a secured party's proposal to retain the collateral in satisfaction of the indebtedness under s. 679.505;
- (3) To redeem the collateral under s. 679.506;
- (4) To obtain injunctive or other relief under s. 679.507(1); and
- (5) To recover losses caused to him under s. 679.208(2).

**History.**—s. 1, ch. 65-254.

**Note.**—s. 9-112, U.C.C.

**679.113 Security interests arising under article on sales.**—A security interest arising solely under the chapter on sales (chapter 672) is subject to the provisions of this chapter except that to the extent that and so long as the debtor does not have or does not lawfully obtain possession of the goods:

- (1) No security agreement is necessary to make the security interest enforceable; and
- (2) No filing is required to perfect the security interest; and
- (3) The rights of the secured party on default by the debtor are governed by the chapter on sales (chapter 672).

**History.**—s. 1, ch. 65-254.

**Note.**—s. 9-113, U.C.C.

**679.114 Consignment.**—

(1) A person who delivers goods under a consignment which is not a security interest and who would be required to file under this chapter by s. 672.326(3)(c) has priority over a secured party who is or becomes a creditor of the consignee and who would have a perfected security interest in the goods if they were the property of the consignee, and also has priority with respect to identifiable cash proceeds received on or before delivery of the goods to a buyer, if:

- (a) The consignor complies with the filing provision of the chapter on sales with respect to consignments (s. 672.326(3)(c)) before the consignee receives possession of the goods; and
- (b) The consignor gives notification in writing to the holder of the security interest if the holder has filed a financing statement covering the same types of goods before the date of the filing made by the consignor; and
- (c) The holder of the security interest receives the notification within 5 years before the consignee receives possession of the goods; and
- (d) The notification states that the consignor expects to deliver goods on consignment to the consignee, describing the goods by item or type.

(2) In the case of a consignment which is not a security interest and in which the requirements of the preceding subsection have not been met, a person who delivers goods to another is subordinate to a person who would have a perfected security interest in the goods if they were the property of the debtor.

**History.**—s. 11, ch. 79-398.

<sup>1</sup>**Note.**—Effective January 1, 1980.

**PART II**

**VALIDITY OF SECURITY AGREEMENT  
AND RIGHTS OF PARTIES THERETO**

- 679.201 General validity of security agreement.
- 679.202 Title to collateral immaterial.
- 679.203 Enforceability of security interest; proceeds, formal requisites.
- 679.204 After-acquired property; future advances.
- 679.205 Use or disposition of collateral without accounting permissible.
- 679.206 Agreement not to assert defenses against assignee; modification of sales warranties where security agreement exists.
- 679.207 Rights and duties when collateral is in secured party's possession.
- 679.208 Request for statement of account or list of collateral.

**679.201 General validity of security agreement.**—Except as otherwise provided by this code a security agreement is effective according to its terms between the parties, against purchasers of the collateral and against creditors. Nothing in this chapter validates any charge or practice illegal under any statute or regulation thereunder governing usury, small loans, retail installment sales, or the like, or extends the application of any such statute or regulation to any transaction not otherwise subject thereto.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 9-201, U.C.C.; supersedes s. 673.03.

**679.202 Title to collateral immaterial.**—Each provision of this chapter with regard to rights, obligations and remedies applies whether title to collateral is in the secured party or in the debtor.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 9-202, U.C.C.; supersedes ss. 673.02, 698.03, 698.05.

**679.203 Enforceability of security interest; proceeds, formal requisites.**—

(1) Subject to the provisions of s. 674.208 on the security interest of a collecting bank and s. 679.113 on a security interest arising under the chapter on sales, a security interest is not enforceable against the debtor or third parties with respect to the collateral and does not attach unless:

(a) The collateral is in the possession of the secured party pursuant to agreement, or the debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops growing or to be grown or timber to be cut, a description of the land concerned; and

(b) Value has been given; and

(c) The debtor has rights in the collateral.

(2) A security interest attaches when it becomes enforceable against the debtor with respect to the collateral. Attachment occurs as soon as all of the events specified in subsection (1) have taken place unless explicit agreement postpones the time of attaching.

(3) Unless otherwise agreed, a security agree-

ment gives the secured party the rights to proceeds provided by s. 679.306.

(4) A transaction, although subject to this chapter, is also subject to chapters 516 and 520, and in the case of conflict between the provisions of this chapter and any such statute, the provisions of such statute control. Failure to comply with any applicable statute has only the effect which is specified therein.

<sup>1</sup>History.—s. 1, ch. 65-254; s. 12, ch. 79-398.

<sup>1</sup>Note.—As amended, effective January 1, 1980.

<sup>1</sup>Note.—s. 9-203, U.C.C.; supersedes s. 673.02.

#### **1679.204 After-acquired property; future advances.—**

(1) Except as provided in subsection (2), a security agreement may provide that any or all obligations covered by the security agreement are to be secured by after-acquired collateral.

(2) No security interest attaches under an after-acquired property clause to consumer goods other than accessions (s. 679.314) when given as additional security unless the debtor acquires rights in them within 10 days after the secured party gives value.

(3) Obligations covered by a security agreement may include future advances or other value whether or not the advances or value are given pursuant to commitment (s. 679.105(1)).

<sup>1</sup>History.—Art. 10, s. 1, ch. 65-254; s. 13, ch. 79-398.

<sup>1</sup>Note.—As amended, effective January 1, 1980.

<sup>1</sup>Note.—s. 9-204, U.C.C.; supersedes ss. 699.04, 699.05, 700.01.

cf.—s. 697.04 Future advances may be secured.

**1679.205 Use or disposition of collateral without accounting permissible.—**A security interest is not invalid or fraudulent against creditors by reason of liberty in the debtor to use, commingle, or dispose of all or part of the collateral (including returned or repossessed goods) or to collect or compromise accounts or chattel paper, or to accept the return of goods or make repossessions, or to use, commingle or dispose of proceeds, or by reason of the failure of the secured party to require the debtor to account for proceeds or replace collateral. This section does not relax the requirements of possession where perfection of a security interest depends upon possession of the collateral by the secured party or by a bailee.

<sup>1</sup>History.—s. 1, ch. 65-254; s. 14, ch. 79-398.

<sup>1</sup>Note.—As amended, effective January 1, 1980.

<sup>1</sup>Note.—s. 9-205, U.C.C.

#### **679.206 Agreement not to assert defenses against assignee; modification of sales warranties where security agreement exists.—**

(1) Subject to any statute or decision which establishes a different rule for buyers or lessees of consumer goods, an agreement by a buyer or lessee that he will not assert against an assignee any claim or defense which he may have against the seller or lessor is enforceable by an assignee who takes his assignment for value, in good faith and without notice of a claim or defense, except as to defenses of a type which may be asserted against a holder in due course of a negotiable instrument under the chapter on commercial paper (chapter 673). A buyer who as part of one transaction signs both a negotiable instrument and a security agreement makes such an agreement.

(2) When a seller retains a purchase money secu-

rity interest in goods the chapter on sales (chapter 672) governs the sale and any disclaimer, limitation or modification of the seller's warranties.

<sup>1</sup>History.—s. 1, ch. 65-254.

<sup>1</sup>Note.—s. 9-206, U.C.C.

#### **679.207 Rights and duties when collateral is in secured party's possession.—**

(1) A secured party must use reasonable care in the custody and preservation of collateral in his possession. In the case of an instrument or chattel paper reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(2) Unless otherwise agreed, when collateral is in the secured party's possession:

(a) Reasonable expenses (including the cost of any insurance and payment of taxes or other charges) incurred in the custody, preservation, use or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(b) The risk of accidental loss or damage is on the debtor to the extent of any deficiency in any effective insurance coverage;

(c) The secured party may hold as additional security any increase or profits (except money) received from the collateral, but money so received, unless remitted to the debtor, shall be applied in reduction of the secured obligation;

(d) The secured party must keep the collateral identifiable but fungible collateral may be commingled;

(e) The secured party may repledge the collateral upon terms which do not impair the debtor's right to redeem it.

(3) A secured party is liable for any loss caused by his failure to meet any obligation imposed by the preceding subsections but does not lose his security interest.

(4) A secured party may use or operate the collateral for the purpose of preserving the collateral or its value or pursuant to the order of a court of appropriate jurisdiction or, except in the case of consumer goods, in the manner and to the extent provided in the security agreement.

<sup>1</sup>History.—s. 1, ch. 65-254.

<sup>1</sup>Note.—s. 9-207, U.C.C.

cf.—s. 818.04 Selling collateral security before debt due.

#### **679.208 Request for statement of account or list of collateral.—**

(1) A debtor may sign a statement indicating what he believes to be the aggregate amount of unpaid indebtedness as of a specified date and may send it to the secured party with a request that the statement be approved or corrected and returned to the debtor. When the security agreement or any other record kept by the secured party identifies the collateral a debtor may similarly request the secured party to approve or correct a list of the collateral.

(2) The secured party must comply with such a request within 2 weeks after receipt by sending a written correction or approval. If the secured party claims a security interest in all of a particular type of collateral owned by the debtor he may indicate that fact in his reply and need not approve or correct an itemized list of such collateral. If the secured party without reasonable excuse fails to comply he is



liable for any loss caused to the debtor thereby; and if the debtor has properly included in his request a good faith statement of the obligation or a list of the collateral or both the secured party may claim a security interest only as shown in the statement against persons misled by his failure to comply. If he no longer has an interest in the obligation or collateral at the time the request is received he must disclose the name and address of any successor in interest known to him and he is liable for any loss caused to the debtor as a result of failure to disclose. A successor in interest is not subject to this section until a request is received by him.

(3) A debtor is entitled to such a statement once every 6 months without charge. The secured party may require payment of a charge not exceeding \$10 for each additional statement furnished.

*History.*—s. 1, ch. 65-254.

*Note.*—s. 9-208, U.C.C.; supersedes s. 698.03.

### PART III

#### RIGHTS OF THIRD PARTIES; PERFECTED AND UNPERFECTED SECURITY INTERESTS; RULES OF PRIORITY

- 679.301 Persons who take priority over unperfected security interests; right of "lien creditor."
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- 679.303 When security interest is perfected; continuity of perfection.
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- 679.313 Priority of security interests in fixtures.
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- 679.315 Priority when goods are commingled or processed.
- 679.316 Priority subject to subordination.
- 679.317 Secured party not obligated on contract of debtor.
- 679.318 Defenses against assignee; modification of contract after notification of assignment; term prohibiting assignment ineffective; identification and proof of as-

signment.

#### **679.301 Persons who take priority over unperfected security interests; right of "lien creditor."**

(1) Except as otherwise provided in subsection (2), an unperfected security interest is subordinate to the rights of:

(a) Persons entitled to priority under s. 679.312;  
(b) A person who becomes a lien creditor before the security interest is perfected;

(c) In the case of goods, instruments, documents, and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course of business, or is a buyer of farm products in ordinary course of business, to the extent that he gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected;

(d) In the case of accounts and general intangibles, a person who is not a secured party and who is a transferee to the extent that he gives value without knowledge of the security interest and before it is perfected.

(2) If the secured party files with respect to a purchase money security interest before or within 10 days after the debtor receives possession of the collateral, he takes priority over the rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches and the time of filing.

(3) A "lien creditor" means a creditor who has acquired a lien on the property involved by attachment, levy, or the like and includes an assignee for benefit of creditors from the time of assignment, and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment.

*History.*—s. 1, ch. 65-254; s. 15, ch. 79-398.

*Note.*—As amended, effective January 1, 1980.

*Note.*—s. 9-301, U.C.C.; supersedes ss. 673.08(2), 673.09(2)(b), 698.01, 699.07, 700.02, 85.30, 85.25(2)(b), 673.08.

*cf.*—s. 713.06 Liens of persons not in privity; proper payments.

#### **679.302 When filing is required to perfect security interest; security interests to which filing provisions of this chapter do not apply.**

(1) A financing statement must be filed to perfect all security interests except the following:

(a) A security interest in collateral in possession of the secured party under s. 679.305;

(b) A security interest temporarily perfected in instruments or documents without delivery under s. 679.304 or in proceeds for a 10-day period under s. 679.306;

<sup>1</sup>(c) A security interest created by an assignment of a beneficial interest in a decedent's estate;

(d) A purchase money security interest in consumer goods; but filing is required for a fixture under s. 679.313;

<sup>1</sup>(e) An assignment of accounts which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts of the assignor;

(f) A security interest of a collecting bank (s. 674.208) or arising under the chapter on sales (see s. 679.113) or covered in subsection (3) of this section.

<sup>1</sup>(g) An assignment for the benefit of all the credi-

tors of the transferor, and subsequent transfers by the assignee thereunder.

(2) If a secured party assigns a perfected security interest, no filing under this chapter is required in order to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

<sup>1</sup>(3) The filing of a financing statement otherwise required by this chapter is not necessary or effective to perfect a security interest in property subject to:

(a) A statute or treaty of the United States which provides for a national or international registration or a national or international certificate of title or which specifies a place of filing different from that specified in this chapter for filing of the security interest; or

(b) The following statutes of this state: chapters 319 and 371; but during any period in which collateral is inventory held for sale by a person who is in the business of selling goods of that kind, the filing provisions of this chapter (part IV) apply to a security interest in that collateral created by him as debtor; or

(c) A certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection (s. 679.103(2)).

<sup>1</sup>(4) Compliance with a statute or treaty described in subsection (3) is equivalent to the filing of a financing statement under this chapter, and a security interest in property subject to the statute or treaty can be perfected only by compliance therewith except as provided in s. 679.103 on multiple state transactions. Duration and renewal of perfection of a security interest perfected by compliance with the statute or treaty are governed by the provisions of the statute or treaty; in other respects the security interest is subject to this chapter.

**History.**—s. 1, ch. 65-254; s. 16, ch. 79-398.

<sup>1</sup>**Note.**—Paragraphs (1)(c) and (e), as amended, paragraph (1)(g), as created, and subsections (3) and (4), as amended, effective January 1, 1980.

**Note.**—s. 9-302, U.C.C.; supersedes ss. 673.08, 28.22.

### **679.303 When security interest is perfected; continuity of perfection.—**

(1) A security interest is perfected when it has attached and when all of the applicable steps required for perfection have been taken. Such steps are specified in ss. 679.302, 679.304-679.306. If such steps are taken before the security interest attaches, it is perfected at the time when it attaches.

(2) If a security interest is originally perfected in any way permitted under this chapter and is subsequently perfected in some other way under this chapter, without an intermediate period when it was unperfected, the security interest shall be deemed to be perfected continuously for the purposes of this chapter.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 9-303, U.C.C.; supersedes ss. 698.01, 85.30, 700.02, 699.07, 673.08, 28.221, 698.09.

### **679.304 Perfection of security interest in instruments, documents, and goods covered by documents; perfection by permissive filing; temporary perfection without filing or transfer of possession.—**

<sup>1</sup>(1) A security interest in chattel paper or nego-

tiable documents may be perfected by filing. A security interest in money or instruments (other than instruments which constitute part of chattel paper) can be perfected only by the secured party's taking possession, except as provided in subsections (4) and (5) of this section and subsections (2) and (3) of s. 679.306 on proceeds.

(2) During the period that goods are in the possession of the issuer of a negotiable document therefor, a security interest in the goods is perfected by perfecting a security interest in the document, and any security interest in the goods otherwise perfected during such period is subject thereto.

(3) A security interest in goods in the possession of a bailee other than one who has issued a negotiable document therefor is perfected by issuance of a document in the name of the secured party or by the bailee's receipt of notification of the secured party's interest or by filing as to the goods.

(4) A security interest in instruments or negotiable documents is perfected without filing or the taking of possession for a period of 21 days from the time it attaches to the extent that it arises for new value given under a written security agreement.

(5) A security interest remains perfected for a period of 21 days without filing where a secured party having a perfected security interest in an instrument, a negotiable document, or goods in possession of a bailee other than one who has issued a negotiable document therefor:

<sup>1</sup>(a) Makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange but priority between conflicting security interests in the goods is subject to s. 679.312(3); or

(b) Delivers the instrument to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal or registration of transfer.

(6) After the 21-day period in subsections (4) and (5) perfection depends upon compliance with applicable provisions of this chapter.

**History.**—s. 1, ch. 65-254; s. 17, ch. 79-398.

<sup>1</sup>**Note.**—As amended, effective January 1, 1980.

**Note.**—s. 9-304, U.C.C.; supersedes ss. 673.03, 673.08(1), 698.01, 678.33.

**679.305 When possession by secured party perfects security interest without filing.**—A security interest in letters of credit and advices of credit (s. 675.116(2)(a)), goods, negotiable documents, or chattel paper may be perfected by the secured party's taking possession of the collateral. If such collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the secured party's interest. A security interest is perfected by possession from the time possession is taken without relation back and continues only so long as possession is retained, unless otherwise specified in this chapter. The security interest may be otherwise perfected as provided in this chapter before or after the period of possession by the secured party.

**History.**—s. 1, ch. 65-254; s. 18, ch. 79-398.

<sup>1</sup>**Note.**—As amended, effective January 1, 1980.

**Note.**—s. 9-305, U.C.C.; supersedes ss. 698.01, 678.44.

**679.306 "Proceeds"; secured party's rights on disposition of collateral.—**

<sup>1</sup>(1) "Proceeds" includes whatever is received upon the sale, exchange, collection, or other disposition of collateral or proceeds. Insurance payable by reason of loss or damage to the collateral is proceeds, except to the extent that it is payable to a person other than a party to the security agreement. Money, checks, deposit accounts, and the like are "cash proceeds." All other proceeds are "noncash proceeds."

<sup>1</sup>(2) Except where this chapter otherwise provides, a security interest continues in collateral notwithstanding sale, exchange, or other disposition thereof unless the disposition was authorized by the secured party in the security agreement or otherwise, and also continues in any identifiable proceeds including collections received by the debtor.

<sup>1</sup>(3) The security interest in proceeds is a continuously perfected security interest if the interest in the original collateral was perfected, but it ceases to be a perfected security interest and becomes unperfected 10 days after receipt of the proceeds by the debtor unless:

(a) A filed financing statement covers the original collateral and the proceeds are collateral in which a security interest may be perfected by filing in the office or offices where the financing statement has been filed and, if the proceeds are acquired with cash proceeds, the description of collateral in the financing statement indicates the types of property constituting the proceeds; or

(b) A filed financing statement covers the original collateral and the proceeds are identifiable cash proceeds; or

(c) The security interest in the proceeds is perfected before the expiration of the 10-day period.

Except as provided in this section, a security interest in proceeds can be perfected only by the methods or under the circumstances permitted in this chapter for original collateral of the same type.

<sup>1</sup>(4) In the event of insolvency proceedings instituted by or against a debtor, a secured party with a perfected security interest in proceeds has a perfected security interest only in the following proceeds:

(a) In identifiable noncash proceeds and in separate deposit accounts containing only proceeds;

(b) In identifiable cash proceeds in the form of money which is neither commingled with other money nor deposited in a deposit account prior to the insolvency proceedings;

(c) In identifiable cash proceeds in the form of checks and the like which are not deposited in a deposit account prior to the insolvency proceedings; and

(d) In all cash and deposit accounts of the debtor, in which proceeds have been commingled with other funds, but the perfected security interest under this paragraph (d) is:

1. Subject to any right of setoff; and

2. Limited to an amount not greater than the amount of any cash proceeds received by the debtor within 10 days before the institution of the insolvency proceedings less the sum of:

a. The payments to the secured party on account

of cash proceeds received by the debtor during such period; and

b. The cash proceeds received by the debtor during such period to which the secured party is entitled under paragraphs (a) through (c) of this subsection.

(5) If a sale of goods results in an account or chattel paper which is transferred by the seller to a secured party, and if the goods are returned to or are repossessed by the seller or the secured party, the following rules determine priorities:

(a) If the goods were collateral at the time of sale for an indebtedness of the seller which is still unpaid, the original security interest attaches again to the goods and continues as a perfected security interest if it was perfected at the time when the goods were sold. If the security interest was originally perfected by a filing which is still effective, nothing further is required to continue the perfected status; in any other case, the secured party must take possession of the returned or repossessed goods or must file.

(b) An unpaid transferee of the chattel paper has a security interest in the goods against the transferor. Such security interest is prior to a security interest asserted under paragraph (a) to the extent that the transferee of the chattel paper was entitled to priority under s. 679.308.

(c) An unpaid transferee of the account has a security interest in the goods against the transferor. Such security interest is subordinate to a security interest asserted under paragraph (a).

(d) A security interest of an unpaid transferee asserted under paragraph (b) or (c) must be perfected for protection against creditors of the transferor and purchasers of the returned or repossessed goods.

**History.**—s. 1, ch. 65-254; s. 19, ch. 79-398.

<sup>1</sup>**Note.**—As amended, effective January 1, 1980.

**Note.**—s. 9-306, U.C.C.; supersedes ss. 673.10, 85.30.

cf.—Ch. 818 Sale of mortgaged personal property; similar offenses.

**679.307 Protection of buyers of goods.—**

(1) A buyer in ordinary course of business (s. 671.201(9)) other than a person buying farm products from a person engaged in farming operations takes free of a security interest created by his seller even though the security interest is perfected and even though the buyer knows of its existence.

<sup>1</sup>(2) In the case of consumer goods, a buyer takes free of a security interest even though perfected if he buys without knowledge of the security interest, for value and for his own personal, family, or household purposes unless prior to the purchase the secured party has filed a financing statement covering such goods.

**History.**—s. 1, ch. 65-254; s. 20, ch. 79-398.

<sup>1</sup>**Note.**—As amended, effective January 1, 1980.

**Note.**—s. 9-307, U.C.C.; supersedes ss. 673.09(2), 85.30.

**<sup>1</sup>679.308 Purchase of chattel paper and instruments.**—A purchaser of chattel paper or an instrument who gives new value and takes possession of it in the ordinary course of his business has priority over a security interest in the chattel paper or instrument:

(1) Which is perfected under s. 679.304 (permissive filing and temporary perfection) or under s. 679.306 (perfection as to proceeds) if he acts without knowledge that the specific paper or instrument is



subject to a security interest; or

(2) Which is claimed merely as proceeds of inventory subject to a security interest (s. 679.306) even though he knows that the specific paper or instrument is subject to the security interest.

**History.**—s. 1, ch. 65-254; s. 21, ch. 79-398.

**Note.**—As amended, effective January 1, 1980.

**Note.**—s. 9-308, U.C.C.; supersedes ss. 673.09(1)(a), 673.10.

**679.309 Protection of purchasers of instruments and documents.**—Nothing in this chapter limits the rights of a holder in due course of a negotiable instrument (s. 673.302) or a holder to whom a negotiable document of title has been duly negotiated (s. 677.501) or a bona fide purchaser of a security (s. 678.301) and such holders or purchasers take priority over an earlier security interest even though perfected. Filing under this chapter does not constitute notice of the security interest to such holders or purchasers.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 9-309, U.C.C.; supersedes s. 673.09(1)(a).

**679.310 Priority of certain liens arising by operation of law.**—When a person in the ordinary course of his business furnishes services or materials with respect to goods subject to a security interest, a lien upon goods in the possession of such person given by statute or rule of law for such materials or services takes priority over a perfected security interest unless the lien is statutory and the statute expressly provides otherwise.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 9-310, U.C.C.; supersedes s. 673.11.

cf.—s. 713.74 Acquisition of liens by persons in privity with the owner—as to personal property.

**679.311 Alienability of debtor's rights; judicial process.**—The debtor's rights in collateral may be voluntarily or involuntarily transferred (by way of sale, creation of a security interest, attachment, levy, garnishment or other judicial process) notwithstanding a provision in the security agreement prohibiting any transfer or making the transfer constitute a default.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 9-311, U.C.C.; supersedes s. 699.09.

cf.—s. 56.061 Property subject to execution.

**679.312 Priorities among conflicting security interests in the same collateral.**—

<sup>1</sup>(1) The rules of priority stated in other sections of this part and in the following sections shall govern when applicable: s. 674.208 with respect to the security interests of collecting banks in items being collected, accompanying documents and proceeds; s. 679.103 on security interests related to other jurisdictions; s. 679.114 on consignments.

(2) A perfected security interest in crops for new value given to enable the debtor to produce the crops during the production season and given not more than 3 months before the crops become growing crops by planting or otherwise takes priority over an earlier perfected security interest to the extent that such earlier interest secures obligations due more than 6 months before the crops become growing crops by planting or otherwise, even though the person giving new value had knowledge of the earlier security interest.

<sup>1</sup>(3) A perfected purchase money security interest

in inventory has priority over a conflicting security interest in the same inventory and also has priority in identifiable cash proceeds received on or before the delivery of the inventory to a buyer if:

(a) The purchase money security interest is perfected at the time the debtor receives possession of the inventory; and

(b) The purchase money secured party gives notification in writing to the holder of the conflicting security interest if the holder had filed a financing statement covering the same types of inventory:

1. Before the date of the filing made by the purchase money-secured party; or

2. Before the beginning of the 21-day period when the purchase money security interest is temporarily perfected without filing or possession (see s. 679.304(5)); and

(c) The holder of the conflicting security interest receives the notification within 5 years before the debtor receives possession of the inventory; and

(d) The notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by time or type.

If any of the foregoing four requirements are not met, the priority of said purchase money security interest shall be determined under subsection (5).

<sup>1</sup>(4) A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral or its proceeds if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within 10 days thereafter. Failure to so perfect shall cause the priority of said purchase money security interest to be determined under subsection (5).

<sup>1</sup>(5) In all cases not governed by other rules stated in this section (including cases of purchase money security interests which do not qualify for the special priorities set forth in subsections (3) and (4)), priority between conflicting security interests in the same collateral shall be determined according to the following rules:

(a) Conflicting security interests rank according to priority in time of filing or perfection. Priority dates from the time a filing is first made covering the collateral or the time the security interest is first perfected, whichever is earlier, provided that there is no period thereafter when there is neither filing nor perfection.

(b) So long as conflicting security interests are unperfected, the first to attach has priority.

<sup>1</sup>(6) For the purposes of subsection (5), a date of filing or perfection as to collateral is also a date of filing or perfection as to proceeds.

<sup>1</sup>(7) If future advances are made while a security interest is perfected by filing or the taking of possession, the security interest has the same priority for the purposes of subsection (5) with respect to the future advances as it does with respect to the first advance. If a commitment is made before or while the security interest is so perfected, the security in-

terest has the same priority with respect to advances made pursuant thereto; in other cases a perfected security interest has priority from the date the advance is made.

**History.**—s. 1, ch. 65-254; s. 2, ch. 78-222; s. 22, ch. 79-398.

**Note.**—Subsections (1) and (3)-(6), as amended, and subsection (7), as created, effective January 1, 1980.

**Note.**—s. 9-312, U.C.C.; supersedes chs. 700, 698.

### 679.313 Priority of security interests in fixtures.—

(1) The rules of this section do not apply to goods incorporated into a structure in the manner of lumber, bricks, tile, cement, glass, metal work and the like and no security interest in them exists under this chapter unless the structure remains personal property under applicable law. The law of this state other than this code determines whether and when other goods become fixtures. This code does not prevent creation of an encumbrance upon fixtures or real estate pursuant to the law applicable to real estate.

(2)(a) A security interest which attaches to goods which are or become fixtures is invalid against any person with an interest in the real estate at the time the security interest in the goods is perfected or at the time the goods are affixed to the real estate, whichever occurs later, who has not in writing consented to the security interest or disclaimed an interest in the goods as fixtures.

(b) A security interest in goods which are or become fixtures takes priority as to the goods over the claims of all persons acquiring interests in the real estate subsequent to the perfection of such security interest or the affixing of the goods to the real estate, whichever occurs later.

(3)(a) When under subsections (2) or (3) a secured party has priority over the claims of all persons who have interests in the real estate, he may, on default, subject to the provisions of part V, remove his collateral from the real estate but he must reimburse any encumbrancer or owner of the real estate who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation.

(b) The secured party shall give reasonable notification of his intention to remove the collateral to all persons entitled to reimbursement.

**History.**—s. 1, ch. 65-254; s. 2, ch. 67-264.

**Note.**—s. 9-313, U.C.C.

cf.—s. 56.061 Property subject to execution.

s. 520.31 Definitions.

s. 713.15 Repossession of materials not used.

### 679.314 Accessions.—

(1) A security interest in goods which attaches before they are installed in or affixed to other goods takes priority as to the goods installed or affixed (called in this section "accessions") over the claims of all persons to the whole except as stated in subsection (3) and subject to s. 679.315(1).

(2) A security interest which attaches to goods after they become part of a whole is valid against all persons subsequently acquiring interests in the

whole except as stated in subsection (3) but is invalid against any person with an interest in the whole at the time the security interest attaches to the goods who has not in writing consented to the security interest or disclaimed an interest in the goods as part of the whole.

(3) The security interests described in subsections (1) and (2) do not take priority over:

(a) A subsequent purchaser for value of any interest in the whole; or

(b) A creditor with a lien on the whole subsequently obtained by judicial proceedings; or

(c) A creditor with a prior perfected security interest in the whole to the extent that he makes subsequent advances,

if the subsequent purchase is made, the lien by judicial proceedings obtained or the subsequent advance under the prior perfected security interest is made or contracted for without knowledge of the security interest and before it is perfected. A purchaser of the whole at a foreclosure sale other than the holder of a perfected security interest purchasing at his own foreclosure sale is a subsequent purchaser within this section.

(4) When under subsections (1) or (2) and (3) a secured party has an interest in accessions which has priority over the claims of all persons who have interests in the whole, he may on default subject to the provisions of part V remove his collateral from the whole but he must reimburse any encumbrancer or owner of the whole who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 9-314, U.C.C.

### 679.315 Priority when goods are commingled or processed.—

(1) If a security interest in goods was perfected and subsequently the goods or a part thereof have become part of a product or mass, the security interest continues in the product or mass if:

(a) The goods are so manufactured, processed, assembled or commingled that their identity is lost in the product or mass; or

(b) A financing statement covering the original goods also covers the product into which the goods have been manufactured, processed or assembled.

In a case to which paragraph (b) applies, no separate security interest in that part of the original goods which has been manufactured, processed or assembled into the product may be claimed under s. 679.314.

(2) When under subsection (1) more than one security interest attaches to the product or mass, they rank equally according to the ratio that the cost of

the goods to which each interest originally attached bears to the cost of the total product or mass.

History.—s. 1, ch. 65-254.

Note.—s. 9-315, U.C.C.

**679.316 Priority subject to subordination.—**

Nothing in this chapter prevents subordination by agreement by any person entitled to priority.

History.—s. 1, ch. 65-254.

Note.—s. 9-316, U.C.C.

**679.317 Secured party not obligated on contract of debtor.—**The mere existence of a security interest or authority given to the debtor to dispose of or use collateral does not impose contract or tort liability upon the secured party for the debtor's acts or omissions.

History.—s. 1, ch. 65-254.

Note.—s. 9-317, U.C.C.; supersedes s. 673.12.

**679.318 Defenses against assignee; modification of contract after notification of assignment; term prohibiting assignment ineffective; identification and proof of assignment.—**

(1) Unless an account debtor has made an enforceable agreement not to assert defenses or claims arising out of a sale as provided in s. 679.206 the rights of an assignee are subject to:

(a) All the terms of the contract between the account debtor and assignor and any defense or claim arising therefrom; and

(b) Any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives notification of the assignment.

<sup>1</sup>(2) So far as the right to payment or a part thereof under an assigned contract has not been fully earned by performance, and notwithstanding notification of the assignment, any modification of or substitution for the contract made in good faith and in accordance with reasonable commercial standards is effective against an assignee unless the account debtor has otherwise agreed but the assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that such modification or substitution is a breach by the assignor.

<sup>1</sup>(3) The account debtor is authorized to pay the assignor until the account debtor receives notification that the amount due or to become due has been assigned and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the account debtor, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the account debtor may pay the assignor.

<sup>1</sup>(4) A term in any contract between an account debtor and an assignor is ineffective if it prohibits assignment of an account or prohibits creation of a security interest in a general intangible for money due or to become due or requires the account debtor's consent to such assignment or security interest.

History.—s. 1, ch. 65-254; s. 23, ch. 79-398.

Note.—As amended, effective January 1, 1980.

Note.—s. 9-318, U.C.C.; supersedes s. 673.09(3).

## PART IV

### FILING

- 679.401 Place of filing; erroneous filing; removal of collateral.
- 679.4011 Filing and recording with clerk of circuit court in Florida.
- 679.402 Formal requisites of financing statement; amendments.
- 679.403 What constitutes filing; duration of filing; effect of lapsed filing; duties of filing officer.
- 679.404 Termination statement.
- 679.405 Assignment of security interest; duties of filing officer; fees.
- 679.406 Release of collateral; duties of filing officer; fees.
- 679.407 Information from filing officer.
- 679.408 Consignor or lessor filing.

**<sup>1</sup>679.401 Place of filing; erroneous filing; removal of collateral.—**

(1) The proper place to file in order to perfect a security interest is as follows:

(a) When the collateral is crops, growing or to be grown, by recording in the office of the clerk of the circuit court in the county where the land on which the crops are growing or to be grown is located, and by filing in the office of the Department of State; provided that the filing in the office of the Department of State need not include a legal description of the real estate pursuant to <sup>2</sup>ss. 679.402(1)(b) and 679.110 if:

1. Such filing designates the county where the land is located and includes a reference to the book and page of the filing in the office of the clerk of the circuit court; or

2. Such filing initially designates the county where the land is located and is thereafter amended within 30 days after the date of the original filing in the office of the Department of State to include the information required in paragraph (a).

(b) When the collateral is timber to be cut or is minerals or the like (including oil and gas) or is accounts subject to s. 679.103(5), or is goods which are or are to become fixtures, then in the office where a mortgage on the real estate would be filed or recorded.

(c) In all other cases, by filing in the office of the Department of State.

(2) Except as provided in s. 679.313(2), a filing which is made in good faith in an improper place or in fewer than all of the places required by this section is nevertheless effective with regard to any collateral as to which the filing complied with the requirements of this chapter, and such filing is also effective with regard to collateral covered by the financing statement against any person who has knowledge of the contents of such financing statement.

(3) Except as provided in s. 679.313(2), a filing which is made in the proper place in this state prior to January 1, 1980, continues effective even though the debtor's residence or place of business or the location of the collateral or its use, whichever con-



trolled the original filing, is thereafter changed.

(4) The rules stated in s. 679.103 determine whether filing is necessary in this state.

(5) Notwithstanding the preceding subsections, and subject to s. 679.302(3), the proper place to file in order to perfect a security interest in collateral, including fixtures, of a transmitting utility is the office of the Department of State.

**History.**—s. 1, ch. 65-254; s. 3, ch. 67-264; ss. 10, 35, ch. 69-106; s. 24, ch. 79-398.

<sup>1</sup>**Note.**—As amended, effective January 1, 1980.

<sup>2</sup>**Note.**—The reference to s. 679.402(1)(b) is erroneous.

**Note.**—s. 9-401, U.C.C.; supersedes s. 673.04, 85.30.

**679.4011 Filing and recording with clerk of circuit court in Florida.**—The filing of a writing in the office of a clerk of the circuit court under this chapter shall be complete and sufficient only if the writing is recorded in the office of the appropriate clerk of the circuit court, in the official records book of such office or in such record book as shall be designated by the clerk of the circuit court for such purpose. Any writing required or permitted to be filed in such office by any provisions of this chapter shall be entitled to be recorded without oath, acknowledgment or proof of its execution. In all other respects such recording shall be in the manner provided in chapter 695, F. S., for recording of conveyances of real property, and in the manner and upon payment of fees as provided in chapter 28, F. S. The record of such writing shall be held for public inspection in lieu of the original. No writing under this chapter shall be deemed filed in the office of the clerk of the circuit court unless such writing shall be recorded as provided in this section.

**History.**—s. 1, ch. 65-254.

**Note.**—New section added, applicable in Florida only.

**679.402 Formal requisites of financing statement; amendments.**—

(1) A financing statement is sufficient if it gives the names of the debtor and the secured party, is signed by the debtor, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor, and contains a statement indicating the types, or describing the items, of collateral. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. When the financing statement covers crops growing or to be grown or timber to be cut or minerals or the like (including oil and gas) or accounts subject to s. 679.103(5), or goods which are or are to become fixtures, the statement must also comply with subsection (5). A copy of the security agreement is sufficient if it contains the above information and is signed by the debtor. A carbon, photographic, or other reproduction of a security agreement or a financing statement is sufficient as a financing statement if the security agreement so provides, or if the original has been filed in this state.

(2) A financing statement which otherwise complies with subsection (1) is sufficient when it is signed by the secured party alone, or together with the debtor, if it is filed to perfect a security interest in:

(a) Collateral already subject to a security interest in another jurisdiction when it is brought into

this state or when the debtor's location is changed to this state. Such a financing statement must state that the collateral was brought into this state under such circumstances; or

(b) Proceeds under s. 679.306 if the security interest in the original collateral was perfected. Such a financing statement must describe the original collateral; or

(c) Collateral as to which the filing has lapsed; or

(d) Collateral acquired after a change of name, identity, or corporate structure of the debtor; or

(e) Collateral acquired after a change of name, identity, or corporate structure of the secured party (but such a filing shall be optional with the secured party).

(3) After January 1, 1980, a form substantially as follows is sufficient to comply with subsection (1):

Name of debtor (or assignor) .....

Address.....

Name of secured party (or assignee) .....

Address .....

(a) This financing statement covers the following types (or items) of property:

(Describe) .....

(b) (If collateral is crops) The above-described crops are growing or are to be grown on:

(Describe real estate by legal description; a mailing or street address is not sufficient.) Record owner (or record lessee) of said real estate.....

(c) (If applicable) The above goods are or are to become fixtures on (or, when appropriate, substitute, "The above timber is standing on ...." or "The above minerals or the like (including oil and gas), or accounts will be financed at the wellhead or minehead of the well or mine located on ...."):

(Describe real estate by legal description; a mailing or street address is not sufficient.) .....

and this financing statement is to be filed for record in the real estate records. If the debtor does not have an <sup>2</sup>interest of record in the real estate, the name of a record owner is .....

(d) (If proceeds or products of collateral are claimed) Proceeds or products of the collateral are also covered.

Signature of debtor (or assignor) .....

Signature of secured party (or assignee) .....

(4) A financing statement may be amended by filing a writing signed by both the debtor and the secured party. An amendment does not extend the period of effectiveness of a financing statement. If any amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment. In this chapter, unless the context otherwise requires, the term "financing statement" means the original financing statement and any amendments.

(5) A financing statement covering timber to be cut or minerals or the like (including oil and gas) or accounts subject to s. 679.103(5), or goods which are or are to become fixtures where the debtor is not a transmitting utility, must show that it covers this type of collateral and must recite that it is to be filed

for record in the real estate records, and the financing statement must contain a legal description of the real estate. If the debtor does not have an interest of record in the real estate, the financing statement must show the name of the record owner.

(6) A financing statement sufficiently shows the name of the debtor if it gives the individual, partnership, or corporate name of the debtor, whether or not it adds other trade names or names of partners. Where the debtor so changes his name or in the case of an organization its name, identity, or corporate structure that a filed financing statement becomes seriously misleading, the filing is not effective to perfect a security interest in collateral acquired by the debtor more than 4 months after the change, unless a new appropriate financing statement is filed before the expiration of that time, in which case the new filing shall continue the priority of the original filing.

(7) A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading.

(8) The Department of State may promulgate approved and uniform forms of financing statements and other instruments to be filed with the Department of State pursuant to this chapter. Any person filing any instrument permitted or required to be filed under this chapter with the Department of State on a form other than the approved or uniform form of the Department of State shall pay a fee of \$3 in addition to the fee required by s. 15.091.

**History.**—s. 1, ch. 65-254; s. 4, ch. 67-264; s. 1, ch. 67-335; ss. 10, 35, ch. 69-106; s. 20, ch. 71-114; s. 25, ch. 79-398.

<sup>1</sup>**Note.**—As amended, effective January 1, 1980.

<sup>2</sup>**Note.**—The words "interest of record in the real estate" were substituted for the words "interest in the real estate records" by the editors.

**Note.**—s. 9-402, U.C.C.

#### **679.403 What constitutes filing; duration of filing; effect of lapsed filing; duties of filing officer.—**

(1) Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer and recording in compliance with section 679.4011, where required, constitutes filing under this chapter.

<sup>1</sup>(2) Except as provided in subsection (6), a filed financing statement is effective for a period of 5 years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of the 5-year period, unless a continuation statement is filed prior to the lapse. If a security interest perfected by filing exists at the time insolvency proceedings are commenced by or against the debtor, the security interest remains perfected until termination of the insolvency proceedings and thereafter for a period of 60 days or until expiration of the 5-year period, whichever occurs later. Upon lapse, the security interest becomes unperfected unless it is perfected without filing. If the security interest becomes unperfected upon lapse, it is deemed to have been unperfected as against a person who became a purchaser or lien creditor before lapse.

<sup>1</sup>(3) A continuation statement may be filed by the secured party within 6 months prior to the expiration of the 5-year period specified in subsection (2). Any such continuation statement must be signed by

the secured party, identify the original statement by file number, and state that the original statement is still effective. A continuation statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and comply with s. 679.405(2), including payment of the required fee. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for 5 years after the last date to which the filing was effective whereupon it lapses in the same manner as provided in subsection (2) unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it immediately if he has retained a microfilm or other photographic record, or in other cases, 1 year after the lapse. The filing officer shall so arrange matters by physical annexation of financing statements to continuation statements or other related filings, or by other means, that if he physically destroys the financing statements of a period more than 5 years past, those which have been continued by a continuation statement or which are still effective under subsection (6) shall be retained.

<sup>1</sup>(4) Except as provided in subsection (7), a filing officer shall mark each statement with a file number and with the date and time of filing and, if applicable, the official records book and page <sup>2</sup>numbers for filings in the office of a clerk of the circuit court and shall hold the statement or a microfilm or other photographic copy thereof for public inspection. In addition the filing officer shall index the statements according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement.

<sup>1</sup>(5) The uniform fee for filing, indexing, and stamping a copy furnished by the secured party to show the date and place of filing for an original financing statement or for a continuation statement shall be as provided in chapter 15 or chapter 28. The secured party may, at his option, show a trade name for any person, or for more than one name, but an additional fee may be charged with respect thereto.

<sup>1</sup>(6) If the debtor is a transmitting utility (s. 679.401(5)) and a filed financing statement so states, it is effective until a termination statement is filed.

<sup>1</sup>(7) When a financing statement covers crops growing or to be grown, timber to be cut, minerals or the like (including oil and gas), accounts subject to s. 679.103(5), or goods which are or are to become fixtures, the filing officer shall index it under the names of the debtor and any owner of record shown on the financing statement in the same fashion as if they were the mortgagors in a mortgage of the real estate described and, to the extent that the law of this state provides for indexing of mortgages under the name of the mortgagee, under the name of the secured party as if he were the mortgagee thereunder.

**History.**—s. 1, ch. 65-254; s. 26, ch. 79-398.

<sup>1</sup>**Note.**—Subsections (2)-(5), as amended, and subsections (6) and (7), as created, effective January 1, 1980.

<sup>2</sup>Note.—The word "numbers" was inserted by the editors.  
 Note.—s. 9-403, U.C.C.

#### **679.404 Termination statement.—**

(1) If a financing statement is filed on or after January 1, 1980, then within 10 days following written demand by the debtor after there is no outstanding secured obligation and no commitment to make advances, incur obligations, or otherwise give value, the secured party must on written demand by the debtor send the debtor, for each filing officer with whom the financing statement was filed, a termination statement to the effect that he no longer claims a security interest under the financing statement, which shall be identified by file number, or official records book and page number, if applicable. Except for termination statements of financing statements filed under s. 679.402(2) and (5), a termination statement signed by a person other than the secured party of record must include or be accompanied by the assignment or a separate written statement of assignment signed by the secured party of record complying with s. 679.405(2), including payment of the required fee. If the affected secured party fails to send such a termination statement within 10 days after proper written demand therefor or written notice that the filing has been assigned to another party, together with such party's address, he shall be liable to the debtor for \$100, and in addition for any loss caused to the debtor by such failure.

(2) On presentation to the filing officer of such a termination statement, the officer must note it in the index and, if applicable, record it in the office where a mortgage on the real estate concerned would be filed or recorded. If he has received the termination statement in duplicate, he shall return one copy of the termination statement to the secured party stamped to show the time of receipt thereof. If the filing officer has a microfilm or other photographic record of the financing statement, and of any related continuation statement, statement of assignment, and statement of release, he may remove the originals from the files at any time after receipt of the termination statement or if he has no such record, he may remove them from the files at any time after 1 year after receipt of the termination statement.

(3) The uniform fee for filing and indexing a termination statement shall be as provided in chapter 15 or chapter 28. An additional fee may be charged for each name, more than one, against which the termination statement is required to be indexed.

History.—s. 1, ch. 65-254; s. 27, ch. 79-398.

<sup>1</sup>Note.—As amended, effective January 1, 1980.

Note.—s. 9-404, U.C.C.

#### **679.405 Assignment of security interest; duties of filing officer; fees.—**

<sup>1</sup>(1) A financing statement may disclose an assignment of a security interest in the collateral described in the financing statement by indication in the financing statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face of the statement or annexed thereto. On presentation to the filing officer of such a financing statement, the filing officer shall mark the same as provided in s. 679.403(4). The uniform fee for filing, indexing, and furnishing data for a

financing statement so indicating an assignment shall be as provided in chapter 15 or chapter 28. An additional fee may be charged for each name, more than one, against which the financing statement is required to be indexed.

<sup>1</sup>(2) A secured party may assign of record all or a part of his rights under a financing statement by the filing, in the place where the original financing statement was filed, of a separate written statement of assignment signed by the secured party of record and setting forth the name of the secured party of record and the debtor, the file number and the date of filing of the financing statement, and the name and address of the assignee and containing a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. On presentation to the filing officer of such a separate statement, the filing officer shall mark such separate statement with the date and time of the filing, and shall file and index same. He shall note the assignment on the index of the financing statement, or in the case of a filing on goods which are or are to become fixtures, filing on crops or timber to be cut under s. 679.402(5), or covering minerals or the like (including oil and gas) or accounts subject to s. 679.103(5), he shall index the assignment under the name of the assignor as grantor, and, to the extent that the law of this state provides for indexing the assignment of a mortgage under the name of the assignee, he shall index the assignment of the financing statement under the name of the assignee. The uniform fee for filing, indexing, and furnishing data about such a separate statement of assignment shall be as provided in chapter 15 or chapter 28. An additional fee may be charged for each name, more than one, against which the statement of assignment is required to be indexed. Notwithstanding the provisions of this subsection, an assignment of record of a security interest in a fixture contained in a mortgage may be made only by an assignment of the mortgage in the manner provided by the law of this state, other than this code.

(3) After the disclosure or filing of an assignment under this section, the assignee is the secured party of record.

History.—s. 1, ch. 65-254; s. 28, ch. 79-398.

<sup>1</sup>Note.—As amended, effective January 1, 1980.

Note.—s. 9-405, U.C.C.

#### **679.406 Release of collateral; duties of filing officer; fees.—**

A secured party of record may by his signed statement release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released, the name and address of the debtor, the name and address of the secured party, and the file number of the financing statement. Except for statements of release of financing statements filed under s. 679.402(4) and (5), a statement of release signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with s. 679.405(2), including payment of the required fee, except that in the case of statements of release of financing statements filed under s. 679.402(4) and



(5), a separate written statement of assignment shall not be required. Upon presentation of such a statement of release to the filing officer, he shall mark the statement with the time and date of filing and note the same upon the margin of the index of the filing of the financing statement. The uniform fee for filing and indexing such a statement of release shall be as provided in chapter 15 or chapter 28. An additional fee may be charged for each name, more than one, against which the statement of release is required to be indexed.

<sup>1</sup>History.—s. 1, ch. 65-254; s. 29, ch. 79-398.

<sup>1</sup>Note.—As amended, effective January 1, 1980.

<sup>1</sup>Note.—s. 9-406, U.C.C.

#### **679.407 Information from filing officer.—**

<sup>1</sup>(1) If the person filing any financing statement, termination statement, statement of assignment, or statement of release, furnishes the filing officer a copy thereof, the filing officer shall note upon the copy the file number and date and time of the filing of the original and deliver or send the copy to such person. The Department of State shall charge no additional fee for such service. The fee to be charged by a clerk of the circuit court shall be as provided in chapter 28.

(2) Upon request of any person, the filing officer shall provide a certified copy of any filed instrument under this chapter. The fee for such service shall be as provided in chapters 15 or 28, F. S.

<sup>1</sup>History.—s. 1, ch. 65-254; s. 1, ch. 67-364; ss. 10, 35, ch. 69-106; s. 30, ch. 79-398.

<sup>1</sup>Note.—As amended, effective January 1, 1980.

<sup>1</sup>Note.—s. 9-407, U.C.C.

**679.408 Consignor or lessor filing.**—A consignor or lessor of goods may file a financing statement using the terms "consignor," "consignee," "lessor," "lessee," or the like instead of the terms specified in s. 679.402. The provisions of this part shall apply as appropriate to such a financing statement, but its filing shall not of itself be a factor in determining whether or not the consignment or lease is intended as security (s. 671.201(37)). However, if it is determined for other reasons that the consignment or lease is so intended, a security interest of the consignor or lessor which attaches to the consigned or leased goods is perfected by such filing.

<sup>1</sup>History.—s. 31, ch. 79-398.

<sup>1</sup>Note.—Effective January 1, 1980.

## **PART V**

## **DEFAULT**

- 679.501 Default; procedure when security agreement covers both real and personal property.
- 679.502 Collection rights of secured party.
- 679.503 Secured party's right to take possession after default.
- 679.504 Secured party's right to dispose of collateral after default; effect of disposition.
- 679.505 Compulsory disposition of collateral; acceptance of the collateral as discharge of obligation.
- 679.506 Debtor's right to redeem collateral.
- 679.507 Secured party's liability for failure to comply with this part.

### **679.501 Default; procedure when security agreement covers both real and personal property.—**

(1) When a debtor is in default under a security agreement, a secured party has the rights and remedies provided in this part, and except as limited by subsection (3) those provided in the security agreement. He may reduce his claim to judgment, foreclose or otherwise enforce the security interest by any available judicial procedure. If the collateral is documents the secured party may proceed either as to the documents or as to the goods covered thereby. A secured party in possession has the rights, remedies and duties provided in s. 679.207. The rights and remedies referred to in this subsection are cumulative.

(2) After default, the debtor has the rights and remedies provided in this part, those provided in the security agreement and those provided in s. 679.207.

<sup>1</sup>(3) To the extent that they give rights to the debtor and impose duties on the secured party, the rules stated in the subsections referred to below may not be waived or varied except as provided with respect to compulsory disposition of collateral (s. 679.504(3) and s. 679.505) and with respect to redemption of collateral (s. 679.506) but the parties may by agreement determine the standards by which the fulfillment of these rights and duties is to be measured if such standards are not manifestly unreasonable:

(a) Sections 679.502(2) and 679.504(2) insofar as they require accounting for surplus proceeds of collateral;

(b) Sections 679.504(3) and 679.505(1) which deal with disposition of collateral;

(c) Section 679.505(2) which deals with acceptance of collateral as discharge of obligation;

(d) Section 679.506 which deals with redemption of collateral; and

(e) Section 679.507(1) which deals with the secured party's liability for failure to comply with this part.

(4) If the security agreement covers both real and personal property, the secured party may proceed under this part as to the personal property or he may proceed as to both the real and the personal property in accordance with his rights and remedies in respect of the real property, in which case the provisions of this part do not apply.

(5) When a secured party has reduced his claim to judgment the lien of any levy which may be made upon his collateral by virtue of any execution based upon the judgment shall relate back to the date of the perfection of the security interest in such collateral. A judicial sale, pursuant to such execution, is a foreclosure of the security interest by judicial procedure within the meaning of this section, and the secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this chapter.

<sup>1</sup>History.—s. 1, ch. 65-254; s. 32, ch. 79-398.

<sup>1</sup>Note.—As amended, effective January 1, 1980.

<sup>1</sup>Note.—s. 9-501, U.C.C.; supersedes s. 673.06.

### **679.502 Collection rights of secured party.—**

(1) When so agreed and in any event on default the secured party is entitled to notify an account debtor or the obligor on an instrument to make pay-

ment to him whether or not the assignor was therefore making collections on the collateral, and also to take control of any proceeds to which he is entitled under s. 679.306.

<sup>1</sup>(2) A secured party who by agreement is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor and who undertakes to collect from the account debtors or obligors must proceed in a commercially reasonable manner and may deduct his reasonable expenses of realization from the collections. If the security agreement secures an indebtedness, the secured party must account to the debtor for any surplus, and unless otherwise agreed, the debtor is liable for any deficiency. But, if the underlying transaction was a sale of accounts or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

History.—s. 1, ch. 65-254; s. 33, ch. 79-398.

<sup>1</sup>Note.—As amended, effective January 1, 1980.

Note.—s. 9-502, U.C.C.; supersedes s. 698.03.

**679.503 Secured party's right to take possession after default.**—Unless otherwise agreed a secured party has on default the right to take possession of the collateral. In taking possession a secured party may proceed without judicial process if this can be done without breach of the peace or may proceed by action. If the security agreement so provides the secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties. Without removal a secured party may render equipment unusable, and may dispose of collateral on the debtor's premises under s. 679.504.

History.—s. 1, ch. 65-254.

Note.—s. 9-503, U.C.C.; supersedes ss. 698.03, 673.06.

**679.504 Secured party's right to dispose of collateral after default; effect of disposition.**—

(1) A secured party after default may sell, lease or otherwise dispose of any or all of the collateral in its then condition or following any commercially reasonable preparation or processing. Any sale of goods is subject to chapter 672. The proceeds of disposition shall be applied in the order following to:

<sup>1</sup>(a) The reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing, and the like and, to the extent provided for in the agreement and not prohibited by law, the reasonable attorneys' fees and legal expenses incurred by the secured party;

(b) The satisfaction of indebtedness secured by the security interest under which the disposition is made;

(c) The satisfaction of indebtedness secured by any subordinate security interest in the collateral if written notification of demand therefor is received before distribution of the proceeds is completed. If requested by the secured party, the holder of a subordinate security interest must seasonably furnish reasonable proof of his interest, and unless he does so, the secured party need not comply with his demand.

<sup>1</sup>(2) If the security interest secures an indebtedness, the secured party must account to the debtor for any surplus, and, unless otherwise agreed, the

debtor is liable for any deficiency. But if the underlying transaction was a sale of accounts or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

<sup>1</sup>(3) Disposition of the collateral may be by public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms, but every aspect of the disposition including the method, manner, time, place, and terms must be commercially reasonable. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the secured party to the debtor if he has not signed after default a conspicuous statement renouncing or modifying his right to notification of sale and, except in the case of consumer goods, to any other person who has a security interest in the collateral and who has duly filed a financing statement indexed in the name of the debtor in this state. The secured party may buy at any public sale and, if the collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations, he may buy at private sale.

(4) When collateral is disposed of by a secured party after default, the disposition transfers to a purchaser for value all of the debtor's rights therein, discharges the security interest under which it is made and any security interest or lien subordinate thereto. The purchaser takes free of all such rights and interests even though the secured party fails to comply with the requirements of this part or of any judicial proceedings:

(a) In the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if he does not buy in collusion with the secured party, other bidders or the person conducting the sale; or

(b) In any other case, if the purchaser acts in good faith.

(5) A person who is liable to a secured party under a guaranty, indorsement, repurchase agreement or the like and who receives a transfer of collateral from the secured party or is subrogated to his rights has thereafter the rights and duties of the secured party. Such a transfer of collateral is not a sale or disposition of the collateral under this chapter.

History.—s. 1, ch. 65-254; s. 34, ch. 79-398.

<sup>1</sup>Note.—As amended, effective January 1, 1980.

Note.—s. 9-504, U.C.C.; supersedes ss. 673.06, 698.03.

**679.505 Compulsory disposition of collateral; acceptance of the collateral as discharge of obligation.**—

(1) If the debtor has paid 60 percent of the cash price in the case of a purchase money security interest in consumer goods or 60 percent of the loan in the case of another security interest in consumer goods, and has not signed after default a statement renouncing or modifying his rights under this part a secured party who has taken possession of collateral must dispose of it under s. 679.504 and if he fails to

do so within 90 days after he takes possession the debtor at his option may recover in conversion or under s. 679.507(1) on secured party's liability.

<sup>1</sup>(2) In any other case involving consumer goods or any other collateral, a secured party in possession may, after default, propose to retain the collateral in satisfaction of the obligation. Written notice of such proposal shall be sent to the debtor and, except in the case of consumer goods, to any other secured party who has a security interest in the collateral and who has duly filed a financing statement indexed in the name of the debtor in this state. If the debtor or other person entitled to receive notification objects in writing within 30 days from the date the notification is sent by the secured party or if any other secured party objects in writing within 30 days after the secured party obtains possession, the secured party must dispose of the collateral under s. 679.504 if the debtor or such other person has not signed after default a conspicuous statement renouncing or modifying his rights under this subsection. In the absence of such written objection, the secured party may retain the collateral in satisfaction of the debtor's obligation.

**History.**—s. 1, ch. 65-254; s. 35, ch. 79-398.

**Note.**—As amended, effective January 1, 1980.

**Note.**—s. 9-505, U.C.C.

#### **679.506 Debtor's right to redeem collateral.—**

At any time before the secured party has disposed of collateral or entered into a contract for its disposition under s. 679.504 or before the obligation has been discharged under s. 679.505(2) the debtor or any other secured party may unless otherwise agreed in writing after default redeem the collateral by tendering fulfillment of all obligations secured by the collateral as well as the expenses reasonably incurred by the secured party in retaking, holding and preparing the collateral for disposition, in arranging for the sale, and to the extent provided in the agreement and not prohibited by law, his reasonable attorneys' fees and legal expenses.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 9-506, U.C.C.

#### **679.507 Secured party's liability for failure to comply with this part.—**

(1) If it is established that the secured party is not proceeding in accordance with the provisions of this part disposition may be ordered or restrained on appropriate terms and conditions. If the disposition has occurred the debtor or any person entitled to notification or whose security interest has been made known to the secured party prior to the disposition has a right to recover from the secured party any loss caused by a failure to comply with the provisions of this part. If the collateral is consumer goods the debtor has a right to recover in any event an amount not less than the credit service charge plus 10 percent of the principal amount of the debt or the time price differential plus 10 percent of the cash price.

(2) The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the secured party is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the secured party either sells the collateral in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with reasonable commercial practices among dealers in the type of property sold he has sold in a commercially reasonable manner. The principles stated in the two preceding sentences with respect to sales also apply as may be appropriate to other types of disposition. A disposition which has been approved in any judicial proceeding or by any bona fide creditors' committee or representative of creditors shall conclusively be deemed to be commercially reasonable, but this sentence does not indicate that any such approval must be obtained in any case nor does it indicate that any disposition not so approved is not commercially reasonable.

**History.**—s. 1, ch. 65-254.

**Note.**—s. 9-507, U.C.C.



## CHAPTER 680

## UNIFORM COMMERCIAL CODE: EFFECTIVE DATE AND REPEALER

## ARTICLE 10

Note.—Pursuant to s. 69, ch. 69-353, the editors have altered the numbers of all sections making up this chapter by deleting the digit and hyphen immediately following the decimal point. The purpose is to conform the numbering of the Code sections with the decimal numbering system used in other chapters of the Florida Statutes.

- 680.101 Effective date; provision for transition; preservation of old transition provision.  
 680.103 General repealer.  
 680.104 Laws not repealed; precedence where code provisions in conflict therewith; certain statutory remedies retained.  
 680.105 Severability.  
 680.108 Transition provisions on place of filing.  
 680.109 Required refilings.  
 680.11 Transition provisions as to priorities.  
 680.111 Presumption that rule of law continues unchanged.

**680.101 Effective date; provision for transition; preservation of old transition provision.—**

(1) This act shall take effect at 12:01 a.m. on January 1, 1980.

(2) Transactions validly entered into after January 1, 1967, and before the effective date of this act, and which were subject to the provisions of chapter 65-254, Laws of Florida, as amended, and which would be subject to this act as amended if they had been entered into after the effective date of this act and the rights, duties, and interests flowing from such transactions remain valid after the latter date and may be terminated, completed, consummated, or enforced as required or permitted by this act. Security interests arising out of such transactions which are perfected when this act becomes effective shall remain perfected until they lapse as provided in this act and may be continued as permitted by this act, except as stated in s. 680.108.

(3) The provisions of s. 680.101 shall continue to apply to this act and for this purpose the two statutes shall be considered one continuous statute.

History.—s. 1, ch. 65-254; s. 1, ch. 69-218; s. 36, ch. 79-398.

Note.—As amended, effective January 1, 1980.

**680.103 General repealer.—**Except as provided in s. 680.104, all laws and parts of laws inconsistent with this code are repealed.

History.—s. 1, ch. 65-254.

**680.104 Laws not repealed; precedence where code provisions in conflict therewith; certain statutory remedies retained.—**

(1) The article on documents of title (Art. 7) does not repeal or modify any laws prescribing the form or contents of documents of title or the services or facilities to be afforded by bailees, or otherwise regulating bailees' businesses in respects not specifically dealt with herein; but the fact that such laws are violated does not affect the status of a document of title which otherwise complies with the definition of a document of title (s. 671.201).

(2) The following laws and parts of laws are specifically not repealed and shall take precedence over any provisions of this code which may be inconsistent or in conflict therewith:

(a) Chapter 517—Sale of securities.

(b) Chapter 610—Uniform act for simplification of fiduciary security transfers.

(c) Chapter 687—Interest and usury.

(d) Chapter 516—Small loan business.

(e) Chapter 520—Retail installment sales (Part I, Motor Vehicle Sales Finance Act; Part II, Retail Installment Sales Act; Part III, Installment Sales Finance Act).

(f) Chapter 665—Savings Association Act.

(g) Chapter 657—Credit unions.

(h) Chapter 319—Title certificates (motor vehicle).

(i) Section 715.04—Pawnbrokers, disposition of pledged property for nonpayment of principal or interest.

(j) Chapters 658, 659, 660 and 661—Florida Banking Code, except those sections in chapter 659 enumerated in s. 680.102.

(3) The following laws or parts of laws, although not repealed, shall yield to and be superseded by any provisions of the code which may be inconsistent or in conflict therewith:

(a) Chapter 697—Instruments deemed mortgages and the nature of a mortgage.

(b) Chapter 701—Assignment and cancellation of mortgages.

(c) Chapter 702—Foreclosure of mortgages.

(d) Chapter 727—General assignments.

(4) Notwithstanding any provisions to the contrary in any of the following Florida Statutes, the remedies provided by such statutes shall not restrict the remedies otherwise available to a secured party under this code, but all such remedies shall be cumulatively available in accordance with their respective terms to a secured party under this code:

Chapter 76—Attachment.

History.—s. 1, ch. 65-254; s. 174, ch. 79-164.

**680.105 Severability.—**If any provision of this code or the application of such provision to any circumstance is held invalid for any reason whatsoever, the remainder of the code or the application of the provision to other circumstances shall not be affected thereby.

History.—s. 1, ch. 65-254.

**680.108 Transition provisions on place of filing.—**

(1) A financing statement or continuation statement filed prior to the effective date of this act which shall not have lapsed prior to the effective date of this act shall remain effective for the period provided in chapter 65-254, Laws of Florida, as amended, but not less than 5 years after the filing.

(2) With respect to any collateral acquired by the debtor subsequent to the effective date of this act,

any effective financing statement or continuation statement described in this section shall apply only if the filing or filings are in the office or offices that would be appropriate to perfect the security interests in the new collateral under this act.

(3) The effectiveness of any financing statement or continuation statement filed prior to the effective date of this act may be continued by a continuation statement as permitted by this act, except that if this act requires a filing in an office where there was no previous financing statement, a new financing statement conforming to s. 680.109(4) shall be filed in that office.

**History.**—s. 37, ch. 79-398.

**Note.**—Effective January 1, 1980.

**680.109 Required refilings.—**

(1) If a security interest is perfected or has priority when this act takes effect as to all persons or as to certain persons without any filing or recording, and if the filing of a financing statement would be required for the perfection or priority of the security interest against those persons under this act, the perfection and priority rights of the security interest continue until 3 years after the effective date of this act. The perfection will then lapse unless a financing statement is filed as provided in subsection (4) or unless the security interest is perfected otherwise than by filing.

(2) If a security interest is perfected when this act takes effect under a law other than the Uniform Commercial Code which requires no further filing, refiling, or recording to continue its perfection, perfection continues until and will lapse 3 years after this act takes effect, unless:

(a) A financing statement is filed as provided in subsection (4);

(b) The security interest is perfected otherwise than by filing; or

(c) Under s. 679.302(3) the other law continues to govern filing.

(3) If a security interest is perfected by a filing, refiling, or recording under a law repealed by this act which required further filing, refiling, or recording to continue its perfection, perfection continues

and will lapse on the date provided by the law so repealed for such further filing, refiling, or recording unless a financing statement is filed as provided in subsection (4) or unless the security interest is perfected otherwise than by filing.

(4) A financing statement may be filed within 6 months before the perfection of a security interest would otherwise lapse. Any such financing statement may be signed by either the debtor or the secured party. It must identify the security agreement, statement, or notice (however denominated in any statute or other law repealed or modified by this act), state the office where and the date when the last filing, refiling, or recording, if any, was made with respect thereto and the filing number, if any, or book and page, if any, of recording and further state that the security agreement, statement, or notice, however denominated, in another filing office under the Uniform Commercial Code or under any statute or other law repealed or modified by this act is still effective. Sections 679.103 and 679.401 determine the proper place to file such a financing statement. Except as specified in this subsection, the provisions of s. 679.403(3) for continuation statements apply to such a financing statement.

**History.**—s. 38, ch. 79-398.

**Note.**—Effective January 1, 1980.

**680.11 Transition provisions as to priorities.**

—Except as otherwise provided in chapter 680, chapter 65-254, Laws of Florida, as amended, shall apply to any questions of priority if the positions of the parties were fixed prior to the effective date of this act. In other cases, questions of priority shall be determined by this act.

**History.**—s. 39, ch. 79-398.

**Note.**—Effective January 1, 1980.

**680.111 Presumption that rule of law continues unchanged.**—Unless a change in law has clearly been made, the provisions of this act shall be deemed declaratory of the meaning of chapter 65-254, Laws of Florida, as amended.

**History.**—s. 40, ch. 79-398.

**Note.**—Effective January 1, 1980.

## CHAPTER 682

## ARBITRATION CODE

- 682.01 Florida arbitration code.
- 682.02 Arbitration agreements made valid, irrevocable, and enforceable; scope.
- 682.03 Proceedings to compel and to stay arbitration.
- 682.04 Appointment of arbitrators by court.
- 682.05 Majority action by arbitrators.
- 682.06 Hearing.
- 682.07 Representation by attorney.
- 682.08 Witnesses, subpoenas, depositions.
- 682.09 Award.
- 682.10 Change of award by arbitrators or umpire.
- 682.11 Fees and expenses of arbitration.
- 682.12 Confirmation of an award.
- 682.13 Vacating an award.
- 682.14 Modification or correction of award.
- 682.15 Judgment or decree on award.
- 682.16 Judgment roll, docketing.
- 682.17 Application to court.
- 682.18 Court, jurisdiction.
- 682.19 Venue.
- 682.20 Appeals.
- 682.21 Law not retroactive.
- 682.22 Severability.

**682.01 Florida arbitration code.**—Sections 682.01-682.22 may be cited as the "Florida Arbitration Code."

*History.*—s. 22, ch. 57-402; s. 12, ch. 67-254.  
*Note.*—Former s. 57.10.

**682.02 Arbitration agreements made valid, irrevocable, and enforceable; scope.**—Two or more parties may agree in writing to submit to arbitration any controversy existing between them at the time of the agreement, or they may include in a written contract a provision for the settlement by arbitration of any controversy thereafter arising between them relating to such contract or the failure or refusal to perform the whole or any part thereof. Such agreement or provision shall be valid, enforceable, and irrevocable without regard to the justiciable character of the controversy; provided that this act shall not apply to any such agreement or provision to arbitrate in which it is stipulated that this law shall not apply or to any arbitration or award thereunder.

*History.*—s. 1, ch. 57-402; s. 12, ch. 67-254.  
*Note.*—Former s. 57.11.

**682.03 Proceedings to compel and to stay arbitration.**—

(1) A party to an agreement or provision for arbitration subject to this law claiming the neglect or refusal of another party thereto to comply therewith may make application to the court for an order directing the parties to proceed with arbitration in accordance with the terms thereof. If the court is satisfied that no substantial issue exists as to the making of the agreement or provision, it shall grant the application. If the court shall find that a substantial issue is raised as to the making of the agreement or provision, it shall summarily hear and determine

the issue and, according to its determination, shall grant or deny the application.

(2) If an issue referable to arbitration under an agreement or provision for arbitration subject to this law becomes involved in an action or proceeding pending in a court having jurisdiction to hear an application under subsection (1), such application shall be made in said court. Otherwise and subject to s. 682.19, such application may be made in any court of competent jurisdiction.

(3) Any action or proceeding involving an issue subject to arbitration under this law shall be stayed if an order for arbitration or an application therefor has been made under this section or, if the issue is severable, the stay may be with respect thereto only. When the application is made in such action or proceeding, the order for arbitration shall include such stay.

(4) On application the court may stay an arbitration proceeding commenced or about to be commenced, if it shall find that no agreement or provision for arbitration subject to this law exists between the party making the application and the party causing the arbitration to be had. The court shall summarily hear and determine the issue of the making of the agreement or provision and, according to its determination, shall grant or deny the application.

(5) An order for arbitration shall not be refused on the ground that the claim in issue lacks merit or bona fides or because any fault or grounds for the claim sought to be arbitrated have not been shown.

*History.*—s. 2, ch. 57-402; s. 12, ch. 67-254.  
*Note.*—Former s. 57.12.

**682.04 Appointment of arbitrators by court.**—If an agreement or provision for arbitration subject to this law provides a method for the appointment of arbitrators or an umpire, this method shall be followed. In the absence thereof, or if the agreed method fails or for any reason cannot be followed, or if an arbitrator or umpire who has been appointed fails to act and his successor has not been duly appointed, the court, on application of a party to such agreement or provision shall appoint one or more arbitrators or an umpire. An arbitrator or umpire so appointed shall have like powers as if named or provided for in the agreement or provision.

*History.*—s. 3, ch. 57-402; s. 12, ch. 67-254.  
*Note.*—Former s. 57.13.

**682.05 Majority action by arbitrators.**—The powers of the arbitrators may be exercised by a majority of their number unless otherwise provided in the agreement or provision for arbitration.

*History.*—s. 4, ch. 57-402; s. 12, ch. 67-254.  
*Note.*—Former s. 57.14.

**682.06 Hearing.**—Unless otherwise provided by the agreement or provision for arbitration:

(1)(a) The arbitrators shall appoint a time and place for the hearing and cause notification to the parties to be served personally or by registered or certified mail not less than 5 days before the hearing. Appearance at the hearing waives a party's



right to such notice. The arbitrators may adjourn their hearing from time to time upon their own motion and shall do so upon the request of any party to the arbitration for good cause shown, provided that no adjournment or postponement of their hearing shall extend beyond the date fixed in the agreement or provision for making the award unless the parties consent to a later date. An umpire authorized to hear and decide the cause upon failure of the arbitrators to agree upon an award shall, in the course of his jurisdiction, have like powers and be subject to like limitations thereon.

(b) The arbitrators, or umpire in the course of his jurisdiction, may hear and decide the controversy upon the evidence produced notwithstanding the failure or refusal of a party duly notified of the time and place of the hearing to appear. The court on application may direct the arbitrators, or the umpire in the course of his jurisdiction, to proceed promptly with the hearing and making of the award.

(2) The parties are entitled to be heard, to present evidence material to the controversy and to cross-examine witnesses appearing at the hearing.

(3) The hearing shall be conducted by all of the arbitrators but a majority may determine any question and render a final award. An umpire authorized to hear and decide the cause upon the failure of the arbitrators to agree upon an award shall sit with the arbitrators throughout their hearing but shall not be counted as a part of their quorum or in the making of their award. If, during the course of the hearing, an arbitrator for any reason ceases to act, the remaining arbitrator, arbitrators or umpire appointed to act as neutrals may continue with the hearing and determination of the controversy.

**History.**—s. 5, ch. 57-402; s. 12, ch. 67-254.  
**Note.**—Former s. 57.15.

**682.07 Representation by attorney.**—A party has the right to be represented by an attorney at any arbitration proceeding or hearing under this law. A waiver thereof prior to the proceeding or hearing is ineffective.

**History.**—s. 6, ch. 57-402; s. 12, ch. 67-254.  
**Note.**—Former s. 57.16.

#### **682.08 Witnesses, subpoenas, depositions.**—

(1) Arbitrators, or an umpire authorized to hear and decide the cause upon failure of the arbitrators to agree upon an award, in the course of his jurisdiction, may issue subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence, and shall have the power to administer oaths. Subpoenas so issued shall be served, and upon application to the court by a party to the arbitration or the arbitrators, or the umpire, enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action.

(2) On application of a party to the arbitration and for use as evidence, the arbitrators, or the umpire in the course of his jurisdiction, may permit a deposition to be taken, in the manner and upon the terms designated by them or him of a witness who cannot be subpoenaed or is unable to attend the hearing.

(3) All provisions of law compelling a person under subpoena to testify are applicable.

(4) Fees for attendance as a witness shall be the same as for a witness in the circuit court.

**History.**—s. 7, ch. 57-402; s. 12, ch. 67-254.  
**Note.**—Former s. 57.17.

#### **682.09 Award.**—

(1) The award shall be in writing and shall be signed by the arbitrators joining in the award or by the umpire in the course of his jurisdiction. They or he shall deliver a copy to each party to the arbitration either personally or by registered or certified mail, or as provided in the agreement or provision.

(2) An award shall be made within the time fixed therefor by the agreement or provision for arbitration or, if not so fixed, within such time as the court may order on application of a party to the arbitration. The parties may, by written agreement, extend the time either before or after the expiration thereof. Any objection that an award was not made within the time required is waived unless the objecting party notifies the arbitrators or umpire in writing of his objection prior to the delivery of the award to him.

**History.**—s. 8, ch. 57-402; s. 12, ch. 67-254.  
**Note.**—Former s. 57.18.

**682.10 Change of award by arbitrators or umpire.**—On application of a party to the arbitration, or if an application to the court is pending under ss. 682.12, 682.13 or 682.14, on submission to the arbitrators, or to the umpire in the case of an umpire's award, by the court under such conditions as the court may order, the arbitrators or umpire may modify or correct the award upon the grounds stated in s. 682.14(1)(a) and (c) or for the purpose of clarifying the award. The application shall be made within 20 days after delivery of the award to the applicant. Written notice thereof shall be given forthwith to the other party to the arbitration, stating that he must serve his objections thereto, if any, within 10 days from the notice. The award so modified or corrected is subject to the provisions of ss. 682.12-682.14.

**History.**—s. 9, ch. 57-402; s. 12, ch. 67-254.  
**Note.**—Former s. 57.19.

**682.11 Fees and expenses of arbitration.**—Unless otherwise provided in the agreement or provision for arbitration, the arbitrators' and umpire's expenses and fees, together with other expenses, not including counsel fees, incurred in the conduct of the arbitration, shall be paid as provided in the award.

**History.**—s. 10, ch. 57-402; s. 12, ch. 67-254.  
**Note.**—Former s. 57.20.

**682.12 Confirmation of an award.**—Upon application of a party to the arbitration, the court shall confirm an award, unless within the time limits hereinafter imposed grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in ss. 682.13 and 682.14.

**History.**—s. 11, ch. 57-402; s. 12, ch. 67-254.  
**Note.**—Former s. 57.21.

#### **682.13 Vacating an award.**—

(1) Upon application of a party, the court shall vacate an award when:

(a) The award was procured by corruption, fraud or other undue means.

(b) There was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or umpire or misconduct prejudicing the rights of any party.

(c) The arbitrators or the umpire in the course of his jurisdiction exceeded their powers.

(d) The arbitrators or the umpire in the course of his jurisdiction refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of s. 682.06, as to prejudice substantially the rights of a party.

(e) There was no agreement or provision for arbitration subject to this law, unless the matter was determined in proceedings under s. 682.03 and unless the party participated in the arbitration hearing without raising the objection.

But the fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.

(2) An application under this section shall be made within 90 days after delivery of a copy of the award to the applicant, except that, if predicated upon corruption, fraud or other undue means, it shall be made within 90 days after such grounds are known or should have been known.

(3) In vacating the award on grounds other than those stated in subsection (1)(e), the court may order a rehearing before new arbitrators chosen as provided in the agreement or provision for arbitration or by the court in accordance with s. 682.04, or, if the award is vacated on grounds set forth in subsection (1)(c) and (d), the court may order a rehearing before the arbitrators or umpire who made the award or their successors appointed in accordance with s. 682.04. The time within which the agreement or provision for arbitration requires the award to be made is applicable to the rehearing and commences from the date of the order therefor.

(4) If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award.

**History.**—s. 12, ch. 57-402; s. 12, ch. 67-254.  
**Note.**—Former s. 57.22.

#### **682.14 Modification or correction of award.—**

(1) Upon application made within 90 days after delivery of a copy of the award to the applicant, the court shall modify or correct the award when:

(a) There is an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award.

(b) The arbitrators or umpire have awarded upon a matter not submitted to them or him and the award may be corrected without affecting the merits of the decision upon the issues submitted.

(c) The award is imperfect as a matter of form, not affecting the merits of the controversy.

(2) If the application is granted, the court shall modify and correct the award so as to effect its intent and shall confirm the award as so modified and corrected. Otherwise, the court shall confirm the award as made.

(3) An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

**History.**—s. 13, ch. 57-402; s. 12, ch. 67-254.  
**Note.**—Former s. 57.23.

**682.15 Judgment or decree on award.**—Upon the granting of an order confirming, modifying or correcting an award, judgment or decree shall be entered in conformity therewith and be enforced as any other judgment or decree. Costs of the application and of the proceedings subsequent thereto, and disbursements may be awarded by the court.

**History.**—s. 14, ch. 57-402; s. 12, ch. 67-254.  
**Note.**—Former s. 57.24.

#### **682.16 Judgment roll, docketing.—**

(1) On entry of judgment or decree, the clerk shall prepare the judgment roll consisting, to the extent filed, of the following:

(a) The agreement or provision for arbitration and each written extension of the time within which to make the award;

(b) The award;

(c) A copy of the order confirming, modifying or correcting the award; and

(d) A copy of the judgment or decree.

(2) The judgment or decree may be docketed as if rendered in a civil action.

**History.**—s. 15, ch. 57-402; s. 12, ch. 67-254.  
**Note.**—Former s. 57.25.

**682.17 Application to court.**—Except as otherwise provided, an application to the court under this law shall be by motion and shall be heard in the manner and upon the notice provided by law or rule of court for the making and hearing of motions. Unless the parties have agreed otherwise, notice of an initial application for an order shall be served in the manner provided by law for the service of a summons in an action.

**History.**—s. 16, ch. 57-402; s. 12, ch. 67-254.  
**Note.**—Former s. 57.26.

#### **682.18 Court, jurisdiction.—**

(1) The term "court" means any court of competent jurisdiction of this state. The making of an agreement or provision for arbitration subject to this law and providing for arbitration in this state shall, whether made within or outside this state, confer jurisdiction on the court to enforce the agreement or provision under this law, to enter judgment on an award duly rendered in an arbitration thereunder and to vacate, modify or correct an award rendered thereunder for such cause and in the manner provided in this law.

(2) Any judgment entered upon an award by a court of competent jurisdiction of any state, territory, the Commonwealth of Puerto Rico or foreign country shall be enforceable by application as provided in s. 682.17 and regardless of the time when said award may have been made.

**History.**—s. 17, ch. 57-402; s. 12, ch. 67-254.  
**Note.**—Former s. 57.27.

**682.19 Venue.**—Any application under this law may be made to the court of the county in which the other party to the agreement or provision for arbitration resides or has a place of business, or, if he has

no residence or place of business in this state, then to the court of any county. All applications under this law subsequent to an initial application shall be made to the court hearing the initial application unless it shall order otherwise.

**History.**—s. 18, ch. 57-402; s. 12, ch. 67-254.

**Note.**—Former s. 57.28.

**682.20 Appeals.—**

- (1) An appeal may be taken from:
  - (a) An order denying an application to compel arbitration made under s. 682.03.
  - (b) An order granting an application to stay arbitration made under s. 682.03(2)-(4).
  - (c) An order confirming or denying confirmation of an award.
  - (d) An order modifying or correcting an award.
  - (e) An order vacating an award without directing a rehearing.
  - (f) A judgment or decree entered pursuant to the provisions of this law.
- (2) The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action.

**History.**—s. 19, ch. 57-402; s. 12, ch. 67-254.

**Note.**—Former s. 57.29.

**682.21 Law not retroactive.**—This law applies only to agreements and provisions for arbitration made subsequent to the taking effect of this law.

**History.**—s. 20, ch. 57-402; s. 12, ch. 67-254.

**Note.**—Former s. 57.30.

**682.22 Severability.**—If any provision of this chapter or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of this chapter. In any action or proceeding in any state or territory of the United States, the Commonwealth of Puerto Rico, or any foreign country, this chapter and any agreement or provision to arbitrate made thereunder shall be classified as substantive within the meaning of that term in the conflict of laws; provided, however, that such substantive classification shall never be intended to derogate the public policy of such other jurisdiction.

**History.**—s. 21, ch. 57-402; s. 12, ch. 67-254.

**Note.**—Former s. 57.31.



## CHAPTER 683

## LEGAL HOLIDAYS—SPECIAL OBSERVANCES

- 683.01 Legal holidays.
- 683.02 Meaning of term "legal holidays" as used in contracts.
- 683.04 Arbor Day.
- 683.05 Pan-American Day.
- 683.06 Pascua Florida Day.
- 683.08 Gasparilla Day, legal holiday in Hillsborough County.
- 683.09 DeSoto Day, legal holiday in Manatee County.
- 683.10 Grandmother's Day.
- 683.11 Law Enforcement Appreciation Month.
- 683.115 Law Enforcement Memorial Day.
- 683.12 Parade Day, Hillsborough County.
- 683.13 State observance of national day of mourning.
- 683.14 Patriots' Day.
- 683.15 Teacher's Day.

**683.01 Legal holidays.—**

(1) The legal holidays, which are also public holidays, are the following:

- (a) Sunday, the first day of each week.
- (b) New Year's Day, January 1.
- (c) Birthday of Martin Luther King, Jr., January 15.
- (d) Birthday of Robert E. Lee, January 19.
- (e) Lincoln's Birthday, February 12.
- (f) Susan B. Anthony's Birthday, February 15.
- (g) Washington's Birthday, the third Monday in February.
- (h) Good Friday.
- (i) Pascua Florida Day, April 2.
- (j) Confederate Memorial Day, April 26.
- (k) Memorial Day, the last Monday in May.
- (l) Birthday of Jefferson Davis, June 3.
- (m) Independence Day, July 4.
- (n) Labor Day, the first Monday in September.
- (o) Columbus Day and Farmers' Day, the second Monday in October.
- (p) Veterans' Day, November 11.
- (q) General Election Day.
- (r) Thanksgiving Day, the fourth Thursday in November.
- (s) Christmas Day, December 25.
- (t) Shrove Tuesday, sometimes also known as "Mardi Gras," in counties where carnival associations are organized for the purpose of celebrating the same.

(2) Whenever any legal holiday shall fall upon a Sunday, the Monday next following shall be deemed a public holiday for all and any of the purposes aforesaid.

**History.**—RS 2315, 2316; s. 1, ch. 4198, 1893; s. 1, ch. 4487, 1895; s. 1, ch. 4488, 1895; s. 1, ch. 5275, 1903; s. 1, ch. 5392, 1905; GS 3102; s. 1, ch. 6872, 1915; RGS 4846; CGL 6932; s. 1, ch. 16067, 1933; s. 1, ch. 20250, 1941; s. 1, ch. 20525, 1941; s. 1, ch. 22610, 1945; s. 1, ch. 29926, 1955; s. 1, ch. 69-24; s. 1, ch. 73-44; s. 1, ch. 75-158; s. 1, ch. 77-423; s. 1, ch. 78-30; s. 1, ch. 78-298.

**683.02 Meaning of term "legal holidays" as used in contracts.**—Whenever, in contracts to be

performed in the state, reference is made to "legal holidays," the term shall be understood to include those holidays designated in s. 683.01 and such others as may be designated by law.

**History.**—s. 1, ch. 5392, 1905; s. 1, ch. 6872, 1915; RGS 4847; CGL 6933; s. 2, ch. 16067, 1933; s. 2, ch. 29926, 1955; s. 2, ch. 69-24.

**683.04 Arbor Day.**—The third Friday in January of each year be and is hereby designated as "Arbor Day" in the state.

**History.**—s. 1, ch. 22538, 1945.

**683.05 Pan-American Day.—**

(1) The governor shall proclaim April 14 of each year to be "Pan-American Day," which day shall be suitably observed in the public schools of the state as a day honoring the republics of Latin America, and which day shall otherwise be suitably observed by such public exercises in the state capitol and elsewhere as the governor may designate. If April 14 shall fall on a day which is not a school day, "Pan-American Day" shall be observed in the schools on the school day next preceding or on such preceding day as may be designated by local school authorities.

(2) The purpose of the law is to establish a day on which the mutually friendly relationship between the state and the Pan-American Republics will be recognized and perpetuated.

**History.**—ss. 1, 2, ch. 22975, 1945.

**683.06 Pascua Florida Day.—**

(1) April 2 of each year is hereby designated as "Florida State Day." The day to be known as Pascua Florida Day."

(2) The Governor may annually issue a proclamation designating April 2 as said State Day and designating the week of March 27 to April 2 as "Pascua Florida Week" and calling upon public schools and citizens of Florida to observe the same as a patriotic occasion.

**History.**—ss. 1, 2, ch. 28063, 1953; s. 2, ch. 77-423.

**683.08 Gasparilla Day, legal holiday in Hillsborough County.**—The day known and designated as "Gasparilla Day" in Hillsborough County shall be a legal holiday within said county, and all city, county, and state offices, and banking institutions may remain closed on Gasparilla Day.

**History.**—s. 1, ch. 63-419.

**683.09 DeSoto Day, legal holiday in Manatee County.**—The last Friday of DeSoto Week every year shall be known as "DeSoto Day" and shall be a legal holiday in Manatee County, and all city, county, and state offices and banking institutions may remain closed on DeSoto Day.

**History.**—s. 1, ch. 69-258; s. 1, ch. 69-289.

**683.10 Grandmother's Day.—**

(1) The second Sunday of October of each year is designated "Grandmother's Day."

(2) The governor may issue annually a proclamation designating the second Sunday of October as

Grandmother's Day and calling upon public schools and citizens of the state to observe the occasion.

History.—s. 1, ch. 71-188.

**683.11 Law Enforcement Appreciation Month.—**

(1) The month of May of each year is hereby designated "Law Enforcement Appreciation Month."

(2) The governor and the mayor of each municipality may issue annually a proclamation designating the month of May as "Law Enforcement Appreciation Month" and urging all civic, fraternal, and religious organizations and public and private educational institutions to recognize and observe this occasion through appropriate programs, meetings, services, or celebrations in which state, county, and local law enforcement officers are invited to participate.

History.—s. 1, ch. 72-322.

**683.115 Law Enforcement Memorial Day.—**

(1) May 15 of each year is hereby designated as "Law Enforcement Memorial Day."

(2) The Governor may issue annually a proclamation declaring May 15 to be a day of mourning throughout the state.

History.—s. 1, ch. 78-46.

**683.12 Parade Day, Hillsborough County.—**

The day known and designated as "Parade Day" of the Hillsborough County Fair and Plant City Strawberry Festival in Hillsborough County shall be a le-

gal holiday within said county, and all city and county offices and banking institutions may remain closed on Parade Day of the Hillsborough County Fair and Plant City Strawberry Festival.

History.—s. 1, ch. 73-160.

**683.13 State observance of national day of mourning.—**Observance by the state of any day of mourning, as proclaimed by the governor in response to the designation of a national day of mourning by the President of the United States, may be by declaring that the following Sunday shall be observed as the day of mourning.

History.—s. 1, ch. 74-16.

**683.14 Patriots' Day.—**Patriots' Day is hereby recognized by the Florida Legislature as one of great historical significance. Public officials, schools, private organizations, and all citizens are encouraged to commemorate Patriots' Day on April 19 of each year.

History.—s. 1, ch. 76-198.

**683.15 Teacher's Day.—**

(1) The third Friday in May of each year is designated as Teacher's Day.

(2) The Governor may issue annually a proclamation designating the third Friday in May as Teacher's Day and calling upon public schools and citizens of the state to observe the occasion.

History.—s. 1, ch. 78-203.

## CHAPTER 687

## INTEREST AND USURY

- 687.01 Rate of interest in absence of contract.
- 687.02 "Usurious contracts" defined.
- 687.03 "Unlawful rates of interest" defined; proviso.
- 687.031 Construction, ss. 687.02 and 687.03.
- 687.04 Penalty for usury; not to apply in certain situations.
- 687.05 Provisions for payment of attorney's fees.
- 687.06 Attorney's fee in enforcing nonusurious contracts; proviso; insurance premiums; attorney's fee provided in note.
- 687.071 Criminal usury, loan sharking; shylocking.
- 687.08 Persons lending money to give borrower receipt for payments; contents of receipt; penalty for violation.
- 687.09 Persons accepting chattel mortgage as security for loans under \$100 to cause amount as principal, etc., to be inserted.
- 687.10 Not applicable to chartered banks, trust companies, building and loan associations, savings and loan associations, or insurance companies.
- 687.12 Interest rates; parity among licensed lenders or creditors.
- 687.13 Alien borrowers.

**687.01 Rate of interest in absence of contract.**

—In all cases where interest shall accrue without a special contract for the rate thereof, the rate shall be 6 percent per annum, but parties may contract for a lesser or greater rate by contract in writing.

**History.**—s. 1, ch. 1483, 1866; ss. 1, 2, ch. 1562, 1866; RS 2320; GS 3103; RGS 4849; CGL 6936; s. 1, ch. 22745, 1945.  
cf.—ss. 55.03, 55.04 Judgments.

**687.02 "Usurious contracts" defined.**—All contracts for the payment of interest upon any loan, advance of money, or forbearance to enforce the collection of any debt, or upon any contract whatever, at a higher rate of interest than the equivalent of 18 percent per annum simple interest are hereby declared usurious. However, if such loan, advance of money, forbearance to enforce the collection of any debt, or contract exceeds \$500,000 in amount or value, then no contract to pay interest thereon is usurious unless the rate of interest exceeds the rate prescribed in s. 687.071.

**History.**—s. 1, ch. 4022, 1891; GS 3104; s. 1, ch. 5960, 1909; RGS 4850; CGL 6937; s. 1, ch. 29705, 1955; s. 1, ch. 73-298; s. 12, ch. 79-274.

**Note.**—Section 15, ch. 79-274, provides that ch. 79-274 shall apply only to loans or advances of credit made on or subsequent to July 1, 1979, and "shall not be construed as diminishing the force and effect of any laws applying to loans or advances of credit completed prior to that date."

cf.—Ch. 516 Florida Consumer Finance Act.

s. 665.395 Collection of fines, interest or premium on loans made by building and loan associations.

**687.03 "Unlawful rates of interest" defined; proviso.**

<sup>1</sup>(1) Except as provided herein, it shall be usury and unlawful for any person, or for any agent, officer, or other representative of any person, to reserve, charge, or take for any loan, advance of money, or forbearance to enforce the collection of any sum of money a rate of interest greater than the equivalent

of 18 percent per annum simple interest, either directly or indirectly, by way of commission for advances, discounts, or exchange, or by any contract, contrivance, or device whereby the debtor is required or obligated to pay a sum of money greater than the actual principal sum received, together with interest at the rate of the equivalent of 18 percent per annum simple interest. However, if any loan, advance of money, forbearance to enforce the collection of any debt, or contract exceeds \$500,000 in amount or value, it shall not be usury or unlawful to reserve, charge, or take interest thereon unless the rate of interest exceeds the rate prescribed in s. 687.071. The provisions of this section shall not apply to sales of bonds in excess of \$100 and mortgages securing the same, or money loaned on bonds.

(2)(a) The provisions of this section and of s. 687.02 shall not apply to loans or other advances of credit made pursuant to:

1. A commitment to insure by the Federal Housing Administration.

2. A commitment to guarantee by the Veterans Administration.

3. A commitment to purchase a loan issued by the Federal National Mortgage Association; Government National Mortgage Association; Federal Home Loan Mortgage Corporation; any department, agency, or instrumentality of the Federal Government; or any successor of any of them, pursuant to any provision of the acts of Congress or federal regulations.

(b) This act shall apply only to loans or advances of credit made subsequent to the effective date of this act. All present laws shall remain in full force and effect as to loans or advances of credit made prior to the effective date of this act.

(3) For the purpose of this chapter, the rate of interest on any loan of money shall be determined and computed upon the assumption that the debt will be paid according to the agreed terms, whether or not said loan is paid or collected by court action prior to the term of said loan, and any payment or property charged, reserved, or taken as an advance or forbearance, which is in the nature of, and taken into account in the calculation of, interest shall be valued as of the date received and shall be spread over the stated term of the loan for the purpose of determining the rate of interest. The spreading of any such advance or forbearance for the purpose of computing the rate of interest shall be calculated by first computing the advance or forbearance as a percentage of the total stated amount of the loan. This percentage shall then be divided by the number of years, and fractions thereof, of the loan according to its stated maturity date, without regard to early maturity in the event of default. The resulting annual percentage rate shall then be added to the stated annual percentage rate of interest to produce the effective rate of interest for purposes of this chapter. Moreover, for the purposes of this chapter, a loan shall be deemed a loan which exceeds \$500,000 in amount or value if:

(a) The outstanding principal indebtedness



thereunder initially exceeds \$500,000; or

(b) The parties thereto agree that the principal indebtedness will exceed \$500,000 at some time during the term of the loan and, when the agreement was made, the principal indebtedness was reasonably expected to exceed that amount, notwithstanding the fact that less than that amount in the aggregate was initially or later advanced.

(4) If a loan exceeds \$500,000, then, for the purposes of this chapter, interest on that loan shall not include the value of property charged, reserved, or taken as an advance or forbearance, the value of which substantially depends on the success of the venture in which are used the proceeds of that loan. Stock options and interests in profits, receipts, or residual values are examples of the type of property the value of which would be excluded from calculation of interest under the preceding sentence.

**History.**—s. 2, ch. 4022, 1891; GS 3105; s. 2, ch. 5960, 1909; RGS 4851; CGL 6938; s. 2, ch. 29705, 1955; s. 1, ch. 70-331; s. 2, ch. 73-298; s. 1, ch. 74-232; ss. 1, 2, ch. 76-124; s. 1, ch. 77-374; s. 1, ch. 78-211; s. 13, ch. 79-274; s. 258, ch. 79-400.

**Note.**—Section 15, ch. 79-274, provides that ch. 79-274 shall apply only to loans or advances of credit made on or subsequent to July 1, 1979, and "shall not be construed as diminishing the force and effect of any laws applying to loans or advances of credit completed prior to that date."

**687.031 Construction, ss. 687.02 and 687.03.**—Sections 687.02 and 687.03 shall not be construed to repeal, modify or limit any or either of the special provisions of existing statutory law creating exceptions to the general law governing interest and usury and specifying the interest rates and charges which may be made pursuant to such exceptions, including but not limited to those exceptions which relate to banks, Morris Plan banks, discount consumer financing, small loan companies and domestic building and loan associations.

**History.**—s. 3, ch. 29705, 1955.

**687.04 Penalty for usury; not to apply in certain situations.**—Any person, or any agent, officer, or other representative of any person, willfully violating the provisions of s. 687.03 shall forfeit the entire interest so charged, or contracted to be charged or reserved, and only the actual principal sum of such usurious contract can be enforced in any court in this state, either at law or in equity; and when said usurious interest is taken or reserved, or has been paid, then and in that event the person who has taken or reserved, or has been paid, either directly or indirectly, such usurious interest shall forfeit to the party from whom such usurious interest has been reserved, taken, or exacted in any way double the amount of interest so reserved, taken, or exacted. However, the penalties provided for by this section shall not apply:

(1) To a bona fide endorsee or transferee of negotiable paper purchased before maturity, unless the usurious character should appear upon its face, or unless the said endorsee or transferee shall have had actual notice of the same before the purchase of such paper, but in such event double the amount of such usurious interest may be recovered after payment, by action against the party originally exacting the same, in any court of competent jurisdiction in this state, together with an attorney's fee, as provided in s. 687.06; or

(2) If, prior to the institution of an action by the borrower or the filing of a defense under this chapter

by the borrower or receipt of written notice by the lender from the borrower that usury has been charged or collected, the lender notifies the borrower of the usurious overcharge and refunds the amount of any overcharge taken, plus interest on the overcharge taken at the maximum lawful rate in effect at the time the usurious interest was taken, to the borrower and makes whatever adjustments in the appropriate contract or account as are necessary to ensure that the borrower will not be required to pay further interest in excess of the amount permitted by s. 687.03.

**History.**—s. 3, ch. 4022, 1891; GS 3106; s. 3, ch. 5960, 1909; RGS 4852; CGL 6939; s. 1, ch. 79-90.

**687.05 Provisions for payment of attorney's fees.**—No provision for the payment of attorney's fees, or charge for exchange or similar charge shall render such instrument subject to the terms of any statute of this state, limiting the amount of interest which shall be charged on such instrument.

**History.**—s. 2, ch. 4374, 1895; GS 3107; RGS 4853; CGL 6940.

**687.06 Attorney's fee in enforcing nonusurious contracts; proviso; insurance premiums; attorney's fee provided in note.**—This chapter shall not be so construed as to prevent provision for the payment of such attorney's fees as the court may determine in cases brought before the court to be reasonable and just for legal services rendered in enforcing nonusurious contracts, either at law or in equity. This chapter shall not be construed so as to prohibit mortgagees from contracting for or collecting premiums for insurance actually issued on the property mortgaged, with the usual loss payable or mortgage clause attached thereto; provided further, that it shall not be necessary for the court to adjudge an attorney's fee, provided in any note or other instrument of writing, to be reasonable and just, when such fee does not exceed 10 percent of the principal sum named in said note, or other instrument in writing.

**History.**—s. 4, ch. 5960, 1909; s. 1, ch. 6870, 1915; RGS 4854; CGL 6941; s. 26, ch. 73-334.

**687.071 Criminal usury, loan sharking; shylocking.**—

(1) **DEFINITIONS.**—The following words and phrases, as used in this section, shall have the following meanings:

(a) "Person" shall be construed to be defined as provided in s. 1.01.

(b) "Creditor" means any person who makes an extension of credit or any person claiming by, under, or through such person.

(c) "Debtor" means any person who receives an extension of credit or any person who guarantees the repayment of a loan of money for another person.

(d) "Extension of credit" means to make or renew a loan of money or any agreement for forbearance to enforce the collection of such loan.

(e) "Extortionate extension of credit" means any extension of credit whereby it is the understanding of the creditor and the debtor at the time an extension of credit is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause

harm to the person, reputation, or property of any person.

(f) "Loan shark" or "shylock" means any person as defined herein who lends money unlawfully under subsections (2), (3), or (4).

(g) "Loan sharking" or "shylocking" means the act of any person as defined herein lending money unlawfully under subsections (2), (3), or (4).

(2) Unless otherwise specifically allowed by law, any person making an extension of credit to any person, who shall willfully and knowingly charge, take, or receive interest thereon at a rate exceeding 25 percent per annum but not in excess of 45 percent per annum, or the equivalent rate for a longer or shorter period of time, whether directly or indirectly, or conspires so to do, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(3) Unless otherwise specifically allowed by law, any person making an extension of credit to any person, who shall willfully and knowingly charge, take or receive interest thereon at a rate exceeding 45 percent per annum or the equivalent rate for a longer or shorter period of time, whether directly or indirectly or conspire so to do, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) Any person who shall knowingly and willfully make an extortionate extension of credit to any person or conspire so to do shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. In any prosecution under this subsection, evidence that the creditor then had a reputation in the debtor's community for the use or threat of use of violence or other criminal means to cause harm to the person, reputation, or property of any person to collect extensions of credit or to punish the nonrepayment thereof shall be admissible.

(5) Books of account or other documents recording extensions of credit in violation of subsections (3) or (4) are declared to be contraband, and any person, other than a public officer in the performance of his duty, and other than the person charged such usurious interest and person acting on his behalf, who shall knowingly and willfully possess or maintain such books of account or other documents, or conspire so to do, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(6) No person shall be excused from attending and testifying or producing any books, paper, or other document before any court upon any investigation, proceeding, or trial, for any violation of this section upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to convict him of a crime or subject him to a penalty or forfeiture, but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be received against him upon any criminal investigation or proceeding.

(7) No extension of credit made in violation of

any of the provisions of this section shall be an enforceable debt in the courts of this state.

History.—s. 1, ch. 69-135; s. 676, ch. 71-136.

**687.08 Persons lending money to give borrower receipt for payments; contents of receipt; penalty for violation.**—Every person, or the agent, officer, or other representative of any person, lending money in this state upon security shall, whenever the borrower of such money makes payment of any money, either principal or interest, immediately upon such payment being made, give to said borrower, a receipt, dated of the date of such payment, which receipt shall state the amount paid and for what such payment is made. If such payment is for interest on the sum borrowed, the receipt shall so state. If the sum so paid is to be applied to the payment of the principal sum borrowed, the receipt shall so state. All such receipts shall be duly and properly signed by the person, or the agent, officer or other representative of the person, to whom such money is paid. Whoever refuses, upon demand, to give a receipt complying with the requirements of this section shall forfeit the entire interest upon said principal sum to the borrower.

History.—s. 6, ch. 5960, 1909; RGS 4856; CGL 6943.

**687.09 Persons accepting chattel mortgage as security for loans under \$100 to cause amount as principal, etc., to be inserted.**—Every mortgagee accepting a mortgage on personal property as security for the repayment of a loan of money less than \$100 shall cause to be stated in such mortgage, separately and distinctly, the several amounts secured as principal, interest and fees, and any mortgagee willfully violating the provisions of this section shall forfeit all interest and fees secured by such mortgage, and be entitled to recover only the principal sum.

History.—s. 7, ch. 5960, 1909; RGS 4857; CGL 6944.

**687.10 Not applicable to chartered banks, trust companies, building and loan associations, savings and loan associations, or insurance companies.**—The provisions of ss. 687.08 and 687.09 shall not apply to chartered banks, state or national, trust companies, building and loan associations or to savings and loan associations, whether chartered under state or federal statutes, or insurance companies.

History.—s. 8, ch. 5960, 1909; RGS 4858; CGL 6945; s. 1, ch. 59-50.

**687.12 Interest rates; parity among licensed lenders or creditors.**—

(1) Any lender or creditor licensed or chartered under the provisions of chapters 516, 520, 654, 656, 657, 659, or 665 or of part XIV of chapter 627; any lender or creditor located in the State of Florida and licensed or chartered under the laws of the United States and authorized to conduct a lending business; or any lender or creditor lending through a licensee under Chapter 494, shall be authorized to charge interest on loans or extensions of credit to any person as defined in s. 1.01(3), or to any firm or corporation, at the maximum rate of interest permitted by law to be charged on similar loans or extensions of credit made by any lender or creditor in the State of

Florida, except that the statutes governing the maximum permissible interest rate on any loan or extension of credit, and other statutory restrictions relating thereto, shall also govern the amount, term, permissible charges, rebate requirements, and restrictions for a similar loan or extension of credit made by any lender or creditor.

(2) This section shall be construed to permit any lender or creditor which is otherwise authorized to make a particular loan or extension of credit to charge interest at a rate permitted to be charged by other lenders or creditors on similar loans or extensions of credit, but shall not be construed to grant any lender or creditor the power or authority to make any particular type of loan or extension of credit which it is not otherwise authorized to make. For purposes of this section, direct loans for the purchase of goods or services, and extensions of credit for the acquisition of goods or services by the seller or provider thereof, shall be deemed to be similar loans or extensions of credit.

(3) In making loans or extensions of credit, lenders or creditors shall be subject only to the licenses,

examinations, regulations, documents, procedures, and disclosures required by the respective laws under which each lender or creditor is licensed or organized, and not to those required by laws governing other lenders or creditors.

(4) In making loans or extensions of credit at a rate of interest that, but for this section, would not be authorized, lenders or creditors shall indicate on the promissory note or other instrument evidencing the loan or extension of credit the specific chapter of the Florida Statutes authorizing the interest rate charged.

**History.**—s. 1, ch. 77-371; s. 259, ch. 79-400.

**687.13 Alien borrowers.**—The provisions of this chapter, other than s. 687.071, shall not apply to any loan made by any international bank agency or any bank, including an Edge Act corporation, organized under the laws of the United States or this state to borrowers who are neither residents nor citizens of the United States if such loan is clearly related to, and usual in, international or foreign business.

**History.**—s. 1, ch. 79-138.



# TITLE XL

## REAL AND PERSONAL PROPERTY

### CHAPTER 689

#### CONVEYANCES OF LAND AND DECLARATIONS OF TRUST

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**689.01 How real estate conveyed.**—No estate or interest of freehold, or for a term of more than 1 year, or any uncertain interest of, in or out of any messuages, lands, tenements or hereditaments shall be created, made, granted, transferred or released in any other manner than by instrument in writing, signed in the presence of two subscribing witnesses by the party creating, making, granting, conveying, transferring or releasing such estate, interest, or term of more than 1 year, or by his agent thereunto

lawfully authorized, unless by will and testament, or other testamentary appointment, duly made according to law; and no estate or interest, either of freehold, or of term of more than 1 year, or any uncertain interest of, in, to or out of any messuages, lands, tenements or hereditaments, shall be assigned or surrendered unless it be by instrument signed in the presence of two subscribing witnesses by the party so assigning or surrendering, or by his agent thereunto lawfully authorized, or by the act and operation of law. No seal shall be necessary to give validity to any instrument executed in conformity with this section. Corporations may convey in accordance with the provisions of this section or in accordance with the provisions of ss. 692.01 and 692.02.

**History.**—s. 1, Nov. 15, 1828; RS 1950; GS 2448; RGS 3787; CGL 5660; s. 4, ch. 20954, 1941.  
cf.—s. 692.01 et seq. Conveyances by corporations to be sealed.  
s. 695.01 Recordation of conveyances.  
s. 695.03 Acknowledgment and proof.  
s. 695.031 Affidavits and acknowledgments by members of armed service.  
s. 726.01 Fraudulent sales.  
s. 727.01 et seq. General assignment.

**689.02 Form of warranty deed prescribed.**—Warranty deeds of conveyance to land may be in the following form, viz.:

"This indenture, made this ..... day of ..... A.D....., between ....., of the County of ..... in the State of ....., party of the first part, and ....., of the County of ....., in the State of ....., party of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of ..... dollars, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained and sold to the said party of the second part, his heirs and assigns forever, the following described land, to wit: .....

.....  
.....  
.....  
.....

And the said party of the first part does hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whomsoever."

**History.**—s. 1, ch. 4038, 1891; GS 2449; RGS 3788; CGL 5661.

**689.03 Effect of such deed.**—A conveyance executed substantially in the foregoing form shall be held to be a warranty deed with full common law covenants, and shall just as effectually bind the grantor, and his heirs, as if said covenants were spe-

cifically set out therein. And this form of conveyance when signed by a married woman shall be held to convey whatever interest in the property conveyed which she may possess.

**History.**—s. 2, ch. 4038, 1891; GS 2450; RGS 3789; CGL 5662; s. 5, ch. 20954, 1941.

**689.04 How executed.**—Such deeds shall be executed and acknowledged as is now or may hereafter be provided by the law regulating conveyances of realty by deed.

**History.**—s. 3, ch. 4038, 1891; GS 2451; RGS 3790; CGL 5663.

cf.—s. 695.03 Acknowledgment.

s. 695.031 Acknowledgments by members of Armed Forces.

**689.05 How declarations of trust proved.**—All declarations and creations of trust and confidence of or in any messuages, lands, tenements or hereditaments shall be manifested and proved by some writing, signed by the party authorized by law to declare or create such trust or confidence, or by his last will and testament, or else they shall be utterly void and of none effect; provided, always, that where any conveyance shall be made of any lands, messuages or tenements by which a trust or confidence shall or may arise or result by the implication or construction of law, or be transferred or extinguished by the act and operation of law, then, and in every such case, such trust or confidence shall be of the like force and effect as the same would have been if this section had not been made, anything herein contained to the contrary in anywise notwithstanding.

**History.**—s. 2, Nov. 15, 1828; RS 1951; GS 2452; RGS 3791; CGL 5664.

**689.06 How trust estate conveyed.**—All grants, conveyances or assignments of trust or confidence of or in any lands, tenements or hereditaments, or of any estate or interest therein, shall be by deed signed, sealed and delivered, in the presence of two subscribing witnesses, by the party granting, conveying or assigning, or by his attorney or agent thereunto lawfully authorized, or by last will and testament duly made and executed, or else the same shall be void and of none effect.

**History.**—s. 3, Nov. 15, 1828; RS 1952; GS 2453; RGS 3792; CGL 5665.

**689.07 "Trustee" or "as trustee" added to name of grantee, transferee, assignee or mortgagee transfers interest or creates lien as if additional word or words not used.**—

(1) Every deed or conveyance of real estate heretofore or hereafter made or executed, in which the words "trustee" or "as trustee" are added to the name of the grantee, and in which no beneficiaries are named nor the nature and purposes of the trust, if any, are set forth, shall grant and is hereby declared to have granted a fee simple estate with full power and authority in and to the grantee in such deed to sell, convey and grant and encumber both the legal and beneficial interest in the real estate conveyed, unless a contrary intention shall appear in the deed or conveyance; provided, that there shall not appear of record among the public records of the county in which the real property is situate at the time of recording of such deed or conveyance, a declaration of trust by the grantee so described declaring the purposes of such trust, if any, declaring that

the real estate is held other than for the benefit of the grantee.

(2) Every instrument heretofore or hereafter made or executed transferring or assigning an interest in real property in which the words "trustee" or "as trustee" are added to the name of the transferee or assignee, and in which no beneficiaries are named nor the nature and purposes of the trust, if any, are set forth, shall transfer and assign, and is hereby declared to have transferred and assigned, the interest of the transferor or assignor to the transferee or assignee with full power and authority to transfer, assign, and encumber such interest, unless a contrary intention shall appear in the instrument; provided that there shall not appear of record among the public records of the county in which the real property is situate at the time of the recording of such instrument, a declaration of trust by the assignee or transferee so described declaring the purposes of such trust, if any, or declaring that the interest in real property is held other than for the benefit of the transferee or assignee.

(3) Every mortgage of any interest in real estate or assignment thereof heretofore or hereafter made or executed in which the words "trustee" or "as trustee" are added to the name of the mortgagee or assignee and in which no beneficiaries are named nor the nature and purposes of the trust, if any, are set forth, shall vest and is hereby declared to have vested full rights of ownership to such mortgage or assignment and the lien created thereby with full power in such mortgagee or assignee to assign, hypothecate, release, satisfy, or foreclose such mortgage unless a contrary intention shall appear in the mortgage or assignment; provided that there shall not appear of record among the public records of the county in which the property constituting security is situate at the time of recording of such mortgage or assignment, a declaration of trust by such mortgagee or assignee declaring the purposes of such trust, if any, or declaring that such mortgage is held other than for the benefit of the mortgagee or assignee.

(4) Nothing herein contained shall prevent any person from causing any declaration of trust to be recorded before or after the recordation of the instrument evidencing title or ownership of property in a trustee; nor shall this section be construed as preventing any beneficiary under an unrecorded declaration of trust from enforcing the terms thereof against the trustee; provided, however, that any grantee, transferee, assignee or mortgagee, or person obtaining a release or satisfaction of mortgage from such trustee for value prior to the placing of record of such declaration of trust among the public records of the county in which such real property is situate, shall take such interest or hold such previously mortgaged property free and clear of the claims of the beneficiaries of such declaration of trust and of anyone claiming by, through or under such beneficiaries, and such person need not see to the application of funds furnished to obtain such transfer of interest in property or assignment or release or satisfaction of mortgage thereon.

(5) In all cases in which tangible personal property is or has been sold, transferred or mortgaged in a transaction in conjunction with and subordinate to

the transfer or mortgage of real property, and the personal property so transferred or mortgaged is physically located on and used in conjunction with such real property, the prior provisions of this section are applicable to the transfer or mortgage of such personal property, and, where the prior provisions of this section in fact apply to a transfer or mortgage of personal property, then any transferee or mortgagee of such tangible personal property shall take such personal property free and clear of the claims of the beneficiaries under such declaration of trust (if any), and of the claims of anyone claiming by, through or under such beneficiaries, and the release or satisfaction of a mortgage on such personal property by such trustee shall release or satisfy such personal property from the claims of the beneficiaries under such declaration of trust, if any, and from the claims of anyone claiming by, through, or under such beneficiaries.

**History.**—s. 1, ch. 6925, 1915; s. 10, ch. 7838, 1919; RGS 3793; CGL 5666; s. 1, ch. 59-251.

**689.071 Land trusts transferring interests in real estate; ownership vests in trustee.—**

(1) Every conveyance, deed, mortgage, lease assignment or other instrument heretofore or hereafter made, hereinafter referred to as the recorded instrument, transferring any interests in real property in this state including but not limited to leasehold and mortgagee interests to any person, corporation, bank, or trust company, qualified to act as a fiduciary in this state, in which said recorded instrument said person, corporation, bank, or trust company is designated "trustee," or, "as trustee," without therein naming the beneficiaries of such trust, whether or not reference is made in said recorded instrument to any separate collateral unrecorded declarations or agreements, shall be effective to vest and is hereby declared to have vested in such trustee full rights of ownership over said real property or interest therein, with full power and authority as granted and provided in said recorded instrument to deal in and with said property or interest therein or any part thereof: provided, said recorded instrument shall confer on the trustee the power and authority either to protect, conserve and to sell, or to lease, or to encumber, or otherwise to manage and dispose of the real property described in said recorded instrument.

(2) Any grantee, mortgagee, lessee, transferee, assignee, or person obtaining satisfactions, releases, or otherwise in any way dealing with the trustee with respect to said real properties held in trust under said recorded instrument, as hereinabove provided for, shall not be obligated to inquire into the identification or status of any named or unnamed beneficiaries, or their heirs or assigns to whom a trustee may be accountable under the terms of said recorded instrument, or under any unrecorded separate declarations or agreements collateral to said recorded instrument whether or not such declarations or agreements are referred to therein, nor to inquire into or ascertain the authority of such trustee to act within and exercise the powers granted under said recorded instrument, nor to inquire into the adequacy or disposition of any consideration, if any is paid or delivered to such trustee in connection with any

interest so acquired from such trustee, nor to inquire into any of the provisions of any said unrecorded declarations or agreements.

(3) All persons dealing with the trustee under said recorded instrument as hereinabove provided shall take any interest transferred by the trustee thereunder within the power and authority as granted and provided therein, free and clear of the claims of all the named or unnamed beneficiaries of such trust, and of any unrecorded declarations or agreements collateral thereto whether referred to in said recorded instrument or not, and of anyone claiming by, through or under said beneficiaries including and without limiting the foregoing to any claim arising out of any dower or curtesy interest of the spouse of any beneficiary thereof; provided, nothing herein contained shall prevent a beneficiary of any said unrecorded collateral declarations or agreements from enforcing the terms thereof against the trustee.

(4) In all cases where said recorded instrument, as hereinabove provided, contains a provision defining and declaring the interests of beneficiaries thereunder to be personal property only, such provision shall be controlling for all purposes where such determination shall become an issue under the laws or in the courts of this state.

(5) This act is remedial in nature and shall be given a liberal interpretation to effectuate the intent and purposes hereinabove expressed.

(6) This act shall not apply to any deed, mortgage, or other instrument to which s. 689.07 applies.

**History.**—ss. 1-6, ch. 63-468.  
cf.—s. 732.111 Dower and curtesy abolished.

**689.075 Inter vivos trusts; powers retained by settlor.—**

(1) A trust which is otherwise valid, including, but not limited to, a trust the principal of which is composed of real property, intangible personal property, tangible personal property, the possible expectancy of receiving as a named beneficiary death benefits as described in s. 733.808, or any combination thereof, and which has been created by a written instrument shall not be held invalid or an attempted testamentary disposition for any one or more of the following reasons:

(a) Because the settlor or another person or both possess the power to revoke, amend, alter, or modify the trust in whole or in part;

(b) Because the settlor or another person or both possess the power to appoint by deed or will the persons and organizations to whom the income shall be paid or the principal distributed;

(c) Because the settlor or another person or both possess the power to add to, or withdraw from, the trust all or any part of the principal or income at one time or at different times;

(d) Because the settlor or another person or both possess the power to remove the trustee or trustees and appoint a successor trustee or trustees;

(e) Because the settlor or another person or both possess the power to control the trustee or trustees in the administration of the trust;

(f) Because the settlor has retained the right to receive all or part of the income of the trust during his life or for any part thereof;

(g) Because the settlor is, at the time of the exe-



cution of the instrument, or thereafter becomes, sole trustee; provided that at the time the trust instrument is executed it is either valid under the laws of the jurisdiction in which it is executed or it is executed in accordance with the formalities for the execution of wills required in such jurisdiction.

(2) Nothing contained herein shall affect the validity of those accounts, including but not limited to bank accounts, share accounts, deposits, certificates of deposit, savings certificates, and other similar arrangements, heretofore or hereafter established at any bank, savings and loan association, or credit union by one or more persons, in trust for one or more other persons, which arrangements are, by their terms, revocable by the person making the same until his death or incompetency.

(3) The fact that any one or more of the powers specified in subsection (1) are in fact exercised once, or more than once, shall not affect the validity of the trust or its nontestamentary character.

(4) This section shall be applicable to trusts executed before or after July 1, 1969 by persons who are living on or after said date. However, the requirement of conformity with the formalities for the execution of wills as found in paragraph (1)(g) shall not be imposed upon any trust executed prior to July 1, 1969.

(5) The amendment of this section, by chapter 75-74, Laws of Florida, is intended to clarify the legislative intent of this section at the time of its original enactment that it apply to all otherwise valid trusts which are created by written instrument and which are not expressly excluded by the terms of this section and that no such trust shall be declared invalid for any of the reasons stated in subsections (1) and (3) regardless of whether the trust involves or relates to an interest in real property.

**History.**—ss. 1, 2, ch. 69-192; s. 1, ch. 69-1747; ss. 1, 2, ch. 71-126; s. 169, ch. 73-333; s. 1, ch. 74-78; ss. 1, 2, ch. 75-74.

**689.08 Fines and common recoveries.**—Conveyance by fine or by common recovery shall never be used in this state.

**History.**—s. 2, Feb. 4, 1835; RS 1953; GS 2454; RGS 3794; CGL 5667.

**689.09 Deeds under statute of uses.**—By deed of bargain and sale, or by deed of lease and release, or of covenant to stand seized to the use of any other person, or by deed operating by way of covenant to stand seized to the use of another person, of or in any lands or tenements in this state, the possession of the bargainor, releasor or covenantor shall be deemed and adjudged to be transferred to the bargainee, releasee or person entitled to the use as perfectly as if such bargainee, releasee or person entitled to the use had been enfeoffed by livery of seizin of the land conveyed by such deed of bargain and sale, release or covenant to stand seized; provided, that livery of seizin can be lawfully made of the lands or tenements at the time of the execution of the said deeds or any of them.

**History.**—s. 12, Nov. 15, 1828; RS 1954; GS 2455; RGS 3795; CGL 5668.

**689.10 Words of limitation and the words "fee simple" dispensed with.**—Where any real estate has heretofore been conveyed or granted or shall hereafter be conveyed or granted without there

being used in the said deed or conveyance or grant any words of limitation, such as heirs or successors, or similar words, such conveyance or grant, whether heretofore made or hereafter made, shall be construed to vest the fee simple title or other whole estate or interest which the grantor had power to dispose of at that time in the real estate conveyed or granted, unless a contrary intention shall appear in the deed, conveyance or grant.

**History.**—s. 1, ch. 5145, 1903; GS 2456; RGS 3796; s. 1, ch. 10170, 1925; CGL 5669.

**689.11 Conveyances between husband and wife direct; homestead.**—

(1) A conveyance of real estate, including homestead, made by one spouse to the other shall convey the legal title to the grantee spouse in all cases in which it would be effectual if the parties were not married, and the grantee need not execute the conveyance. An estate by the entirety may be created by the action of the spouse holding title:

(a) Conveying to the other by a deed in which the purpose to create the estate is stated; or

(b) Conveying to both spouses.

(2) All deeds heretofore made by a husband direct to his wife or by a wife direct to her husband are hereby validated and made as effectual to convey the title as they would have been were the parties not married;

(3) Provided, that nothing herein shall be construed as validating any deed made for the purpose, or that operates to defraud any creditor or to avoid payment of any legal debt or claim; and

(4) Provided further that this section shall not apply to any conveyance heretofore made, the validity of which shall be contested by suit commenced within 1 year of the effective date of this law.

**History.**—s. 1, ch. 5147, 1903; GS 2457; RGS 3797; CGL 5670; s. 6, ch. 20954, 1941; s. 1, ch. 23964, 1947; s. 1, ch. 71-54.

**689.111 Conveyances of homestead; power of attorney.**—

(1) A deed or mortgage of homestead realty owned by an unmarried person may be executed by virtue of a power of attorney executed in the same manner as a deed.

(2) A deed or mortgage of homestead realty owned by a married person, or owned as an estate by the entirety, may be executed by virtue of a power of attorney executed solely by one spouse to the other, or solely by one spouse or both spouses to a third party, provided the power of attorney is executed in the same manner as a deed. Nothing in this section shall be construed as dispensing with the requirement that husband and wife join in the conveyance or mortgage of homestead realty, but the joinder may be accomplished through the exercise of a power of attorney.

**History.**—s. 1, ch. 71-27.

**689.12 How state lands conveyed for educational purposes.**—

(1) The title to all lands granted to or held by the state for educational purposes shall be conveyed by deed executed by the members of the State Board of Education, with an impression of the seal of the Board of Trustees of the Internal Improvement

Trust Fund of the state thereon and when so impressed by this seal deeds shall be entitled to be recorded in the public records and to be received in evidence in all courts and judicial proceedings.

(2) Lands held for any tuberculosis hospital and declared to be surplus to the needs of such hospital may be conveyed to the district school board in which said lands are located for educational purposes.

**History.**—s. 1, ch. 4999, 1901; GS 2458; RGS 3798; CGL 5671; ss. 1, 2, ch. 67-191; ss. 27, 35, ch. 69-106; s. 1, ch. 69-300.

**689.13 Rule against perpetuities not applicable to dispositions of property for private cemeteries, etc.**—No disposition of property, or the income thereof, hereafter made for the maintenance or care of any public or private burying ground, churchyard, or other place for the burial of the dead, or any portion thereof, or grave therein, or monument or other erection in or about the same, shall fail by reason of such disposition having been made in perpetuity; but such disposition shall be held to be made for a charitable purpose or purposes.

**History.**—s. 1, ch. 14655, 1931; CGL 1936 Supp. 5671(1).

**689.14 Entailed estates.**—No property, real or personal, shall be entailed in this state. Any instrument purporting to create an estate tail, express or implied, shall be deemed to create an estate for life in the first taker with remainder per stirpes to the lineal descendants of the first taker in being at the time of his death. If the remainder fails for want of such remainderman, then it shall vest in any other remaindermen designated in such instrument, or, if there is no such designation, then it shall revert to the original donor or to his heirs.

**History.**—s. 20, Nov. 17, 1829; RS 1818; GS 2293; RGS 3616; CGL 5481; s. 2, ch. 20954, 1941; s. 1, ch. 23126, 1945.

cf.—s. 689.17 Rule in Shelley's Case abolished.

**689.15 Estates by survivorship.**—The doctrine of the right of survivorship in cases of real estate and personal property held by joint tenants shall not prevail in this state; that is to say, except in cases of estates by entirety, a devise, transfer or conveyance heretofore or hereafter made to two or more shall create a tenancy in common, unless the instrument creating the estate shall expressly provide for the right of survivorship; and in cases of estates by entirety, the tenants, upon dissolution of marriage, shall become tenants in common.

**History.**—s. 20, Nov. 17, 1829; RS 1819; GS 2294; RGS 3617; CGL 5482; s. 3, ch. 20954, 1941; s. 1, ch. 73-300.

**689.17 Rule in Shelley's Case abolished.**—The rule in Shelley's Case is hereby abolished. Any instrument purporting to create an estate for life in a person with remainder to his heirs, lawful heirs, heirs of his body or to his heirs described by words of similar import, shall be deemed to create an estate for life with remainder per stirpes to the life tenant's lineal descendants in being at the time said life estate commences, but said remainder shall be subject to open and to take in per stirpes other lineal descendants of the life tenant who come into being during the continuance of said life estate.

**History.**—s. 2, ch. 23126, 1945.

cf.—s. 689.14 Entailed estates.

**689.18 Reverter or forfeiture provisions, limitations; exceptions.**—

(1) It is hereby declared by the Legislature of the state that reverter or forfeiture provisions of unlimited duration in the conveyance of real estate or any interest therein in the state constitute an unreasonable restraint on alienation and are contrary to the public policy of the state.

(2) All reverter or forfeiture provisions of unlimited duration embodied in any plat or deed executed more than 21 years prior to the passage of this law conveying real estate or any interest therein in the state, be and the same are hereby canceled and annulled and declared to be of no further force and effect.

(3) All reverter provisions in any conveyance of real estate or any interest therein in the state, now in force, shall cease and terminate and become null, void and unenforceable 21 years from the date of the conveyance embodying such reverter or forfeiture provision.

(4) No reverter or forfeiture provision contained in any deed conveying real estate or any interest therein in the state, executed on and after July 1, 1951, shall be valid and binding more than 21 years from the date of such deed, and upon the expiration of such period of 21 years, the reverter or forfeiture provision shall become null, void and unenforceable.

(5) Any and all conveyances of real property in this state heretofore or hereafter made to any governmental, educational, literary, scientific, religious, public utility, public transportation, charitable or nonprofit corporation or association are hereby excepted from the provisions of this section.

(6) Any holder of a possibility of reverter who claims title to any real property in the state, or any interest therein by reason of a reversion or forfeiture under the terms or provisions of any deed heretofore executed and delivered containing such reverter or forfeiture provision shall have 1 year from July 1, 1951, to institute suit in a court of competent jurisdiction in this state to establish or enforce such right, and failure to institute such action within said time shall be conclusive evidence of the abandonment of any such right, title, or interest, and all right of forfeiture or reversion shall thereupon cease and determine, and become null, void, and unenforceable.

(7) This section shall not vary, alter, or terminate the restrictions placed upon said real estate, contained either in restrictive covenants or reverter or forfeiture clauses, and all said restrictions may be enforced and violations thereof restrained by a court of competent jurisdiction whenever any one of said restrictions or conditions shall be violated, or threat to violate the same be made by owners or parties in possession or control of said real estate, by an injunction which may be issued upon petition of any person adversely affected, mandatorily requiring the abatement of such violations or threatened violation and restraining any future violation of said restrictions and conditions.

**History.**—ss. 1-7, ch. 26927, 1951; s. 218, ch. 77-104.

**689.19 Variances of names in recorded instruments.—**

(1) The word "instrument" as used in this section shall be construed to mean and include not only instruments voluntarily executed but also papers filed or issued in or in connection with actions and other proceedings in court and orders, judgments and decrees entered therein and transcripts of such judgments and proceedings in foreclosure of mortgage or other liens.

(2) Variances between any two instruments affecting the title to the same real property both of which shall have been spread on the record for the period of more than 10 years among the public records of the county in which such real property is situated, with respect to the names of persons named in the respective instruments or in acknowledgments thereto arising from the full Christian name appearing in one and only the initial letter of that Christian name appearing in the other or from a full middle name appearing in one and only the initial letter of that middle name appearing in the other or from the initial letter of a middle name appearing in one and not appearing in the other, irrespective of which one of the two instruments in which any such variance occurred was prior in point of time to the other and irrespective of whether the instruments were executed or originated before or after August 5, 1953, shall not destroy or impair the presumption that the person so named in one of said instruments was the same person as the one so named in the other of said instruments which would exist if the names in the two instruments were identical; and, in spite of any such variance, the person so named in one of said instruments shall be presumed to be the same person as the one so named in the other until such time as the contrary appears and, until such time, either or both of such instruments or the record thereof or certified copy or copies of the record thereof shall be admissible in evidence in the same manner as though the names in the two instruments were identical.

History.—s. 1, ch. 28208, 1953.

**689.20 Limitation on use of word "minerals."**

—Whenever the word "minerals" is hereafter used in any deed, lease or other contract in writing, said word or term shall not include any of the following: topsoil, muck, peat, humus, sand and common clay, unless expressly provided in said deed, lease or other contract in writing.

History.—s. 1, ch. 59-375.

**689.21 Disclaimer of interests in property passing under certain nontestamentary instruments or under certain powers of appointment.—****(1) DEFINITIONS.—**

(a) "Beneficiary" means any person who becomes entitled to an interest in property in any manner described in subsection (2).

(b) "Grantor" means the person by whom an interest in property was created.

(c) "Power of appointment" means any power described in subparagraph (d) 3.

(d) An "interest in property" which may be disclaimed shall include:

1. The whole of any property, real or personal, legal or equitable, or any fractional part, share, or portion of property, or specific assets thereof;

2. Any estate in such property; or

3. Any power to appoint, consume, apply, or expend property or any other right, power, privilege, or immunity relating thereto.

**(2) SCOPE OF RIGHT TO DISCLAIM.—**

(a) A beneficiary may disclaim any interest in property which would pass (unless disclaimed) to the beneficiary:

1. As donee;

2. As grantee;

3. Under any deed, assignment, or other nontestamentary instrument of conveyance or transfer;

4. As beneficiary of an inter vivos trust;

5. As beneficiary of an insurance contract;

6. Through exercise or nonexercise of a power of appointment exercisable by deed;

7. Through nontestamentary exercise of a power of appointment exercisable by deed or will;

8. As donee of a power of appointment created by a nontestamentary instrument;

9. By succession in any manner described in this subsection to a disclaimed interest; or

10. In any other manner not specifically enumerated herein under a nontestamentary instrument.

(b) Disclaimer may be made for a minor, incompetent, or deceased beneficiary by the guardian or personal representative if the circuit court having jurisdiction of the estate of such minor, incompetent, or deceased beneficiary, after hearing upon petition filed by the guardian, personal representative, or other interested person and served upon such persons and in such manner as the judge shall direct, finds that it is in the best interests of those interested in the estate of such beneficiary, and of those who take the beneficiary's interest by virtue of the disclaimer, and not detrimental to the best interests of the beneficiary, to make the disclaimer. If so ordered by the circuit court, the guardian or personal representative shall execute and file the disclaimer on behalf of the beneficiary within the time and in the manner in which the beneficiary himself could disclaim if he were living, of legal age, and competent.

**(3) DISPOSITION OF DISCLAIMED INTERESTS.—**

(a) Unless the grantor, or a donee of a power of appointment, has otherwise provided by a nontestamentary instrument with reference to the possibility of a disclaimer by the beneficiary, the interest disclaimed shall descend, be distributed, or otherwise be disposed of in the same manner as if the disclaimant had died immediately preceding the death or other event which causes him to become finally ascertained as a beneficiary and his interest to become indefeasibly fixed both in quality and quantity, and, in any case, the disclaimer shall relate for all purposes to such date, whether filed before or after such death or other event. An interest in property disclaimed shall never vest in the disclaimant.

(b) A beneficiary who disclaims any interest which would pass to him in any manner described in paragraph (2)(a) shall not be excluded, unless his disclaimer instrument so provides, from sharing in any other interest to which he may be entitled in any



manner described in this section, including subparagraph (2)(a)9., even though such interest includes, by virtue of the beneficiary's disclaimer, disclaimed assets.

**(4) FORM, FILING, RECORDING, AND SERVICE OF DISCLAIMER INSTRUMENTS.—**

(a) Any writing to be a disclaimer shall:

1. Declare the disclaimer and its extent;

2. Describe the interest in property disclaimed; and

3. Be signed, witnessed, and acknowledged in the manner provided for deeds of real estate.

(b) A disclaimer shall be effective and irrevocable when the instrument is filed for recording in the office of any circuit court in this state.

(c) A copy of the disclaimer instrument shall be delivered by hand or by certified mail to the personal representative, trustee, or other person having legal title to or possession of the property in which the disclaimed interest exists. No such representative, trustee, or other person shall be liable for any otherwise proper distribution or other disposition made without actual notice of the disclaimer, or, in the event such disclaimer is waived or barred as herein-after provided, for any otherwise proper distribution or other disposition made in reliance on such disclaimer, provided such distribution or disposition is made without actual notice of the facts constituting the waiver or barring the right to disclaim.

(d) If an interest in or relating to real estate is disclaimed, a certified copy of the disclaimer instrument shall be filed in the office of the clerk of the circuit court of the county or counties wherein the real estate is located for recording, and shall constitute notice to all persons from the time of filing.

**(5) TIME IN WHICH DISCLAIMER SHALL BE MADE.—**A disclaimer shall be filed at any time after the creation of the interest but, in any event, within 12 months after the effective date of the non-testamentary instrument creating the interest, or, if the disclaimant is not then finally ascertained as a beneficiary or his interest has not then become indefeasibly fixed both in quality and quantity, such disclaimer shall be filed not later than 12 months after the event which would cause him so to become finally ascertained and his interest to become indefeasibly fixed both in quality and quantity.

**(6) WAIVER OR BAR TO RIGHT TO DISCLAIM.—**The right to disclaim otherwise conferred by this section shall be barred if the beneficiary is insolvent at the time of the event giving rise to the right to disclaim. Any voluntary assignment or transfer of, or contract to assign or transfer, or encumbrance of, an interest in real or personal property, or written waiver of the right to disclaim an interest in real or personal property, by any beneficiary, or any sale or other disposition of an interest in real or personal property pursuant to judicial process, made before he has filed a disclaimer as herein provided bars the right otherwise hereby conferred on such beneficiary to disclaim as to such interest. The acceptance, assignment, transfer, encumbrance, or written waiver of the right to disclaim, or sale pursuant to judicial process, of a part of an interest in property shall not bar the right to disclaim any other part of the interest in property.

**(7) EFFECT OF RESTRAINTS; SPOUSE'S CONSENT.—**The right to disclaim granted by this section shall exist irrespective of any limitation imposed on the interest of the disclaimant in the nature of an express or implied spendthrift provision or similar restriction. If an interest in real estate is disclaimed, the wife of the disclaimant, if such wife has consented to the disclaimer in writing, shall thereupon be automatically debarred from dower in such real estate. Disclaimer by a married woman shall be effective without the joinder or consent of her husband.

**(8) EFFECT ON RIGHTS OUTSIDE THIS SECTION.—**This section shall not abridge the right of any person, apart from this section, to disclaim, renounce, alienate, release, or otherwise transfer or dispose of any interest in property under any existing or future rule of law.

**(9) EFFECTIVE DATE.—**Any interest in property coming into existence after October 1, 1971 and any interest in property which exists on October 1, 1971 but which has not then become indefeasibly fixed both in quality and quantity, or the beneficiary of which has not then become finally ascertained, may be disclaimed in the manner provided herein.

*History.—s. 1, ch. 71-31; s. 26, ch. 73-334.*

**689.22 Rule against perpetuities.—**

**(1) STATEMENT OF THE RULE.—**No interest in real or personal property is valid unless it must vest, if at all, not later than 21 years after one or more lives in being at the creation of the interest and any period of gestation involved. The lives measuring the permissible period of vesting must not be so numerous or be designated in such a manner as to make proof of their end unreasonably difficult.

**(2) BASIS FOR DETERMINING VALIDITY OF INTEREST.—**

(a) Except as provided in sub-subparagraph (5)(d) 1.a., in determining whether an interest violates the rule against perpetuities, the validity of the interest is determined on the basis of facts existing at the end of the lives in being used to measure the permissible period or, if no life in being is used, the facts existing at the end of the 21-year period.

(b) For the purposes of the rule against perpetuities, every interest created through the exercise, by will, deed, or other instrument, of a power of appointment, irrespective of whether the power is limited or unlimited as to appointees, the manner in which the power was created or may be exercised, or whether the power was created before or after this section takes effect, is considered to have been created at the time of the exercise, and not at the time of the creation, of the power of appointment. No such interest is void because of the rule unless the interest would be void had it been created at the date of the exercise of the power of appointment otherwise than through the exercise of a power of appointment, except that no power may be exercised so as to create another power, limited as to appointees or as to the manner in which such second power may be exercised.

**(3) APPLICATION OF RULE.—**

(a) The rule against perpetuities does not apply to:

1. Any disposition of property or interest there-

in, which disposition, as of the effective date of this section, does not violate, or is exempted by statute from the operation of, the common-law rule against perpetuities.

2. Powers of a trustee to sell, lease, or mortgage property or which relate to the administration or management of trust assets, including, without limitation, discretionary powers to determine which receipts constitute principal and which receipts constitute income and powers to appoint a successor trustee.

3. Mandatory powers of a trustee to distribute income, or discretionary powers of a trustee to distribute principal, prior to termination of the trust, to a beneficiary having an interest in the principal, which interest is irrevocably vested in quality and quantity.

4. Discretionary powers of a trustee to allocate income and principal among beneficiaries, except that any exercise of such power after the expiration of the period of the rule against perpetuities is void.

5. Leases to commence in the future or upon the happening of a future event, but no such lease is valid unless the term thereof actually commences in possession within 40 years from the date of execution of the lease.

6. Commitments by a lessor to enter into a lease with a subtenant or with the holder of a leasehold mortgage or to commitments by a lessee or sublessee to enter into a lease with the holder of a leasehold mortgage.

7. Options to purchase in gross or in a lease or preemptive rights in the nature of a right of first refusal, but no option in gross is valid for more than 40 years from the date of its creation.

(b) The period of perpetuities does not commence to run in connection with any disposition of property or interest therein, no instrument is considered to be effective for purposes of the rule against perpetuities, and no interest or power is considered to be created for purposes of the rule against perpetuities so long as, under the instrument, the maker of the instrument has the power to revoke the instrument or to transfer or direct transfer to himself of the entire legal and equitable ownership of the property or interest therein.

(4) **REDUCTION OF AGE CONTINGENCY.**—If, except for this subsection, an interest in property would be invalid because it depends for its vesting upon any person attaining or failing to attain an age in excess of 21 years, the age contingency is reduced to 21 years with respect to each person subject to the contingency.

(5) **RULES OF CONSTRUCTION.**—Unless a contrary intent appears, the rules of construction provided in this subsection govern with respect to any matter concerning the rule against perpetuities.

(a) It shall be presumed that the creator of an interest intended that the interest be valid.

(b) If, except for this paragraph, an interest would be invalid because of the possibility that the person to whom it is given or limited may be a person not in being at the time of the creation of the estate, and such person is referred to in the instrument creating the interest as the spouse of another without further identification, it is presumed that such

reference is to a person in being on the effective date of the instrument.

(c) If the duration or vesting of an interest is contingent upon the probate of a will, the appointment of a fiduciary, the location of a distributee, the payment of debts, the sale of assets, the settlement of an estate, the determination of questions relating to an estate or transfer tax, or the occurrence of any specified contingency, it is presumed that the creator of such interest intended that the contingency occur, if at all, within 21 years from the effective date of the instrument creating the interest.

(d)1. If the validity of a disposition depends upon the ability of a person to have a child at some future time, it is presumed, subject to subparagraph 2., that a male can have a child at 14 years of age or older, but not younger than age 14, and that a female can have a child at 12 years of age or older, but not older than age 55 or younger than age 12. However, in the case of a living person, evidence may be given to establish whether such person can have a child at the time in question. The possibility that a person may have a child by adoption is disregarded.

a. A determination of the validity of a disposition under the rule against perpetuities by the application of this paragraph is not affected by the later occurrence of facts in contradiction to the facts presumed or determined or the possibility of adoption disregarded under this paragraph.

b. Any invalidity because of the ability of a person to have a child at some future time shall be determined in accordance with paragraph (2)(a).

2. This paragraph does not apply for any purpose other than that of determining the validity of a disposition under the rule against perpetuities when such validity depends on the ability of a person to have a child at some future time.

(6) **ACQUISITION OF REAL PROPERTY BY FOREIGN TRUST.**—If real property situated in this state is acquired by a trust validly created under the law of another jurisdiction, the law of this state in effect at the time of the acquisition of such property determines whether there is a violation of the rule against perpetuities or whether a direction for the accumulation of rents and profits is valid.

(7) **TRUST WITH TRANSFERABLE CERTIFICATES.**—A trust with transferable certificates, heretofore or hereafter created, is not invalid as violating the rule against perpetuities, but such trust may continue for such time as is necessary to accomplish the purpose for which the trust was created if the instrument creating the trust provides that the trust may be terminated at any time by action of the trustees or by affirmative vote of the beneficiaries having a specified percentage of interest in the trust. This subsection applies to an investment trust, which is an unincorporated trust or association managed by trustees, and which does not hold any property for sale to customers in the ordinary course of its trade or business, and the beneficial ownership of which trust is evidenced by transferable shares or by transferable certificates of beneficial interest, which shares or certificates are offered for sale to the public.

History.—s. 1, ch. 77-23.

## CHAPTER 692

## CONVEYANCES BY CORPORATIONS

- 692.01 Conveyances by corporations.
- 692.02 Validation of conveyances.
- 692.03 Validity of conveyances by certain foreign corporations recorded for 7 years; limitation.
- 692.04 Validation of deeds, etc., executed by corporations.

**692.01 Conveyances by corporations.**—Any corporation may execute instruments conveying, mortgaging, or affecting any interest in its lands by instruments sealed with the common or corporate seal and signed in its name by its president or any vice president or chief executive officer. Assignments, satisfactions, or partial releases of mortgages and acquittances for debts may be similarly executed by any corporate officer. No corporate resolution need be recorded to evidence the authority of the person executing the deed, mortgage, or other instrument for the corporation, and an instrument so executed shall be valid whether or not the officer signing for the corporation was authorized to do so by the board of directors, in the absence of fraud in the transaction by the person receiving it. In cases of fraud, subsequent transactions with good faith purchasers for value and without notice of the fraud shall be valid and binding on the corporation.

**History.**—RS 1955; GS 2459; s. 1, ch. 6183, 1911; RGS 3799; CGL 5672; s. 1, ch. 71-10; s. 1, ch. 79-290.

**692.02 Validation of conveyances.**—Conveyances by corporations of lands in this state, heretofore executed, which have been sealed with the common or corporate seal of such corporation and signed in its name by a vice president or the chief executive officer thereof, shall be as valid and effective and shall bear the same presumptions as if signed in the name of such corporation by its president.

**History.**—s. 2, ch. 6183, 1911; RGS 3800; CGL 5673.

**692.03 Validity of conveyances by certain**

**foreign corporations recorded for 7 years; limitation.**—

(1) Whenever any conveyance, by the surviving directors or trustees of a foreign corporation, which has been dissolved for any cause, or which has had its permit to transact business in the state canceled for failure to pay fees due the Department of State, or which has failed to comply with the provisions of laws of this state, has been executed and delivered to any grantee or grantees, and has for a period of 7 years or more been spread upon the records of a county wherein the land therein described is situated, the same shall be taken and held by all the courts of this state in the absence of any showing of fraud, adverse possession, or pending litigation, to have authorized the conveyance of, or to have conveyed, the fee simple title, or any interest therein, of the corporation on whose behalf said instrument has been executed to the land therein described.

(2) This section shall not apply to any conveyance, the validity of which shall be contested or shall have been contested by suit commenced heretofore or prior to July 1, 1954.

**History.**—ss. 1, 2, ch. 28078, 1953; ss. 10, 35, ch. 69-106.

**692.04 Validation of deeds, etc., executed by corporations.**—All deeds and other instruments relating to the conveyance, transfer, lease, assignment, release, subordination, encumbrance, or satisfaction of any right, title, interest, claim, lien, or demand in, to, or upon real property, heretofore made or hereafter made, and in all other respects executed in due form, by a corporation, not dissolved or expired, but delinquent for 6 months or more as to payment of capital stock taxes at the time of the making or executing of such deed or other instrument, are, notwithstanding said delinquency, hereby validated.

**History.**—s. 1, ch. 57-264.



## CHAPTER 694

## CERTAIN CONVEYANCES MADE VALID

- 694.01 Those executed between 1817 and 1822.
- 694.02 Married women's conveyances validated.
- 694.03 Married women's conveyances by attorney validated.
- 694.04 Conveyances of married women; defective acknowledgments validated.
- 694.05 Certain other conveyances validated.
- 694.06 Deeds executed by State Board of Education.
- 694.07 Certain grant of lands confirmed.
- 694.08 Certain instruments validated, notwithstanding lack of seals or witnesses, or defect in acknowledgment, etc.
- 694.09 Certified copies admissible in evidence.
- 694.10 Certain titles not affected.
- 694.11 Certain deeds of county commissioners validated.
- 694.12 Validation of instruments in which name of corporation is incorrectly set out.
- 694.13 Ratifying, validating and confirming conveyances of real estate by county commissioners, etc.
- 694.14 Validation of deeds executed by guardians appointed under Uniform Veterans' Guardianship Law.
- 694.15 Validation of conveyances by Board of Trustees.

**694.01 Those executed between 1817 and 1822.**—All deeds of conveyance, bills of sale, mortgages or other transfers of property, either real or personal, within the limits of this state, made and received bona fide and upon good consideration at any time between January 17, 1817, and October 1, 1822, shall be as good and efficient in law and equity as if the same had been made and executed according to the formalities of the Spanish law as against the maker or makers thereof, and every person or persons claiming by, through, or under him, her, or them; provided, that nothing in this section contained shall be so construed as to affect the interest of persons not parties to any of the contracts aforesaid; and provided, also, that the said deeds of conveyance, bills of sale, mortgages and other transfers were recorded agreeably to the laws of the state within 6 months from June 24, 1823.

**History.**—June 21, 1823; RS 1968; GS 2474; RGS 3815; CGL 5688.

**694.02 Married women's conveyances validated.**—All sales, conveyances, transfers, or mortgages made prior to February 14, 1835, by married women of their real estate of inheritance where the husbands of such married women have joined therein shall be as valid as if the same had been conveyed by fine as at common law.

**History.**—s. 2, Feb. 4, 1835; RS 1969; GS 2475; RGS 3816; CGL 5689.

**694.03 Married women's conveyances by attorney validated.**—Any deed, release or conveyance executed and acknowledged before the passage of the act approved February 20, 1875, entitled, "An Act to authorize married women to convey their separate estate and release dower by attorney," yet in

the manner therein provided, shall have the same force and effect and be as valid as if the same had been executed and acknowledged after the passage of the said act.

**History.**—RS 1970; GS 2476; RGS 3817; CGL 5690.

**694.04 Conveyances of married women; defective acknowledgments validated.**—All conveyances, contracts, transfers, or mortgages of real property or of any interest in it, including relinquishments of dower, executed by a married woman before May 13, 1943, that were not acknowledged separate from her husband or in which the separate acknowledgment was defective for any other reason are as valid and effective as though the acknowledgment had been properly made.

**History.**—Ch. 5412, 1905; s. 1, ch. 6217, 1911; RGS 3818; CGL 5691; s. 9, ch. 20954, 1941; s. 1, ch. 70-4.

**694.05 Certain other conveyances validated.**—Any deed or conveyance heretofore executed and acknowledged in accordance with the provisions of the act approved February 24, 1873, entitled "An Act providing for the acknowledgment of deeds and other conveyances of lands," shall be held good and valid.

**History.**—s. 2, ch. 2069, 1875; RS 1971; GS 2477; RGS 3819; CGL 5692.

**694.06 Deeds executed by State Board of Education.**—All deeds conveying lands granted to or held by the state for educational purposes heretofore executed by the members of the State Board of Education are hereby confirmed and declared to be valid and binding as conveyances of the title to such lands.

**History.**—s. 2, ch. 4999, 1901; GS 2478; RGS 3820; CGL 5693.

**694.07 Certain grant of lands confirmed.**—The state does hereby grant and confirm to purchasers, grantees and assigns of the several railroad companies which accepted the provisions of the act entitled, "An Act to provide for and encourage a liberal system of internal improvements in this state," approved January 6, 1855, and their assigns, the lands and titles thereto which were granted to the state by the United States to aid in the construction of certain railroads in the state, by Act of Congress, approved May 17, 1856, which said land has been selected and located for the several railroad companies accepting the provisions of said act along the line of their respective roads, to the extent and proportion to which they severally became entitled under said act to provide for and encourage a liberal system of internal improvements in this state and the Act of Congress granting the same above referred to. And to confirm and convey the title to any lands which may hereafter be selected and approved to the state for the use of the several railroads as aforesaid, to the purchasers, grantees and assigns of said railroads.

**History.**—s. 1, ch. 4707, 1899; GS 2479; RGS 3821; CGL 5694.

**694.08 Certain instruments validated, notwithstanding lack of seals or witnesses, or defect in acknowledgment, etc.—**

(1) Whenever any power of attorney has been executed and delivered, or any conveyance has been executed and delivered to any grantee by the person owning the land therein described, or conveying the same in an official or representative capacity, and has, for a period of 7 years or more been spread upon the records of the county wherein the land therein described has been or was at the time situated, and one or more subsequent conveyances of said land or parts thereof have been made, executed, delivered and recorded by parties claiming under such instrument or instruments, and such power of attorney or conveyance, or the public record thereof, shows upon its face a clear purpose and intent of the person executing the same to authorize the conveyance of said land or to convey the said land, the same shall be taken and held by all the courts of this state, in the absence of any showing of fraud, adverse possession, or pending litigation, to have authorized the conveyance of, or to have conveyed, the fee simple title, or any interest therein, of the person signing such instruments, or the person in behalf of whom the same was conveyed by a person in an official or representative capacity, to the land therein described as effectively as if there had been no defect in the acknowledgment or the certificate of acknowledgment, if acknowledged, or the relinquishment of dower, and as if there had been no lack of the word "as" preceding the title of the person conveying in an official or representative capacity, of any seal or seals, or of any witness or witnesses, and shall likewise be taken and held by all the courts of this state to have been duly recorded so as to be admissible in evidence;

(2) Provided, however, that this section shall not apply to any conveyance the validity of which shall be contested or have been contested by suit commenced heretofore or within 1 year of the effective date of this law.

**History.**—s. 1, ch. 10169, 1925; CGL 5695; s. 15, ch. 20954, 1941; s. 1, ch. 25277, 1949; s. 1, ch. 26957, 1951; s. 35, ch. 69-216.

cf.—s. 95.231 Limitations where deed or will of record for 10 or 20 years or more.

s. 732.111 Dower and curtesy abolished.

**694.09 Certified copies admissible in evidence.**—A copy of any of the instruments referred to in s. 694.08 duly certified, under the hand and seal of office of the officer in whose office the same may be recorded, to be a true and correct copy of the original, on file or of record in his office, shall in all cases and in all courts be admitted and received in evidence with the like effect and force as the original thereof might be.

**History.**—s. 2, ch. 10169, 1925; CGL 5696.

**694.10 Certain titles not affected.**—Nothing in s. 694.08 contained shall be taken or held to validate or perfect any title to any land as against one or more in adverse possession thereof or holding or claiming title under a different or adverse chain of title from either a common or different source.

**History.**—s. 3, ch. 10169, 1925; CGL 5697.

**694.11 Certain deeds of county commissioners validated.**—All deeds of conveyance of lands in this state heretofore made and executed prior to the year 1915 by the board of county commissioners of any county in this state of lands lying and being within such county, or that were made and executed by someone acting by or under the authority of any such board of county commissioners, of any such lands, be and the same are hereby ratified, validated and confirmed, and declared to convey such title, right or interest therein as such county may have had or held at the time of the conveyance, and as was expressed in any such deed of conveyance, and intended to be conveyed thereby. Provided, that nothing in this section shall validate any deed that was fraudulently obtained or that is now in litigation.

**History.**—s. 1, ch. 13622, 1929; CGL 1936 Supp. 5697(1).

**694.12 Validation of instruments in which name of corporation is incorrectly set out.**—All deeds of conveyance, bills of sale, mortgages, or other transfers of real or personal property within the limits of this state, heretofore made and received bona fide and upon good consideration by any corporation, or to any corporation, in which the name of said corporation shall be incorrectly set out in such deed, bill of sale, mortgage or other instrument by omitting a word from the corporate name, or by adding a word thereto, or by misspelling any part of the name of said corporation, and the identity of said corporation shall plainly appear from the contents of said instrument, or otherwise, such deed, bill of sale, mortgage or other instrument, shall be taken and deemed valid and effectual as though the name of said corporation were correctly set out in said deed, bill of sale, mortgage or other instrument, and the same shall, notwithstanding such irregularity or defect, be deemed and taken as properly executed.

**History.**—s. 1, ch. 14838, 1931; CGL 1936 Supp. 5673(1); s. 7, ch. 22858, 1945.

**694.13 Ratifying, validating and confirming conveyances of real estate by county commissioners, etc.—**

(1) All conveyances of real estate heretofore made by any of the several counties of the state or the county commissioners thereof, or any district school board, or any board of bond trustees or commissioners or supervisors of a drainage or other special improvement district, be and the same are hereby ratified, validated, and confirmed; provided, however, that this section shall not ratify, validate, or confirm any such conveyances which are the subject of litigation on June 16, 1947, or any tax deed, or title acquired by failure of the owner of lands to pay taxes or assessments.

(2) The several counties of the state by a majority of the county commissioners thereof or any school board or any board of bond trustees or commissioners or supervisors of a drainage or other special improvement district or a majority of the members thereof, are hereby authorized to execute and deliver deed to real property in which any such county, school board, board of bond trustees or commission-

ers or supervisors of a drainage or other special improvement district may have been interested.

*History.*—ss. 1, 2, ch. 24307, 1947; s. 11, ch. 25035, 1949; s. 1, ch. 69-300.

**694.14 Validation of deeds executed by guardians appointed under Uniform Veterans' Guardianship Law.**—Any deed of conveyance, executed bona fide and for a valuable consideration authorized and approved by order of the probate court, by any limited guardian, who was appointed as guardian under the Uniform Veterans' Guardianship Law of Florida and who acted under that law and the order of the probate court in the execution of the deed of conveyance, the said deed is hereby cured and it shall be deemed and taken as if properly executed notwithstanding the fact said deed was executed to property that said mentally incompetent veteran did not directly or otherwise acquire with money received by the veteran from the Veterans' Administration and notwithstanding the fact the conveyance is to property acquired by the mentally incompetent veteran before he or she became a veteran or was declared insane; and notwithstanding

the fact that some of the information required by said Uniform Veterans' Guardianship Law was not set out in the petition for appointment of the guardian; and notwithstanding the fact the guardian did not publish the notice of application for an order of sale as required by s. 294.10; and notwithstanding any other defect in any part of the said guardianship proceeding that resulted in said court-authorized and court-approved proceeding that resulted in the execution of such guardians' deed as aforesaid.

*History.*—ss. 1, 2, ch. 57-341; s. 1, ch. 73-304; s. 170, ch. 73-333.

**694.15 Validation of conveyances by Board of Trustees.**—All conveyances and releases of any interest in lands, title to which was vested in the Board of Trustees of the Internal Improvement Trust Fund under chapter 253, made by the Board of Trustees after June 30, 1975, and prior to July 1, 1977, are hereby ratified, confirmed, and validated in all respects.

*History.*—s. 1, ch. 77-385.



## CHAPTER 695

## RECORD OF CONVEYANCES OF REAL ESTATE

- 695.01 Conveyances to be recorded.
- 695.015 Conveyances by law between governmental agencies, recording.
- 695.02 Blank or master form of instruments may be recorded.
- 695.03 Acknowledgment and proof; validation of certain acknowledgments.
- 695.031 Affidavits and acknowledgments by members of armed forces and their spouses.
- 695.032 Provisions not applicable to transactions under chapter 679, Uniform Commercial Code.
- 695.04 Requirements of certificate.
- 695.05 Certain defects cured as to acknowledgments and witnesses.
- 695.06 Certain irregularities as to venue validated.
- 695.07 Use of scrawl as seal.
- 695.08 Prior use of scrawl as seal.
- 695.09 Identity of grantor.
- 695.10 Proof by others.
- 695.11 Instruments deemed to be recorded from time of filing.
- 695.12 Imperfect record.
- 695.13 Want of certificate of record.
- 695.14 Unsigned certificate of record.
- 695.15 Recording conveyances lost by fire.
- 695.16 When mortgage or lien is destroyed.
- 695.17 United States Deeds and Patents may be recorded.
- 695.18 Indorsement by clerk.
- 695.19 Certified copies of recorded instruments may be recorded.
- 695.20 Unperformed contracts of record.
- 695.21 Instruments relating to real estate to contain post-office address of grantee; exceptions.
- 695.22 Same; duties of clerks.
- 695.24 Instruments required to reflect name and address of person by whom prepared.
- 695.25 Short form of acknowledgment.

**695.01 Conveyances to be recorded.—**

(1) No conveyance, transfer or mortgage of real property, or of any interest therein, nor any lease for a term of 1 year or longer, shall be good and effectual in law or equity against creditors or subsequent purchasers for a valuable consideration and without notice, unless the same be recorded according to law; nor shall any such instrument made or executed by virtue of any power of attorney be good or effectual in law or in equity against creditors or subsequent purchasers for a valuable consideration and without notice unless the power of attorney be recorded before the accruing of the right of such creditor or subsequent purchaser.

(2) Grantees by quitclaim, heretofore or hereafter made, shall be deemed and held to be bona fide purchasers without notice within the meaning of the recording acts;

(3) Provided, however, that this section shall not apply to quitclaims heretofore made, the priority of

which shall be contested by suit commenced within 1 year of the effective date of this law.

**History.**—ss. 4, 9, Nov. 15, 1828; RS 1972; GS 2480; RGS 8822; CGL 5698; s. 10, ch. 20954, 1941.

**695.015 Conveyances by law between governmental agencies, recording.**—All laws which purport to convey title to real property from one governmental agency or political subdivision to another shall be recorded in the public records of the county or counties in which the property is located, and such laws shall contain a provision requiring such recording.

**History.**—s. 1, ch. 70-103.

**695.02 Blank or master form of instruments may be recorded.—**

(1) Any person may have a blank or master form of mortgage or other instrument conveying, transferring or reserving an interest in, or creating a lien on, real or personal property, filed, indexed and recorded in the office of the clerk of the circuit court.

(2) When any such blank or master form is filed with the clerk of the circuit court, he shall record and index the same in the manner provided by law for recording and indexing mortgages and such other instruments respectively, except that the name of the person whose name appears on such blank or master form shall be inserted in the indexes as grantor and also as grantee.

(3) When any instrument conveying, transferring or reserving an interest in, or creating a lien on, real or personal property, incorporates by reference the provisions, terms, covenants, conditions, obligations, powers and other contents, or any of them, set forth in any such recorded blank or master form, such incorporation by reference, for all purposes, shall be equivalent to setting forth in extenso in such instrument that which is incorporated by reference.

**History.**—ss. 1-4, ch. 17109, 1935; CGL 1936 Supp. 5698(1); s. 219, ch. 77-104. cf.—s. 1.01 "Person" defined.

**695.03 Acknowledgment and proof; validation of certain acknowledgments.**—To entitle any instrument concerning real property to be recorded, the execution must be acknowledged by the party executing it or the execution must be proved by a subscribing witness to it before the officers and in the form and manner following:

(1) **IN THIS STATE.**—An acknowledgment or proof made within this state may be made before any judge, clerk, or deputy clerk of any court, a United States Commissioner or magistrate, or a notary public, and the certificate of acknowledgment or proof shall be under the seal of the court or officer, as the case may be. All affidavits and acknowledgments heretofore made or taken in this manner are hereby validated.

(2) **WITHOUT THIS STATE BUT WITHIN THE UNITED STATES.**—An acknowledgment or proof made out of this state but within the United States may be made before a commissioner of deeds appointed by the governor of this state; a judge or clerk

of any court of the United States or of any state, territory, or district; a United States Commissioner or Magistrate; or a notary public, justice of the peace, master in chancery, or registrar or recorder of deeds of any state, territory, or district having a seal, and the certificate of acknowledgment or proof shall be under the seal of the court or officer, as the case may be. If the acknowledgment or proof is made before a notary public who does not have or does not affix a seal, the instrument shall have affixed a certificate by the clerk of a court having a seal under the seal to the effect that the notary public was duly authorized by the laws of the state to take the acknowledgment or proof of the instrument to which the certificate is affixed. All affidavits and acknowledgments heretofore made or taken in this manner are hereby validated.

(3) **IN FOREIGN COUNTRIES.**—If the acknowledgment or proof be made in any foreign country, it may be made before any commissioner of deeds appointed by the governor of this state to reside in such country, or before any notary public of such foreign country having an official seal, or before any ambassador, envoy extraordinary, minister plenipotentiary, minister, commissioner, charge d'affaires, consul general, consul, vice consul, consular agent, or any other diplomatic or consular officer of the United States appointed to reside in such country, military or naval officer authorized by the Laws or Articles of War of the United States to perform the duties of notary public, and the certificate of acknowledgment or proof shall be under the seal of the officer.

All affidavits and acknowledgments heretofore made or taken in the manner set forth above are hereby validated.

**History.**—RS 1973; ch. 5404, 1905; GS 2481; ss. 1, 2, ch. 7849, 1919; RGS 3823; CGL 5699; s. 7, ch. 22858, 1945; s. 1, ch. 28225, 1953; s. 1, ch. 69-79; s. 1, ch. 71-53; s. 26, ch. 73-334.  
cf.—s. 117.07 Duty of notary public to state time of expiration of commission.  
s. 695.032 Provisions not applicable to transactions under ch. 679, Uniform Commercial Code.

#### **695.031 Affidavits and acknowledgments by members of armed forces and their spouses.—**

(1) In addition to the manner, form and proof of acknowledgment of instruments as now provided by law, any person serving in or with the Armed Forces of the United States, including the Army, Navy, Marine Corps, Coast Guard, or any component or any arm or service of any thereof, including any female auxiliary of any thereof, and any person whose duties require his or her presence with the Armed Forces of the United States, as herein designated, or otherwise designated by law or military or naval command, may acknowledge any instrument, wherever located, either within or without the state, or without the United States, before any commissioned officer in active service of the Armed Forces of the United States, as herein designated, or otherwise designated by law, or military or naval command, or order, with the rank of second lieutenant or higher in the Army or Marine Corps, or of any component or any arm or service of either thereof, including any female auxiliary of any thereof, or ensign or higher in the Navy or United States Coast Guard, or of any component or any arm or service of either thereof,

including any female auxiliary of any thereof.

(2) The instrument shall not be rendered invalid by the failure to state therein the place of execution or acknowledgment. No authentication of the officer's certificate of acknowledgment or otherwise shall be required, and no seal shall be necessary, but the officer taking the acknowledgment shall endorse thereon or attach thereto a certificate substantially in the following form:

On this ..... day of ....., 19....., before me ....., the undersigned officer, personally appeared ....., known to me (or satisfactorily proven) to be serving in or with, or whose duties require his presence with the Armed Forces of the United States, and to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained, and the undersigned does further certify that he is at the date of this certificate a commissioned officer of the rank stated below and is in the active service of the Armed Forces of the United States.

.....(Signature of commissioned officer).....

.....(Rank of commissioned officer and command or branch of service to which officer is attached).....

(3) Such acknowledgments by a married woman, who is a member of the Armed Forces of the United States, shall be sufficient in all respects to bar the dower, homestead rights or separate property rights of such married woman in any real estate described in the instrument thus acknowledged by her, as fully and completely as though such married woman had acknowledged such instrument as now required by other statutes.

(4) An acknowledgment by the spouse of a member of the Armed Forces of the United States shall be sufficient in all respects if it is acknowledged in the manner and form herein provided and shall have the same force and effect as though the instrument had been acknowledged as now required by other statutes and such acknowledgment by a married woman who is a spouse of a member of the Armed Forces of the United States shall be sufficient in all respects to bar the dower, homestead rights or separate property rights of such married woman in any real estate described in the instrument thus acknowledged by her as fully and completely as though such married woman had acknowledged such instrument as now required by other statutes.

(5) Any instrument or document acknowledged in the manner and form herein provided shall be entitled to be recorded and shall be recorded as in the case of other instruments or documents properly acknowledged.

(6) This section is to be liberally construed in favor of the validity of any such acknowledgments by any such member of the Armed Forces of the United States and any acknowledgments heretofore taken, containing words of similar import, are hereby confirmed and declared to be valid and binding. This section shall be construed as an enabling act and as an exception to existing laws rather than, inferentially or otherwise, as a repeal of the same or any part of the same.

**History.**—s. 7, ch. 22858, 1945; s. 1, ch. 57-40.  
cf.—s. 732.111 Dower and curtesy abolished.

**Note.**—Former s. 120.08.

**695.032 Provisions not applicable to transactions under chapter 679, Uniform Commercial Code.**—Section 695.03 shall not apply to any of the transactions within the scope of chapter 679 of the Uniform Commercial Code.

**History.**—s. 1, ch. 65-254.

**695.04 Requirements of certificate.**—The certificate of the officer before whom the acknowledgment or proof shall be taken shall contain and set forth substantially the matter required to be done or proved to make such acknowledgment or proof effectual.

**History.**—RS 1974; GS 2482; RGS 3824; CGL 5700.

**695.05 Certain defects cured as to acknowledgments and witnesses.**—All deeds, conveyances, bills of sale, mortgages or other transfers of real or personal property within the limits of this state, heretofore or hereafter made and received bona fide and upon good consideration by any corporation, and acknowledged for record before some officer, stockholder or other person interested in the corporation, grantee, or mortgagee as a notary public or other officer authorized to take acknowledgments of instruments for record within this state, shall be held, deemed and taken as valid as if acknowledged by the proper notary public or other officer authorized to take acknowledgments of instruments for record in this state not so interested in said corporation, grantee or mortgagee; and said instrument whenever recorded shall be deemed notice to all persons; provided, however, that this section shall not apply to any instrument heretofore made, the validity of which shall be contested by suit commenced within 1 year of the effective date of this law.

**History.**—s. 1, ch. 4953, 1901; GS 2483; RGS 3825; s. 1, ch. 11991, 1927; CGL 5701, 5702; s. 1, ch. 14706, 1931; CGL 1936 Supp. 5702(1).

**695.06 Certain irregularities as to venue validated.**—Whenever, in the acknowledgment to any deed or other instrument relating to real estate, heretofore recorded in this state, it shall appear, either from the recitals in such acknowledgment, or following the signature of the officer taking the same, or from the seal of such officer that the said acknowledgment was not taken, or may not have been taken, in the place as stated in the caption or venue thereof, said deed or other instrument shall, notwithstanding such irregularity or defect, be deemed and taken as properly acknowledged and of record.

**History.**—s. 1, ch. 11990, 1927; CGL 5703.

**695.07 Use of scrawl as seal.**—A scrawl or scroll, printed or written, affixed as a seal to any written instrument shall be as effectual as a seal.

**History.**—s. 1, ch. 4148, 1893; GS 2484; RGS 3826; CGL 5704.

**695.08 Prior use of scrawl as seal.**—All written instruments heretofore or hereafter made with a scrawl or scroll, printed or written, affixed as a seal are declared to be sealed instruments, and shall be construed and received in evidence as such in all the courts of this state.

**History.**—s. 2, ch. 4148, 1893; GS 2485; RGS 3827; CGL 5705.

**695.09 Identity of grantor.**—No acknowledgment or proof shall be taken by any officer within or without the United States unless he shall know, or have satisfactory proof, that the person making the acknowledgment is the individual described in and who executed such instrument, or that the person offering to make proof is one of the subscribing witnesses to such instrument.

**History.**—RS 1975; GS 2486; RGS 3828; CGL 5706.

**695.10 Proof by others.**—Where the grantors and witnesses of any instrument which may be recorded are dead, or cannot be had, the judge of the circuit court, or the county court judge for the county wherein the real property is situated, may take the examination of any competent witness or witnesses, on oath, to prove the handwriting of the witness or witnesses, or where such proof cannot be had, then to prove the handwriting of the grantor or grantors, which shall be certified by the judge, and the instrument being thus proved may be recorded.

**History.**—RS 1976; GS 2487; RGS 3829; CGL 5707; s. 26, ch. 73-334.

**695.11 Instruments deemed to be recorded from time of filing.**—All instruments which are authorized or required to be recorded in the office of the clerk of the circuit court of any county in the State of Florida, and which are to be recorded in the "Official Records" as provided for under s. 28.222, and which are filed for recording on or after the effective date of this act, shall be deemed to have been officially accepted by the said officer, and officially recorded, at the time he affixed thereon the consecutive official register numbers required under s. 28.222, and at such time shall be notice to all persons. The sequence of such official numbers shall determine the priority of recordation. An instrument bearing the lower number in the then current series of numbers shall have priority over any instrument bearing a higher number in the same series.

**History.**—s. 1, ch. 3592, 1885; RS 1977; GS 2488; RGS 3830; CGL 5708; s. 1, ch. 17217, 1935; s. 1, ch. 67-442.

**695.12 Imperfect record.**—Whenever any instrument authorized or required by law to be recorded in any county either has been or may be so imperfectly or erroneously recorded as to require a new record thereof, if the officer who so recorded the same be still in office, he shall, upon demand of the owner of such instrument, or person controlling the same, record it anew free of any charge or fee than the fee allowed by law for one perfect record thereof.

**History.**—s. 1, ch. 3896, 1889; RS 1978; GS 2489; RGS 3831; CGL 5709.

**695.13 Want of certificate of record.**—Whenever any instrument authorized or required by law to be recorded shall appear to be recorded in the appropriate record book in the proper office, whether the record shall be in the handwriting of the officer whose duty it was to record such instrument, or in the handwriting of any other person, the record shall be presumed to have been made by the officer whose duty it was to make it, and the absence of a certificate of such officer that such instrument was



recorded by him shall in no wise affect the validity of the record.

**History.**—s. 1, ch. 3894, 1889; RS 1979; GS 2490; RGS 3832; CGL 5710.

**695.14 Unsigned certificate of record.**—

Whenever any unsigned certificate on such record of the instruments mentioned in s. 695.13 shall contain the date of filing or of recording such instrument, it shall be prima facie evidence of the time of filing or of recording such instrument.

**History.**—s. 2, ch. 3894, 1889; RS 1980; GS 2491; RGS 3833; CGL 5711.

**695.15 Recording conveyances lost by fire.**—

Whenever the record in the office of the clerk of the circuit court of any county in this state of any deed, conveyance, contract, mortgage, deed of trust, map or plat or other instrument in writing affecting real estate in such county has been heretofore destroyed by fire, any such instrument, or a copy thereof from such former record duly certified, may be rerecorded in such county, and in rerecording the same the officer shall record the certificate of the previous record, and the date of filing for record appearing in said original certificate so recorded shall be deemed and taken as the date of the record thereof. And copies of such record so authorized to be made hereunder, duly certified by said officer, under the seal of said court, shall be received in evidence under the same circumstances and conditions under which a certified copy of the original record would be so received, and shall have the same force and effect as a certified copy of the original record.

**History.**—s. 1, ch. 4950, 1901; GS 2492; RGS 3834; CGL 5712; s. 7, ch. 22858, 1945.

**695.16 When mortgage or lien is destroyed.**—

Whenever any mortgage or other lien required by law to be recorded, to be good and effectual against creditors or subsequent purchasers for a valuable consideration and without notice, has been heretofore recorded, and the record thereof has been destroyed by fire prior to May 30, 1901, such mortgage or other lien or a certified copy thereof, as aforesaid, shall be rerecorded within 9 months from said date, or such mortgage or other lien shall not be good or effectual in law or equity against a creditor or subsequent purchaser for valuable consideration and without notice; provided, however, that if the original instrument of mortgage or other lien has been lost or destroyed, the foregoing provision of this section shall not apply thereto, but such mortgage or other lien shall not be good or effectual in law or equity against creditors, or subsequent purchasers for a valuable consideration and without notice, unless legal proceedings to reestablish the same were begun in the proper court prior to March 3, 1902.

**History.**—s. 2, ch. 4950, 1901; GS 2493; RGS 3835; CGL 5713.

**695.17 United States Deeds and Patents may be recorded.**—

Deeds and patents issued by the United States Government and photographic copies made by authority of said government from its records thereof in the general land office, embracing lands within the state, shall be admitted to record in this state in the county or counties where the land lies, when presented to the clerk of the court of the county where same is to be recorded, and when said

deeds, patents or photographic copies shall appear to him to be genuine.

**History.**—s. 1, ch. 8565, 1921; CGL 5714.

**695.18 Indorsement by clerk.**—Upon recording said deed, patent or certified copy, the clerk of the court shall indorse thereon and also upon the record made by him the following:

"This deed and patent (or certified copy as the case may be) having been presented to me on the ..... day of ..... for record, and same appearing to me to be genuine and to have been made and issued by the authority of the United States Government, I have duly recorded same in ..... on page ..... of the public records of my office.

Witness my hand and official seal at ..... Florida, this ..... day of .....

.....(Clerk.)"

**History.**—s. 2, ch. 8565, 1921; CGL 5715.

**695.19 Certified copies of recorded instruments may be recorded.**—

Certified copies of deeds, mortgages, powers of attorney and all other instruments of any kind which have been or may hereafter be duly recorded or filed among the public records of any county in this state may be recorded or rerecorded among the public records of any other county in this state as fully and in the same manner and with like effect as if such certified copy were the original instrument.

**History.**—s. 1, ch. 11989, 1927; CGL 5717.

**695.20 Unperformed contracts of record.**—

Whenever anyone shall have contracted to purchase real estate in the state, prior to January 1, 1930, by written agreement requiring all payments to be made within 10 years from the date of the contract, or has accepted an assignment of such an agreement, and the fact of the existence of such a contract of purchase, or assignment, appears of record from the instrument itself or by reference in some other recorded instrument, and shall not have obtained and placed of record a deed to the property or a decree of a court of competent jurisdiction recognizing his rights thereunto, and is not in actual possession of the property covered by the contract or by the assignment, as defined in s. 95.17, he, his widow, heirs, personal representatives, successors, and assigns, shall have no further interest in the property described in the contract, or the assignment, by virtue thereof, and the record of such contract, assignment or other record reference thereto, shall no longer constitute either actual or constructive notice to a purchaser, mortgagee, or other person acquiring an interest in the property, unless within 6 months after this law shall take effect, (approved April 26, 1941) he or some one claiming under him shall:

(1) Place on record a deed or other conveyance of the property from the holder of the record title; or

(2) Place on record a written instrument executed by the holder of the record title evidencing an extension or modification of the original contract and showing that the original contract remains in

force and effect; or

(3) Institute, or have pending, in a court of competent jurisdiction a suit for the enforcement of his rights under such contract.

History.—s. 1, ch. 20235, 1941.

**695.21 Instruments relating to real estate to contain post-office address of grantee; exceptions.**—After October 1, 1945, it shall be the duty of the several clerks of the circuit courts to ascertain, of all persons presenting for public record any instrument other than mortgages conveying or purporting to convey any interest in real estate, the correct post-office address of the grantee or grantees named in such instrument, and it shall be the duty of the person presenting such instrument for recordation to furnish such information to said official.

History.—s. 1, ch. 23114, 1945.

**695.22 Same; duties of clerks.**—After October 1, 1945, the several clerks of the circuit courts shall keep and furnish to the respective county property appraisers in the counties where such instruments are recorded a daily schedule of the aforesaid deeds and conveyances so filed for recordation, in which schedule shall be set forth the name of the grantor or grantors, the names and addresses of each grantee and a description of the land as specified in each instrument so filed.

History.—s. 2, ch. 23114, 1945; s. 1, ch. 77-102.

**695.24 Instruments required to reflect name and address of person by whom prepared.**—

(1) No instrument by which the title to real estate or any interest in it or lien on it is conveyed, created, encumbered, assigned, or otherwise disposed of shall be recorded by the clerk of the circuit court unless the name and address of the natural person who prepared the instrument or under whose supervision it was prepared is printed, typewritten, or stamped on the face of it in a legible manner. An instrument complies with this section if it contains a statement in substantially the following form:

"Prepared by

.....(Name)....., .....(Address)....."

(2) This section does not apply to any instrument executed before the effective date of this section, nor to the following:

(a) A decree, order, judgment, or writ of any court.

(b) An instrument executed or acknowledged outside of this state.

(c) A plat.

(d) An instrument prepared or executed by any public officer except a notary public.

(3) The failure of the clerk of the circuit court to comply with the provisions of this section shall not impair the validity of the recordation or of the constructive notice imparted thereby.

(4) Recordation of all otherwise valid instruments made prior to April 28, 1971 without compliance with this section is hereby validated and all the instruments are declared to be record or construc-

tive notice in the counties where they are recorded from the date of recordation.

History.—ss. 1, 2, ch. 67-53; s. 1, ch. 69-78; s. 1, ch. 71-11.

**695.25 Short form of acknowledgment.**—The forms of acknowledgment set forth in this section may be used, and are sufficient for their respective purposes, under any law of this state. The forms shall be known as "Statutory Short Forms of Acknowledgment" and may be referred to by that name. The authorization of the forms in this section does not preclude the use of other forms.

(1) For an individual acting in his own right:

STATE OF .....

COUNTY OF .....

The foregoing instrument was acknowledged before me this (date) by (name of person acknowledged).

.....(Signature of Person Taking Acknowledgment).....

.....(Title or Rank).....

.....(Serial Number, if any).....

(2) For a corporation:

STATE OF .....

COUNTY OF .....

The foregoing instrument was acknowledged before me this (date) by (name of officer or agent, title of officer or agent) of (name of corporation acknowledging), a (state or place of incorporation) corporation, on behalf of the corporation.

.....(Signature of Person Taking Acknowledgment).....

.....(Title or Rank).....

.....(Serial Number, if any).....

(3) For a partnership:

STATE OF .....

COUNTY OF .....

The foregoing instrument was acknowledged before me this (date) by (name of acknowledging partner or agent), partner (or agent) on behalf of (name of partnership), a partnership.

.....(Signature of Person Taking Acknowledgment).....

.....(Title or Rank).....

.....(Serial Number, if any).....

(4) For an individual acting as principal by an attorney in fact:

STATE OF .....

COUNTY OF .....

The foregoing instrument was acknowledged before me this (date) by (name of attorney in fact) as attorney in fact on behalf of (name of principal).

.....(Signature of Person Taking Acknowledgment).....

.....(Title or Rank).....

.....(Serial Number, if any).....

(5) By any public officer, trustee, or personal rep-

representative:

STATE OF .....

.....(Title or Rank).....

COUNTY OF .....

The foregoing instrument was acknowledged before me this (date) by (name and title of position).

.....(Serial Number, if any).....

.....(Signature of Person Taking Acknowledgment).....

History.—s. 1, ch. 73-62.



## CHAPTER 696

## RECORD OF CONTRACTS; PHOTOGRAPHIC RECORDING

- 696.01 Contracts for sale of realty must be acknowledged in order to be recorded.
- 696.02 Assignments of contracts for sale of realty not entitled to record unless original is recorded or entitled to record.
- 696.03 When agreement executed by agent or attorney may be recorded.
- 696.04 What instruments affected by ss. 696.01-696.03.
- 696.05 Photographic recording authorized; clerk circuit court.
- 696.06 Same; county court judges.

**696.01 Contracts for sale of realty must be acknowledged in order to be recorded.**—No contract, agreement, or other instrument purporting to contain an agreement to purchase or sell real estate shall be recorded in the public records of any county in the state, unless such contract, agreement or other instrument is acknowledged by the vendor in the manner provided by law for the acknowledgment of deeds; and where there is no acknowledgment on the part of the vendor, the recording officers in the various counties of this state shall refuse to accept such instrument for record.

*History.*—s. 1, ch. 11813, 1927; CGL 5719.

**696.02 Assignments of contracts for sale of realty not entitled to record unless original is recorded or entitled to record.**—No assignment of any contract, agreement, or other instrument purporting to contain an agreement to purchase or sell real estate shall be recorded in any of the public records of this state, unless the contract, agreement or other instrument sought to be assigned shall have been recorded, or is entitled to be recorded under the provisions of ss. 696.01-696.04.

*History.*—s. 2, ch. 11813, 1927; CGL 5720.

**696.03 When agreement executed by agent or attorney may be recorded.**—No contract or agreement or other instrument purporting to contain an agreement to sell or purchase real estate, which has been executed by an agent or attorney in fact shall be recorded in any of the public records of this state, unless the authority of such agent or attorney in fact to execute the instrument sought to be recorded is produced and recorded by the recording officer, or is already recorded in the county where such instrument is sought to be recorded; and for the purposes of ss. 696.01-696.04 no authority for the execution of instruments by an agent or attorney in fact shall be accepted which is not executed in the manner provided by law for the execution of deeds.

*History.*—s. 3, ch. 11813, 1927; CGL 5721.

**696.04 What instruments affected by ss. 696.01-696.03.**—Sections 696.01-696.03 shall apply to all contracts and instruments, which had not been recorded on June 6, 1927; but nothing therein con-

tained shall enlarge, impair, alter, or diminish the obligation of any such contract or agreement affected thereby as between the parties privy thereto, or as to those who have actual notice thereof.

*History.*—s. 4, ch. 11813, 1927; CGL 5722.

**696.05 Photographic recording authorized; clerk circuit court.**—

(1) In every county in this state, the clerk of the circuit court may record any and all instruments filed for record by photographic process, this phrase being used in its most general sense and including miniature photographic, microfilming or microphotographic processes or any other photographic, mechanical or other process heretofore or hereafter devised, however designated, such as may be recommended by the clerk from time to time and approved by the board of county commissioners. The board of county commissioners shall provide out of the general revenue fund adequate equipment and supplies for making and preserving such records in accordance with the process so recommended and approved, and shall also provide adequate equipment for reproduction, and for viewing where said recording process is miniature photographic, microfilming or microphotographic, it being the intent hereof that such records shall be readily available for public inspection and copying. The clerk of the circuit court may note on the index to the photographic record of a mortgage or lien a note of assignment or a note of satisfaction of the mortgage or lien.

(2) All instruments heretofore recorded and all action of the boards of county commissioners and clerks of the circuit courts heretofore performed in the purchase of photographic equipment and its use in accordance with the provisions of this act are hereby validated and shall be held good and valid. All service charges shall be as provided in s. 28.24.

*History.*—s. 1, ch. 10300, 1925; CGL 1936 Supp. 5722(1); ss. 1-4, ch. 22051, 1943; s. 8, ch. 29749, 1955; s. 1, ch. 59-429; s. 1, ch. 61-186; s. 28, ch. 70-134.

**696.06 Same; county court judges.**—

(1) In every county in the state, the county court judge may record any and all instruments filed for record by photographic process, this phrase being used in its most general sense not excluding any photographic process heretofore or hereafter devised, however designated, such as may be recommended by the county court judge from time to time and approved by the board of county commissioners, and the board of county commissioners shall provide out of the general revenue fund adequate equipment and supplies for making and preserving such records in accordance with the process so recommended and approved.

(2) Any instrument heretofore recorded and any action of the boards of county commissioners or county court judges heretofore performed in accordance with the provisions of this section shall be held good and valid.

*History.*—s. 1, ch. 11382, 1925; CGL 5723; ss. 1, 2, ch. 21785, 1943; s. 26, ch. 73-334.

## CHAPTER 697

## INSTRUMENTS DEEMED MORTGAGES AND THE NATURE OF A MORTGAGE

- 697.01 Instruments deemed mortgages.
- 697.02 Nature of a mortgage.
- 697.03 Cooperative association mortgages.
- 697.04 Future advances may be secured.
- 697.05 Balloon mortgages; scope of law; definition; requirements as to contents; penalties for violations; exemptions.
- 697.06 Prepayment of note.

**697.01 Instruments deemed mortgages.—**

(1) All conveyances, obligations conditioned or defeasible, bills of sale or other instruments of writing conveying or selling property, either real or personal, for the purpose or with the intention of securing the payment of money, whether such instrument be from the debtor to the creditor or from the debtor to some third person in trust for the creditor, shall be deemed and held mortgages, and shall be subject to the same rules of foreclosure and to the same regulations, restraints and forms as are prescribed in relation to mortgages.

(2) Provided, however, that no such conveyance shall be deemed or held to be a mortgage, as against a bona fide purchaser or mortgagee, for value without notice, holding under the grantee.

**History.**—s. 1, Jan. 30, 1838; s. 1, ch. 525, 1853; RS 1981; GS 2494; RGS 3836; CGL 5724; s. 12, ch. 20954, 1941.

**697.02 Nature of a mortgage.**—A mortgage shall be held to be a specific lien on the property therein described, and not a conveyance of the legal title or of the right of possession.

**History.**—ss. 1, 2, ch. 525, 1853; RS 1982; GS 2495; RGS 3837; CGL 5725.

**697.03 Cooperative association mortgages.—**

(1) Hereafter, any mortgage or other instrument given by a cooperative association for the purpose of creating a lien on real or personal property, or both, may secure not only existing indebtedness, but also such future advances, whether obligatory or otherwise, as are made within 10 years from the date thereof. Such lien, as to third persons without actual notice thereof, shall be valid as to all such indebtedness and future advances from the time the mortgage or other instrument is filed for record as provided by law. The total amount of indebtedness that may be so secured may decrease or increase from time to time, but the total unpaid balance so secured at any one time shall not exceed a maximum principal amount which must be specified therein, plus interest thereon, and any disbursements made for the payment of taxes, levies, or insurance on the property covered by the lien, with interest on such disbursements.

(2) A "Cooperative association" within the meaning of this section means any corporation formed, reorganized or brought under any general or special law of this or any other state as a cooperative association.

(3)(a) A mortgage executed by a cooperative association may cover and create a valid mortgage lien upon stocks or inventories of farm supplies and processed agricultural products, which stocks and inven-

tories the mortgagor may be permitted to retain in possession and sell in the usual course of business. The lien of such mortgage shall be lost on such of the mortgaged property as is sold in the usual course of business up to the time a receiver, who shall be appointed as a matter of right upon application of the mortgagee by the court having jurisdiction of a proceeding instituted to foreclose said mortgage, shall have taken possession of the mortgaged property, and shall without further act, writing or formality attach to any proceeds of the sale thereof, including but not limited to accounts receivable arising from sale of the mortgaged property, but a purchaser of mortgaged property from any such mortgagor, not having actual notice of the attaching of such lien to said proceeds, shall not be liable for any payments made to the person who, except for the provisions of this subsection, would be entitled thereto; provided, however, that such lien as to said accounts receivable shall be subject and subordinate to assignments of any such accounts receivable which are protected assignments under the provisions of chapter 679. If so provided in the mortgage, the lien thereof shall, in addition to the stocks and inventories originally mortgaged, attach to farm supplies and processed agricultural products acquired after the execution and delivery of such mortgage.

(b) If so stipulated therein, such mortgage may secure not only existing indebtedness of the mortgagor to the mortgagee but also such future advances, whether obligatory or otherwise, as are made by the mortgagee to the mortgagor within 10 years from the date of such mortgage to the same extent as if such future advances were made on the date of the execution of such mortgage although there may be no advance made at the time of the execution of such mortgage and although there may be no indebtedness outstanding at the time any advance is made. Such lien shall be valid as to all such indebtednesses and future advances from the time the mortgage is filed for record as provided by law whether such stocks and inventories shall be in existence at the time of the execution of the mortgage or at the time of filing such mortgage for record or shall come into existence subsequent thereto or shall be subsequently acquired by the mortgagor.

(c) The total amount of the indebtedness that may be so secured may decrease or increase from time to time but the total unpaid balance so secured at the time shall not exceed a maximum principal amount which must be specified in such mortgage, plus interest thereon, together with costs and attorney's fees, and any disbursements made for the payment of taxes, levies, assessments, or insurance on the property covered by the mortgage, with interest on such disbursements.

(d) Such mortgage shall not be invalid or fraudulent against creditors because the mortgagor is permitted to retain in possession and sell the mortgaged property in the usual course of business or by reason of liberty in the mortgagor to use, commingle, or dispose of any such stocks or inventories or the pro-

ceeds of the sale of such stocks or inventories or by reason of the failure of the mortgagee to require the mortgagor to account for such proceeds or to replace mortgaged property.

(e) The provisions of this subsection shall not be construed as impairing, limiting, or otherwise affecting the rights of a lender to, or other creditor of a mortgagor of such farm supplies or processed agricultural products, to deal with and make loans to such mortgagor upon the security of assignments of accounts receivable arising or to arise on account of the sale by the mortgagor of the mortgaged property.

(f) This subsection shall not apply to any mortgages made on or after the effective date in this state of the Uniform Commercial Code.

**History.**—ss. 1, 2, ch. 20248, 1941; s. 1, ch. 65-540; s. 167, ch. 71-355.

#### **697.04 Future advances may be secured.—**

(1) Hereafter, any mortgage or other instrument given for the purpose of creating a lien on real property may, and when so expressed therein shall, secure not only existing indebtedness, but also such future advances, whether such advances are obligatory or to be made at the option of the lender, or otherwise, as are made within 20 years from the date thereof, to the same extent as if such future advances were made on the date of the execution of such mortgage or other instrument, although there may be no advance made at the time of the execution of such mortgage or other instrument and although there may be no indebtedness outstanding at the time any advance is made. Such lien, as to third persons without actual notice thereof, shall be valid as to all such indebtedness and future advances from the time the mortgage or other instrument is filed for record as provided by law. The total amount of indebtedness that may be so secured may decrease or increase from time to time, but the total unpaid balance so secured at any one time shall not exceed a maximum principal amount which must be specified in such mortgage or other instrument, plus interest thereon, and any disbursements made for the payment of taxes, levies, or insurance on the property covered by the lien, with interest on such disbursements. This section shall not apply to any mortgages, shipping contracts, or other instruments made and given by naval stores operators and producers to secure existing loans and future advances by naval stores factors.

(2) As against the rights of creditors or subsequent purchasers for a valuable consideration, actual notice or record notice of advances to be made at the option of the lender, under the terms of such mortgage or other instrument, shall be valid only as to such advances as are to be made within 20 years from the date of such mortgage or other instrument; provided that this section shall not apply to any mortgages, shipping contracts, or other instruments made and given by naval stores operators and producers to secure existing loans and future advances by naval stores factors.

(3) Any such mortgage or other instrument shall be prior in dignity to all subsequent encumbrances, including statutory liens, except landlords' liens.

**History.**—ss. 1-3, ch. 20846, 1941; s. 1, ch. 28116, 1953; ss. 1, 2, ch. 61-135; s. 3, ch. 63-212; s. 1, ch. 70-34.

#### **697.05 Balloon mortgages; scope of law; definition; requirements as to contents; penalties for violations; exemptions.—**

(1) Any conveyance, obligation conditioned or de-feasible, bill of sale or other instrument of writing conveying or selling real property for the purpose or with the intention of securing the payment of money, whether such instrument be from the debtor to the creditor or from the debtor to some third person in trust for the creditor, shall be deemed and held to be a mortgage, and shall be subject to the provisions of this section.

(2)(a) Every mortgage in which the final payment or the balance due and payable upon maturity is greater than twice the amount of the regular monthly or periodic payment of the said mortgage shall be deemed a balloon mortgage, and shall have printed or clearly stamped on such mortgage:

THIS IS A BALLOON MORTGAGE AND THE FINAL PAYMENT OR THE BALANCE DUE UPON MATURITY IS ....., TOGETHER WITH ACCRUED INTEREST, IF ANY, AND ALL ADVANCEMENTS MADE BY THE MORTGAGEE UNDER THE TERMS OF THIS MORTGAGE.

(b) This legend including the total amount due upon maturity shall appear at the top of the first page or face sheet of the mortgage and also immediately above the place for signature of the mortgagor. The legend shall be conspicuously printed or stamped in type as large as the largest type used in the text of the instrument, either as an overprint or by a rubber stamp impression.

(3) Failure of a mortgagee, creditor or a third party in trust for a mortgagee or creditor to comply with the provisions of this section shall automatically extend the maturity date of such mortgage in the following manner: The final payment or the balance due and payable is to be divided by the regular monthly or periodic payment and the quotient so secured is to be the number of months or periods the maturity date of the mortgage is extended. The mortgagor shall continue to make such monthly or periodic payments until the principal of the mortgage is paid. All such payments shall be credited to the principal only.

(4) Any mortgagee, creditor, bona fide holder, assignee, transferee, endorsee, or any agent, officer, or other representative of any such person violating the provisions of this section shall forfeit the entire interest charged, contracted to be charged or reserved under any such mortgage written in violation of this section, and only the principal sum of such mortgage can be enforced in any court in this state, either at law or in equity. Any interest, collection charge or attorney fee that has been paid or reserved or contracted for, either directly or indirectly, shall be forfeited to the person or mortgagor presently obligated under such mortgage.

(5) This section does not apply to the following:

- (a) Any mortgage in effect prior to January 1, 1960;
- (b) Any first mortgage;
- (c) Any mortgage created for a term of more than 5 years;
- (d) Any mortgage, the periodic payments on



which are to consist of interest payments only, with the entire original principal sum to be payable upon maturity.

*History.*—ss. 1-5, ch. 59-356; s. 1, ch. 61-472.

**697.06 Prepayment of note.**—Any note which

is silent as to the right of the obligor to prepay the note in advance of the stated maturity date may be prepaid in full by the obligor or his successor in interest without penalty.

*History.*—s. 1, ch. 77-318.

## CHAPTER 698

## CHATTEL MORTGAGES

- 698.01 To be recorded.
- 698.02 Acknowledgment.
- 698.03 Power of sale may be included in certain mortgages; exercise of power.
- 698.04 Sale under power.
- 698.05 Remedy concurrent.
- 698.08 Notice given by filing for record of chattel mortgages generally, to extend 7 years.
- 698.09 Extension of period of notice.
- 698.10 Effect on certain existing instruments.
- 698.11 Duties of clerk in connection with extension.
- 698.12 Chapter not applicable to transactions under Uniform Commercial Code.

**698.01 To be recorded.**—No chattel mortgage shall be valid or effectual against creditors or subsequent purchasers for a valuable consideration and without notice unless it be recorded, or unless the property included in it be delivered to the mortgagee and continue to remain truly and bona fide in his possession.

**History.**—RS 1983; GS 2496; RGS 3833; CGL 5726.  
cf.—s. 695.03 Acknowledgment.

**698.02 Acknowledgment.**—To entitle such mortgage to record, its execution must be acknowledged or proved in the manner provided for mortgages of real property.

**History.**—RS 1984; GS 2497; RGS 3839; CGL 5727.

**698.03 Power of sale may be included in certain mortgages; exercise of power.**—

(1) In all mortgages to, or in favor of, the Government of the United States or any agencies thereunder making agricultural loans, or to secure principal indebtedness not exceeding \$500, bearing interest not in excess of the general legal rate, on farm machinery and equipment, and agricultural, horticultural, or fruit crops in being, it may be provided or covenanted that the mortgagee, his legal representatives or assigns, shall have the power to sell the mortgaged property upon any breach or default by the mortgagor of the terms, covenants, conditions, or stipulations of such mortgage or of the obligation thereby secured or upon nonpayment of the indebtedness secured by such mortgage or interest thereon, when due and payable in such manner and on such terms as may be provided in such mortgage, and all such provisions and covenants shall be valid, effectual, and enforceable, and every such sale thereunder shall vest in the purchaser, or purchasers, the title in and to the property mortgaged and described in such mortgage.

(2) In case of the exercise of such power of sale, written notice of such sale shall be given to the mortgagor and all persons claiming by, through, or under him by instrument duly recorded, not less than 15 days prior to such sale. Such notice may be served in the same manner as summons ad respondendum are served pursuant to the laws of Florida, and a copy of such notice shall be published at least twice, the first publication of which shall be not less than 20 days

prior to such sale, in a newspaper published in the county where such sale shall occur, and another copy of such notice shall be served upon any person in charge, or having or taking part in the supervision or care of such mortgaged property, or any part thereof. If there be no newspaper published in such county, then such publication may be made in a newspaper published in any county adjoining that wherein such sale is to be made. Such notice may be served upon any of said parties wherever they may be within the state. If any person to whom notice is required to be given under this statute shall not reside in the state, or his residence be unknown to the mortgagee, his legal representatives or assigns, then it shall not be necessary to make personal service of such notice upon him, and in such case, the publication of such notice as above provided shall be sufficient; provided, that where the address of such non-resident be known to the mortgagee, his legal representative or assigns, a copy of such notice shall be mailed to him at such address, by registered mail.

(3) Every such sale shall occur during the hours prescribed for sheriffs' sales at the courthouse of the county where such property is situate at the time of the sale, and if the property is situate in more than one county, the sale may occur in any county where any part of such property is located. The actual possession of such mortgaged property, or its presence, at the place of sale shall be unnecessary to the validity of any such sale.

(4) Every such notice of sale shall describe the mortgaged property to be sold and state the time and place of sale, the name of the person who will conduct the sale, and the amount claimed to be due and secured by such mortgage and for the payment of which such sale is being held.

(5) The proceeds of every such sale shall be applied first to the payment of the costs and expenses of such sale, including the cost of advertising and serving notices and of the person conducting such sale (which shall be the same as the fees prescribed by law to be paid sheriffs for conducting sales and executing sheriffs' deeds under executions) and attorney's fees of 10 percent of the principal and accrued interest of the obligation secured by such mortgage, for the services of the attorney for the mortgagee or his assigns, and then to the payment of the obligation secured by such property mortgage, including unpaid interest, if any, and the balance or excess, if any, shall be paid to the owner of such mortgaged property if he be known; otherwise, such excess shall be paid by the person conducting such sale into the registry of the circuit court for such county to be there held for the benefit of the person lawfully entitled to the same.

**History.**—s. 1, ch. 17108, 1935; CGL 1936 Supp. 5727(1); s. 168, ch. 71-355.

**698.04 Sale under power.**—In case of any sale of property under a power of sale as provided in s. 698.03, the sale may be conducted by the mortgagee or assignee, or by any person appointed by the mortgagee or as assignee, and the person conducting such sale shall execute a bill of sale to the purchaser or

purchasers, which shall effectively transfer title to the property so sold. The mortgagee or assignee may bid and become the purchaser at any such sale. All rights and remedies of the mortgagee provided in ss. 698.03-698.05 shall extend to the mortgagee's legal representatives and assigns.

**History.**—s. 2, ch. 17108, 1935; CGL 1936 Supp. 5727(2).

**698.05 Remedy concurrent.**—Nothing in ss. 698.03 and 698.04 shall prevent the holder of any such mortgage from foreclosing such mortgage in equity; the remedy by power of sale given in said sections being intended to be cumulative and concurrent, but not exclusive. In all other respects, the laws relating to chattel mortgages shall be applicable to such mortgages.

**History.**—s. 3, ch. 17108, 1935; CGL 1936 Supp. 5727(3).

**698.08 Notice given by filing for record of chattel mortgages generally, to extend 7 years.**—

(1) The notice given to third persons by the filing for record of any mortgage or other security instrument, except mortgages or other instruments given to secure future advances, creating a lien on, or conveying or reserving an interest in, personal property, or agricultural, horticultural, or fruit crops planted, growing or to be planted, grown or raised, shall, unless otherwise provided by law, expire at the end of 7 years from the date of the filing thereof for record.

(2) The notice given to third persons by the filing for record of any mortgage or other security instrument given to secure future advances, creating a lien on, or conveying or reserving an interest in, personal property or agricultural, horticultural, or fruit crops planted, growing, or to be planted, grown, or raised, shall, unless otherwise provided by law, expire at the end of:

(a) Seven years from the date of maturity of the debts or obligations last maturing thereunder and secured by such mortgages or other security instruments, or

(b) Seven years from the last date an advance could validly be made thereunder so as to be secured thereby,

whichever of said dates is later.

(3) Provided, however, that this law shall not apply to any mortgage or other security instrument creating a lien on, or conveying or reserving an interest in, or in respect of property owned by, or sold or leased to, or agreed to be sold or leased to, any railroad corporation, where such mortgage has been or shall be recorded in the county in the state in which the mortgaged property is situated or, in the case of such other instrument, where such other instrument has been or shall be recorded in the office of the department of state. Provided further, however, that this law shall not apply to any mortgage or other security instrument given to secure any indebtedness to the United States, or any agency or instrumentality thereof, incurred under the Rural Electrification Act of 1939, as amended.

**History.**—s. 1, ch. 17112, 1935; CGL 1936 Supp. 5727(7); s. 1, ch. 20921, 1941; s. 1, ch. 26889, 1951; s. 4, ch. 63-212; ss. 10, 35, ch. 69-106.

**698.09 Extension of period of notice.**—The effect as to third persons of the filing of any such instrument for record, may, in all respects, including the preservation of priority thereof, be extended for successive additional periods, each not exceeding 7 years from the date of the filing in the office of the clerk of the circuit court, wherein any such instrument is recorded, upon the filing by the owner or holder thereof, of an affidavit identifying such instrument, stating his interest therein and the nature and amount unpaid on the obligation still secured thereby. Provided, however, that where a mortgage or other security instrument has been amended or supplemented one or more times and an identifying affidavit is so filed for record by the owner or holder thereof with respect to the original mortgage or other security instrument and mention is made in such affidavit of any instrument or instruments amendatory or supplemental thereto such identifying affidavit need not be filed with respect to such amendatory or supplemental instrument or instruments so mentioned therein and the effect of such amendatory or supplemental instrument or instruments and the preservation of any lien or priority thereof shall be extended along with the original mortgage or other security instrument as to which affidavit or affidavits have been filed in accordance with the requirements of this section.

**History.**—s. 2, ch. 17112, 1935; CGL 1936 Supp. 5727(8); s. 1, ch. 28083, 1953.

**698.10 Effect on certain existing instruments.**—The notice given by the filing of any mortgage, or other security instrument creating a lien on, or conveying or reserving an interest in, personal property, or agricultural, horticultural, or fruit crops planted, growing or to be planted, grown, or raised, filed or recorded, prior to May 1, 1935, shall not extend more than 7 years from said date, unless within 7 years therefrom such an affidavit is so filed.

**History.**—s. 3, ch. 17112, 1935; CGL 1936 Supp. 5727(9).

**698.11 Duties of clerk in connection with extension.**—The clerk of the circuit court shall file such affidavit, reindex the instrument mentioned therein, and enter on the index of such instrument a reference to the filing of such affidavit, stating thereon the date of filing of such affidavit and the amount unpaid on the obligation secured by such instrument, for which services the clerk of the circuit court shall be entitled to a service charge as provided in s. 28.24.

**History.**—s. 4, ch. 17112, 1935; CGL 1936 Supp. 5727(10); s. 29, ch. 70-134.

**698.12 Chapter not applicable to transactions under Uniform Commercial Code.**—The provisions of this chapter shall not apply to transactions governed by any of the provisions of the Uniform Commercial Code, but shall remain applicable to transactions to which that code does not apply.

**History.**—s. 1, ch. 65-254.



## CHAPTER 701

## ASSIGNMENT AND CANCELLATION OF MORTGAGES

- 701.01 Assignment.
- 701.02 Assignment not effectual against creditors unless recorded.
- 701.03 Cancellation.
- 701.04 Cancellation of mortgages, liens and judgments.
- 701.05 Failing or refusing to satisfy lien; punishment for.
- 701.06 Certain cancellations and satisfactions of mortgages validated.

**701.01 Assignment.**—Any mortgagee may assign and transfer any mortgage made to him, and the person to whom any mortgage may be assigned or transferred may also assign and transfer it, and he or his assigns or subsequent assignees may lawfully have, take and pursue the same means and remedies which the mortgagee may lawfully have, take or pursue for the foreclosure of a mortgage and for the recovery of the money secured thereby.

*History.*—s. 1, Dec. 11, 1834; RS 1985; GS 2498; RGS 3840; CGL 5743.

**701.02 Assignment not effectual against creditors unless recorded.**—

(1) No assignment of a mortgage upon real property or of any interest therein, shall be good or effectual in law or equity, against creditors or subsequent purchasers, for a valuable consideration, and without notice, unless the same be recorded according to law.

(2) The provisions of this section shall also extend to assignments of mortgages resulting from transfers of all or any part or parts of the debt, note or notes secured by mortgage, and none of same shall be effectual in law or in equity against creditors or subsequent purchasers for a valuable consideration without notice, unless a duly executed assignment be recorded according to law.

(3) Any assignment of a mortgage, duly executed and recorded according to law, purporting to assign the principal of the mortgage debt or the unpaid balance of such principal, shall, as against subsequent purchasers and creditors for value and without notice, be held and deemed to assign any and all accrued and unpaid interest secured by such mortgage, unless such interest shall be specifically and affirmatively reserved in such assignment by the assignor, and no reservation of such interest or any part thereof shall be implied.

*History.*—s. 1, ch. 6909, 1915; RGS 3841; CGL 5744; s. 13, ch. 20954, 1941. cf.—s. 695.01 et seq. Recordation of conveyances and mortgages of real estate.

**701.03 Cancellation.**—Whenever the amount of money due on any mortgage shall be fully paid, the mortgagee or assignee shall within 60 days thereafter cancel the same in the manner provided by law.

*History.*—RS 1986; GS 2499; RGS 3842; CGL 5745; s. 171, ch. 73-333.

**701.04 Cancellation of mortgages, liens and judgments.**—Whenever the amount of money due on any mortgage, lien or judgment shall be fully paid to the person or party entitled to the payment thereof, the mortgagee, creditor or assignee, or the attorney of record in the case of a judgment, to whom such payment shall have been made, shall enter on the margin of the record of such mortgage, notice of lien or judgment, in the presence of the custodian of such record, to be attested by said custodian, satisfaction of said mortgage, notice of lien or judgment, and sign the same with his, her, or their hand; or shall execute in writing an instrument acknowledging satisfaction of said mortgage, lien, or judgment, and have the same acknowledged or proven, and duly entered of record in the book provided by law for such purposes in the proper county.

*History.*—s. 1, ch. 4138, 1893; s. 1, ch. 4918, 1901; GS 2500; RGS 3843; CGL 5746.

**701.05 Failing or refusing to satisfy lien; punishment for.**—Any person entitled to and receiving the payment of the amount of money due upon any mortgage, lien, or judgment, who shall fail for 30 days after written demand made by the person paying the same, to cancel and satisfy of record, as provided by law, any such mortgage, lien or judgment so paid, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

*History.*—s. 2, ch. 4918, 1901; GS 3712; RGS 5663; CGL 7866; s. 677, ch. 71-136.

**701.06 Certain cancellations and satisfactions of mortgages validated.**—All cancellations or satisfactions of mortgages made prior to the enactment of chapter 4138, acts of 1893, by the mortgagee or assignee of record of such mortgage entering same on the margin of the record of such mortgage in the presence of the custodian of such record and attested by the said custodian and signed by said mortgagee or assignee of record of such mortgage, shall be valid and effectual for every purpose as if the same had been done subsequent to the enactment of chapter 4138, acts of 1893.

*History.*—s. 1, ch. 14763, 1931; CGL 1936 Supp. 5746(1).

## CHAPTER 702

FORECLOSURE OF MORTGAGES, AGREEMENTS FOR DEEDS,  
AND STATUTORY LIENS

- 702.01 Chancery.
- 702.03 Certain foreclosures validated.
- 702.04 Mortgaged lands in different counties.
- 702.05 Mortgaged lands sold for taxes.
- 702.06 Deficiency decree; common law suit to recover deficiency.
- 702.07 Power of courts and judges to set aside foreclosure decrees at any time before sale.
- 702.08 Effect of setting aside foreclosure decree.
- 702.09 Definitions.

**702.01 Chancery.**—All mortgages shall be foreclosed in chancery, unless otherwise provided by statute.

**History.**—RS 1987; GS 2501; RGS 3844; CGL 5747; s. 7, ch. 22858, 1945.

**702.03 Certain foreclosures validated.**—All mortgage foreclosures heretofore made, or now pending, wherein there has been annexed to the bill of complaint in such cause, an uncertified copy of the mortgage, as provided by chapter 12095, acts of 1927, entitled: "An act to amend section 3845 RGS relating to complaint in foreclosure of mortgages" are hereby validated and confirmed insofar as they relate to the copy of the mortgage attached to such complaint, to the same extent and effect as if section 3117, RGS, had been expressly repealed by chapter 12095, 1927, entitled: "An act to amend section 3845 RGS relating to complaint in foreclosure of mortgages."

**History.**—s. 1, ch. 13642, 1929; CGL 1936 Supp. 5748(1).

**702.04 Mortgaged lands in different counties.**—When a mortgage includes lands, railroad track, right-of-way, or terminal facilities and station grounds, lying in two or more counties, it may be foreclosed in any one of said counties, and all proceedings shall be had in that county as if all the mortgaged land, railroad track, right-of-way, or terminal facilities and station grounds lay therein, except that notice of the sale must be published in every county wherein any of the lands, railroad track, right-of-way, or terminal facilities and station grounds to be sold lie. After final disposition of the suit, the clerk of the circuit court shall prepare and forward a certified copy of the decree of foreclosure and sale and of the decree of confirmation of sale to the clerk of the circuit court of every county wherein any of the mortgaged lands, railroad tracks, right-of-way, or terminal facilities and station grounds lie, to be recorded in the foreign judgment book of each such county, and the costs of such copies and of the record thereof shall be taxed as costs in the cause.

**History.**—RS 1989; s. 1, ch. 4420, 1895; GS 2503; s. 1, ch. 7339, 1917; RGS 3846; CGL 5749.

**702.05 Mortgaged lands sold for taxes.**—Any person who has a lien by mortgage or otherwise upon lands sold for taxes may, within the time allowed by law for redemption, redeem such lands, and the receipt of the officer authorized to receive the amount paid for redemption money shall entitle the lien-

holder to collect the said amount, with interest at the rate of 10 percent per annum, as a part of and in the same manner as the amount secured by his original lien.

**History.**—s. 1, ch. 3903, 1889; RS 1990; GS 2504; RGS 3847; CGL 5750.

**702.06 Deficiency decree; common law suit to recover deficiency.**—In all suits for the foreclosure of mortgages heretofore or hereafter executed the entry of a deficiency decree for any portion of a deficiency, should one exist, shall be within the sound judicial discretion of the court, but the complainant shall also have the right to sue at common law to recover such deficiency, provided no suit at law to recover such deficiency shall be maintained against the original mortgagor in cases where the mortgage is for the purchase price of the property involved and where the original mortgagee becomes the purchaser thereof at foreclosure sale and also is granted a deficiency decree against the original mortgagor.

**History.**—s. 1, ch. 11993, 1927; CGL 5751; s. 1, ch. 13625, 1929.

**702.07 Power of courts and judges to set aside foreclosure decrees at any time before sale.**—The circuit courts of this state, and the judges thereof at chambers, shall have jurisdiction, power, and authority to rescind, vacate, and set aside a decree of foreclosure of a mortgage of property at any time before the sale thereof has been actually made pursuant to the terms of such decree, and to dismiss the foreclosure proceeding upon the payment of all court costs.

**History.**—s. 1, ch. 11881, 1927; CGL 5752.

**702.08 Effect of setting aside foreclosure decree.**—Whenever a decree of foreclosure has been so rescinded, vacated, and set aside and the foreclosure proceedings dismissed as provided in s. 702.07, the mortgage, together with its lien and the debt thereby secured, shall be, both in law and equity, completely relieved of all effects of any kind whatsoever resulting from or on account of the foreclosure proceedings and the decree of foreclosure and fully restored in all respects to the original status of the same as it existed prior to the foreclosure proceedings and the decree of foreclosure, and thereafter the same shall be for all purposes whatsoever legally of force and effect just as if foreclosure proceeding had never been instituted and a decree of foreclosure had never been made.

**History.**—s. 2, ch. 11881, 1927; CGL 5753.

**702.09 Definitions.**—For the purposes of ss. 702.07 and 702.08 the words "decree of foreclosure" shall include a judgment or order rendered or passed in the foreclosure proceedings in which the decree of foreclosure shall be rescinded, vacated, and set aside; the word "mortgage" shall mean any written instrument securing the payment of money or advances; the word "debt" shall include promissory notes, bonds, and all other written obligations given for the payment of money; the words "foreclosure proceed-

ings" shall embrace every action in the circuit courts of this state wherein it is sought to foreclose a mortgage and sell the property covered by the same; and

the word "property" shall mean and include both real and personal property.

History.—s. 3, ch. 11881, 1927; CGL 5754.



## CHAPTER 703

## ABSTRACTS OF TITLE

- 703.01 County commissioners authorized to require clerk to make abstracts.
- 703.02 Abstracts of real estate upon petition; service charge of clerk.
- 703.03 What abstract to show.
- 703.04 Abstracting tax sales.
- 703.05 Service charge of clerk for furnishing abstract.
- 703.06 Board may purchase abstract books.
- 703.07 Abstracts of records destroyed by fire; purchase of abstract books by county; proceedings for.
- 703.08 Copies of abstracts as evidence.
- 703.09 Condemnation of abstracts, maps, etc., by county where records have been destroyed.
- 703.10 Order to show cause; enjoining owners from removing abstracts, etc., beyond jurisdiction of court.
- 703.11 Order granting petition; jury to assess compensation; copies of original abstracts, etc.
- 703.13 Payment of compensation and delivery of abstracts, etc.; petitioner to pay cost.
- 703.14 Penalty for failure to deliver abstracts, etc.
- 703.15 Abstracts, etc., acquired by condemnation.
- 703.17 Alteration of abstracts condemned by county for use of the public.
- 703.18 Refusing to make abstract.
- 703.19 Filing untrue copies of abstracts ordered filed for use of public.

**703.01 County commissioners authorized to require clerk to make abstracts.**—The county commissioners in and for any county of this state, whenever the said board deems it advisable, may require the clerk of the circuit court in and for said county to abstract any or all instruments of writing affecting any real estate situated in the county as the same is recorded. For such services the clerk may collect a charge not to exceed 60 cents for each piece of property so abstracted, provided there are not more than two descriptions. In instruments to be recorded when there are more than two descriptions, the charge of the clerk shall not exceed 60 cents for each of the first two descriptions, and an additional charge of 20 cents for each of the others or a flat fee of \$1 per instrument. In cases where instruments are to be recorded and real estate is described by reference only, a search and recording charge shall be as provided in s. 28.24.

*History.*—s. 1, ch. 5173, 1903; GS 2505; RGS 3848; CGL 5755; s. 1, ch. 61-386; s. 30, ch. 70-134.

**703.02 Abstracts of real estate upon petition; service charge of clerk.**—Upon a petition of a majority of the registered voters of any county of this state, the board of county commissioners of said county, if it deems it advisable, shall have abstracted, under the supervision of said clerk, any or all instruments of record relating to real estate situated

in said county. For such services the clerk shall receive a service charge as provided in s. 28.24.

*History.*—s. 2, ch. 5173, 1903; GS 2506; RGS 3849; CGL 5756; s. 31, ch. 70-134.

**703.03 What abstract to show.**—The said abstract books shall be so ruled and headed as to show the description of the property, the names of the grantors and grantees, mortgagors and mortgagees, nature of the instrument, consideration, date, release of dower, number of witnesses, number of book and page of record, and such other information arranged in such order as the said board of commissioners may deem advisable.

*History.*—s. 3, ch. 5173, 1903; GS 2507; RGS 3850; CGL 5757. cf.—s. 732.111 Dower and curtesy abolished.

**703.04 Abstracting tax sales.**—Whenever the board of county commissioners deems it advisable, it shall have abstracted any or all of the tax sales relating to any real estate situated in the county. This shall be done under the supervision of the clerk, who shall receive service charges as provided in s. 28.24. The abstract books shall be so ruled and headed as to show number of certificate, date of sale, the year for which taxes were unpaid, number and page of book where recorded, date of redemption or cancellation, date of deed, number and page of book where recorded, and such other information and in such order as may be deemed advisable by the clerk.

*History.*—s. 4, ch. 5173, 1903; GS 2508; RGS 3851; CGL 5758; s. 32, ch. 70-134.

**703.05 Service charge of clerk for furnishing abstract.**—When the records of the county have been abstracted, the service charge of the clerk for making an abstract shall be as provided in s. 28.24.

*History.*—s. 5, ch. 5173, 1903; GS 2509; RGS 3852; CGL 5759; s. 33, ch. 70-134.

**703.06 Board may purchase abstract books.**—Upon a petition of a majority of the registered voters of any county in this state, the board of county commissioners of said county, if the said board deems it advisable, may purchase a set of abstract books, for whatever price, and on whatever terms, the board may deem expedient. The clerk of the court shall have custody of said books, and they shall be open to examination free of charge.

*History.*—s. 6, ch. 5173, 1903; GS 2510; RGS 3853; CGL 5760.

**703.07 Abstracts of records destroyed by fire; purchase of abstract books by county; proceedings for.**—

(1) When the records, or any material part thereof, in any county in this state, concerning the title to property have been heretofore destroyed by fire so that a connected chain of title cannot be taken therefrom, the judge of the circuit court of such county, if requested by the board of county commissioners of such county by resolution of such board, shall appoint three competent and trustworthy persons as commissioners to examine into the state of the records in such county, and in case they find any

abstracts, copies, minutes, extracts, maps, or plats from such records, existing after such destruction as aforesaid, and find that such abstracts, copies, minutes, extracts, maps, or plats were fairly made before such destruction of the records by any person or persons in the ordinary course of business, and that they contain a material and substantial part of such records, they shall certify the facts found by them in respect to such copies, abstracts, minutes, extracts, maps, or plats, and also (if they are of that opinion) that such abstracts, copies, minutes, extracts, maps, or plats tend to show a connected chain of title to the lands in said county, and shall file such certificates with the county clerk of the proper county, and the board of county commissioners thereof may, with the approval of the judge of the circuit court of the county, purchase from the owners thereof such abstracts, copies, minutes, extracts, maps, or plats, or such parts thereof as may tend to constitute a connected chain of title to the lands in said county, including all judgments and decrees that form part of such chain of title, paying therefor such reasonable price as may be agreed upon between them and such owners; provided, that such price shall be approved by said board of three commissioners appointed by such circuit judge as aforesaid, and also by said circuit judge; or such board of county commissioners may, with such approval and upon such conditions, procure a copy of said abstracts, copies, minutes, extracts, maps, or plats, instead of the originals, to be paid for in like manner, upon approval of the price thereof by said circuit judge and said board of three commissioners as aforesaid.

(2) The compensation of said three commissioners to be appointed by said circuit judge as aforesaid shall be fixed and allowed by the board of county commissioners and shall be paid by the county.

*History.*—s. 2, ch. 4951, 1901; GS 2511; RGS 3854; CGL 5761.

**703.08 Copies of abstracts as evidence.**—The abstracts, copies, minutes, maps, and plats of said county purchased under the provisions of s. 703.07 shall thereupon be placed in the office of the clerk of the circuit court of said county, to be copied or arranged in such form as the board of county commissioners shall deem best for the public interest. And in case the originals have been lost or destroyed, and no certified copy from the records of the original papers shall be in the power, custody, or control of the party asking to use the same on any trial or other proceedings, copies of the same, or any part thereof, duly certified by the clerk of the circuit court of said county, shall be admitted in evidence in all courts of law and equity in this state. Such clerk shall furnish to any and all parties requesting it, upon being paid his proper fees, certified copies of the same, or parts thereof.

*History.*—s. 3, ch. 4951, 1901; GS 2512; RGS 3855; CGL 5762.

**703.09 Condemnation of abstracts, maps, etc., by county where records have been destroyed.**—When the records, or any material part thereof, in any county in this state, concerning the title to property, have been destroyed by fire or other causes so that a connected chain of title cannot be taken therefrom, and any person or corporation is possessed of any abstracts, copies, minutes, extracts,

maps, or plats, made from said records before such destruction, the board of county commissioners of any such county may acquire such abstracts, copies, minutes, extracts, maps, or plats in whole or in part, as the board may determine, or copies thereof, to be placed in the office of the clerk of the circuit court for the use of the public as part of the public records, in the following manner:

(1) The said board shall determine, by an entry in their minutes, what abstracts, copies, minutes, extracts, maps, or plats so owned by any person or corporation they desire to acquire for the use of the public;

(2) The said board of county commissioners shall thereupon cause a petition in the name of such county, to be presented to the judge of the circuit court of the circuit in which such county is situated, setting forth what abstracts, copies, minutes, extracts, maps, or plats, so made from such burned records, are required, and giving the name of any person, persons, or corporation owning the same or in possession thereof, and praying that the said abstracts, copies, minutes, extracts, maps, or plats, or copies thereof sworn to by the custodian thereof to be correct copies of the same, may be condemned and placed in the clerk's office for the use of the public as part of the public records.

*History.*—s. 1, ch. 5414, 1905; RGS 3856; CGL 5763.

**703.10 Order to show cause; enjoining owners from removing abstracts, etc., beyond jurisdiction of court.**—Upon the presentation of such petition to such judge, he shall make an order requiring the owner or custodian of such abstracts, copies, minutes, extracts, maps, or plats to appear before him at a day by him fixed, not less than 10 nor more than 30 days from the date of such order, and show cause why the petition should not be granted, and the said judge shall at the time make an order enjoining the owners or persons in charge of such abstracts, copies, minutes, extracts, maps, or plats from removing the same beyond the jurisdiction of the court pending the litigation.

*History.*—s. 2, ch. 5414, 1905; RGS 3857; CGL 5764.

**703.11 Order granting petition; jury to assess compensation; copies of original abstracts, etc.**—Upon the day fixed, or any day to which the hearing may be adjourned, if no person shall appear, or if no sufficient cause be shown why the prayer of the petition should not be granted, then the said judge shall make an order granting the prayer of the petition and issue an order to the sheriff to empanel a jury of 12 men to try what shall be just compensation for the said abstracts, copies, minutes, extracts, maps, or plats, or copies thereof, sought to be taken for the county. If the defendant so appearing shall, in his return to such order, elect that the condemnation sought by the petitioner shall, if any such condemnation be allowed, be of copies of such abstracts, copies, minutes, extracts, maps, or plats and not of the originals thereof, no condemnation shall be allowed of such originals, and the petition, in case it shall have sought a condemnation of such originals, shall thereupon be amended so as to seek only a

condemnation of a copy of said abstracts, copies, minutes, extracts, maps, or plats.

**History.**—s. 3, ch. 5414, 1905; RGS 3858; CGL 5765.

**703.13 Payment of compensation and delivery of abstracts, etc.; petitioner to pay cost.**—Upon the rendition of the verdict, the said judge shall make an order that, upon the payment into court for the use of the defendant, within 10 days, unless further time be allowed by the court, of the compensation ascertained by the jury, the prayer of the petition is granted, or else the proceedings shall be null and void, and the said judge shall fix a time within which, after such payment into court, the defendant shall place in the office of the clerk of the circuit court for said county, for the use of the public, such abstracts, copies, minutes, extracts, maps, or plats, or copies thereof, sworn to by the custodian of the said abstracts, copies, minutes, extracts, maps, or plats, in accordance with the prayer of said petition, and said judge shall render judgment against the petitioner for the cost.

**History.**—s. 5, ch. 5414, 1905; RGS 3860; CGL 5767.

**703.14 Penalty for failure to deliver abstracts, etc.**—Any person or the officers of any corporation in possession of, or having under their control such abstracts, copies, minutes, extracts, maps, or plats who shall fail or refuse to comply with such order, shall be guilty of a contempt of court and may be imprisoned until such order is obeyed.

**History.**—s. 6, ch. 5414, 1905; RGS 3861; CGL 5768.

**703.15 Abstracts, etc., acquired by condemnation.**—Upon the filing of such abstracts, copies, minutes, maps, or plats, or such copies thereof, in the office of the clerk of the circuit court for such county, they shall have the same force and effect as is now provided in ss. 703.07 and 703.08 for those obtained and filed in such clerk's office under the provisions of said sections.

**History.**—s. 8, ch. 5414, 1905; RGS 3862; CGL 5769.

**703.17 Alteration of abstracts condemned by county for use of the public.**—Any person or persons making any erasure, alteration, interlineation, or interpolation in any abstracts, copies, minutes, extracts, maps, or plats, or in any copies thereof filed in the clerk's office under the provisions of ss. 703.09-703.11 and 703.13-703.15 shall be guilty of the crime of forgery.

**History.**—s. 9, ch. 5414, 1905; RGS 5207; CGL 7325; s. 678, ch. 71-136.

**703.18 Refusing to make abstract.**—Any person or any employee thereof, who may be engaged in such business of making abstracts, writing, entries, or maps in any county in which the records have been destroyed, shall furnish such abstract or copy, or any portion thereof and a certificate and affidavit of the correctness thereof to any person from time to time applying therefor in the order of application, and without unnecessary delay, and for a reasonable consideration to be allowed therefor, which in no case shall exceed the sum of 60 cents for each deed, mortgage, or other instrument for which such abstract is furnished, and \$5 for the certificate and affidavit, and only one certificate and affidavit shall be necessary or shall be charged to or for all the entries, instruments, or items of the abstract of any chain of title, and any and all persons so engaged, whose business is hereby declared to stand upon a like footing with that of common carriers, who shall refuse so to do, if tender or payment be made to him or them of the amount demanded for such abstract or copy, and not exceeding the amount aforesaid, as soon as such amount is made known and ascertained, or of a sum adequate to cover such amount before it is ascertained, shall be guilty of the crime of extortion, and shall also be liable in any action for any and all damages, loss or injury which any person applying therefor may suffer or incur by reason of such failure to furnish such abstract or copy, as aforesaid, and shall also be subject to be compelled to furnish such abstract by mandamus or other legal proceedings.

**History.**—s. 7, ch. 4951, 1901; GS 3484; RGS 5358; CGL 7493; s. 679, ch. 71-136.

cf.—s. 1.01 "Person" defined.

**703.19 Filing untrue copies of abstracts ordered filed for use of public.**—Any person making copies of abstracts, copies, minutes, extracts, maps, or plats, where copies are prayed for under the provisions of ss. 703.09-703.11 and 703.13-703.15 and ordered filed in the office of the clerk of the circuit court for the use of the public, who shall not make the same truly and without alteration or interpolation, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 7, ch. 5414, 1905; RGS 5359; CGL 7494; s. 680, ch. 71-136.



## CHAPTER 704

## EASEMENTS

- 704.01 Common law, statutory easements defined and determined.
- 704.02 When lands enclosed, person using easement to maintain gates.
- 704.03 "Practicable" defined.
- 704.04 Judicial remedy and compensation to servient owner.
- 704.05 Easements and rights of entry.
- 704.06 Conservation easements; creation; acquisition; enforcement.
- 704.07 Solar easements; creation; remedies.

**704.01 Common law, statutory easements defined and determined.—**

(1) **IMPLIED GRANT OF WAY OF NECESSITY.**—The common law rule of an implied grant of a way of necessity is hereby recognized, specifically adopted, and clarified. Such an implied grant exists where a person has heretofore granted or hereafter grants lands to which there is no accessible right-of-way except over his land, or has heretofore retained or hereafter retains land which is inaccessible except over the land which he conveys. In such instances a right-of-way is presumed to have been granted or reserved. Such an implied grant or easement in lands or estates exists where there is no other reasonable and practicable way of egress, or ingress and same is reasonably necessary for the beneficial use or enjoyment of the part granted or reserved. An implied grant arises only where a unity of title exists from a common source other than the original grant from the state or United States; provided, however, that where there is a common source of title subsequent to the original grant from the state or United States, the right of the dominant tenement shall not be terminated if title of either the dominant or servient tenement has been or should be transferred for nonpayment of taxes either by foreclosure, reversion, or otherwise.

(2) **STATUTORY WAY OF NECESSITY EXCLUSIVE OF COMMON LAW RIGHT.**—Based on public policy, convenience, and necessity, a statutory way of necessity exclusive of any common law right exists when any land or portion thereof outside any municipality which is being used or desired to be used as a dwelling or for agricultural or for timber raising or cutting or stockraising purposes shall be shut off or hemmed in by lands, fencing, or other improvements of other persons so that no practicable route of egress or ingress shall be available therefrom to the nearest practicable public or private road. The owner or tenant thereof, or anyone in their behalf, lawfully may use and maintain an easement for persons, vehicles, stock, and electricity and telephone service over and upon the lands which lie between the said shut-off or hemmed-in lands and such public or private road by means of the nearest practical route, considering the use to which said lands are being put; and the use thereof, as aforesaid,

shall not constitute a trespass; nor shall the party thus using the same be liable in damages for the use thereof; provided that such easement shall be used only in an orderly and proper manner.

**History.**—s. 1, ch. 7326, 1917; RGS 4999; CGL 7088; s. 1, ch. 28070, 1953; s. 220, ch. 77-104.

**704.02 When lands enclosed, person using easement to maintain gates.**—When the land on which the statutory easement referred to in s. 704.01(2) shall be in use, or afterwards put to the use of enclosing farm or grove products or livestock, the owner or tenant of the dominant tenement using the easement of the same shall, if no compensation is paid under s. 704.04, when requested by the owner of the servient tenement, erect and maintain either a cattle guard or a gate at each place where said easement intersects a fence. Any such gate is to be kept closed when not opened for passage, and any such cattle guard or gate so erected and maintained shall be in substantial conformity with the character of the fence at such intersection.

**History.**—s. 2, ch. 7326, 1917; RGS 5000; CGL 7089; s. 2, ch. 28070, 1953.

**704.03 "Practicable" defined.**—For the purposes of this chapter the word "practicable," as used in s. 704.01, shall be held and construed to mean "without the use of bridge, ferry, turnpike road, embankment, or substantial fill."

**History.**—s. 3, ch. 7326, 1917; RGS 5001; CGL 7090; s. 3, ch. 28070, 1953.

**704.04 Judicial remedy and compensation to servient owner.**—When the owner or owners of such lands across which a statutory way of necessity under s. 704.01(2) is claimed, exclusive of the common law right, objects or refuses to permit the use of such way under the conditions set forth herein or until he receives compensation therefor, either party or the board of county commissioners of such county may file suit in the circuit court of the county wherein the land is located in order to determine if the claim for said easement exists, and the amount of compensation to which said party is entitled for use of such easement. Where said easement is awarded to the owner of the dominant tenement, it shall be temporary and exist so long as such easement is reasonably necessary for the purposes stated herein. The court, in its discretion, shall determine all questions including the type, extent, and location of the easement and the amount of compensation, provided that if either of said parties so requests in his original pleadings, the amount of compensation may be determined by a jury trial. The easement shall date from the time the award is paid.

**History.**—s. 4, ch. 28070, 1953.

**704.05 Easements and rights of entry.—**

(1) The rights and interests in land which are subject to being extinguished by marketable record title pursuant to the provisions of s. 712.04 shall include rights of entry or of an easement, given or reserved in any conveyance or devise of realty, when given or reserved for the purpose of mining, drilling,

exploring, or developing for oil, gas, minerals, or fissionable materials, unless those rights of entry or easement are excepted or not affected by the provisions of s. 712.03 or s. 712.04. However, the provisions of this section shall not apply to interests reserved or otherwise held by the state or by any of its agencies, boards, or departments.

(2) Any person claiming such a right of entry or easement may preserve and protect the same from extinguishment by the operation of this act by filing a notice in the form and in accordance with the procedures set forth in ss. 712.05 and 712.06. If the period for filing the notice would expire prior to January 1, 1977, the period shall be extended to January 1, 1977.

(3) This section is intended, and shall be deemed, to operate both prospectively and retrospectively.

(4) The provisions of this section shall not revive any right or interest that was extinguished by the operation of chapter 712 prior to June 6, 1975.

*History.*—s. 1, ch. 70-100; s. 1, ch. 73-140; s. 1, ch. 75-94.

#### **704.06 Conservation easements; creation; acquisition; enforcement.—**

(1) As used in this section, "conservation easement" means a right or interest in real property which is appropriate to retaining land or water areas predominantly in their natural, scenic, open, or wooded condition; retaining such areas as suitable habitat for fish, plants, or wildlife; or maintaining existing land uses and which prohibits or limits any or all of the following:

(a) Construction or placing of buildings, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground.

(b) Dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste, or unsightly or offensive materials.

(c) Removal or destruction of trees, shrubs, or other vegetation.

(d) Excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance in such manner as to affect the surface.

(e) Surface use except for purposes that permit the land or water area to remain predominantly in its natural condition.

(f) Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation.

(g) Acts or uses detrimental to such retention of land or water areas.

(2) Conservation easements are perpetual, undivided interests in property and may be created or stated in the form of a restriction, easement, covenant, or condition in any deed, will, or other instrument executed by or on behalf of the owner of the property, or in any order of taking. Such easements may be acquired in the same manner as other interests in property are acquired, except by condemnation or by other exercise of the power of eminent domain, and shall not be unassignable to other governmental bodies or agencies, charitable organizations, or trusts authorized to acquire such easements, for lack of benefit to a dominant estate.

(3) Conservation easements may be acquired by any governmental body or agency or by a charitable corporation or trust whose purposes include the con-

servation of land or water areas or the preservation of buildings or sites of historical or cultural significance.

(4) Conservation easements shall run with the land and be binding on all subsequent owners of the servient estate. No conservation easement shall be unenforceable on account of lack of privity of contract or lack of benefit to particular land or on account of the benefit being assignable. Conservation easements may be enforced by injunction or proceeding in equity or at law, and shall entitle the holder to enter the land in a reasonable manner and at reasonable times to assure compliance. A conservation easement may be released by the holder of the easement to the holder of the fee even though the holder of the fee may not be a governmental body or a charitable corporation or trust.

(5) All conservation easements shall be recorded and indexed in the same manner as any other instrument affecting the title to real property.

(6) The provisions of this section shall not be construed to imply that any restriction, easement, covenant, or condition which does not have the benefit of this section shall, on account of any provision hereof, be unenforceable.

*History.*—s. 1, ch. 76-169.

#### **704.07 Solar easements; creation; remedies.—**

(1) Easements obtained for the purpose of maintaining exposure of a solar energy device shall be created in writing and shall be subject to being recorded and indexed in the same manner as any other instrument affecting the title to real property. Solar easements may be preserved and protected from extinguishment by the filing of a notice in the form and in accordance with the provisions set forth in ss. 712.05 and 712.06.

(2) In addition to fulfilling the requirements of law relating to conveyance of interests in land, the instrument creating the solar easement shall include:

(a) A description of the properties, servient and dominant.

(b) The vertical and horizontal angles, expressed in degrees, at which the solar easement extends over the real property subject to the solar easement.

(c) A description of where the easement falls across the servient property in relation to existing boundaries and various setbacks established by the local zoning authority.

(d) The point on the dominant property from where the angles describing the solar easement are to be measured.

(e) Terms or conditions under which the solar easement is granted or will terminate.

(f) Any provisions for compensation of the owner of the property benefiting from the solar easement in the event of interference with the enjoyment of the solar easement or compensation of the owner of the property subject to the solar easement for maintaining the solar easement.

(3) No structure under construction on October 1, 1978, shall be subject to any solar easement recorded pursuant to this section.

*History.*—ss. 2, 3, ch. 78-309.

## CHAPTER 705

## SEIZED, ABANDONED, WRECKED, OR DERELICT PROPERTY

- 705.01 County court judge to order sale.
- 705.02 Mode of ascertaining salvage.
- 705.03 Disposition of proceeds of sale.
- 705.05 Sheriff to report to county court judge.
- 705.06 Recovery from person wrongfully in possession.
- 705.07 Finder of derelict goods failing to report.
- 705.08 Finder appropriating derelict goods.
- 705.09 Disposition and appraisal of property seized by the sheriff or by any other officer.
- 705.10 Notice of seizure and order to show cause.
- 705.11 Notice of seizure and order to show cause when owners of property are unknown.
- 705.12 Proceeding when claim filed.
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- 705.16 Abandoned property; supplemental procedure for removal and destruction.
- 705.17 Exceptions.
- 705.18 Disposal of personal property lost or abandoned on university or community college campuses; disposition of proceeds from sale thereof.
- 705.19 Abandonment of animals by owner; procedure for handling.

**705.01 County court judge to order sale.—**

(1) Whenever any wrecked derelict goods or abandoned motor vehicle shall be found in any county in this state, the county court judge shall ascertain the amount and situation of the same and by his written order shall cause the sheriff to take charge thereof and sell the same at public outcry, after giving a reasonable public notice of the time and place of such sale.

(2) Whenever any confiscated or contraband personal property of any description shall come into the possession or custody of the sheriff by seizure in the performance of his duty or otherwise which is subject to forfeiture and sale under any provision of the state constitution or statutes, such property shall be disposed of as hereinafter provided.

**History.**—s. 1, ch. 1005, 1859; RS 2010; GS 2532; RGS 3887; CGL 5794; s. 1, ch. 22031, 1943; s. 1, ch. 63-267; s. 26, ch. 73-334; s. 2, ch. 78-150.

**705.02 Mode of ascertaining salvage.**—In order to ascertain the quantum of salvage to be paid to the person finding and reporting such wrecked derelict goods, abandoned motor vehicle, or other personal property, the county court judge shall appoint two disinterested citizens of the county as arbitrators (who shall be authorized in case of disagreement to select an umpire), who shall determine the quantum of salvage, not to exceed one-half the proceeds of such goods, to be paid to the salvors or persons finding and reporting such goods, and the county court judge shall draw his order upon the sheriff, who shall pay the same for the amount so awarded in favor of the salvors or persons finding and reporting.

**History.**—s. 2, ch. 1005, 1859; RS 2011; GS 2533; RGS 3888; CGL 5795; s. 2, ch. 22031, 1943; s. 26, ch. 73-334.

**705.03 Disposition of proceeds of sale.**—The sheriff shall pay the balance of the proceeds of such sale, after paying to the county court judge 1 percent of the balance for his services, into the state treasury for the benefit of the state school fund and unless the same shall be claimed and proceedings initiated to validate said claim within 1 year and a day, the said proceeds shall be forever forfeited to the state school fund.

**History.**—s. 3, ch. 1005, 1859; RS 2012; GS 2534; RGS 3889; CGL 5796; s. 2, ch. 63-267; s. 26, ch. 73-334.

**705.05 Sheriff to report to county court judge.**—The sheriff shall place in the hands of the county court judge within 1 month of the time at which any money is received a statement of the amount of money received by him, the time at which, and the source from which, said money was received; which statement shall be kept by the county court judge, and a copy thereof forwarded without unnecessary delay to the Department of Banking and Finance.

**History.**—s. 6, ch. 344, 1850; RS 2014; GS 2536; RGS 3891; CGL 5798; ss. 12, 35, ch. 69-106; s. 26, ch. 73-334.

**705.06 Recovery from person wrongfully in possession.**—Whenever any property described in this chapter, chapter 706, or chapter 707, is ascertained to be wrongfully withheld and the person in possession refuses to give it up to the sheriff on demand, the county attorney of the county in which the property is situated, or the city attorney, if within a municipality, when required to do so by the sheriff, shall enter a suit for said property and prosecute it to a final recovery. All moneys derived from these sources shall be paid by the sheriff into the state treasury for the benefit of the state school fund.

**History.**—ss. 4, 5, ch. 344, 1850; RS 2015; GS 2537; RGS 3892; CGL 5799; s. 4, ch. 63-267.

**705.07 Finder of derelict goods failing to report.**—Whoever finds wrecked or derelict goods and fails to report them to the county court judge of the county wherein the same are found shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083.

**History.**—s. 4, ch. 1005, 1859; RS 2501; GS 3384; RGS 5232; CGL 7351; s. 681, ch. 71-136; s. 26, ch. 73-334.

**705.08 Finder appropriating derelict goods.**—Whoever finds wrecked or derelict goods and secretes or appropriates the same to his own use, or shall refuse to deliver the same when required, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083.

**History.**—RS 2502; GS 3385; RGS 5233; CGL 7352; s. 682, ch. 71-136.

**705.09 Disposition and appraisal of property seized by the sheriff or by any other officer.**—

(1) When personal property not subject to be summarily destroyed is seized by the sheriff pursuant to any of the provisions of the law of this state permitting forfeiture thereof, or when property seized by any other officer is delivered to the sheriff



under such provisions, the sheriff shall forthwith fix the approximate value thereof and make report thereof to the county court judge. The report shall contain a schedule of the property seized, a full statement of the facts giving cause for said seizure, the name and position of the person making the seizure, the name and address of the owners or persons having possession of the property seized, and names and addresses of all persons, firms, or corporations known to the sheriff to have an interest in the property seized.

(2) The sheriff shall hold the property seized pending an order of disposal by the court.

*History.*—s. 5, ch. 63-267; s. 26, ch. 73-334.

#### **705.10 Notice of seizure and order to show cause.—**

(1) The county court judge upon receiving the report and schedule of the sheriff shall treat it as a petition or libel in rem for the forfeiture of the property therein described. The report shall be sufficient as said petition or libel notwithstanding the fact that it may not contain a formal prayer or demand for forfeiture. The report shall be subject to amendment at any time before final hearing upon due notice to all interested parties.

(2) Upon the filing of the report, the county court judge shall cause to be issued a citation directed to all persons, firms, and corporations owning, having, or claiming any interest in or lien upon the seized property, giving notice of the seizure and directing all such persons, firms, and corporations to file their claims stating their particular interest in said property. All persons, firms, and corporations personally served shall file their claims within 20 days after receiving service of the citation. The citation shall set the time for filing a claim for interested parties not personally served not to exceed 30 days from the date the report was filed. Personal service shall be made on all parties in the state having liens noted upon a certificate of title as shown by the records of the Department of Highway Safety and Motor Vehicles.

*History.*—s. 5, ch. 63-267; s. 6, ch. 65-190; ss. 24, 35, ch. 69-106; s. 26, ch. 73-334.

#### **705.11 Notice of seizure and order to show cause when owners of property are unknown.—**

When personal property not subject to summary destruction is seized by the sheriff pursuant to any of the provisions of the law in this state permitting forfeiture of said property, or when property seized by any other officer is delivered to the sheriff, and the name of the owners of said property or the names of any person, firm, or corporation having an interest in or lien upon said property cannot be ascertained, the sheriff shall give notice of seizure and an order to show cause why the property should not be forfeited and sold by publication for a period of 30 days in the manner provided in chapter 50.

*History.*—s. 5, ch. 63-267.

**705.12 Proceeding when claim filed.—**When one or more claims are filed in the cause, the cause shall be tried upon the issues made thereby with the petition for forfeiture with any affirmative defenses being deemed denied without further pleading.

Judgment by default shall be entered against all other persons, firms, and corporations owning, claiming, or having an interest in and to the property seized, after which the cause shall proceed as in other common law cases; except any claimant shall prove to the satisfaction of the court that he did not know or have any reason to believe, at the time his right, title, interest, or lien arose, that the property was being used for, or in connection with, the violation of any of the statutes or laws of this state making such property subject to such forfeiture, and further, that at such time there was no reasonable reason to believe that said property might be used for such purpose. Where the owner of the property has been convicted of the violation of a statute or laws of the state which provide for the seizure and forfeiture of property, such conviction shall be prima facie evidence that each claimant had reason to believe that the property might be used for, or in connection with a violation of, such statutes and laws, and it shall be incumbent upon such claimant to satisfy the court that he was without knowledge of such conviction.

*History.*—s. 5, ch. 63-267.

**705.13 Judgment of forfeiture.—**On final hearing the report of the sheriff to the county court judge shall be taken as prima facie evidence that the property seized was, or had been, used in, or in connection with, the violation of the statutes and laws of this state subjecting the property involved to forfeiture and sale, and shall be sufficient predicate for a judgment of forfeiture in the absence of other proofs and evidence. The burden shall be upon the claimants to show that the property was not so used or, if so used, that they had no knowledge of such violation and no reason to believe that the seized property was or would be used for the violation of such statutes and laws. Where such properties are encumbered by a lien or retained title agreement under circumstances wherein the lienholder had no knowledge that the property was or would be used in violating such statutes and laws, and no reasonable reason to believe that it might be so used, then the court may declare a forfeiture of all the rights, titles, and interest, subject, however, to the lien of such innocent lienholder, or may direct the payment of such a lien from the proceeds of any sale of said property. The proceedings and judgment of forfeiture shall be in rem and shall be primarily against the property itself. Upon the entry of a judgment of forfeiture the court shall determine the disposition to be made of the property, which may include the destruction thereof, the sale thereof, the allocation thereof to some other governmental function or use, or otherwise, as the court may determine. If any of the property declared forfeited is of such a nature as to be readily adaptable for use in the office of sheriff, the sheriff of the county involved shall be allowed to requisition such items of the forfeited property before any other disposition is made under the judgment. The sheriff's requisition shall be filed before judgment, and the property requisitioned therein shall be allocated to the office of the sheriff in said judgment. The balance of the property shall be destroyed or sold or allocated to some other governmental function or use. Sales of such property shall be a public sale to the highest and best bidder for

cash after 2 weeks' public notice as the court may direct. Upon the application of any claimant, the court may fix the value of a forfeitable interest in the seized property and permit such claimant to redeem the said property upon the payment of a sum equal to said value which sum shall be disposed of as would the proceeds of the sale of said property under a judgment of forfeiture.

History.—s. 5, ch. 63-267; s. 26, ch. 73-334.

#### 705.14 Disposition of proceeds of forfeiture.

—All sums received from the sale or other disposition of the seized property shall be paid into the state treasury for the benefit of the state school fund and shall become a part thereof.

History.—s. 5, ch. 63-267.

**705.15 Fees for services.**—Fees for services required hereunder shall be the same as provided for sheriffs and clerks for like and similar services in other cases.

History.—s. 5, ch. 63-267.

#### 705.16 Abandoned property; supplemental procedure for removal and destruction.—

(1) In any county in the state, the rights, powers, and procedures set forth in this section shall be supplemental to and cumulative to the rights, powers, and procedures set forth elsewhere in this chapter and any amendments thereto.

(2) DEFINITIONS.—As used in this section:

(a) "Local government" means the board of county commissioners or the commission or council of any municipality in the county.

(b) "Abandoned property" means wrecked or derelict property having no value other than nominal salvage value, if any, which has been left abandoned and unprotected from the elements and shall include wrecked, inoperative, or partially dismantled motor vehicles, trailers, boats, machinery, refrigerators, washing machines, plumbing fixtures, furniture, and any other similar article which has no value other than nominal salvage value, if any, and which has been left abandoned and unprotected from the elements.

(c) "Public property" means lands and improvements owned by the Federal Government, the State of Florida, the county, or municipalities lying within the county and includes buildings, grounds, parks, playgrounds, streets, sidewalks, parkways, rights-of-way, and other similar property.

(d) "Enforcement officer" means sheriff, director of public safety, police chief, marshal, or any other officer designated by law, charter, ordinance, or resolution of the governing body of the local government to enforce the provisions of this section.

(3)(a) Whenever the enforcement officer of any local government shall ascertain that an article of abandoned property is present on public property within the limits of such governmental unit, or unincorporated area of the county, if a county, he shall cause a notice to be placed upon such article in substantially the following form:

NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED PROPERTY. This property, to wit: (setting forth brief description) is unlawfully upon public property known as (setting

forth brief description of location) and must be removed within 10 days from date of this notice; otherwise it shall be presumed to be abandoned property and will be removed and destroyed by order of (setting forth name of local government). Dated this: (setting forth the date of posting of notice). Signed: (setting forth name, title, address, and telephone number of enforcement officer).

Such notice shall be not less than 8 inches by 10 inches and shall be sufficiently weatherproof to withstand normal exposure to the elements. In addition to posting, the enforcement officer shall make reasonable effort to ascertain the name and address of the owner, and if such is reasonably available to the enforcement officer he shall mail a copy of such notice to the owner on or before the date of posting.

(b) If at the end of 10 days after posting such notice the owner or any person interested in the abandoned article or articles described in such notice has not removed the article or articles from public property or shown reasonable cause for failure so to do, the enforcement officer may cause the article or articles of abandoned property to be removed and destroyed, and the salvage value, if any, of such article or articles shall be retained by the local government to be applied against the cost of removal and destruction thereof.

(4)(a) Whenever the enforcement officer of any local government shall ascertain that an article or articles of abandoned property are present on private property within the limits of such governmental unit, or unincorporated area of the county if a county, in violation of any zoning ordinance or regulation, antilitter ordinance or regulation, or other similar ordinance or regulation of such local government, the enforcement officer shall cause a notice to be placed upon such article in substantially the following form:

NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED PROPERTY. This property, to wit: (setting forth brief description) located at (setting forth brief description of location) is improperly stored and is in violation of (setting forth ordinance or regulation violated) and must be removed within 10 days from date of this notice; otherwise it shall be presumed to be abandoned property and will be removed and destroyed by order of (setting forth name of local government). Dated this: (setting forth date of posting of notice). Signed: (setting forth name, title, address, and telephone number of enforcement officer).

Such notice shall not be less than 8 inches by 10 inches and shall be sufficiently weatherproof to withstand normal exposure to the elements for a period of 10 days. In addition to posting, the enforcement officer shall mail a copy of the notice to the owner of the real property upon which the abandoned articles are located, as shown by the real estate tax records used by the local government on or before the date of posting of such notice.

(b) If at the end of 10 days after posting such notice the owner or any person interested in the abandoned article or articles described in such notice has not removed the article or articles and com-

plied with the ordinance or regulation cited in the notice, the enforcement officer may cause the article or articles of abandoned property to be removed and destroyed, and the salvage value, if any, of such article or articles shall be retained by the local government to be applied against the cost of removal and destruction thereof.

(5) Whoever opposes, obstructs, or resists any enforcement officer or any person authorized by the enforcement officer in the discharge of his duties as provided in this section upon conviction shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(6) Any enforcement officer or any person authorized by the enforcement officer shall be immune from prosecution, civil or criminal, for reasonable, good faith trespass upon real property while in the discharge of duties imposed by this section.

(7) Any incorporated municipality in any county in the state may by ordinance adopt by reference any or all of the provisions of this section.

*History.*—ss. 1-7, ch. 69-324; s. 683, ch. 71-136.

**705.17 Exceptions.**—The provisions of ss. 705.01-705.16 of this chapter shall not be applied to any personal property lost or abandoned on the campus of any institution in the state university system.

*History.*—s. 1, ch. 71-75.

**705.18 Disposal of personal property lost or abandoned on university or community college campuses; disposition of proceeds from sale thereof.**—

(1) Whenever any lost or abandoned personal property shall be found on a campus of an institution in the state university system or a campus of a state-supported community college, the president of the institution or his designee shall take charge thereof and make a record of the date such property was found. If, within 30 days after such property is found,

it is not claimed by the owner, the president shall order it sold at public outcry after giving notice of the time and place of sale in a publication of general circulation on the campus and written notice to the owner if known. The rightful owner of such property may reclaim same at any time prior to sale.

(2) All moneys realized from such sale shall be placed in an appropriate fund and used solely for student scholarship and loan purposes.

*History.*—s. 1, ch. 71-75; s. 1, ch. 77-131.

**705.19 Abandonment of animals by owner; procedure for handling.**—

(1) Any animal placed in the custody of a licensed veterinarian for treatment, boarding, or other care, which shall be abandoned by its owner or his agent for a period of more than 10 days after written notice is given to the owner or his agent, at his last known address, may be turned over to the custody of the nearest humane society or dog pound in the area for disposal as such custodian may deem proper.

(2) The giving of notice to the owner, or the agent of the owner, of such animal by the licensed veterinarian as provided in subsection (1) shall relieve the veterinarian and any custodian to whom such animal may be given of any further liability for disposal. Such procedure by the licensed veterinarian shall not constitute grounds for disciplinary procedure under chapter 474.

(3) For the purpose of this section, the term "abandonment" means to forsake entirely or to neglect or refuse to provide or perform the legal obligations for care and support of an animal by its owner or his agent. Such abandonment shall constitute the relinquishment of all rights and claim by the owner to such animal.

*History.*—ss. 1, 2, ch. 79-228.

<sup>1</sup>*Note.*—Section 2, ch. 79-228, provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended by ch. 77-457.



## CHAPTER 706

## WRECKED COTTON; LUMBER ADRIFT; BOATS AND VESSELS ADRIFT

- 706.01 Finder of wrecked cotton to advertise.
- 706.02 Owner to pay expenses and salvage.
- 706.03 Sale.
- 706.04 Persons to adopt brand for lumber.
- 706.05 Damages for fraudulently using stamp.
- 706.06 Booms may be constructed.
- 706.07 Public custodian for certain ports.
- 706.08 To what ports ss. 706.04-706.15 apply.
- 706.09 Custodian; duties as to vessels.
- 706.10 Custodian; duties as to lost timber.
- 706.11 Notice of finding lost timber.
- 706.12 Stamp to be evidence.
- 706.13 Fees.
- 706.14 Sale of lost timber.
- 706.15 Picking up lumber adrift.
- 706.16 Ports having no public custodian; lumber, etc., not to be stayed before reaching the sea.
- 706.17 Lumber taken up in sea, etc., to be advertised.
- 706.18 Sale and disposition of proceeds.
- 706.19 Selling rafted lumber adrift.
- 706.20 Proceedings like those for estrays.

**706.01 Finder of wrecked cotton to advertise.**  
—Persons taking up cotton afloat in the rivers of this state shall place it in a secure place out of the weather and give early notice, by advertisement at the port to which said cotton was destined, of the finding of the same, giving the marks or brands on said cotton, together with the place of finding and the name of the finder.

**History.**—s. 1, March 4, 1841; RS 2016; GS 2538; RGS 3893; CGL 5800.

**706.02 Owner to pay expenses and salvage.**  
The person finding said cotton shall deliver it to the owner, on his paying the expense of advertisement and the sum of \$5 for each bale so saved.

**History.**—s. 2, March 4, 1841; RS 2017; GS 2539; RGS 3894; CGL 5801.

**706.03 Sale.**—If no owner shall appear within 3 months after the time of such advertisement, the person finding shall expose the same at public auction to the highest bidder, and shall hold the proceeds, after the payment of proper costs and charges and the salvage aforesaid, for the benefit of the owner.

**History.**—s. 3, March 4, 1841; RS 2018; GS 2540; RGS 3895; CGL 5802.

**706.04 Persons to adopt brand for lumber.**  
Any person floating lumber, logs, or timber down the current of rivers, streams, or watercourses in the state may adopt, to his exclusive use, a particular mark, brand, or stamp to be used and applied on all such lumber, logs, or timber, to distinguish and designate his ownership thereof; but such person adopting any such mark, brand, or stamp shall have it recorded in the office of the clerk of the circuit court, describing it particularly and its usual mode of appli-

cation. The clerk shall receive a service charge as provided in s. 28.24.

**History.**—s. 2, ch. 507, 1853; RS 2019; s. 1, ch. 4174, 1893; GS 2541; RGS 3896; CGL 5803; s. 34, ch. 70-134.

**706.05 Damages for fraudulently using stamp.**—Any person who shall after such record knowingly use said mark, brand, or stamp shall be liable in double damages to the party aggrieved.

**History.**—RS 2020; s. 2, ch. 4174, 1893; GS 2542; RGS 3897; CGL 5804.

**706.06 Booms may be constructed.**—Owners of timber or lumber floating down rivers or watercourses may make use of floating booms on such streams for the purpose of securing such timber or lumber from loss, but such booms shall not be used in such manner as to cause any unnecessary delay to boats and vessels engaged in the navigation of such streams, nor shall they remain stretched out upon or across such streams any longer than is absolutely necessary to secure the timber or lumber from loss.

**History.**—s. 3, ch. 507, 1853; RS 2021; GS 2543; RGS 3898; CGL 5805.

**706.07 Public custodian for certain ports.**—The governor shall appoint, subject to confirmation by the Senate, for each port in the state into which have or shall come during any calendar year not fewer than 50 vessels of 500 tons burden each, a public custodian of lost timber and lumber, who shall give a bond in the sum of \$1,000 to the governor for the faithful discharge of his duties, and shall hold his office for 4 years, unless sooner removed by the governor for good cause.

**History.**—s. 1, ch. 5171, 1903; GS 2544; RGS 3899; CGL 5806; s. 11, ch. 77-85.

**706.08 To what ports ss. 706.04-706.15 apply.**  
—Sections 706.04-706.15 shall apply to all ports, and none other, into which have come during the past 5 years vessels of 500 tons burden and upwards, at the average of not less than 250 vessels per year, according to the records of the United States Customhouse at or nearest the port for which such appointment shall be made.

**History.**—s. 2, ch. 4803, 1899; GS 2552; RGS 3905; CGL 5812.

**706.09 Custodian; duties as to vessels.**—The said public custodian shall keep in his office a register book, wherein he shall immediately upon the arrival of any vessel record the name, date of arrival, master, nationality, and the tonnage thereof, and the cargo stamp to be furnished as hereinafter provided. The said public custodian of timber and lumber shall furnish to the master of each vessel loading cargo from the water a suitable stamp, with which the master of the said vessel shall cause to be stamped all timber and lumber immediately upon its receipt alongside to be loaded as above set forth.

**History.**—s. 2, ch. 3899, 1889; RS 2023; GS 2545; RGS 3900; CGL 5807.

**706.10 Custodian; duties as to lost timber.**—The said public custodian, either by himself or his agent, shall keep at all times a careful watch over the waters of his port, and shall recover and place in

a boom to be kept by him for the purpose, convenient to the shipping, all timber and lumber that shall be found adrift in said waters, and safely keep the same until disposed of in the manner hereinafter provided; but nothing in this section contained shall authorize the public custodian, or his agent, or any other person, to take possession of any lumber or timber afloat upon the waters of such port, or its tributaries, when the owner thereof, on his bailee or agent, shall be in possession, view or immediate pursuit thereof.

**History.**—s. 3, ch. 3899, 1889; RS 2024; s. 2, ch. 5171, 1903; GS 2546; RGS 3901; CGL 5808.

**706.11 Notice of finding lost timber.**—The said public custodian of timber and lumber immediately upon the recovery of any timber or lumber shall give public notice for 5 days in some newspaper published at said port giving the description, quantity, and stamp of such timber or lumber, and stating that unless said timber or lumber be called for and identified by the owner within 5 days, the same will be sold as provided in s. 706.14, and that if the proceeds of such sale be not called for by the person lawfully entitled to the same within 90 days after such sale, the same will be forfeited and paid into the county treasury for the use of district schools; and the owners of any such timber or lumber shall be entitled to have the same delivered when at said boom upon paying to the said custodian the fees hereinafter provided.

**History.**—s. 4, ch. 3899, 1889; RS 2025; s. 3, ch. 5171, 1903; GS 2547; RGS 3902; CGL 5809; s. 1, ch. 69-300.

**706.12 Stamp to be evidence.**—The stamp furnished and used under the provisions of s. 706.09 when appearing upon timber or lumber adrift shall be, in the courts of the state, prima facie evidence of ownership.

**History.**—s. 5, ch. 3899, 1889; RS 2026; GS 2548; RGS 3903; CGL 5810.

**706.13 Fees.**—The said public custodian of lost timber and lumber shall be entitled to demand and receive from the master of each vessel using the stamp provided for in this chapter the sum of \$2 for the use of the same while engaged in loading, and for each stick of sawn timber recovered and delivered the sum of 75 cents and for each stick of hewn timber recovered and delivered the sum of \$1.50, and for lumber recovered and delivered the sum of \$3 per thousand superficial feet measurement, \$2.50 for each chain and 5 cents for each iron dog recovered and delivered, and \$5 for each ship's boat or yawl recovered and delivered, and the said custodian shall have a first lien upon timber, lumber, chains, iron dogs, and boats or yawls so recovered by him for all his fees and dues for same until the same be fully paid, and he shall not be required to deliver any timber, lumber, chains, iron dogs, boats or yawls until such payment is made.

**History.**—s. 6, ch. 4044, 1891; s. 1, ch. 4803, 1899; GS 2549; RGS 3904; CGL 5811; am. s. 7, ch. 22858, 1945.

**706.14 Sale of lost timber.**—After any lost timber or lumber has been advertised as above required for the period of 5 days, and no owner or claimant has appeared, the custodian shall sell the same at public sale, after public notice as aforesaid, adver-

tised for 5 days, for the benefit of whom it may concern, for which service he shall receive from the proceeds of such sale 5 percent on the gross amount of such sale; the net proceeds of such sales to be held and paid by him to such person as shall be lawfully entitled to the same.

**History.**—s. 7, ch. 3899, 1889; s. 3, ch. 4044, 1891; RS 2028; GS 2551; RGS 3906; CGL 5813.

**706.15 Picking up lumber adrift.**—No person other than the custodian of lost timber, or his agents, in ports where such custodian has been appointed, shall pick up, recover, or in any manner interfere with any timber or lumber found adrift in the waters of such port, which has been stamped as required by law or which has not been stamped. Any person violating the provisions of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 8, ch. 3899, 1889; RS 2503; s. 4, ch. 5171, 1903; GS 3386; RGS 5234; CGL 7353; s. 684, ch. 71-136.

**706.16 Ports having no public custodian; lumber, etc., not to be stayed before reaching the sea.**—In ports having no public custodian, no person other than the owner or his agents shall arrest, stay or take possession of any sawed lumber in rafts, hewed timber, round sawmill logs or spars adrift before the same shall have reached the mouths or outlets of the rivers and streams and have passed out into the open sea or bays where the said rivers or streams empty their waters.

**History.**—s. 1, ch. 507, 1853; RS 2030; GS 2552; RGS 3907; CGL 5814.

**706.17 Lumber taken up in sea, etc., to be advertised.**—Whenever any person shall find any rafts of the timber or lumber mentioned in s. 706.16 in the said open sea or bays, he shall secure it in the place where found, or in the nearest place of safety, and shall proceed to advertise it at the door of the courthouse of the county wherein it was found, stating the kind and probable quantity of lumber, the place where found and where deposited.

**History.**—s. 1, Feb. 10, 1834; RS 2031; GS 2553; RGS 3908; CGL 5815.

**706.18 Sale and disposition of proceeds.**—If after the expiration of 60 days from the date of the advertisement no person shall claim and establish his right of property to said timber or lumber to the satisfaction of the county court judge (to prove which right the person claiming to be the owner of said timber or lumber shall not be required to produce testimony upon oath to the identity thereof, but such circumstantial proof as the nature of the case admits) then the finder may take it to the nearest market and deliver it to the county court judge, who shall forthwith sell the same to the best advantage, pay to the finder all necessary and reasonable expenses, reserve to himself 5 percent as compensation for his services, and place the balance in the hands of the clerk of the circuit court, whose receipt he shall take. But if before the expiration of the 60 days the owner shall appear and establish his right to said lumber such owner shall pay all expenses and reasonable charges for securing the same, to be determined, in case of difference between the parties, by an arbitrator appointed by each; but if after the expiration of another term of 60 days no right shall have

yet been established to said lumber, then the balance of said money remaining in the hands of the clerk shall be paid over, one-half to the finder and the other half to the county treasury, to be applied in common with other funds to county purposes.

**History.**—s. 2, Feb. 10, 1834; RS 2032; GS 2554; RGS 3909; CGL 5816; s. 26, ch. 73-334.

**706.19 Selling rafted lumber adrift.**—Whoever finding any timber or lumber adrift, outside of ports for which a public custodian for lost timber and lumber is appointed, sells it without complying with the law relative to lumber adrift, or disposes of it, in the place or places where found, as his timber or lumber, or appropriates it to his own use, shall be

guilty of larceny.

**History.**—s. 3, Feb. 10, 1834; RS 2446; GS 3294; RGS 5128; CGL 7229; s. 685, ch. 71-136.

**706.20 Proceedings like those for estrays.**—If any person shall take up any boat or other vessel adrift, he shall as in the case of estrays, make application to the county court judge of the county where such boat or vessel was taken up for his warrant to have the same valued and described by her kind, burden, and build, and shall proceed in all other respects and shall have the same benefits as directed in the case of estrays.

**History.**—s. 8, Nov. 21, 1828; RS 2033; GS 2555; RGS 3910; CGL 5817; s. 26, ch. 73-334.



## CHAPTER 707

## ESTRAYS

- 707.18 Owners of strayed animals may enter pasture of another to seek for same.
- 707.19 Owner of strayed animals to notify owner of pasture of intention to enter.
- 707.20 Duty of owner of pasture to facilitate entry.
- 707.21 Refusing entrance to pasture to seek strayed domestic animals.

**707.18 Owners of strayed animals may enter pasture of another to seek for same.**—It shall be lawful for the owner or owners of any cattle or other domestic animals or the agent or agents of said owners to enter the pasture of another for the sole purpose of seeking and recovering any cattle or other domestic animals that may have strayed or broken into, or which may have been driven into, such inclosure, inadvertently or otherwise and to drive from such inclosure any cattle or other domestic animals belonging to such owners or under the control of such agent or agents so entering.

**History.**—s. 1, ch. 5417, 1905; RGS 3928; CGL 5835.

**707.19 Owner of strayed animals to notify owner of pasture of intention to enter.**—The owners of any cattle or other domestic animals or their agent or agents, desiring to enter any pasture of another for the purpose as set forth in s. 707.18, shall

notify the owner or owners or their agent or agents of the time and place they desire to enter such pasture for the purposes set forth in said section. Such notice may be given verbally or in writing.

**History.**—s. 2, ch. 5417, 1905; RGS 3929; CGL 5836.

**707.20 Duty of owner of pasture to facilitate entry.**—The owner or owners, their agent or agents shall facilitate the entering into any pasture owned by them or controlled by their agent or agents when request is made by any party or parties entitled to the benefits of s. 707.18, the request to be made according to s. 707.19.

**History.**—s. 3, ch. 5417, 1905; RGS 3930; CGL 5837.

**707.21 Refusing entrance to pasture to seek strayed domestic animals.**—Any person or owner of any pasture, who refuses to allow entrance or who hinders any owner or owners of cattle or other domestic animals, or their agent or agents, who have complied with s. 707.19, either by their own acts or the acts of their agent or agents, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Provided, that this section shall not apply to any county having no-fence districts.

**History.**—ss. 1, 4, ch. 5417, 1905; RGS 5238; CGL 7357; s. 686, ch. 71-136.

## CHAPTER 708

## MARRIED WOMEN'S PROPERTY

- 708.05 Husband not liable for antenuptial debts of wife.  
 708.08 Married women's rights; separate property; release of dower.  
 708.09 Same; agreements with husband, power of attorney, etc.  
 708.10 Same; construction of law.

**708.05 Husband not liable for antenuptial debts of wife.**—The husband shall not be liable to pay the debts of the wife contracted before marriage, but the property of the wife shall be subject to such debts.

**History.**—s. 5, March 6, 1845; RS 2073; GS 2591; RGS 3950; CGL 5869.

**708.08 Married women's rights; separate property; release of dower.**—

(1) Every married woman is empowered to take charge of and manage and control her separate property, to contract and to be contracted with, to sue and be sued, to sell, convey, transfer, mortgage, use, and pledge her real and personal property and to make, execute, and deliver instruments of every character without the joinder or consent of her husband in all respects as fully as if she were unmarried. Every married woman has and may exercise all rights and powers with respect to her separate property, income, and earnings and may enter into, obligate herself to perform, and enforce contracts or undertakings to the same extent and in like manner as if she were unmarried and without the joinder or consent of her husband. Any claim or judgment against a married woman shall not be a claim or lien against her inchoate right of dower in her husband's separate property. All conveyances, contracts, transfers, or mortgages of real property or any interest in it, executed by a married woman without the joinder of her husband after the effective date of the 1968 Constitution of Florida, are as valid and effective as though the husband had joined.

(2) Any married woman having a right of dower in real property may relinquish it by joining in a conveyance or mortgage of the property or by a sepa-

rate instrument without the joinder of her husband, executed in the same manner as conveyances.

**History.**—s. 1, ch. 21932, 1943; s. 2, ch. 70-4.  
 cf.—s. 689.01 et seq. Conveyances of real property.  
 s. 689.11 Conveyance between husband and wife.  
 s. 732.111 Dower and curtesy abolished.

**708.09 Same; agreements with husband, power of attorney, etc.**—Every married woman may enter into agreements and contracts with her husband, may become the partner of her husband or others, may give a power of attorney to her husband, and may execute powers conferred upon her by her husband, including the power to execute and acknowledge all instruments, including relinquishments of dower, conveying, transferring, or encumbering property, or any interest in it, owned by her, or by herself and her husband as tenants by the entirety, or by her husband. All powers of attorney heretofore executed by a wife to her husband and vice versa, and the execution of all documents executed thereunder, are hereby validated and confirmed.

**History.**—s. 1, ch. 21696, and s. 2, ch. 21932, 1943; s. 3, ch. 70-4.  
 cf.—s. 732.111 Dower and curtesy abolished.

**708.10 Same; construction of law.**—This law shall not be construed as:

- (1) Relieving a husband from any duty of supporting and maintaining his wife and children;
- (2) Abolishing estates by the entireties or any of the incidents thereof;
- (3) Abolishing dower or any of the incidents thereof;
- (4) Changing the rights of either husband or wife to participate in the distribution of the estate of the other upon his death, as may now or hereafter be provided by law;
- (5) Dispensing with the joinder of husband and wife in conveying or mortgaging homestead property.

**History.**—s. 3, ch. 21932, 1943.  
 cf.—s. 732.111 Dower and curtesy abolished.

## CHAPTER 709

## POWERS OF ATTORNEY AND SIMILAR INSTRUMENTS

- 709.01 Power of attorney; authority of nominee when principal dead.
- 709.015 Power of attorney; authority of agent when principal listed as missing.
- 709.02 Power of appointment; method of release.
- 709.03 Same; property held in trust.
- 709.04 Same; effect of revocation.
- 709.05 Same; prior powers validated.
- 709.06 Same; powers included in law.
- 709.07 Same; effect on title to property.
- 709.08 Durable family power of attorney.

**709.01 Power of attorney; authority of nominee when principal dead.**—If any agent, constituted by power of attorney or other authority, shall do any act for his principal which would be lawful if such principal were living, the same shall be valid and binding on the estate of said principal, although he or she may have died before such act was done; provided, the party treating with such agent dealt bona fide, not knowing at the time of the doing of such act that such principal was dead. An affidavit, executed by the attorney in fact or agent setting forth that he has not or had not, at the time of doing any act pursuant to the power of attorney, received actual knowledge or actual notice of the death of the principal, or notice of any facts indicating his death, shall in the absence of fraud be conclusive proof of the absence of knowledge or notice by the agent of the death of the principal at such time. If the exercise of the power requires the execution and delivery of any instrument which is recordable under the laws of this state, such affidavit shall likewise be recordable. No report or listing, either official or otherwise, of "missing" or "missing in action" regarding any person in connection with any activity pertaining to or connected with the prosecution of any hostilities in which the United States is then engaged, as such words "missing" or "missing in action" are used in military parlance, shall constitute or be interpreted as constituting actual knowledge or actual notice of the death of such principal, or notice of any facts indicating the death of such person, or shall operate to revoke the agency.

History.—s. 1, ch. 23011, 1945; s. 1, ch. 67-453.

**709.015 Power of attorney; authority of agent when principal listed as missing.**—

(1) The acts of an agent under a power of attorney or other authority shall be as valid and as binding on the principal or his estate as if the principal were alive and competent if, in connection with any activity pertaining to hostilities in which the United States is then engaged, the principal is officially listed or reported by a branch of the United States Armed Forces in a missing status as defined in 37 U.S.C. s. 551 or 5 U.S.C. s. 5561, regardless of whether the principal is then dead, alive, or incompetent.

(2) If the exercise of the power of attorney requires the execution and delivery of a recordable instrument, the power of attorney shall be executed with the same formalities as required of the instru-

ment itself and recorded pursuant to the laws of Florida.

(3) Upon request of the person dealing with the agent, the agent shall make an affidavit that he has not received notice, and has no knowledge, that the principal is incompetent. In the absence of fraud, the affidavit shall be conclusively presumed to establish the agent's lack of notice or knowledge of the principal's incompetence.

(4) Homestead property held as tenants by the entireties shall not be conveyed by a power of attorney regulated by this section until 1 year following the first official report or listing of the principal as missing or missing in action. An affidavit of an officer of the armed forces having maintenance and control of the records pertaining to those missing or missing in action that the principal has been in that status for a given period shall be a conclusive presumption of that fact.

(5) This section applies to powers of attorney heretofore and hereafter executed.

History.—s. 1, ch. 70-33.

**709.02 Power of appointment; method of release.**—Powers of appointment over any property, real, personal, intangible or mixed, may be released, in whole or in part, by a written instrument signed by the donee or donees of such powers. Such written releases shall be signed in the presence of two witnesses but need not be sealed, acknowledged or recorded in order to be valid, nor shall it be necessary to the validity of such releases for husbands of married donees to join such donees in the execution of releases, in whole or part, of powers of appointment.

History.—s. 1, ch. 23007, 1945.

**709.03 Same; property held in trust.**—If property subject to a power of appointment is held in trust by a person, firm or corporation other than the donee or donees of the power, a written release, in whole or in part, of a power to appoint the same shall be delivered to such trustee or trustees before the written release becomes legally effective. In no other instance shall a delivery of a release, in whole or in part, of a power of appointment be necessary to the validity of such release.

History.—s. 2, ch. 23007, 1945.

**709.04 Same; effect of revocation.**—Any power of appointment wholly released by a written instrument signed by the donee or donees of such power shall be, in legal effect, completely revoked, and shall not, after such release, be subject to being exercised in any manner whatsoever. Any power of appointment partially released by a written instrument signed by the donee or donees of such power shall be, in legal effect, as to such released part, completely revoked, and shall not after such release be subject to being exercised in any manner whatsoever as to such released part.

History.—s. 3, ch. 23007, 1945.



**709.05 Same; prior powers validated.**—All releases, in whole or in part, of powers of appointment heretofore executed in a manner that conforms with the provisions of this law be and they are hereby validated and shall be given the same force and effect as if executed subsequently to the effective date of this law.

*History.*—s. 4, ch. 23007, 1945.

**709.06 Same; powers included in law.**—Powers of appointment referred to in this law shall include not only those recognized as such by general law but also those designated as such under the Tax Law of the United States.

*History.*—s. 5, ch. 23007, 1945.

**709.07 Same; effect on title to property.**—No such release, in whole or in part, of a power of appointment shall affect the title to property of any bona fide purchaser for value who does not have notice or knowledge of such release.

*History.*—s. 7, ch. 23007, 1945.

**709.08 Durable family power of attorney.**—

(1) A principal may create a durable family power of attorney designating his spouse, parent, child, whether natural or adopted, brother, or sister his attorney in fact by executing a power of attorney. Such power of attorney shall be in writing, shall state the relationship of the parties, and shall include the words, "This durable family power of attorney shall not be affected by disability of the principal except as provided by statute" or similar words clearly showing the intent of the principal that the power conferred on the attorney in fact shall be exercisable from the date specified in the instrument, notwithstanding a later disability or incapacity of the principal, unless otherwise provided by statute. All acts done by the attorney in fact pursuant to the power conferred during any period of disability or incompetence shall have the same effect, and inure to the benefit of and bind the principal or his heirs,

devisees, and personal representatives, as if the principal were competent and not disabled.

(2) The durable family power of attorney shall be nondelegable and shall be valid until such time as the donor shall die, revoke the power, or be adjudged incompetent. At any time, a petition to determine competency of the donor or a petition to appoint a guardian for the donor has been filed, the durable family power of attorney shall be temporarily suspended. Notice of the pending petition shall be given to all known donees of the power. The power shall remain suspended until the petition is dismissed, withdrawn, or the donor adjudged competent, at which time the power shall be automatically reinstated and any exercise of the power shall be valid. If the donor is adjudged incompetent, the power shall be automatically revoked.

(3) Property subject to the durable family power of attorney shall include all real and personal property owned by the donor, the donor's interest in all property held in joint tenancy, the donor's interest in all nonhomestead property held in tenancy by the entirety, and all property over which the donor holds a power of appointment. Nothing in this section shall permit the donee of a durable family power of attorney, when the donor is married, to mortgage or convey homestead property without the joinder of the spouse or the spouse's legal guardian, but the joinder may be accomplished through the exercise of a power of attorney.

(4) Whenever an emergency shall arise between the time a petition is filed and an adjudication is made regarding the competency of the donor, the donee of the durable family power of attorney may petition the court for permission to exercise the power. The petition shall specify the emergency, the property involved, and the proposed action of the donee. No exercise of the power by the donee during this time period shall be valid without the permission of the court.

*History.*—s. 1, ch. 74-245; s. 1, ch. 77-272.

CHAPTER 710  
GIFTS TO MINORS

- 710.01 Short title.
- 710.02 Definitions.
- 710.03 Manner of making gifts.
- 710.04 Effect of gift.
- 710.05 Duties and powers of custodian.
- 710.06 Custodian's expenses, compensation, bond and liabilities.
- 710.07 Exemption of third persons from liability.
- 710.08 Resignation, death or removal of custodian; bond; designation of successor custodian.
- 710.09 Accounting by custodian.
- 710.10 Construction.

**710.01 Short title.**—This act may be cited as the "Florida Gifts to Minors Act."

*History.*—s. 11, ch. 57-53.

**710.02 Definitions.**—In this act, unless the context otherwise requires:

(1) An "adult" is a person who has attained the age of 18 years.

(2) A "bank" is a bank, trust company, national banking association, savings or industrial bank.

(3) A "broker" is a person lawfully engaged in the business of effecting transactions in securities for the account of others. The term includes a bank which effects such transactions. The term also includes persons lawfully engaged in buying and selling securities for his own account, through a broker or otherwise, as a part of regular business.

(4) A "savings and loan association" is a savings and loan association organized under the laws of this state or the United States, and located in this state.

(5) "Court" means the Circuit Court.

(6) The "custodial property" includes:

(a) All securities, money, life insurance policies and annuity contracts under the supervision of the same custodian for the same minor as a consequence of a gift made to the minor in a manner prescribed by this act;

(b) The income from custodial property; and

(c) The proceeds, immediate and remote, from the sale, exchange, conversion, investment, reinvestment, surrender or other disposition of such securities, money, life insurance policies and annuity contracts and income.

(7) A "custodian" is a person so designated in a manner prescribed by this act.

(8) A "guardian" of a minor includes the general guardian, guardian, tutor or curator of his property, estate or person.

(9) An "issuer" is a person who places or authorizes the placing of his name on a security (other than as a transfer agent) to evidence that it represents a share, participation or other interest in his property or in an enterprise or to evidence his duty or undertaking to perform an obligation evidenced by the security, or who becomes responsible for or in place of any such person.

(10) A "legal representative" of a person is his executor or administrator, general guardian, guardian, committee, conservator, tutor or curator of his property or estate.

(11) A "member" of a minor's family means any of the minor's parents, grandparents, brothers, sisters, uncles and aunts, whether of the whole blood or the half blood, or by or through legal adoption.

(12) A "minor" is a person who has not attained the age of 18 years.

(13) A "security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, (certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease), collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation in, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing. The term does not include a security of which the donor is the issuer. A security is in "registered form" when it specifies a person entitled to it or to the rights it evidences and its transfer may be registered upon books maintained for that purpose by or on behalf of the issuer.

(14) A "transfer agent" is a person who acts as authenticating trustee, transfer agent, registrar or other agent for an issuer in the registration of transfers of its securities or in the issue of new securities or in the cancellation of surrendered securities.

(15) A "trust company" is a bank authorized to exercise trust powers in Florida.

(16) "Life insurance policies and annuity contracts" mean only life insurance policies and annuity contracts on the life of a minor or a member of the minor's family as herein defined.

(17) A "credit union" is a credit union organized under the laws of this state or the United States and located in the state.

*History.*—s. 1, ch. 57-53; s. 1, ch. 61-125; s. 1, ch. 65-354; s. 1, ch. 74-31; s. 1, ch. 74-142.

**710.03 Manner of making gifts.**—

(1) An adult person may, during his lifetime, make a gift of a security or money, a life insurance policy or an annuity contract to a person who is a minor on the date of the gift:

(a) If the subject of the gift is a security in registered form, by registering it in the name of the donor, an adult member of the minor's family, a guardian of the minor or a trust company, followed, in substance, by the words: "as custodian for ..... under the Florida Gifts to Minors Act";

(b) If the subject of the gift is a security not in registered form, by delivering it to an adult member, other than the donor, of the minor's family, a guardian of the minor or trust company, accompanied by a statement of gift in the following form, in substance, signed by the donor and the person designated as custodian:

**"GIFT UNDER THE FLORIDA GIFTS TO MINORS ACT**

.....(name of donor)..... hereby delivers to .....(name of custodian)..... as custodian for ..... under the Florida Gifts to Minors Act, the following security(ies): (insert an ap-

propriate description of the securities or security delivered sufficient to identify it or them)

.....(signature of donor).....

.....(name of custodian)..... hereby acknowledges receipt of the above described security(ies) as custodian for the above minor under the Florida Gifts to Minors Act.  
Dated: .....(signature of custodian).....

(c) If the subject of the gift is money, by paying or delivering it to a broker, savings and loan association, bank, or credit union for credit to an account in the name of the donor, an adult member of the minor's family, a guardian of the minor or a bank with trust powers, followed, in substance, by the words: "as custodian for ..... under the Florida Gifts to Minors Act."

(d) If the subject of the gift is a life insurance policy or an annuity contract, the ownership of the policy or contract shall be registered by the donor of such policy or contract in his own name, in the name of an adult member of the minor's family, a guardian of the minor or a bank or trust company, followed by the words "as custodian for .....(name of minor)..... under the Florida Gifts to Minors Act," and such policy or contract shall be delivered to the person in whose name it is thus registered as custodian. If the policy or contract is registered in the name of the donor, as custodian, such registration shall of itself constitute the delivery required by this subsection.

(2) An adult person may, in his will or in a trust agreement, provide for a gift of a security or money, a life insurance policy, or an annuity contract under this act to a person who is a minor on the date of the gift. In such event, the legal representative or trustee, as the case may be, shall make distribution by transferring the subject of the gift to the custodian in the form and manner provided in subsection (1). If the testator or settlor fails to designate a custodian or if the designated custodian is not eligible, dies, or becomes legally incapacitated before the minor attains the age of majority, the guardian of the minor shall be custodian if the minor has a guardian who is otherwise eligible or, if the minor has no guardian, the legal representative or trustee, as the case may be, shall designate the custodian from among those persons eligible to become successor custodian for the minor under this act. The receipt of the custodian constitutes a sufficient release and discharge for the money or security, life insurance policy, or annuity contract distributed to the custodian.

(3) A trustee of a trust heretofore or hereafter created of which a minor is a beneficiary may pay or transfer to a custodian for the minor, in the form and manner prescribed in paragraphs (a), (b), (c) or (d) of subsection (1), any money or security, life insurance policy, or annuity contract then distributable to the minor, if the trustee deems it to be for the best interests of the minor and the testator or settlor has not expressly directed otherwise in the trust instrument. The trustee shall designate the guardian of the minor as custodian if the minor has a guardian who is otherwise eligible. If the minor does not have such a guardian, the trustee shall designate the custodian from among those persons eligible to become successor custodian for the minor under this act. The

receipt of the custodian constitutes a sufficient release and discharge for the money or security, life insurance policy, or annuity contract distributed to the custodian.

(4) Any gift made in a manner prescribed in subsection (1) may be made to only one minor and only to one person as custodian.

(5) A donor who makes a gift to a minor in a manner prescribed in subsection (1) shall promptly do all things within his power to put the subject of the gift in the possession and control of the custodian, but neither the donor's failure to comply with this subsection, nor his designation of an ineligible person as custodian, nor renunciation by the person designated as custodian affects the consummation of the gift.

**History.**—s. 2, ch. 57-53; s. 2, ch. 61-125; s. 2, ch. 65-354; s. 1, ch. 73-202; s. 2, ch. 74-142.

#### 710.04 Effect of gift.—

(1) A gift made in a manner prescribed in this act is irrevocable and conveys to the minor indefeasible vested legal title to the custodial property given, but no guardian of the minor has any right, power, duty or authority with respect to the custodial property except as provided in this act.

(2) By making a gift in a manner prescribed in this act, the donor incorporates in his gift all the provisions of this act and grants to the custodian, and to any issuer, transfer agent, bank, broker, savings and loan association, credit union, or third person dealing with a person designated as custodian, the respective powers, rights and immunities provided in this act.

**History.**—s. 3, ch. 57-53; s. 3, ch. 61-125; s. 3, ch. 65-354; s. 3, ch. 74-142.

#### 710.05 Duties and powers of custodian.—

(1) The custodian shall collect, hold, manage, invest and reinvest the custodial property.

(2) The custodian shall pay over to the minor for expenditure by him, or expend for the minor's benefit, so much of or all the custodial property as the custodian deems advisable for the support, maintenance, education and benefit of the minor in the manner, at the time or times, and to the extent that the custodian in his discretion deems suitable and proper, with or without court order, with or without regard to the duty of himself or of any other person to support the minor or his ability to do so, and with or without regard to any other income or property of the minor which may be applicable or available for any such purpose.

(3) The court, on the petition of a parent or guardian of the minor or of the minor, if he has attained the age of 14 years, may order the custodian to pay over to the minor for expenditure by him or to expend so much of or all the custodial property as is necessary for the minor's support, maintenance or education.

(4) To the extent that the custodial property is not so expended, the custodian shall deliver or pay it over to the minor on his attaining the age of 18 years, or, if the minor dies before attaining the age of 18 years, he shall thereupon deliver or pay it over to the estate of the minor. However, as to gifts made prior to July 1, 1973, pursuant to this chapter, for a minor who had not attained 21 years of age prior to



July 1, 1973, such custodial property and accumulations thereon shall not be paid over or delivered by the custodian until the recipient attains 21 years of age, or shall be paid over to the recipient's estate if he dies prior to attaining 21 years of age.

(5) The custodian, notwithstanding statutes restricting investments by fiduciaries, shall invest and reinvest the custodial property as would a prudent man of discretion and intelligence who is seeking a reasonable income and the preservation of his capital, except that he may, in his discretion and without liability to the minor or his estate, retain a security given to the minor in a manner prescribed in this act.

(6) The custodian may sell, exchange, convert or otherwise dispose of custodial property in the manner, at the time or times, for the price or prices and upon the terms he deems advisable. He may vote in person or by general or limited proxy a security which is custodial property. He may consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution or liquidation of an issuer, a security which is custodial property, and to the sale, lease, pledge or mortgage of any property by or to such an issuer, and to any other action by such an issuer. He may execute and deliver any and all instruments in writing which he deems advisable to carry out any of his powers as custodian.

(7) The custodian shall register each security which is custodial property and in registered form in the name of the custodian, followed, in substance, by the words: "as custodian for ..... under the Florida Gifts to Minors Act." The custodian shall hold all money which is custodial property in an account with a broker, savings and loan association, or bank or in a credit union in the name of the custodian, followed, in substance, by the words: "as custodian for ..... under the Florida Gifts to Minors Act." The custodian shall keep all other custodial property separate and distinct from his own property in a manner to identify it clearly as custodial property.

(8) The custodian shall keep records of all transactions with respect to the custodial property and keep them available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor, if he has attained the age of 14 years.

(9) A custodian has and holds as powers in trust, with respect to the custodial property, in addition to the rights and powers provided in this act, all the rights and powers which a guardian has with respect to property not held as custodial property.

(10) If the subject of the gift is a life insurance policy or annuity contract, the custodian shall have all the incidents of ownership in such policy or contract which he may hold as custodian, to the same extent as if he were the owner thereof, except that the designated beneficiary of any such policy or contract on the life of the minor shall be the minor's estate and the designated beneficiary of any such policy or contract on the life of a person other than the minor shall be the custodian as custodian for the minor for whom he is acting.

*History.*—s. 4, ch. 57-53; s. 4, ch. 61-125; s. 4, ch. 65-354; s. 2, ch. 74-31; s. 4, ch. 74-142; s. 1, ch. 77-174.

#### **710.06 Custodian's expenses, compensation, bond and liabilities.—**

(1) A custodian is entitled to reimbursement from the custodial property for his reasonable expenses incurred in the performance of his duties.

(2) A custodian may act without compensation for his services.

(3) Unless he is a donor, a custodian may receive from the custodial property reasonable compensation for his services as directed by the donor when the gift is made.

(4) Except as otherwise provided in this act, a custodian shall not be required to give a bond for the performance of his duties.

(5) A custodian is not liable for losses to the custodial property unless they result from his bad faith, intentional wrongdoing or gross negligence or from his failure to maintain the standard of prudence in investing the custodial property provided in this act.

*History.*—s. 5, ch. 57-53.

#### **710.07 Exemption of third persons from liability.—**

No issuer, transfer agent, bank, life insurance company, broker, savings and loan association, credit union, or other person acting on the instructions of or otherwise dealing with any person purporting to act as a donor or in the capacity of a custodian is responsible for determining whether the person designated by the purported donor or purporting to act as custodian has been duly designated or whether any purchase, sale or transfer to or by or any other act of any person purporting to act in the capacity of custodian, is in accordance with or authorized by this act, or is obliged to inquire into the validity or propriety under this act of any instrument or instructions executed or given by a person purporting to act as a donor or in the capacity of a custodian, or is bound to see to the application by any person purporting to act in the capacity of a custodian of any money or other property paid or delivered to him.

*History.*—s. 6, ch. 57-53; s. 5, ch. 61-125; s. 5, ch. 65-354; s. 5, ch. 74-142.

#### **710.08 Resignation, death or removal of custodian; bond; designation of successor custodian.—**

(1) Only an adult member of the minor's family, a guardian of the minor, or a trust company is eligible to become successor custodian. A custodian may designate his successor by executing and dating an instrument of designation before a subscribing witness other than the successor. The instrument of designation may but need not contain the resignation of the custodian. If the custodian does not so designate his successor before he dies or becomes legally incapacitated and the minor has no guardian and has attained the age of 14 years, the minor may designate a successor custodian by executing an instrument of designation before a subscribing witness other than the successor. A successor custodian has all the rights, powers, duties, and immunities of a custodian designated in a manner prescribed by this subsection.

(2) The designation of a successor custodian takes effect as to each item of the custodial property when the custodian resigns, dies or becomes legally

incapacitated and the custodian or his legal representative:

(a) Causes the item, if it is a security and in registered form or a life insurance policy or annuity contract, to be registered with the issuing insurance company, in the case of a life insurance policy or annuity contract, in the name of the successor custodian followed, in substance, by the words: "As custodian for (name of minor) under the Florida Uniform Gifts to Minors Act"; or

(b) Delivers or causes to be delivered to the successor custodian any other item of the custodial property, together with the instrument of designation of the successor custodian or a true copy thereof and any additional instruments required for the transfer thereof to the successor custodian.

(3) A custodian who executes an instrument of designation of his successor containing the custodian's resignation shall promptly do all things within his power to put each item of the custodial property in the possession and control of the successor custodian named in the instrument. The legal representative of a custodian who dies or becomes legally incapacitated shall promptly do all things within his power to put each item of the custodial property in the possession and control of the successor custodian named in an instrument of designation executed by the custodian or, if none, by the minor, if he has no guardian and has attained the age of 14 years, or in the possession and control of the guardian of the minor if he has a guardian. If the custodian has executed more than one instrument of designation, his legal representative shall treat the instrument dated an earlier date as having been revoked by the instrument dated on a later date.

(4) If all persons designated as custodian or successor custodian by the donor, custodian, or any successor custodian are not eligible, die, or become legally incapacitated before the minor attains the age of 18 years, and if the minor has a guardian, the guardian of the minor shall be successor custodian. If the minor has no guardian and if no successor custodian who is eligible and has not died or become legally incapacitated has been or is designated, a

donor, his legal representative, the legal representative of the custodian, or an adult member of the minor's family may petition the court for the designation of a successor custodian.

(5) A donor, the legal representative of a donor, a successor custodian, an adult member of the minor's family, a guardian of the minor, or the minor, if he has attained the age of 14 years, may petition the circuit court that, for cause shown in the petition, the custodian be removed and a successor custodian be designated or, in the alternative, that the custodian be required to give bond for the performance of his duties.

(6) Upon the filing of a petition as provided in this section, the circuit court shall grant an order, directed to such persons and returnable on such notice as the court may require, to show cause why the relief prayed for in the petition should not be granted and, in due course, grant such relief as the circuit court finds to be in the best interests of the minor.

*History.*—s. 7, ch. 57-53; s. 1, ch. 67-495; s. 1, ch. 71-23; s. 63, ch. 77-121.

#### **710.09 Accounting by custodian.—**

(1) The minor, if he has attained the age of 14 years, or the legal representative of the minor, an adult member of the minor's family, or a donor or his legal representative may petition the court for an accounting by the custodian or his legal representative.

(2) The court, in a proceeding under this act or otherwise, may require or permit the custodian or his legal representative to account and, if the custodian is removed, shall so require and order delivery of all custodial property to the successor custodian and the execution of all instruments required for the transfer thereof.

*History.*—s. 8, ch. 57-53.

**710.10 Construction.**—This act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it. This act shall not be construed as providing an exclusive method for making gifts to minors.

*History.*—s. 9, ch. 57-53.

## CHAPTER 712

## MARKETABLE RECORD TITLES TO REAL PROPERTY

- 712.01 Definitions.
- 712.02 Marketable record title.
- 712.03 Exceptions to marketability.
- 712.04 Interests extinguished by marketable record title.
- 712.05 Effect of filing notice.
- 712.06 Contents of notice; recording and indexing.
- 712.07 Limitations of actions and recording acts.
- 712.08 Filing false claim.
- 712.09 Extension of 30-year period.
- 712.10 Law to be liberally construed.

**712.01 Definitions.**—As used in this law:

(1) The term "person" as used herein denotes singular or plural, natural or corporate, private or governmental, including the state and any political subdivision or agency thereof as the context for the use thereof requires or denotes.

(2) "Root of title" means any title transaction purporting to create or transfer the estate claimed by any person and which is the last title transaction to have been recorded at least 30 years prior to the time when marketability is being determined. The effective date of the root of title is the date on which it was recorded.

(3) "Title transaction" means any recorded instrument or court proceeding which affects title to any estate or interest in land.

*History.*—s. 1, ch. 63-133; s. 11, ch. 65-420.

**712.02 Marketable record title.**—Any person having the legal capacity to own land in this state, who, alone or together with his predecessors in title, has been vested with any estate in land of record for 30 years or more, shall have a marketable record title to such estate in said land, which shall be free and clear of all claims except the matters set forth as exceptions to marketability in s. 712.03. A person shall have a marketable record title when the public records disclosed a record title transaction affecting the title to the land which has been of record for not less than 30 years purporting to create such estate either in:

- (1) The person claiming such estate; or
- (2) Some other person from whom, by one or more title transactions, such estate has passed to the person claiming such estate, with nothing appearing of record, in either case, purporting to divest such claimant of the estate claimed.

*History.*—s. 2, ch. 63-133.

**712.03 Exceptions to marketability.**—Such marketable record title shall not affect or extinguish the following rights:

- (1) Estates or interests, easements and use restrictions disclosed by and defects inherent in the muniments of title on which said estate is based beginning with the root of title; provided, however, that a general reference in any of such muniments to easements, use restrictions or other interests created prior to the root of title shall not be sufficient to preserve them unless specific identification by reference to book and page of record or by name of

recorded plat be made therein to a recorded title transaction which imposed, transferred or continued such easement, use restrictions or other interests; subject, however, to the provisions of subsection (5).

(2) Estates, interests, claims, or charges preserved by the filing of a proper notice in accordance with the provisions hereof.

(3) Rights of any person in possession of the lands, so long as such person is in such possession.

(4) Estates, interests, claims, or charges arising out of a title transaction which has been recorded subsequent to the effective date of the root of title.

(5) Recorded or unrecorded easements or rights, interest or servitude in the nature of easements, rights-of-way and terminal facilities, including those of a public utility or of a governmental agency, so long as the same are used and the use of any part thereof shall except from the operation hereof the right to the entire use thereof. No notice need be filed in order to preserve the lien of any mortgage or deed of trust or any supplement thereto encumbering any such recorded or unrecorded easements, or rights, interest, or servitude in the nature of easements, rights-of-way, and terminal facilities. However, nothing herein shall be construed as preserving to the mortgagee or grantee of any such mortgage or deed of trust or any supplement thereto any greater rights than the rights of the mortgagor or grantor.

(6) Rights of any person in whose name the land is assessed on the county tax rolls for such period of time as the land is so assessed and which rights are preserved for a period of 3 years after the land is last assessed in such person's name.

(7) State title to lands beneath navigable waters acquired by virtue of sovereignty.

*History.*—s. 3, ch. 63-133; s. 12, ch. 65-420; s. 1, ch. 73-218; s. 1, ch. 78-288.

**712.04 Interests extinguished by marketable record title.**—Subject to the matters stated in s. 712.03, such marketable record title shall be free and clear of all estates, interests, claims or charges whatsoever, the existence of which depends upon any act, title transaction, event or omission that occurred prior to the effective date of the root of title. All such estates, interests, claims or charges, however denominated, whether such estates, interests, claims or charges are or appear to be held or asserted by a person sui juris or under a disability, whether such person is within or without the state, whether such person is natural or corporate, or is private or governmental, are hereby declared to be null and void, except that this chapter shall not be deemed to affect any right, title or interest of the United States, Florida or any of its officers, boards, commissions or other agencies reserved in the patent or deed by which the United States, Florida or any of its agencies parted with title.

*History.*—s. 4, ch. 63-133; s. 1, ch. 65-280.

**712.05 Effect of filing notice.**—

- (1) Any person claiming an interest in land may preserve and protect the same from extinguishment by the operation of this act by filing for record, dur-



ing the 30-year period immediately following the effective date of the root of title, a notice, in writing, in accordance with the provisions hereof, which notice shall have the effect of so preserving such claim of right for a period of not longer than 30 years after filing the same unless again filed as required herein. No disability or lack of knowledge of any kind on the part of anyone shall delay the commencement of or suspend the running of said 30-year period. Such notice may be filed for record by the claimant or by any other person acting on behalf of any claimant who is:

- (a) Under a disability,
- (b) Unable to assert a claim on his behalf, or
- (c) One of a class, but whose identity cannot be established or is uncertain at the time of filing such notice of claim for record.

(2) It shall not be necessary for the owner of the marketable record title, as herein defined, to file a notice to protect his marketable record title.

History.—s. 5, ch. 63-133.

#### 712.06 Contents of notice; recording and indexing.—

(1) To be effective, the notice above referred to shall contain:

(a) The name or description of the claimant and the name and particular post-office address of the person filing the claim.

(b) The name and post-office address of an owner, or the name and post-office address of the person in whose name said property is assessed on the last completed tax assessment roll of the county at the time of filing, who, for the purpose of such notice, shall be deemed to be an owner.

(c) A full and complete description of all land affected by such notice, which description shall be set forth in particular terms and not by general reference, but if said claim is founded upon a recorded instrument, then the description in such notice may be the same as that contained in such recorded instrument, provided the same shall be sufficient to identify the property.

(d) A statement of the claim showing the nature, description and extent of such claim, except that it shall not be necessary to show the amount of any claim for money or the terms of payment.

(e) If such claim is based upon an instrument of record, such instrument shall be sufficiently described to identify the same, including reference to the book and page in which the same is recorded.

(f) Such notice shall be acknowledged in the same manner as deeds are acknowledged for record.

(2) Such notice shall be filed with the clerk of the circuit court of the county or counties where the land described therein is situated, together with a true copy thereof. The clerk shall enter, record and index said notice in the same manner that deeds are entered, recorded and indexed, as though the claimant were the grantee in the deed and the purported owner were the grantor in a deed, and the clerk shall charge the same fees for recording thereof as are charged for recording deeds. In those counties where the circuit court clerk maintains a tract index, such notice shall also be indexed therein.

(3) The clerk of the circuit court shall, upon such filing, mail by registered or certified mail to the purported owner of said property, as stated in such notice, a copy thereof and shall enter on the original, before recording the same, a certificate showing such mailing. For preparing the certificate, the claimant shall pay to the clerk the service charge as prescribed in s. 28.24(9) and the necessary costs of mailing, in addition to the recording charges as prescribed in s. 28.24(16). If the notice names purported owners having more than one address, the person filing the same shall furnish a true copy for each of the several addresses stated, and the clerk shall send one such copy to the purported owners named at each respective address. Such certificate shall be sufficient if the same reads substantially as follows:

I hereby certify that I did on this ....., mail by registered (or certified) mail a copy of the foregoing notice to each of the following at the address stated:

.....  
(Clerk of the circuit court)  
of .... County, Florida,  
By .....  
(Deputy clerk)

(4) Failure of any purported owner to receive the mailed notice shall not affect the validity of the notice or vitiate the effect of the filing of such notice.

History.—s. 6, ch. 63-133; s. 5, ch. 77-354.

**712.07 Limitations of actions and recording acts.**—Nothing contained in this law shall be construed to extend the period for the bringing of an action or for the doing of any other act required under any statute of limitations or to affect the operation of any statute governing the effect of the recording or the failure to record any instrument affecting land. This law shall not vitiate any curative statute.

History.—s. 7, ch. 63-133.

**712.08 Filing false claim.**—No person shall use the privilege of filing notices hereunder for the purpose of asserting false or fictitious claims to land; and in any action relating thereto if the court shall find that any person has filed a false or fictitious claim, the court may award to the prevailing party all costs incurred by him in such action, including a reasonable attorney's fee, and in addition thereto may award to the prevailing party all damages that he may have sustained as a result of the filing of such notice of claim.

History.—s. 8, ch. 63-133.

**712.09 Extension of 30-year period.**—If the 30-year period for filing notice under s. 712.05 shall have expired prior to July 1, 1965, such period shall be extended to July 1, 1965.

History.—s. 9, ch. 63-133.

**712.10 Law to be liberally construed.**—This law shall be liberally construed to effect the legislative purpose of simplifying and facilitating land title transactions by allowing persons to rely on a record title as described in s. 712.02 subject only to such limitations as appear in s. 712.03.

History.—s. 10, ch. 63-133.

## CHAPTER 713

## LIENS, GENERALLY

## PART I MECHANICS' LIENS (ss. 713.01-713.37)

## PART II MISCELLANEOUS LIENS (ss. 713.50-713.78)

## PART III OIL AND GAS LIENS (ss. 713.801-713.825)

## PART I

## MECHANICS' LIENS

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- 713.02 Types of lienors and exemptions.
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713.36 Effective date.

713.37 Rule of construction.

**713.01 Definitions.**—As used in this part:

(1) "Contract" means an agreement for improving real property, written or unwritten, express or implied, and includes extras or change-orders as herein defined.

(2) "Contractor" means a person other than a materialman or laborer who enters into a contract with the owner of real property for improving it, or who takes over from a contractor as above defined the entire remaining work under such contract.

(3) "Contract price" means the amount agreed upon by the contracting parties for performing all labor and services and furnishing all materials covered by their contract and shall be increased or diminished by the price of extras or change orders as herein defined, or by any amounts attributable to changes in the scope of the work or defects in workmanship or materials or any other breaches of the contract; but no penalty or liquidated damages between the owner and a contractor shall diminish the contract price as to any other lienor. If no price is agreed upon by the contracting parties, this term shall mean the value of all labor, services, or materials covered by their contract, with any increases and diminutions, as above provided. Allowance items are a part of the contract when accepted by the owner.

(4) "Direct contract" means a contract as herein defined between the owner and any other person.

(5) "Extras" or "change orders" means labor, services or materials for improving real property authorized by the owner and added to or deleted from labor, services or materials covered by a previous contract between the same parties.

(6) "Furnish materials" means supply materials which are incorporated in the improvement including normal wastage in construction operations; or specially fabricated materials for incorporation in the improvement; or supply materials used for the construction and not remaining in the improvement, subject to diminution by the salvage value of such materials; and includes supplying tools, appliances or machinery used on the particular improvement to the extent of the reasonable rental value for the period of actual use (not determinable by the contract for rental unless the owner is a party thereto), but does not include supplying handtools. The delivery of materials to the site of the improvement shall be prima facie evidence of incorporation of such materials in the improvement.

(7) "Improve" means build, erect, place, make, alter, remove, repair, or demolish any improvement

over, upon, connected with, or beneath the surface of real property, or excavate any land, or furnish materials for any of these purposes, or perform any labor or services upon the improvements, including the furnishing of carpet or rugs or appliances that are permanently affixed to the real property; or perform any labor or services or furnish any materials in grading, seeding, sodding, or planting for landscaping purposes, including the furnishing of trees, shrubs, bushes, or plants that are planted on the real property, or in equipping any improvement with fixtures or permanent apparatus.

(8) "Improvement" means any building, structure, construction, demolition, excavation, landscaping, or any part thereof existing, built, erected, placed, made or done on land or other real property for its permanent benefit.

(9) "Laborer" means any person other than an architect, landscape architect, engineer, land surveyor and the like who, under properly authorized contract, personally performs on the site of the improvement labor or services for improving real property and does not furnish materials or labor service of others.

(10) "Lienor" means:

- (a) A contractor,
- (b) A subcontractor,
- (c) A subsubcontractor,
- (d) A laborer,

(e) A materialman who contracts with the owner, a contractor, a subcontractor, or a subsubcontractor, or

(f) A professional lienor under s. 713.03,

as each is defined herein, and who has a lien or prospective lien upon real property under part I, and includes his successor in interest. No person shall have a lien under part I, except those specified in this subsection as they are defined in this section.

(11) "Materialman" means any person who furnishes materials under contract to the owner, contractor, subcontractor, or subsubcontractor on the site of the improvement or for direct delivery to the site of the improvement or for specially fabricated materials off the site of the improvement for the particular improvement, and who performs no labor in the installation thereof.

(12) "Owner" means a person who is the owner of any legal or equitable interest in real property, which interest can be sold by legal process, and who enters into a contract for the improvement of the real property. The term does not include any political subdivision, agency, or department of the state, a municipality, or other governmental entity.

(13) "Perform" or "furnish" when used in connection with the words "labor" or "services" or "materials" means performance or furnishing by the lienor or by another for him.

(14) "Real property" means the land that is improved and the improvements thereon, including fixtures, except any such property owned by the state, county, any municipality, school board, or governmental agency, commission or political subdivision.

(15) "Site of the improvement" means the real property which is being improved and on which labor or services are performed or materials furnished

in furtherance of the operations of improving such real property. In cases of removal, without demolition and under contract, of an improvement from one lot, parcel or tract of land to another, this term means the real property to which the improvement is removed.

(16) "Subcontractor" means a person other than a materialman or laborer who enters into a contract with a contractor for the performance of any part of such contractor's contract.

(17) "Subsubcontractor" means a person other than a materialman or laborer who enters into a contract with a subcontractor for the performance of any part of such subcontractor's contract.

(18) "Commencement of the improvement" means the time of filing for record of the notice of commencement provided in s. 713.13.

(19) "Lienors giving notice" means any lienor, except a contractor or subcontractor, who has duly and timely served a notice to the owner and, if required, to the contractor, as provided in s. 713.06(2).

(20) "Notice by lienor" means the notice to owner served as provided in s. 713.06(2).

(21) "Notice of commencement" means the notice recorded as provided in s. 713.13 and the giving of notice shall be effective upon the filing in the clerk's office.

(22) "Claim of lien" means the claim recorded as provided in s. 713.08.

(23) "Clerk's office" means the office of the clerk of the circuit court of the county in which the real property is located.

(24) "Post" or "posting" means placing the document referred to on the site of the improvement in a conspicuous place on the front of said site and such documents shall be protected from the weather.

History.—s. 1, ch. 63-135; s. 35, ch. 67-254; s. 1, ch. 77-353.

Note.—Former s. 84.011.

### 713.02 Types of lienors and exemptions.—

(1) Persons performing the services described in s. 713.03 shall have rights to a lien on real property as provided in that section.

(2) Persons performing services or furnishing materials for subdivision improvements as described in s. 713.04 shall have rights to a lien on real property as provided in that section.

(3) Persons who are in privity with an owner and who perform labor or services or furnish materials constituting an improvement or part thereof shall have rights to a lien on real property as provided in s. 713.05.

(4) Persons who are not in privity with an owner and who perform labor or services or furnish materials constituting a part of an improvement under the direct contract of another person shall have rights to a lien on real property as provided in s. 713.06.

(5) Any improvement for which the contract price is \$2,500 or less shall be exempt from all other provisions of this part I except the provisions of s. 713.05.

(6) In any direct contract the owner may require the contractor to furnish a payment bond as provided in s. 713.23, and upon receipt of the bond the owner shall be exempt from the other provisions of part I as to that direct contract, but this does not exempt the owner from the lien of the contractor



no furnishes the bond. The owner may post said bond or a copy thereof. If the bond is provided, it shall secure all liens subsequently accruing under part I as provided in s. 713.23.

**History.**—s. 1, ch. 63-135; s. 1, ch. 67-210; s. 35, ch. 67-254; s. 7, ch. 69-97; ss. 2, 17, ch. 77-353; s. 1, ch. 78-397.

**Note.**—Former s. 84.022.

### 713.03 Liens for professional services.—

(1) Any person who performs services as architect, landscape architect, engineer or land surveyor, subject to compliance with and the limitations imposed by this part, shall have a lien on the real property improved for any money that shall be owing to him for his services in preparing plans, specifications or drawings used in connection with improving the real property or for his services in supervising any portion of the work of improving the real property, rendered in accordance with his contract and with the direct contract.

(2) Any architect, landscape architect, engineer or land surveyor who has a direct contract and who in the practice of his profession shall perform services, by himself or others, in connection with a specific parcel of real property and subject to said compliances and limitations, shall have a lien upon such real property for the money owing to him for his professional services, regardless of whether such real property is actually improved.

(3) No liens under this section shall be acquired until a claim of lien is recorded. No lienor under this section shall be required to serve a notice to owner as provided in s. 713.06(2) or an affidavit concerning unpaid lienors as provided in s. 713.06(3).

**History.**—s. 1, ch. 63-135; s. 1, ch. 65-456; s. 35, ch. 67-254; s. 3, ch. 77-353.

**Note.**—Former s. 84.031.

**713.04 Subdivision improvements.**—Any lienor who, regardless of whether in privity, performs services or furnishes material to real property for the purpose of making it suitable as the site for the construction of an improvement or improvements shall be entitled to a lien on the real property for any money that shall be owing to him for his services or materials. The work of making real property suitable as the site of an improvement shall include but shall not be limited to the grading, leveling, excavating and filling of land (including the furnishing of fill soil), the grading and paving of streets, curbs and sidewalks, the construction of ditches and other area drainage facilities, and the laying of pipes and conduits for water, gas, electric, sewage and drainage purposes, and construction of canals and shall also include the altering, repairing and redoing of all said things. When such services or materials are placed on land dedicated to the public use and are furnished under contract with the owner of the abutting land, the cost of such services and materials, if unpaid, may be the basis for a lien upon said abutting land. When such services or materials are placed upon land under contract with the owner of such land who subsequently dedicates portions of such lands to public use, the person furnishing the services or materials placed upon the dedicated land shall be entitled to a lien upon the land abutting the dedicated land for the unpaid cost of the services and materials placed upon the dedicated land, or in the case of improvements which serve or benefit real property

which is divided by such improvements, to a lien upon each abutting portion for the equitable portion of the full amount due and owing. If the portion of the cost to be borne by each parcel of the lands subject to the same lien is not specified in the contract it shall be prorated equitably among the parcels served or benefited. No lien under this section shall be acquired until a claim of lien is recorded.

**History.**—s. 1, ch. 63-135; s. 2, ch. 65-456; s. 35, ch. 67-254.

**Note.**—Former s. 84.041.

**713.05 Liens of persons in privity.**—A materialman or laborer, either of whom is in privity with the owner, or a contractor who complies with the provisions of part I and is subject to the limitations thereof, shall have a lien on the real property improved for any money that is owed to him for labor, services, materials, or other items required by, or furnished in accordance with, the direct contract. No lien under this section shall be acquired until a claim of lien is recorded. A lienor who, as a subcontractor, subsubcontractor, laborer, or materialman not in privity with the owner, commences to furnish labor, services, or material to an improvement and who thereafter becomes in privity with the owner shall have a lien for any money that is owed to him for the labor, services, or materials furnished after he becomes in privity with the owner. A lienor may record one claim of lien to cover his work done both in privity with the owner and not in privity with the owner. No lienor under this section shall be required to serve a notice to owner as provided in s. 713.06(2). A lienor, except a laborer or materialman, who is in privity with the owner and claims a lien under this section shall furnish the contractor's affidavit required in s. 713.06(3)(d). A contractor may claim a lien for any labor, services, or materials furnished by another lienor for which he is obligated to pay the lienor, regardless of the right of the lienor to claim a lien, but if the lienor claims a valid lien, the contractor shall not recover the amount of the lien recovered by the lienor, and the amount of the contractor's claim of lien may be reduced accordingly by court order. No person shall have a lien under this section except those lienors specified in it, as their designations are defined in s. 713.01.

**History.**—s. 1, ch. 63-135; s. 3, ch. 65-456; s. 2, ch. 67-210; s. 35, ch. 67-254; s. 4, ch. 77-353.

**Note.**—Former s. 84.051.

### 713.06 Liens of persons not in privity; proper payments.—

(1) A materialman or laborer, either of whom is not in privity with the owner, or a subcontractor or subsubcontractor who complies with the provisions of part I and is subject to the limitations thereof, shall have a lien on the real property improved for any money that is owed to him for labor, services, or materials furnished in accordance with his contract and with the direct contract. The total amount of all liens allowed under part I for furnishing labor, services, or material covered by any certain direct contract shall not exceed the amount of the contract price fixed by the direct contract except as provided in subsection (3). No person shall have a lien under this section except those lienors specified in it, as their designations are defined in s. 713.01.

(2)(a) All lienors under this section, except labor-

ers, as a prerequisite to perfecting a lien under this chapter and recording a claim of lien, shall be required to serve a notice on the owner setting forth the lienor's name and address, a description sufficient for identification of the real property, and the nature of the services or materials furnished or to be furnished. A subcontractor or a materialman to a subcontractor shall serve a copy of the notice on the contractor as a prerequisite to perfecting a lien under this chapter and recording a claim of lien. A materialman to a subcontractor shall also serve a copy of the notice to owner on the subcontractor of the subcontractor as a prerequisite to perfecting a lien under this chapter and recording a claim of lien. The notice must be served before commencing, or not later than 45 days from commencing, to furnish his services or materials, but, in any event, before the date of furnishing the affidavit under subparagraph (3)(d)1. or abandonment, whichever shall occur first. The notice must be served regardless of the method of payments by the owner, whether proper or improper, and shall not give to the lienor serving the notice any priority over other lienors in the same category, and the failure to serve the notice shall be a complete defense to payment by any person, except a person with whom the lienor failing to serve the notice has a contract. The serving of the notice shall not dispense with recording the claim of lien. The notice shall not be a lien, cloud, or encumbrance on the real property nor actual nor constructive notice of any of them.

(b) If the owner, in his notice of commencement, shall have designated a person in addition to himself to receive a copy of such lienor's notice, as provided in s. 713.13(1)(g), the lienor shall mail a copy of his notice to the person so designated. Failure by the lienor to mail such copy, however, shall not invalidate an otherwise valid lien.

(c) The notice may be in substantially the following form:

#### NOTICE TO OWNER

To (Owner's name and address)

The undersigned hereby informs you that he has furnished or is furnishing services or materials as follows:

(General description of services or materials) for the improvement of the real property identified as (property description) under an order given by.....

Florida law prescribes the serving of this notice and restricts your right to make payments under your contract in accordance with s. 713.06, Florida Statutes.

Copies to: (Lienor's signature and address)

(3) The owner may make proper payments on the direct contract as to lienors under this section, in the following manner:

(a) The owner shall not pay any money on account of a direct contract prior to recording of the notice provided in s. 713.13, and any amount so paid shall be held improperly paid. If the description of the property in the notice prescribed by s. 713.13 is incorrect and the error adversely affects any lienor, payments made on the direct contract shall be held improperly paid to that lienor; but this does not ap-

ply to clerical errors when the description listed covers the property where the improvements are.

(b) The owner at any time after recording the notice provided in s. 713.13, may pay to any laborers the whole or any part of the amounts that shall then be due and payable to them respectively for labor or services performed by them and covered by the direct contract, and shall deduct the same from the balance due the contractor under a direct contract.

(c) When any payment becomes due to the contractor on the direct contract, except the final payment:

1. The owner shall pay or cause to be paid, within the limitations imposed by subparagraph 2., the sum then due to each lienor, giving notice prior to the time of the payment. The owner may require (and in such event, the contractor shall furnish as a prerequisite to requiring payment to himself) an affidavit as prescribed in subparagraph (d)1., on any payment made, or to be made, on a direct contract, but the furnishing of the affidavit shall not relieve the owner of his responsibility to pay or cause to be paid all lienors giving notice. The owner shall be under no obligation to any lienor, except laborers, from whom he has not received a notice to owner at the time of making a payment.

2. When the payment due is insufficient to pay all bills of lienors giving notice, the owner shall prorate the amount then due under the direct contract among the lienors giving notice pro rata in the manner prescribed in subsection (4). Lienors receiving money shall execute partial releases as provided in s. 713.20(2), to the extent of the payment received.

3. If any affidavit permitted hereunder recites any outstanding bills for labor, services, or materials, the owner may pay the bills in full direct to the person or firm to whom they are due if the balance due on the direct contract at the time the affidavit is given is sufficient to pay the bills and shall deduct the amounts so paid from the balance of payment due the contractor. This subparagraph shall not create any obligation of the owner to pay any person who is not a lienor giving notice.

4. No person furnishing labor or material, or both, who is required to serve a notice under paragraph (2)(a), and who did not serve the notice and whose time for service has expired shall be entitled to be paid by the owner because he is listed in an affidavit furnished by the contractor under subparagraph (c)1.

(d) When the final payment under a direct contract becomes due the contractor:

1. The contractor shall give to the owner an affidavit stating, if that be the fact, that all lienors under his direct contract have been paid in full or, if the fact be otherwise, showing the name of each lienor who has not been paid in full and the amount due or to become due each for labor, services, or materials furnished. The contractor shall have no lien or right of action against the owner for labor, services, or materials furnished under the direct contract while in default for not giving the owner the affidavit. The contractor shall execute the affidavit and deliver it to the owner at least 5 days before instituting an action as a prerequisite to the institution of any action to enforce his lien under this chapter, even if the

final payment has not become due because the contract is terminated for a reason other than completion and regardless of whether the contractor has any lienors working under him or not.

2. If the contractor's affidavit required in this subsection recites any outstanding bills for labor, services, or materials, the owner may, after giving the contractor at least 10 days' written notice, pay such bills in full direct to the person or firm to whom they are due, if the balance due on a direct contract at the time the affidavit is given is sufficient to pay them and lienors giving notice, and shall deduct the amounts so paid from the balance due the contractor. Lienors listed in said affidavit not giving notice, whose 45-day notice time has not expired shall be paid in full or pro rata, as appropriate, from any balance then remaining due the contractor, but no lienor whose notice time has expired shall be paid by the owner or by any other person except the person with whom that lienor has a contract.

3. If the balance due is not sufficient to pay in full all lienors listed in the affidavit and entitled to payment from the owner under this part and other lienors giving notice, the owner shall pay no money to anyone until such time as the contractor has furnished him with the difference; however, if the contractor fails to furnish the difference within 10 days from delivery of the affidavit or notice from the owner to the contractor to furnish the affidavit, the owner shall determine the amount due each lienor and shall disburse to them the amounts due from him on a direct contract in accordance with the procedure established by subsection (4).

4. The owner shall have the right to rely on the contractor's affidavit given under this paragraph in making the final payment, unless there are lienors giving notice who are not listed in the affidavit. If there are lienors giving notice who are not so listed, the owner may pay such lienors and any persons listed in the affidavit that are entitled to be paid by the owner under subparagraph (d)2. and shall thereupon be discharged of any further responsibility under the direct contract, except for any balance that may be due to the contractor.

5. The owner shall retain the final payment due under the direct contract that shall not be disbursed until the contractor's affidavit under subparagraph (d)1. has been furnished to the owner.

6. When final payment has become due to the contractor and the owner fails to withhold as required by subparagraph (d)5., the property improved shall be subject to the full amount of all valid liens of which the owner has notice at the time the contractor furnishes his affidavit.

(e) If the improvement is abandoned before completion, the owner shall determine the amount due each lienor giving notice and shall pay the same in full or prorate in the same manner as provided in subsection (4).

(f) No contractor shall have any right to require the owner to pay any money to him under a direct contract if such money cannot be properly paid by the owner to the contractor in accordance with this section.

(g) Except with written consent of the contractor, before paying any money directly to any lienor

except the contractor or any laborer, the owner shall give the contractor at least 10 days' written notice of his intention to do so, and the amount he proposes to pay each lienor.

(h) When the owner has properly retained all sums required in this section to be retained but has otherwise made improper payments, the owner's real property shall be liable to all laborers, subcontractors, subsubcontractors, and materialmen complying with this chapter only to the extent of the retentions and the improper payments, notwithstanding the other provisions of this subsection. Any money paid by the owner on a direct contract, the payment of which is proved to have caused no detriment to any certain lienor, shall be held properly paid as to the lienor, and if any of the money shall be held not properly paid as to any other lienors, the entire benefit of its being held not properly paid as to them shall go to the lienors.

(4)(a) In determining the amounts for which liens between lienors claiming under a direct contract shall be paid by the owner or allowed by the court within the total amount fixed by the direct contract and under the provisions of this section, the owner or court shall pay or allow such liens in the following order:

1. Liens of all laborers.
2. Liens of all persons other than the contractor.
3. Lien of the contractor.

(b) Should the total amount for which liens under such direct contract may be allowed be less than the total amount of liens under such contract in all classes above mentioned, all liens in a class shall be allowed for their full amounts before any liens shall be allowed to any subsequent class. Should the amount applicable to the liens of any single class be insufficient to permit all liens within that class to be allowed for their full amounts, each lien shall be allowed for its pro rata share of the total amount applicable to liens of that class; but if the same labor, services, or materials shall be covered by liens of more than one class, such labor, services, or materials shall be allowed only in the earliest class by which they shall be covered; and also if the same labor, services, or materials shall be covered by liens of two or more lienors of the same class, such labor, services or materials shall be allowed only in the lien of the lienor farthest removed from the contractor. This section shall not be construed to affect the priority of liens derived under separate direct contracts.

**History.**—s. 1, ch. 63-135; ss. 4, 5, ch. 65-456; s. 35, ch. 67-254; s. 1, ch. 75-227; s. 5, ch. 77-353.

**Note.**—Former s. 84.061.

#### 713.07 Priority of liens.—

(1) Liens under ss. 713.03 and 713.04 shall attach at the time of recordation of the claim of lien and shall take priority as of that time.

(2) Liens under ss. 713.05 and 713.06 shall attach and take priority as of the time of recordation of the notice of commencement, but in the event a notice of commencement is not filed, then such liens shall attach and take priority as of the time the claim of lien is recorded.

(3) All such liens shall have priority over any conveyance, encumbrance or demand not recorded



against the real property prior to the time such lien attached as provided herein, but any conveyance, encumbrance or demand recorded prior to the time such lien attaches and any proceeds thereof, regardless of when disbursed, shall have priority over such liens.

(4) If construction ceases before completion and the owner desires to recommence construction, he may pay all lienors in full or pro rata in accordance with s. 713.06(4) prior to recommencement in which event all liens for the recommenced construction shall take priority from such recommencement; or the owner may record an affidavit in the clerk's office stating his intention to recommence construction and that all lienors giving notice have been paid in full except those listed therein as not having been so paid in which event 30 days after such recording, the rights of any person acquiring any interest, lien or encumbrance on said property or of any lienor on the recommenced construction shall be paramount to any lien on the prior construction unless such prior lienor records a claim of lien within said 30-day period. A copy of said affidavit shall be served on each lienor named therein. Before recommencing, the owner shall record and post a notice of commencement for the recommenced construction, as provided in s. 713.13.

History.—s. 1, ch. 63-135; s. 6, ch. 65-456; s. 35, ch. 67-254.

Note.—Former s. 84.071.

#### 713.08 Claim of lien.—

(1) For the purpose of perfecting his lien under part I, every lienor, including laborers and persons in privity, shall record a claim of lien which shall state:

(a) The name of the lienor and the address where notices or process under this part I may be served on the lienor.

(b) The name of the person with whom the lienor contracted or by whom he was employed.

(c) The labor, services or materials furnished and the contract price or value thereof. Materials specially fabricated at a place other than the site of the improvement for incorporation in the improvement but not so incorporated and the contract price or value thereof shall be separately stated in the claim of lien.

(d) A description of the real property sufficient for identification.

(e) The name of the owner.

(f) The time when the first and the last item of labor or service or materials was furnished.

(g) The amount unpaid the lienor for such labor or services or materials.

(h) If the lien is claimed by a person not in privity with the owner, the date and method of service of the notice to owner. If the lien is claimed by a person not in privity with the contractor or subcontractor, the date and method of service of the copy of the notice on the contractor or subcontractor.

(2) The claim of lien shall be signed and verified by the lienor or his agent acquainted with the facts stated therein.

(3) Such claim of lien shall be sufficient if it is in substantially the following form:

#### CLAIM OF LIEN

State of .....

County of .....

Before me, the undersigned authority, personally appeared ....., who, being duly sworn, says that he is (the lienor herein) (the agent) (attorney) of the lienor herein ..... whose address is ....., and that in pursuance of a contract with ....., lienor furnished labor, services or materials consisting of ..... on the following described real property in ..... County, Florida: owned by ..... of a total value of \$....., of which there remains unpaid \$..... and furnished the first of the same on ....., 19 ....., and the last of the same on ....., 19 ....., and (if the lien is claimed by one not in privity with the owner) that the lienor served his notice to owner on ....., 19....., by .....

Sworn to and subscribed before me this ..... day of ....., 19.....

..... (Notary Public).....

My commission expires: .....

(4)(a) The omission of any of the foregoing details or errors in such claim of lien shall not, within the discretion of the trial court, prevent the enforcement of such lien as against one who has not been adversely affected by such omission or error.

(b) Any claim of lien recorded as provided in this part I may be amended at any time during the period allowed for recording such claim of lien, provided, that such amendment shall not cause any person to suffer any detriment by having acted in good faith in reliance upon such claim of lien as originally recorded. Any amendment of the claim of lien shall be recorded in the same manner as is provided for recording the original claim of lien.

(c) Failure to serve any claim of lien in the manner provided in s. 713.18 before recording or within 15 days after recording shall render the claim of lien voidable to the extent that the failure or delay is shown to have been prejudicial to any person entitled to rely on the service.

(5) The claim of lien may be recorded at any time during the progress of the work or thereafter but not later than 90 days after the final furnishing of the labor or services or materials by the lienor; provided if the original contractor defaults or the contract is terminated under s. 713.07(4), no claim for a lien attaching prior to such default shall be recorded after 90 days from the date of such default or 90 days after the final performance of labor or services or furnishing of materials, whichever occurs first. The claim of lien shall be recorded in the clerk's office. If such real property is situated in two or more counties the claim of lien shall be recorded in the clerk's office in each of such counties. The recording of the claim of lien shall be constructive notice to all persons of the contents and effect of such claim. The validity of the lien and the right to record a claim therefor shall not be affected by the insolvency, bankruptcy or death of the owner before the claim of lien is recorded.

History.—s. 1, ch. 63-135; s. 7, ch. 65-456; s. 35, ch. 67-254; s. 6, ch. 77-353.  
Note.—Former s. 84.081.

#### 713.09 When single claim of lien sufficient.—

(1) A lienor shall be required to record only one claim of lien covering his entire demand against such real property where the amount demanded is for labor or services or materials furnished for more

than one improvement on a single lot, parcel, or tract of land, or for a single improvement on contiguous or adjacent lots, parcels, or tracts of land, or for more than one improvement to be operated as a single plant but located on separate lots, parcels, or tracts of land, or for more than one improvement to be operated as separate units on separate lots, parcels, or tracts of land but improved in one continuous building operation, such as, but not limited to, a housing or multiple unit dwelling project, or a multiple separate unit development, and made or to be made in each case under the same direct contract. The claim of lien shall then be applicable to such lots, parcels or tracts of land and the improvements thereon included therein but not previously released in writing, and proof of delivery of materials at the order of the purchaser to any of such lots, parcels or tracts of land shall be prima facie sufficient to support a lien on any or all of such lots, parcels or tracts of land so improved.

(2) In the event the project consists of six or more improvements or one improvement costing more than \$50,000, and delivery is to a place, other than the site of improvement, designated by the purchaser, such as, but not limited to, a warehouse, concentration point, cutting or fabricating plant, of materials ordered by the purchaser to be used on one or more of such improvements, there shall be served upon the owner a notice, signed and acknowledged by both the seller and purchaser, substantially as follows:

#### NOTICE OF DELIVERY

Notice is hereby given that materials having a value of \$.....have been delivered by the undersigned vendor to .....(purchaser)..... at .....(address of delivery)....., said materials to be used for construction of improvements upon the following described property situated in ..... County, Florida, to wit:

.....(Vendor).....

.....(Purchaser).....

The service of said notice shall not create a lien, but shall be proof of delivery of the materials referred to in said notice sufficient to support a lien therefor on any or all of such lots, parcels or tracts of land described in said notice; provided, however, that no lien shall attach to any one or more of such lots, parcels or tracts of land by lienors subject thereto until compliance with s. 713.06(2), when required, and s. 713.08, and provided further, that no lien shall attach to any one or more of such lots, parcels or tracts of land previously released in writing or upon which the improvement has been completed for a period of 90 days.

**History.**—s. 1, ch. 63-135; s. 8, ch. 65-456; s. 35, ch. 67-254.  
**Note.**—Former s. 84.091.

**713.10 Extent of liens.**—Except as provided in s. 713.12, liens under part I of this chapter shall extend to, and only to, the right, title and interest of the person who contracts for the improvement as such right, title and interest exists at the commencement of the improvement or is thereafter acquired in the real property. When an improvement is made by a

lessee in accordance with an agreement between such lessee and his lessor, liens shall extend also to the interest of such lessor. In the absence of fraud on the part of the lessor, the interest of the lessor shall not be subject to liens for improvements made by the lessee when the lease is recorded in the clerk's office and the terms of the lease expressly prohibit such liability.

**History.**—s. 1, ch. 63-135; s. 35, ch. 67-254.  
**Note.**—Former s. 84.101.

**713.11 Liens for improving land in which the contracting party has no interest.**—When the person contracting for improving real property has no interest as owner in the land, no lien shall attach to the land, except as provided in s. 713.12, but if removal of such improvement from the land is practicable, the lien of a lienor shall attach to the improvement on which he has performed labor or services or for which he has furnished materials. The court, in the enforcement of such lien, may order such improvement to be separately sold and the purchaser may remove it within such reasonable time as the court may fix. The purchase price for such improvement shall be paid into court. The owner of the land upon which the improvement was made may demand that the land be restored substantially to its condition before the improvement was commenced, in which case the court shall order its restoration and the reasonable charge therefor shall be first paid out of such purchase price and the remainder shall be paid to lienors and other encumbrancers in accordance with their respective rights.

**History.**—s. 1, ch. 63-135; s. 35, ch. 67-254.  
**Note.**—Former s. 84.111.

**713.12 Liens for improving real property under contract with husband or wife on property of the other or of both.**—When the contract for improving real property is made with a husband or wife who is not separated and living apart from his or her spouse and the property is owned by the other or by both, the spouse who contracts shall be deemed to be the agent of the other to the extent of subjecting the right, title, or interest of the other in said property to liens under part I of this chapter unless such other shall, within 10 days after learning of such contract, give the contractor and record in the clerk's office, notice of his or her objection thereto.

**History.**—s. 1, ch. 63-135; s. 35, ch. 67-254.  
**Note.**—Former s. 84.121.

#### 713.13 Notice of commencement.

(1) An owner or his authorized agent before actually commencing to improve any real property, or recommencing completion of any improvement after default or abandonment, whether or not a project has a payment bond complying with s. 713.23, shall record a notice of commencement in the clerk's office and forthwith post a certified copy thereof containing the following information:

(a) A description sufficient for identification of the real property to be improved. The description should include the legal description of the property and also should include the street address of the property if available or, if there is no street address available, such additional information as will de-

scribe the physical location of the real property to be improved.

(b) A general description of the improvement.

(c) The name and address of the owner as defined in s. 713.01, his interest in the site of the improvement, and the name and address of the fee simple title holder, if other than such owner.

(d) The name and address of the contractor.

(e) The name and address of the surety on the payment bond under s. 713.23, if any, and the amount of such bond.

(f) The name and address of any person making a loan for the construction of the improvements.

(g) The name and address within the state of a person other than himself who may be designated by the owner as the person upon whom notices or other documents may be served under part I of this chapter, and service upon the person so designated shall constitute service upon the owner.

(h) The owner, at his option, may designate a person in addition to himself to receive a copy of the lienor's notice as provided in s. 713.06(2)(b), and if he does so, the name and address of such person shall be included in the notice of commencement.

(2) If the improvement described in said notice is not actually commenced within 30 days after the recording thereof, such notice shall be void and of no further effect.

(3) Neither the recording of a notice of commencement nor the posting of a copy thereof shall constitute a lien, cloud or encumbrance on real property, nor actual nor constructive notice of any of the same.

(4) This section does not apply to an owner who is constructing improvements described in s. 713.04.

(5) Unless otherwise provided in the notice of commencement or a new or amended notice of commencement, any notice of commencement heretofore or hereafter recorded shall not be effective as to any person acquiring title or any interest in real property from the owner or under him after 1 year from the date of recording the notice of commencement.

**History.**—s. 1, ch. 63-135; s. 9, ch. 65-456; s. 35, ch. 67-254; s. 14, ch. 77-353.  
**Note.**—Former s. 84.131.

### **713.135 Notice of commencement and applicability of mechanic's lien.—**

(1) When any person applies for a building permit, the authority issuing such permit shall:

(a) Print on the face of each application and permit in no less than 18-point, capitalized, boldface type: "FAILURE TO COMPLY WITH THE MECHANICS' LIEN LAW CAN RESULT IN THE PROPERTY OWNER PAYING TWICE FOR BUILDING IMPROVEMENTS."

(b) Provide the applicant with a printed statement stating that the right, title, and interest of the person who has contracted for the improvement may be subject to attachment under the mechanics' lien law. The Division of Consumer Services of the Department of Agriculture and Consumer Services shall furnish, for distribution, the statement described in this paragraph, and said statement shall be a summary of the mechanics' lien law. However, failure by the authorities to provide the summary shall not subject the issuing authority to liability.

(c) Inform each applicant who is not the person whose right, title, and interest is subject to attachment that, as a condition to the issuance of a building permit, the applicant shall promise in good faith that the statement shall be delivered to the person whose property is subject to attachment.

(d) When required to do so by ordinance or resolution of the governing body, furnish to the applicant two or more copies of a form of notice of commencement conforming with the provisions of s. 713.13, together with a concise printed statement explaining the provisions of the Florida Mechanics' Lien Law, part I of this chapter, relating to the recording and to the posting of copies of notices of commencement and encouraging the owner to record a notice of commencement and post a copy thereof in accordance with the provisions of s. 713.13.

(2) No issuing authority in subsection (1) shall be held liable in any civil action for the failure of the person whose property is subject to attachment to receive or to be delivered a printed statement stating that the right, title, and interest of the person who has contracted for the improvement may be subject to attachment under the mechanics' lien law.

(3) The several boards of county commissioners, municipal councils, or other similar bodies may by ordinance or resolution establish reasonable fees for furnishing copies of the forms and the printed statement provided in paragraph (1)(d) in an amount not to exceed \$2 to be paid by the applicant for each permit in addition to all other costs of the permit; however, no forms or statement need be furnished nor shall such additional fee be obtained from applicants for permits in those cases where the owner of a legal or equitable interest (including that of ownership of stock of a corporate landowner) of the real property to be improved is engaged in the business of construction of buildings for sale to others and intends to make the improvements authorized by the permit on the property and upon completion will offer the improved real property for sale.

(4) This section shall apply to every municipality and county in the state which now or hereafter may have a system of issuing building permits for the construction of improvements or for the alteration or repair of improvements on or to real property located within the geographic limits of the issuing authority.

**History.**—ss. 1-3, ch. 67-185; s. 2, ch. 78-397.

### **713.14 Application of money to materials account.—**

(1) Any owner, contractor, subcontractor, or sub-subcontractor, in making any payment under, or properly applicable to, any contract to one with whom he has a running account, or with whom he has more than one contract, or to whom he is otherwise indebted, shall designate the contract under which the payment is made or the items of account to which it is to be applied. If he shall fail to do so or shall make a false designation, he shall be liable to anyone suffering a loss in consequence for the amount of the loss.

(2) When a payment for materials is made to a subcontractor, sub-subcontractor, or materialman, the subcontractor, sub-subcontractor, or materialman shall demand of the person making the pay-



ment a designation of the account and the items of account to which the payment is to apply. In any case in which a lien is claimed for materials furnished by a subcontractor, subsubcontractor, or materialman, it shall be a complete defense to the claim to prove that a payment made by the owner to the contractor for the materials has been paid over to the subcontractor, subsubcontractor, or materialman, and to prove also that when such payment was received by such subcontractor, subsubcontractor, or materialman he did not demand a designation of the account and of the items of account to which the payment was to be applied or, receiving a designation of its application to the account for the materials, he failed to apply the payment in accordance therewith. This subsection shall be deemed to be cumulative to any other defenses available to the person paying the materialman, subcontractor, or subsubcontractor.

**History.**—s. 1, ch. 63-135; s. 35, ch. 67-254; s. 7, ch. 77-353.

**Note.**—Former s. 84.141.

#### **713.15 Repossession of materials not used.**—

If for any reason the completion of an improvement is abandoned or though the improvement is completed, materials delivered are not used therefor, a person who has delivered materials for the improvement which have not been incorporated therein and for which he has not received payment may peaceably repossess and remove such materials or replevy the same and thereupon he shall have no lien on the real property or improvements and no right against any persons for the price thereof, but shall have the same rights in regard to the materials as if he had never parted with their possession. This right to repossess and remove or replevy the materials shall not be affected by their sale, encumbrance, attachment, or transfer from the site of improvement, except that if the materials have been so transferred, the right to repossess or replevy them shall not be effective as against a purchaser or encumbrancer thereof in good faith whose interest therein is acquired after such transfer from the site of the improvement or as against a creditor attaching after such transfer. The right of repossession and removal given by this section shall extend only to materials whose purchase price does not exceed the amount remaining due to the person repossessing but where materials have been partly paid for, the person delivering them may repossess them as allowed in this section on refunding the part of the purchase price which has been paid.

**History.**—s. 1, ch. 63-135; s. 35, ch. 67-254.

**Note.**—Former s. 84.151.

#### **713.16 Copy of contract and statements of account may be demanded.**—

(1) A copy of the contract of a lienor or owner and a statement of the amount due or to become due if fixed or ascertainable thereon shall be furnished by any party thereto, upon written demand of an owner or a lienor contracting with or employed by the other party to such contract. If the owner or lienor refuses or neglects to furnish such copy of the contract or such statement, or willfully and falsely states the amount due or to become due if fixed or ascertainable under such contract, any person who suffers any

detriment thereby shall have a cause of action against the person refusing or neglecting to furnish the same or willfully and falsely stating the amount due or to become due for his damages sustained thereby. The information contained in such copy or statement furnished pursuant to such written demand shall be binding upon the owner or lienor furnishing it unless actual notice of any modification is given to the person demanding the copy or statement before such person acts in good faith in reliance on it. The person demanding such documents shall be required to pay for the reproduction thereof and if such person fails or refuses to do so, he shall be entitled only to inspect such documents at reasonable times and places.

(2) At the time any payment is to be made by the owner to the contractor or directly to a lienor, the owner may in writing demand of any lienor a written statement under oath of his account showing the nature of the labor or services performed and to be performed, the materials furnished and to be furnished, the amount paid on account to date, the amount due, and the amount to become due. Failure or refusal to furnish the statement within 30 days after the demand, or furnishing of a false or fraudulent statement, shall deprive the person so failing or refusing to furnish such statement of his lien.

**History.**—s. 1, ch. 63-135; s. 10, ch. 65-456; s. 35, ch. 67-254; s. 8, ch. 77-353.

**Note.**—Former s. 84.161.

**713.17 Materials not attachable for debts of purchaser.**—Whenever materials have been furnished to improve real property and payment therefor has not been made or waived, such materials shall not be subject to attachment, execution, or other legal process to enforce any debt due by the purchaser of such materials, except a debt due for the purchase price thereof, so long as in good faith the same are about to be applied to improve the real property; but if the owner has made payment for materials furnished and the materialman has not received payment therefor, such materials shall not be subject to attachment, execution, or other legal process to enforce the debt due for the purchase price.

**History.**—s. 1, ch. 63-135; s. 35, ch. 67-254.

**Note.**—Former s. 84.171.

#### **713.18 Manner of serving notices, etc.**—

(1) Service of notices, claims of lien, affidavits, assignments and other instruments permitted or required hereunder, or copies thereof when so permitted or required, unless otherwise specifically provided in this part I, shall be made by one of the following methods:

(a) By serving in the manner provided by law for the service of process.

(b) By actual delivery to the person to be served; or, if a partnership, to one of the partners; or, if a corporation, to an officer, director, managing agent or business agent thereof.

(c) By mailing the same, postage prepaid, by registered or certified mail to the person to be served at his last known address and evidence of delivery.

(d) If none of the foregoing can be accomplished, by posting on the premises.

(2) If the real property is owned by more than

one person, a lienor may serve any notices or other papers under part I of this chapter on any one of such owners and this shall be deemed notice to all owners.

**History.**—s. 1, ch. 63-135; s. 11, ch. 65-456; s. 35, ch. 67-254.

**Note.**—Former s. 84.181.

**713.19 Assignment of lien.**—A lien or prospective lien, except that of a laborer, may be assigned by the lienor at any time before its discharge. The assignment may be recorded in the clerk's office.

**History.**—s. 1, ch. 63-135; s. 12, ch. 65-456; s. 35, ch. 67-254.

**Note.**—Former s. 84.191.

**713.20 Waiver or release of liens.**—

(1) The acceptance by the lienor of an unsecured note for all or any part of the amount of his demand shall not constitute a waiver of his lien therefor unless expressly so agreed in writing, nor shall it in any way affect the period for filing the notice under s. 713.06(2), or the claim of lien under s. 713.08.

(2) Any person other than a laborer may waive his lien under this chapter at any time, either before or after furnishing services or materials. A laborer may waive his lien only to the extent of labor theretofore performed.

(3) Any person may at any time waive, release or satisfy any part of his lien under part I of this chapter, either as to the amount due for labor performed, or for services or materials furnished or to be furnished, or as to any part or parcel of the real property.

**History.**—s. 1, ch. 63-135; s. 35, ch. 67-254.

**Note.**—Former s. 84.202.

**713.21 Discharge of lien.**—A lien properly perfected under this chapter may be discharged by any of the following methods:

(1) By entering satisfaction of the lien upon the margin of the record thereof in the clerk's office when not otherwise prohibited by law. This satisfaction shall be signed by the lienor, his agent or attorney and attested by said clerk. Any person who executes a claim of lien shall have authority to execute a satisfaction in the absence of actual notice of lack of authority to any person relying on the same.

(2) By the satisfaction of the lienor, duly acknowledged and recorded in the clerk's office. Any person who executes a claim of lien shall have authority to execute a satisfaction in the absence of actual notice of lack of authority to any person relying on the same.

(3) By failure to begin an action to enforce the lien within the time prescribed in this part I.

(4) By an order of the circuit court of the county where the property is located, as provided in this subsection. Upon filing a complaint therefor by any interested party the clerk shall issue a summons to the lienor to show cause within 20 days why his lien should not be enforced by action or vacated and canceled of record. Upon failure of the lienor to show cause why his lien should not be enforced or his failure to commence such action before the return date of the summons the court shall forthwith order cancellation of the lien.

(5) By recording in the clerk's office the original or a certified copy of a judgment or decree of a court of competent jurisdiction showing a final determination of the action.

**History.**—s. 1, ch. 63-135; s. 35, ch. 67-254.

**Note.**—Former s. 84.211.

**713.22 Duration of lien.**—

(1) No lien provided by part I shall continue for a longer period than 1 year after the claim of lien has been recorded, unless within that time an action to enforce the lien is commenced in a court of competent jurisdiction. The continuation of the lien effected by the commencement of the action shall not be good against creditors or subsequent purchasers for a valuable consideration and without notice, unless a notice of lis pendens is recorded.

(2) An owner or his agent or attorney may elect to shorten the time prescribed in subsection (1) within which to commence an action to enforce any claim of lien or claim against a bond or other security under s. 713.23 or s. 713.24 by recording in the clerk's office a notice in substantially the following form:

**NOTICE OF CONTEST OF LIEN**

To: (Name and address of lienor)....

You are notified that the undersigned contests the claim of lien filed by you on .... 19....., and recorded in .... Book ....., Page ....., of the public records of .... County, Florida, and that the time within which you may file suit to enforce your lien is limited to 60 days from the date of service of this notice. This .... day of .... 19.....

Signed: (Owner or Attorney)....

The lien of any lienor upon whom such notice is served and who fails to institute a suit to enforce his lien within 60 days after service of such notice shall be extinguished automatically. The clerk shall mail a copy of the notice of contest to the lien claimant at the address shown in the claim of lien or most recent amendment thereto and shall certify to such service on the face of such notice and record the notice. Service shall be deemed complete upon mailing.

**History.**—s. 1, ch. 63-135; s. 13, ch. 65-456; s. 35, ch. 67-254; s. 9, ch. 77-353.

**Note.**—Former s. 84.221.

**713.23 Payment bond.**—

(1) The payment bond required to exempt an owner under part I shall be furnished by the contractor in at least the amount of the original contract price before commencing the construction of the improvement under the direct contract. The bond shall be executed as surety by a surety insurer authorized to do business in Florida and shall be conditioned that the contractor shall promptly make payments to all lienors under the contractor's direct contract. The owner, contractor, or surety shall furnish a true copy at the cost of reproduction to any lienor demanding it. Any person who fails or refuses to furnish the copy without justifiable cause shall be liable to the lienor demanding the copy for any damages caused by the refusal or failure. If a payment bond is furnished, the owner, within 10 days after receipt of a notice to owner, shall give written notice, to the

person who serves such notice to owner, of the existence of the payment bond, including the name and address of the surety and principal under the bond. A lienor, except a laborer, who is not in privity with the contractor shall serve the contractor notice in writing within 45 days after beginning to furnish labor, materials, or supplies that he will look to the contractor's bond for protection on the work. However, if a notice of commencement is not recorded, or a reference to the bond is not given in the notice of commencement, and, in either case, if the lienor not in privity with the contractor is not otherwise notified in writing of the existence of the bond, the lienor not in privity with the contractor shall have 45 days from the date he is notified of the existence of the bond within which to serve the notice. In addition, any lienor who is not in privity with the contractor and who has not received payment shall, within 90 days after performance of the labor or after complete delivery of materials and supplies, serve the contractor with written notice of the performance of the labor or delivery of materials and supplies and the nonpayment. No action for the labor or materials and supplies may be instituted or prosecuted against the contractor unless both notices have been given. No action shall be instituted or prosecuted against the contractor or against the surety on the bond under this section after 1 year from the performance of the labor or completion of delivery of the materials and supplies. Any lienor shall have a direct right of action on the bond against the surety. No bond shall contain any provisions restricting the classes of persons protected thereby or the venue of any proceeding. The surety shall not be entitled to the defense of pro tanto discharge as against any lienor because of changes or modifications in the contract to which the surety is not a party; but the liability of the surety shall not be increased beyond the penal sum of the bond.

(2) The bond shall secure every lien accruing subsequent to its execution and delivery, except that of the contractor. Every claim of lien, except that of the contractor, filed subsequent to execution and delivery of the bond shall be transferred to it with the same effect as liens transferred under s. 713.24. Record notice of the transfer shall be effected by the contractor, or any person having an interest in the property against which the claim of lien has been asserted, by recording in the clerk's office a notice in substantially the following form:

#### NOTICE OF BOND

To ..... (Name and Address of Lienor).....

You are notified that the claim of lien filed by you on....., 19..... and recorded in Official Records Book ..... at page ..... of the public records of ..... County, Florida, is secured by a bond, a copy being attached.

Signed: ..... (Name of person recording notice).....

The notice shall be verified. The clerk shall mail a copy of the notice to the lienor at the address shown in the claim of lien, or most recent amendment to it, and shall certify to the service on the face of the notice and shall record the notice.

(3) A payment bond in substantially the follow-

ing form shall be sufficient:

#### PAYMENT BOND

BY THIS BOND We, ....., as Principal, and ....., a corporation, as Surety, are bound to ....., herein called Owner, in the sum of \$.....for the payment of which we bind ourselves, our heirs, personal representatives, successors and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if Principal:

1. Promptly makes payments to all lienors supplying labor, material, and supplies used directly or indirectly by Principal in the prosecution of the work provided in the contract dated ....., 19 ....., between Principal and Owner for construction of ....., the contract being made a part of this bond by reference, and

2. Pays Owner all loss, damage, expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of default by Principal under the bond,

then this bond is void; otherwise it remains in full force.

Any changes in or under the contract documents and compliance or noncompliance with formalities connected with the contract or the changes do not affect Surety's obligation under this bond.

DATED on ....., 19 .....

.....(Principal).....

(SEAL)

.....(SURETY'S NAME).....

By ..... (As Attorney-in-Fact).....

.....(Surety).....

(4) The provisions of s. 713.24(3) shall apply to bonds under this section.

History.—s. 1, ch. 63-135; s. 14, ch. 65-456; s. 35, ch. 67-254; s. 10, ch. 77-353.  
Note.—Former s. 84.231.

**713.231 Contract disclosures.**—Any direct contract between an owner and a contractor shall include a statement which discloses the substance of the provisions of ss. 713.02(6) and 713.23.

History.—s. 16, ch. 77-353.

#### 713.24 Transfer of liens to security.—

(1) Any lien claimed under part I may be transferred, by any person having an interest in the real property upon which the lien is imposed or the contract under which the lien is claimed, from such real property to other security by either:

(a) Depositing in the clerk's office a sum of money, or

(b) Filing in the clerk's office a bond executed as surety by a surety insurer licensed to do business in this state,

either to be in an amount equal to the amount demanded in such claim of lien, plus interest thereon at 6 percent per year for 3 years, plus \$100 to apply on any court costs which may be taxed in any proceeding to enforce said lien. Such deposit or bond shall be conditioned to pay any judgment or decree which may be rendered for the satisfaction of the



lien for which such claim of lien was recorded, and costs not to exceed \$100. Upon making such deposit or filing such bond, the clerk shall make and record a certificate showing the transfer of the lien from the real property to the security and mail a copy thereof by registered or certified mail to the lienor named in the claim of lien so transferred, at the address stated therein. Upon filing the certificate of transfer, the real property shall thereupon be released from the lien claimed, and such lien shall be transferred to said security. The clerk shall be entitled to a fee for making and serving the certificate, in the sum of \$10. If the transaction involves the transfer of multiple liens, an additional charge of \$5 for each additional lien shall be charged. For recording the certificate and approving the bond, the clerk shall receive his usual statutory service charges as prescribed in s. 28.24. Any number of liens may be transferred to one such security.

(2) Any excess of the security over the aggregate amount of any judgments or decrees rendered plus costs actually taxed shall be repaid to the party filing the same or his successor in interest. Any deposit of money shall be considered as paid into court and shall be subject to the provisions of law relative to payments of money into court and the disposition of same.

(3) Any party having an interest in such security or the property from which the lien was transferred may at any time, and any number of times, file a complaint in chancery in the circuit court of the county where such security is deposited for an order to require additional security, reduction of security, change or substitution of sureties, payment or discharge thereof or any other matter affecting said security.

(4) If no proceeding to enforce a transferred lien shall be commenced within the time specified in s. 713.22 or if it appears that the transferred lien has been satisfied of record, the clerk shall return said security upon request of the person depositing or filing the same, or the insurer.

**History.**—s. 1, ch. 63-135; s. 15, ch. 65-456; s. 35, ch. 67-254; s. 6, ch. 77-354.  
**Note.**—Former s. 84.241.

**713.25 Applicability of ch. 65-456.**—This act shall take effect on July 1, 1965, but shall not apply to any act required to be done within a time period which is running on that date nor shall apply to existing projects where its operation would impair vested rights.

**History.**—s. 17, ch. 65-456; s. 35, ch. 67-254.  
**Note.**—Former s. 84.242.

**713.26 Redemption and sale.**—The right of redemption upon all sales under part I of this chapter shall exist in favor of the person whose interest is sold and may be exercised in the same manner as is or may be provided for redemption of real property from sales under mortgages.

**History.**—s. 1, ch. 63-135; s. 35, ch. 67-254; s. 4, ch. 71-5.  
**Note.**—Former s. 84.251.

**713.27 Interplead.**—An owner or other person holding funds for disbursement on an improvement shall have the right to interplead such lienor and any other person having or claiming to have an interest in the real property improved or a contract

relating to the improvement thereof, whenever there is a dispute between lienors as to the amounts due or to become due them. If the court decrees the interpleader, it may transfer all claims to the funds held by the plaintiff. In such case the court shall require said fund to be deposited in registry of court and, effective upon such deposit, shall decree the real property to be free of all liens and claims of lien of the parties to the suit.

**History.**—s. 1, ch. 63-135; s. 35, ch. 67-254.  
**Note.**—Former s. 84.271.

### **713.28 Judgments in case of failure to establish liens; personal and deficiency judgments or decrees.**—

(1) If a lienor shall fail, for any reason, to establish a lien for the full amount found to be due him in an action to enforce the same under the provisions of part I of this chapter, he may, in addition to the lien decreed in his favor, recover a judgment or decree in such action against any party liable therefor for such sums in excess of the lien as are due him or which he might recover in an action on a contract against any party to the action from whom such sums are due him.

(2) In any action heretofore or hereafter brought a court may, either before or after the final adjudication, award a summary money judgment or decree in favor of any party. This shall not preclude the rendition of other judgments or decrees in the action.

(3) If, upon the sale of the real property under any judgment or decree there is a deficiency of proceeds to pay the amount of such judgment or decree, the judgment or decree may be enforced for the deficiency against any person liable therefor in the same manner and under the same conditions as deficiency decrees in mortgage foreclosures. Any payment made on account of any judgment or decree in favor of a party shall be credited on any other judgment or decree rendered in favor of that party in the same action.

**History.**—s. 1, ch. 63-135; s. 35, ch. 67-254.  
**Note.**—Former s. 84.281.

**713.29 Attorney's fees.**—In any action brought to enforce a lien under part I, the prevailing party shall be entitled to recover a reasonable fee for the services of his attorney for trial and appeal, to be determined by the court, which shall be taxed as part of his costs, as allowed in equitable actions.

**History.**—s. 1, ch. 63-135; s. 35, ch. 67-254; s. 11, ch. 77-353.  
**Note.**—Former s. 84.291.

**713.30 Other actions not barred.**—This part I shall be cumulative to other existing remedies and nothing contained in part I of this chapter shall be construed to prevent any lienor or assignee under any contract from maintaining an action thereon at law in like manner as if he had no lien for the security of his debt, and the bringing of such action shall not prejudice his rights under part I of this chapter, except as herein otherwise expressly provided.

**History.**—s. 1, ch. 63-135; s. 35, ch. 67-254.  
**Note.**—Former s. 84.301.

### **713.31 Remedies in case of fraud or collusion.**—

(1) When the owner or any lienor shall, by fraud

or collusion, deprive or attempt to deprive any lienor of benefits or rights to which such lienor is entitled under this part I by establishing or manipulating the contract price or by giving false affidavits, releases, invoices, worthless checks, statements or written instruments permitted or required under part I of this chapter relating to the improvement of real property hereunder to the detriment of any such lienor, the circuit court in chancery shall have jurisdiction, upon a complaint filed by such lienor, to issue temporary and permanent injunctions, order accountings, grant discovery, utilize all remedies available under creditors' bills and proceedings supplementary to execution, marshal assets and exercise any other appropriate legal or equitable remedies or procedures without regard to the adequacy of a remedy at law or whether or not irreparable damage has or will be done.

(2)(a) Any lien asserted under this part I in which the lienor has willfully exaggerated the amount for which such lien is claimed or in which the lienor has willfully included a claim for work not performed upon or materials not furnished for the property upon which he seeks to impress such lien or in which the lienor has compiled his claim with such willful and gross negligence as to amount to a willful exaggeration shall be deemed a fraudulent lien.

(b) It shall be a complete defense to any action to enforce a lien under this part I, or against any lien in any action in which the validity of the lien is an issue, that the lien is a fraudulent lien and the court so finding is empowered to and shall declare the lien unenforceable and the lienor shall thereupon forfeit his right to any lien on the property upon which he sought to impress such fraudulent lien.

(c) An owner against whose interest a fraudulent lien is filed, or any contractor or subcontractor who suffers damages as a result of the filing of such a fraudulent lien, shall have a right of action for his actual damages occasioned thereby and for punitive damages. Such action may be instituted independently of other action, or in connection with a summons to show cause under s. 713.21, or as a counterclaim or cross-claim to any action to enforce or to determine the validity of such lien. The lienor who files a fraudulent lien shall be liable to the owner or the defrauded party in damages, which shall include court costs, clerk's fees, a reasonable attorney's fee for services in securing the discharge of the lien, the amount of any premium for a bond given to obtain the discharge of the lien, interest on any money deposited for the purpose of discharging the lien, and punitive damages in an amount not exceeding the difference between the amount claimed by the lienor to be due or to become due and the amount actually due or to become due.

**History.**—s. 1, ch. 63-135; s. 35, ch. 67-254; s. 12, ch. 77-353; s. 260, ch. 79-400.  
**Note.**—Former s. 84.311.

**713.32 Insurance proceeds liable for demands.**—The proceeds of any insurance that by the terms of the policy contract are payable to the owner of improved real property or a lienor and actually received or to be received by him because of the damage, destruction, or removal by fire or other casualty of an improvement on which lienors have furnished labor or services or materials shall, after the

owner or lienor, as the case may be, has been reimbursed therefrom for any premiums paid by him, be liable to liens or demands for payment provided by part I to the same extent and in the same manner, order of priority, and conditions as the real property or payments under a direct contract would have been, if the improvement not been so damaged, destroyed, or removed. The insurer may pay the proceeds of the policy of insurance to the insured named in the policy and thereupon any liability of the insurer under part I shall cease. The named insured who receives any proceeds of the policy shall be deemed a trustee of the proceeds, and the proceeds shall be deemed trust funds for the purposes designated by this section for a period of 1 year from the date of receipt of the proceeds. This section shall not apply to that part of the proceeds of any policy of insurance payable to a person, including a mortgagee, who holds a lien perfected before the recording of the notice of commencement or recommencement.

**History.**—s. 1, ch. 63-135; s. 35, ch. 67-254; s. 13, ch. 77-353.  
**Note.**—Former s. 84.321.

**713.33 Disbursing agent and others may rely on owner's notices.**—When the proceeds of a construction or improvement loan or any portion thereof are being disbursed by a person other than the owner, any affidavit, notice or other instrument which is permitted or required under this part to be furnished to the owner may be relied upon by such other person in making such disbursements to the same extent as the owner is entitled to rely upon the same.

**History.**—s. 1, ch. 63-135; s. 35, ch. 67-254.  
**Note.**—Former s. 84.331.

**713.34 Misapplication of funds shall constitute embezzlement.**—

(1) For the purpose of this section the net proceeds of a loan shall be deemed to be the amount remaining after deducting from the principal amount of the loan:

(a) Fees and charges legally incident to the procuring of the loan;

(b) The amount required to satisfy prior encumbrances against the real property which is security for such loan and the fees and charges legally incident thereto, if such encumbrances are paid or to be paid with the consent of the lender, from the proceeds of the loan; and

(c) The amount of fees and charges for professional services for which liens are not provided by this part I and which are bona fide rendered in connection with the improving of the real property.

(2) Any person, firm, corporation or agent, officer or employee thereof who procures a loan secured by mortgage or other encumbrance on real property, representing that the net proceeds thereof are to be used for the purpose of improving such real property and who, with intent to defraud, shall use the net proceeds, as defined in subsection (1), or any part thereof for any other purpose than to pay for labor or services performed on, or material furnished for, this specific improvement, while any amount for which he may be or become liable for such labor, services, or materials remains unpaid or while any amount of which he has received notice of nonpay-

ment prescribed by this part I remains unpaid, shall be guilty of embezzlement and shall be prosecuted and, upon conviction, punished in accordance with the provisions of the laws of this state; provided, however, that failure to pay for such labor, services or materials furnished for this specific improvement after receipt of such loan shall constitute prima facie evidence of intent to defraud.

(3) Any person, firm, corporation or agent, officer or employee thereof who, with intent to defraud, shall use the proceeds of any payment made to him on account of improving certain real property, for any other purpose than to pay for labor or services performed on or materials furnished for this specific improvement, while any amount for which he may be or become liable for such labor, services, or materials remains unpaid shall be guilty of embezzlement and shall be prosecuted and, upon conviction, punished in accordance with the provisions of the laws of this state; provided, however, that failure to pay for such labor, services or materials furnished for this specific improvement after receipt of such proceeds shall constitute prima facie evidence of intent to defraud.

(4) The provisions of subsections (2) and (3) shall not apply to mortgage bankers or their agents, servants or employees for their acts in the usual course of the business of lending or disbursing mortgage funds.

**History.**—s. 1, ch. 63-135; s. 35, ch. 67-254.

**Note.**—Former s. 84.341.

**713.35 Making or furnishing false statement shall constitute perjury.**—Any person, firm or corporation who shall willfully make or furnish to another person, firm or corporation, an affidavit containing a false statement in connection with the improvement of real property in this state, knowing that the one to whom it was furnished may rely on it, and the one to whom it was furnished shall part with anything of value relying on the truth of such statement as an inducement to do so, shall be guilty of perjury and shall be prosecuted and, upon conviction, punished in accordance with the provisions of the laws of this state.

**History.**—s. 1, ch. 63-135; s. 35, ch. 67-254.

**Note.**—Former s. 84.351.

**713.36 Effective date.**—Chapter 63-135 shall take effect at 12:01 a.m., October 1, 1963. The rights of all persons with respect to an improvement that has a time of visible commencement prior to October 1, 1963, shall be determined and enforced as provided in former ss. 84.01-84.35, as they existed prior to October 1, 1963. As to all other rights, former ss. 84.01-84.35, Florida Statutes, are repealed concurrently with the effective time of this part I.

**History.**—s. 3, ch. 63-135; s. 35, ch. 67-254.

**Note.**—Former s. 84.361.

**713.37 Rule of construction.**—This part shall not be subject to a rule of liberal construction in favor of any person to whom it applies.

**History.**—s. 15, ch. 77-353.

## PART II

### MISCELLANEOUS LIENS

- 713.50 Liens upon property.
- 713.56 Liens for labor on and with machines, etc.
- 713.57 Liens for labor on logs and timber.
- 713.58 Liens for labor or services on personal property.
- 713.59 Liens for labor in raising crops.
- 713.60 Liens for labor on or for vessels.
- 713.61 Liens for manufacturing and repairing articles.
- 713.62 Liens for furnishing articles to be manufactured.
- 713.63 Liens for furnishing locomotives, machinery, etc.
- 713.64 Liens for furnishing material for vessels.
- 713.65 Liens for care and maintenance of animals.
- 713.66 Liens for feed, etc., for racehorses, polo ponies and race dogs.
- 713.67 Liens for board, lodging, etc., at hotels, etc.
- 713.68 Liens for hotels, apartment houses, roominghouses, boardinghouses, etc.
- 713.69 Unlawful to remove property upon which lien has accrued.
- 713.691 Landlord's lien for rent; exemptions.
- 713.70 Lien for service of stallions and other animals.
- 713.71 Liens for loans and advances.
- 713.73 Priority of foregoing liens.
- 713.74 Acquisition of liens by persons in privity with the owner.
- 713.75 Acquisition of liens by persons not in privity with the owner.
- 713.76 Release of lien by filing bond.
- 713.77 Liens of owners, operators or keepers of camps; ejection of occupants.
- 713.78 Liens for recovering, towing, or storing vehicles.

**713.50 Liens upon property.**—Liens prior in dignity to all others accruing thereafter shall exist in favor of the following persons, upon the following described personal property under the circumstances hereinafter mentioned in this part II. This part II is limited to liens on personal property and their enforcement and related matters.

**History.**—ss. 1, 6, ch. 3747, 1887; RS 1726, 1730; s. 1, ch. 5143, 1903; GS 2190, 2196; RGS 3495, 3502; CGL 5349, 5363; s. 44, ch. 16042, 1933; s. 36, ch. 67-254; s. 1, ch. 69-97.

**Note.**—Former s. 85.01.

**713.56 Liens for labor on and with machines, etc.**—In favor of any person by himself or others performing any labor upon or with any engine, machine, apparatus, fixture, implement, newspaper or printing material or other property, or doing work in any hotel; upon such engine, machine, material, apparatus, fixture, implement, newspaper or printing material, or other property, and upon the furniture, furnishings and belongings of said hotel.

**History.**—s. 6, ch. 3747, 1887; RS 1730; s. 1, ch. 4583, 1897; GS 2196; RGS 3503; CGL 5364; s. 36, ch. 67-254.

**Note.**—Former s. 85.07.



**713.57 Liens for labor on logs and timber.**—In favor of any person by himself or others cutting, rafting, running, driving, or performing other labor upon logs or timber of any kind; on such logs and timber, and on any article manufactured therefrom.

**History.**—s. 7, ch. 3747, 1887; RS 1731; GS 2197; RGS 3504; CGL 5365; s. 36, ch. 67-254.

**Note.**—Former s. 85.08.

**713.58 Liens for labor or services on personal property.**—

(1) In favor of persons performing labor or services for any other person, upon the personal property of the latter upon which the labor or services is performed, or which is used in the business, occupation, or employment in which the labor or services is performed.

(2) It is unlawful for any person, knowingly, willfully, and with intent to defraud, to remove any property upon which a lien has accrued under this section without first making full payment to the person performing labor or services of all sums due and payable for such labor or services or without first having the written consent of such person so performing the labor or services so to remove such property.

(3) In that the possessory right and lien of the person performing labor or services under this section is released, relinquished, and lost by the removal of such property upon which a lien has accrued, it shall be deemed prima facie evidence of intent to defraud if, upon the removal of such property, the person removing such property utters, delivers, or gives any check, draft, or written order for the payment of money in payment of the indebtedness secured by the lien and then stops payment on such check, draft, or written order.

(4) Any person violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be punished by fine of not more than \$500 or imprisonment in the county jail for not more than 3 months.

**History.**—s. 10, ch. 3747, 1887; RS 1732; GS 2198; RGS 3505; s. 1, ch. 8474, 1921; CGL 5366; s. 36, ch. 67-254; s. 1, ch. 70-340.

**Note.**—Former s. 85.09.

**713.59 Liens for labor in raising crops.**—In favor of any person performing any labor in, or managing or overseeing, the cultivation or harvesting of crops; upon the crops cultivated or harvested.

**History.**—Ch. 1899, 1872; s. 9, ch. 3747, 1887; RS 1733; GS 2199; RGS 3506; CGL 5367; s. 36, ch. 67-254.

**Note.**—Former s. 85.10.

**713.60 Liens for labor on or for vessels.**—In favor of any person performing for himself or others, any labor, or furnishing any materials or supplies for use in the construction of any vessel or watercraft; and in favor of any person performing for himself or others, any labor or service of any kind, on, to or for the use or benefit of a vessel or watercraft, including masters, mates and members of the crew and persons loading or unloading the vessel or putting in or taking out ballast; upon such vessel or watercraft, whether partially or completely con-

structed and whether launched or on land, her tackle, apparel and furniture.

**History.**—s. 1, ch. 3612, 1885; RS 1734; GS 2200; s. 10, ch. 7838, 1919; RGS 3507; CGL 5368; s. 36, ch. 67-254.

**Note.**—Former s. 85.11.

**713.61 Liens for manufacturing and repairing articles.**—In favor of any person who shall manufacture, alter or repair any article or thing of value; upon such article or thing.

**History.**—s. 5, ch. 3747, 1887; RS 1735; GS 2201; RGS 3508; CGL 5369; s. 36, ch. 67-254.

**Note.**—Former s. 85.12.

**713.62 Liens for furnishing articles to be manufactured.**—In favor of any person who shall furnish any logs, lumber, clay, sand, stone or other material whatsoever, crude or partially or wholly prepared for use, to any mill or other manufactory to be manufactured into any article of value; upon all such articles furnished and upon all articles manufactured therefrom.

**History.**—s. 7, ch. 3747, 1887; RS 1736; GS 2202; RGS 3509; CGL 5370; s. 36, ch. 67-254.

**Note.**—Former s. 85.13.

**713.63 Liens for furnishing locomotives, machinery, etc.**—In favor of any person who shall furnish any locomotive or stationary engine, water engine, windmill, car or other machine or parts of machine or instrument for any railroad, telegraph or telephone line, mill, distillery, or other manufactory; upon the articles so furnished.

**History.**—s. 9, ch. 3747, 1887; RS 1737; GS 2203; RGS 3510; CGL 5371; s. 36, ch. 67-254.

**Note.**—Former s. 85.14.

**713.64 Liens for furnishing material for vessels.**—In favor of any ship chandler, storekeeper or dealer furnishing stores, provisions, rigging or other material to or for the use of any ship, vessel, steamboat or other watercraft; on such ship, vessel, steamboat or other watercraft.

**History.**—s. 14, ch. 40, 1845; ss. 1-4, ch. 1128, 1861; RS 1738; GS 2204; RGS 3511; CGL 5372; s. 36, ch. 67-254.

**Note.**—Former s. 85.15.

**713.65 Liens for care and maintenance of animals.**—In favor of all persons feeding or caring for the horse or other animal of another, including all keepers of livery, sale or feed or feed stables, for feeding or taking care of any horse or other animal put in their charge; upon such horse or other animal.

**History.**—s. 1, ch. 3618, 1885; RS 1739; GS 2205; RGS 3512; CGL 5373; s. 1, ch. 25048, 1949; s. 36, ch. 67-254.

**Note.**—Former s. 85.16.

**713.66 Liens for feed, etc., for racehorses, polo ponies and race dogs.**—In favor of any person who shall furnish corn, oats, hay, grain or other feed or feedstuffs or straw or bedding material to or upon the order of the owner, or the agent, bailee, lessee, or custodian of the owner, of any racehorse, polo pony or race dog, for the unpaid portion of the price of such supplies upon every racehorse, polo pony, or race dog which consumes any part of such supplies. All racehorses and race dogs of such owner which are accustomed to consume supplies of the character delivered, which are at the time of the delivery of such supplies upon the premises to which delivery is made, shall be deemed prima facie to have consumed

such supplies. Such lien shall remain valid and enforceable for a period of 1 year from the dates of the respective deliveries of such corn, oats, hay, grain, feed or feedstuffs, or straw; and such liens are to be enforced in the manner provided for the enforcement of other liens on personal property in this state. Said liens shall be superior to any and all claims, liens and mortgages, whether recorded or unrecorded, including, but not limited to, any lessor's or vendor's lien, and any chattel mortgage, which theretofore may have been or thereafter may be created against such racehorse, polo pony or race dog, and to the claims of any and all purchases thereof.

**History.**—s. 1, ch. 17092, 1935; CGL 1936 Supp. 5373(1); s. 7, ch. 22858, 1945; s. 36, ch. 67-254.

**Note.**—Former s. 85.17.

**713.67 Liens for board, lodging, etc., at hotels, etc.**—In favor of keepers of hotels, apartment houses, roominghouses, and boardinghouses for the board, lodging and occupancy of and for moneys advanced to transient guests or tenants, upon the goods and chattels belonging to such guests or tenants in such hotel, apartment house, roominghouse or boardinghouse, including garage and storeroom. Upon the nonpayment of such sums in accordance with the rules of such hotels, apartment houses, roominghouses or boardinghouses, the keeper thereof may instantly eject such transient guests or tenants therefrom.

**History.**—s. 6, ch. 1999, 1874; RS 1740; GS 2206; RGS 3513; CGL 5374; s. 44, ch. 16042, 1933; s. 36, ch. 67-254; s. 6, ch. 73-330.

**Note.**—Former s. 85.18.

**713.68 Liens for hotels, apartment houses, roominghouses, boardinghouses, etc.**—In favor of any person conducting or operating any hotel, apartment house, roominghouse, boardinghouse or tenement house where rooms or apartments are let for hire or rental on a transient basis. Such lien shall exist on all the property including trunks, baggage, jewelry and wearing apparel, guns and sporting goods, furniture and furnishings and other personal property of any person which property is brought into or placed in any room or apartment of any hotel, apartment house, lodginghouse, roominghouse, boardinghouse or tenement house when such person shall occupy, on a transient basis, such room or apartment as tenant, lessee, boarder, roomer or guest for the privilege of which occupancy money or anything of value is to be paid to the person conducting or operating such hotel, apartment house, roominghouse, lodginghouse, boardinghouse or tenement house. Such lien shall continue and be in full force and effect for the amount payable for such occupancy until the same shall have been fully paid and discharged.

**History.**—s. 1, ch. 12080, 1927; CGL 5375; s. 36, ch. 67-254; s. 7, ch. 73-330.

**Note.**—Former s. 85.19.

cf.—s. 212.03 Transient rentals tax.

**713.69 Unlawful to remove property upon which lien has accrued.**—It is unlawful for any person to remove any property upon which a lien has accrued under the provisions of s. 713.68 from any hotel, apartment house, roominghouse, lodginghouse, boardinghouse or tenement house without first making full payment to the person operating or

conducting the same of all sums due and payable for such occupancy or without first having the written consent of such person so conducting or operating such place to so remove such property. Any person violating the provisions of this section shall, if the property removed in violation hereof be of the value of \$50 or less, be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083; and if the property so removed should be of greater value than \$50 then such person shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—ss. 2, 3, ch. 12080, 1927; CGL 5376, 7323; s. 36, ch. 67-254; s. 687, ch. 71-136.

**Note.**—Former s. 85.20.

**713.691 Landlord's lien for rent; exemptions.**—

(1) With regard to a residential tenancy, the landlord has a lien on all personal property of the tenant located on the premises for accrued rent due to the landlord under the rental agreement. This lien shall be in addition to any other liens upon such property which the landlord may acquire by law, and may be modified or waived, in whole or in part, by the provisions of a written rental agreement.

(2) When the tenant is the head of a family, personal property owned by him in the value of \$1,000 is exempt from the lien provided by this section. This subsection does not authorize an exemption any greater than that which may be available to the tenant in s. 4, Art. X of the State Constitution.

(3) The remedy of distress for rent is abolished with regard to residential tenancies.

**History.**—s. 3, ch. 73-330.

**713.70 Lien for service of stallions and other animals.**—In favor of owners of stallions, jackasses or bulls, upon the colt or calf of the get of said stallion, jackass or bull, and also upon the mare, jenny or cow served by said stallion, jackass or bull in breeding thereof for the sum stipulated to be paid for the service thereof, by filing at any time within 18 months after the date of service a statement of the account thereof, together with the description as to color and markings of the female served, and the name of the owner at the date of service, in the office of the county clerk of the county wherein the owner of the said female resided at the time of service. Neither the mare, jenny or cow, nor the get thereof, shall be sold within 18 months after the date of service, unless the service fee shall be paid, unless such sale shall be agreed to and approved in writing by the owner of the stallion, jackass or bull at the time of the sale or transfer of the mare, jenny or cow, or offspring thereof. At any time after such mare, jenny or cow shall conceive, anyone having the lien herein provided may enforce the same in the same manner as is now provided by law.

**History.**—s. 1, ch. 4352, 1895; GS 2207; s. 1, ch. 7362, 1917; RGS 3514; CGL 5377; s. 36, ch. 67-254.

**Note.**—Former s. 85.21.

**713.71 Liens for loans and advances.**—Any person who shall procure a loan or advance of money or goods and chattels, wares or merchandise or other things of value, to aid him in the business of planting, farming, timber getting or any other kind of

businesses in this state, from any factor, merchant, firm or person in this state, or in the United States or in any foreign country, shall, by part II of this chapter, be held to have given to the lender, lenders, or person making such advance, a statutory lien of prior dignity to all other encumbrances, saving and excepting liens for labor and liens in favor of landlords, upon all the timber-getting, all the crops, and products grown or anything else made or grown by said person, through the assistance of said loan or advances; provided, that the lien above-given shall not be created unless the person obtaining or procuring such loan or advance shall give to the person making such loan or advance an instrument of writing consenting to said lien; and the same shall be recorded in the office of the clerk of the circuit court of the county wherein such business of planting, farming or timber-getting is conducted.

**History.**—s. 1, ch. 4163, 1893; GS 2208; RGS 3515; CGL 5378; s. 36, ch. 67-254.

**Note.**—Former s. 85.22.

**713.73 Priority of foregoing liens.**—Liens for labor and liens for material provided for by this law shall take priority among themselves according to the times that the notices required to create such liens respectively were given or were recorded in the cases where record is required; that is to say, each such lien which shall have attached to the property shall be paid before any such lien which shall have subsequently attached thereto, shall be entitled to be paid.

**History.**—s. 12, ch. 5143, 1903; GS 2209; RGS 3516; CGL 5379; s. 36, ch. 67-254.

**Note.**—Former s. 85.24.

**713.74 Acquisition of liens by persons in privity with the owner.**—As against the owner of personal property upon which a lien is claimed under this part II, the lien shall be acquired by any person in privity with the owner by the performance of the labor or the furnishing of the materials. There shall be no lien upon personal property as against purchasers and creditors without notice unless the person claiming the lien is in possession of the property upon which the lien is claimed. The lien shall continue as long as the possession continues, not to exceed 3 months after performance of the labor or furnishing the material.

**History.**—RS 1742; s. 1, ch. 4582, 1897; ss. 8, 9, 11, ch. 5143, 1903; GS 2210; RGS 3517; CGL 5380; s. 36, ch. 67-254; s. 4, ch. 69-97.

**Note.**—Former s. 85.25.

**713.75 Acquisition of liens by persons not in privity with the owner.**—A person entitled to acquire a lien not in privity with the owner of the personal property shall acquire a lien upon the owner's personal property as against the owner and persons claiming through him by delivery to the owner of a written notice that the person for whom the labor has been performed or the material furnished is indebted to the person performing the labor or furnishing the material in the sum stated in the notice. A person who is performing or is about to perform labor or is furnishing or is about to furnish materials for personal property may deliver to the owner a written cautionary notice that he will do so. A lien shall exist from the time of delivery of either notice for the amount unpaid on the contract of the

owner with the person contracting with the lienor and the delivery of the notice shall also create a personal liability against the owner of the personal property in favor of the lienor giving the notice, but not to a greater extent than the amount then unpaid on the contract between the owner and the person with whom the owner contracted. There shall be no lien upon personal property as against creditors and purchasers without notice except under the circumstances and for the time prescribed in s. 713.74 and for the amount of the debt due to the lienor at the time of the service of the notice provided for in this section.

**History.**—RS 1743; s. 2, ch. 4582, 1897; ss. 1, 15, ch. 5143, 1903; GS 2211; RGS 3518; CGL 5381; s. 36, ch. 67-254; s. 5, ch. 69-97.

**Note.**—Former s. 85.26.

#### **713.76 Release of lien by filing bond.**—

(1) Any lienor may release his property from any lien claimed thereon under this part by filing with the clerk of the circuit court a cash or surety bond, payable to the person claiming the lien, in the amount of the final bill, and conditioned for the payment of any judgment which may be recovered on said lien, with costs.

(2) Whenever a lienor brings an action in the appropriate court with respect to any property which has been wrongfully detained by a lienor in violation of this section, the lienor, upon a judgment in the lienor's favor, shall be entitled to damages, reasonable court costs, and attorney's fees sustained by the lienor by reason of such wrongful detention.

(3) Any lienor who, upon the posting of the bond, fails to release or return the property to the lienor pursuant to this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 8, ch. 1632, 1868; RS 1749; s. 19, ch. 5143, 1903; GS 2225; RGS 3532; CGL 5396; s. 36, ch. 67-254; s. 1, ch. 77-387.

**Note.**—Former s. 85.27.

**713.77 Liens of owners, operators or keepers of camps; ejection of occupants.**—Liens prior in dignity to all others except liens for unpaid purchase price shall exist in favor of owners, operators, or keepers of tourist camps or trailer camps for rent owing by and for money or other property advanced to any occupant thereof upon the goods, chattels or other personal property of the occupant of such camp. Upon the nonpayment of such sums in accordance with the rules of such camps, or for failure to observe any provision of this part II or the rules and regulations prescribed by the State Board of Health, the owner, operator or keeper thereof may instantly eject such occupant therefrom; the liens created in favor of owners, operators, or keepers of tourist camps or trailer camps may be enforced in the same manner as is now or may hereafter be provided by law for the enforcement of liens in favor of keepers of hotels and boardinghouses. Nothing in this section, however, shall prevent owners or operators of tourist camps or trailer camps from enforcing any claims for rent under and in the manner provided by landlord and tenant acts of this state.

**History.**—s. 11, ch. 12419, 1927; s. 1, ch. 19365, 1939; CGL 4149; s. 36, ch. 67-254.

**Note.**—Former s. 85.28.



**713.78 Liens for recovering, towing, or storing vehicles.—**

(1) For the purposes of this section, "vehicle" means any mobile item, whether motorized or not, which is mounted on wheels.

(2) Whenever a person regularly engaged in the business of transporting vehicles by wrecker, tow truck, or car carrier recovers, removes, or stores a vehicle upon instructions from:

(a) The owner thereof; or

(b) The owner or lessor, or a person authorized by the owner or lessor, of property on which such vehicle is wrongfully parked, and such removal is done in compliance with s. 715.07; or

(c) Any law enforcement agency,

he shall have a lien on such vehicle for a reasonable towing fee and for a reasonable storage fee; except that no storage fee shall be charged if such vehicle is stored for less than 6 hours.

(3)(a) Any person regularly engaged in the business of recovering, towing, or storing vehicles who comes into possession of a vehicle pursuant to subsection (2), and who claims a lien for recovery, towing, or storage services, shall give notice to the registered owner and to all persons claiming a lien thereon, as disclosed by the records in the Department of Highway Safety and Motor Vehicles or of a corresponding agency in any other state.

(b) Notice by registered or certified mail shall be sent to the registered owner and to all persons claiming a lien within 14 days of the date of possession. It shall state the fact of possession of the vehicle, that a lien as provided in subsection (2) is claimed, that the lien is subject to enforcement pursuant to law, and that the owner or lienholder, if any, has the right to a hearing as set forth in subsection (4).

(4)(a) The owner of a vehicle removed pursuant to the provisions of subsection (2), or any person claiming a lien, other than the towing-storage operator, within 5 days of the time he has knowledge of the location of said vehicle, may file a complaint in the county court of the county in which the vehicle is stored or in which the owner resides to determine if his property was wrongfully taken or withheld from him.

(b) Upon filing of a complaint, an owner or lienholder may have his vehicle released upon posting with the court a cash or surety bond or other adequate security equal to the amount of the charges for towing or storage to ensure the payment of such charges in the event he does not prevail. At the time of such release, after reasonable inspection, he shall give a receipt to the towing-storage company reciting any claims he has for loss or damage to the vehicle or the contents thereof.

(c) Upon determination of the respective rights of the parties by the court:

1. Should the owner or lienholder prevail, he may collect damages and costs from the party instigating the tow.

2. Should the person instigating the tow prevail, he shall recover his costs.

3. In any event, the final order shall provide for immediate payment in full of recovery, towing, and storage fees by the vehicle owner or lienholder; or

the agency ordering the tow; or the owner, lessor, or agent thereof of the property from which the vehicle was removed.

(5) Any vehicle which is stored pursuant to subsection (2) and which remains unclaimed, or for which reasonable towing or storing charges remain unpaid, may be sold by the owner or operator of the storage space after 45 days from the time the vehicle is stored therein. The sale shall be at public auction for cash. Notice of the sale shall be given to the person in whose name the vehicle is registered and to all persons claiming a lien on the vehicle as shown on the records of the Department of Highway Safety and Motor Vehicles or of the corresponding agency in any other state. Notice shall be sent by registered or certified mail to the owner of the vehicle and the person having the recorded lien on the vehicle at the address shown on the records of the registering agency and shall be mailed not less than 15 days before the date of the sale. After diligent search and inquiry, if the name and address of the registered owner or the owner of the recorded lien cannot be ascertained, the requirements of notice by mail may be dispensed with. In addition to the notice by mail, public notice of the time and place of sale shall be made by publishing a notice thereof one time, at least 10 days prior to the date of the sale, in a newspaper of general circulation in the county in which the sale is to be held or by notices posted for 10 days in three public places in the county, one of which shall be at the courthouse, and another in some conspicuous part of the storehouse. The proceeds of the sale, after payment of reasonable towing and storage charges and costs of the sale, shall be deposited with the clerk of the circuit court for the county if the owner is absent, and the clerk shall hold such proceeds subject to the claim of the person legally entitled thereto. The clerk shall be entitled to receive 5 percent of such proceeds for the care and disbursement thereof. The certificate of title issued under this law shall be discharged of all liens except those registered with the Department of Highway Safety and Motor Vehicles.

<sup>1</sup>(6) No person regularly engaged in the business of recovering, towing, or storing vehicles shall be liable for damages connected with such services, provided that they have been performed with reasonable care and provided, further, that, in the case of removal of a vehicle upon the request of a person purporting, and reasonably appearing, to be the owner or lessor, or a person authorized by the owner or lessor, of the property from which such vehicle is removed, such removal has been done in compliance with s. 715.07. No person regularly engaged in the business of recovering, towing, or storing vehicles shall operate a wrecker, tow truck, or car carrier unless the name, address, and telephone number of the company performing such service is clearly printed on the side of its vehicle.

**History.**—s. 2, ch. 76-83; s. 1, ch. 79-206; s. 1, ch. 79-244; s. 1, ch. 79-410.

**Note.**—This subsection has been reworded by the editors in order to reconcile amendments by s. 1, ch. 79-244, and s. 1, ch. 79-410. See s. 1.04.

PART III  
OIL AND GAS LIENS

- 713.801 Definitions.
- 713.803 Entitlement to lien.
- 713.805 Property subject to lien.
- 713.807 Subcontractors' lien.
- 713.809 Forfeiture or failure of title.
- 713.811 Notice to purchasers of oil and gas.
- 713.813 Liability of interest holder to subcontractors.
- 713.815 Date lien arises.
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- 713.819 When single claim of lien sufficient.
- 713.821 Claim of lien.
- 713.823 Release of lien by filing bond.
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**713.801 Definitions.**—As used in this part, the following terms shall have the following meanings unless the context clearly requires another meaning:

(1) "Interest holder" means a person, or his agent, holding, for oil or gas purposes or for any oil or gas pipeline, any interest in the legal or equitable title to any land or any leasehold interest, and shall include purchasers under executory contract, receivers, and trustees.

(2) "Operator" means the person in charge of operations on lands or leaseholds for oil or gas purposes or for any oil or gas pipeline. For the purposes of this part, an operator shall be deemed to be the agent of the interest holder.

(3) "Material" means any machinery, equipment, appliances, buildings, structures, tools, bits, or supplies used in connection with any construction, drilling, or operating upon any land or leasehold for oil or gas purposes or for any oil or gas pipeline.

(4) "Drilling" means drilling, digging, torpedoing, acidizing, perforating, fracturing, testing, logging, cementing, completing, or repairing upon any land or leasehold for oil or gas purposes or for any oil or gas pipeline.

(5) "Operating" means conducting any operation in connection with, or necessary to, the production of oil or gas, either in the development thereof or in working thereon in the subtractive process.

(6) "Construction" means construction, maintenance, operation, or repair in connection with any oil or gas pipeline or in connection with, or necessary for, the production of oil or gas, either in the development thereof or in working thereon in the subtractive process.

(7) "Oil or gas pipeline" means any pipeline laid and designed as a means of transporting natural gas, oil, or gasoline, or their components or derivatives, and the right-of-way therefor.

(8) "Original contractor" means any person for whose benefit a lien is prescribed by the provisions of s. 713.803.

*History.*—s. 1, ch. 75-51.

**713.803 Entitlement to lien.**—Any person who, under contract with an interest holder or operator, performs any labor or furnishes any material or service used or furnished to be used:

(1) In the drilling or operating of any oil or gas well upon the land or leasehold of the interest holder or in the construction of any oil or gas pipeline, or

(2) In the construction of any material so used or employed, whether the labor is performed or the material or service is furnished on or off the said land or leasehold,

shall be entitled to a lien, whether or not a producing well is obtained and whether or not such material is consumed or becomes a part of the completed oil or gas well or oil or gas pipeline, for the amount due him for the performance of such labor or the furnishing of such material or service, but in no case greater than the contract price, with legal interest from the date the same was due.

*History.*—s. 1, ch. 75-51.

**713.805 Property subject to lien.**—Liens created under s. 713.803 shall extend to:

(1) The leasehold interest or that portion thereof covered by an assignment, farmout agreement, or operating agreement held by the operator, whichever shall be the lesser interest, held for oil or gas purposes or for any oil or gas pipeline for which the material or service was furnished or for which the labor was performed, and the appurtenances thereunto belonging as title thereto existed on the date such labor was first performed or such material or service was first furnished. However, neither the land itself, apart from the rights granted under an oil or gas lease, nor any mineral interest or royalty interest shall be subject to such lien.

(2) All materials and fixtures owned by the interest holder and used or furnished to be used in the drilling or operating of any oil or gas well, or in the construction of any oil or gas pipeline, located on the land or leasehold held by the interest holder.

(3) All oil or gas wells located on such land or leasehold, the oil or gas produced therefrom, and the proceeds from the sale thereof inuring to those interests subject to such lien.

*History.*—s. 1, ch. 75-51; s. 1, ch. 77-174.

**713.807 Subcontractors' lien.**—Any person who shall, under contract, perform any labor or furnish any material or service as a subcontractor under an original contractor, or for or to an original contractor or subcontractor under an original contractor, shall be entitled to a lien for the amount due him, but in no case greater than the contract price, upon all the property upon which the lien of an original contractor may attach, to the same extent as an original contractor. The lien provided for in this section shall further extend and attach to all materials and fixtures owned by such original contractor or subcontractor to whom the labor, services, or materials were furnished.

*History.*—s. 1, ch. 75-51.

**713.809 Forfeiture or failure of title.**—If a lien, as provided for in this part, is imposed on an assignment, farmout agreement, operating agreement, or other equitable interest or legal interest in land or in a leasehold estate, which interest is contingent upon the happening of a condition subsequent, such lien may be perfected and entered

against such land or against the leasehold estate, notwithstanding the failure of such interest to ripen into legal title or the failure of such conditions subsequent to be fulfilled.

**History.**—s. 1, ch. 75-51.

**713.811 Notice to purchasers of oil and gas.—**

No lien under this part, to the extent that it may extend to oil or gas or the proceeds from the sale thereof, shall be effective against any purchaser of such oil or gas until the purchaser has received proper written notice of said claim. Such notice shall state the name of the claimant and his address, the amount for which the lien is claimed, and a description of the land or leasehold upon which the lien is claimed. Notice shall be delivered personally to the purchaser or by registered or certified mail. A purchaser who has received such notice shall withhold payment for such oil or gas runs to the extent of the lien amount claimed, together with legal interest, until said lien has been satisfied or held to be invalid by a court of competent jurisdiction.

**History.**—s. 1, ch. 75-51.

**713.813 Liability of interest holder to subcontractors.**—Nothing in this part shall be deemed to fix a liability upon an interest holder greater than the amount for which the interest holder would be liable to the original contractor. Payment made by the interest holder to the original contractor prior to notice of a subcontractor's lien shall be considered satisfaction of obligations to the extent of such payments. Payments made by the interest holder to a subcontractor pursuant to a valid lien shall be considered satisfaction of obligations owed by the interest holder to the contractor under the contract to the extent of such payments.

**History.**—s. 1, ch. 75-51.

**713.815 Date lien arises.**—The liens provided for in this part arise on the date of furnishing of the first item of material or service or the date of performance of the first labor. Upon compliance with the provisions of s. 713.821, such lien shall be pre-

ferred to all other titles, charges, liens, or encumbrances which may, subsequent to the date the lien herein provided for arises, attach to or upon any of the property upon which a lien is given by this part.

**History.**—s. 1, ch. 75-51.

**713.817 Parity of liens; exception.**—All liens arising by virtue of this part upon the same property shall be of the same class, except that liens of persons for the performance of labor shall be preferred to all other liens arising by virtue of this part.

**History.**—s. 1, ch. 75-51.

**713.819 When single claim of lien sufficient.**

—All labor performed, and materials and services furnished, by any person entitled to a lien under this part shall, for the purposes of this part, be considered to have been performed or furnished under a single contract, regardless of whether or not the same was performed or furnished at different times or on separate orders. However, no more than 90 days shall have elapsed between the date of performance of such labor or the date of furnishing such materials or services and the date on which labor is next performed or materials or services are next furnished.

**History.**—s. 1, ch. 75-51.

**713.821 Claim of lien.**—The manner of perfecting a lien under this part shall be the same as that provided in s. 713.08.

**History.**—s. 1, ch. 75-51.

**713.823 Release of lien by filing bond.**—Any licensee may release his property from any lien under this part in the manner provided by s. 713.76.

**History.**—s. 1, ch. 75-51.

**713.825 Duration of lien.**—No lien provided by this part shall continue for a period longer than 1 year after the claim of lien has been recorded, unless within that time an action to enforce the lien is commenced in a court of competent jurisdiction.

**History.**—s. 1, ch. 75-51.



## CHAPTER 715

## PROPERTY; GENERAL PROVISIONS

- 715.01 Title to personal property found in public places.
- 715.02 Prohibiting recovery from seller of forfeited deposit or down payment made by check, draft or obligation refused through no fault of seller.
- 715.03 Laundries and drycleaners; disposition of unclaimed articles.
- 715.04 Pawnbrokers; disposition of pledged property for nonpayment of principal or interest.
- 715.041 Recovery of stolen property from pawnbrokers.
- 715.05 Reporting of unclaimed motor vehicles.
- 715.06 Real estate; exploration for minerals.
- 715.065 Jewelry stores; television or radio repair stores; disposition of unclaimed articles.
- 715.07 Vehicles parked on private property; towing.

**715.01 Title to personal property found in public places.—**

(1) The title to all personal property found in or upon public conveyances, premises at the time used for business purposes, parks, places of amusement, public recreation areas, and other places open to the public is hereby vested in the finder unless the same be called for or claimed by the rightful owner thereof within 6 months after the finding thereof.

(2) Employees of any state, county, or municipal agency shall be deemed agents of such governmental entity, and personal property found by them during the course of their official duties shall be turned in to the proper person or department designated to receive such property by the said governmental entity. Such property shall be securely kept for the period of time as required by this section, after which time, if unclaimed by the rightful owner, the title to such property shall be vested in the state, county, or municipality and not in the employee.

(3) Employees of public transportation systems shall be deemed agents of such transportation systems, and personal property found on public conveyances, in depots, or in garages of said transportation system shall be turned in to the proper person or department designated to receive such property by the said transportation systems. Such property shall be securely kept for the period of time as required by this section, after which time, if unclaimed by the rightful owner, the title of such property shall be vested in the transportation system and not in the employee.

*History.*—s. 1, ch. 24313, 1947; s. 1, ch. 78-150.

**715.02 Prohibiting recovery from seller of forfeited deposit or down payment made by check, draft or obligation refused through no fault of seller.**—In any action by any person against the seller of real property for any share of a forfeited deposit or down payment by a prospective purchaser, no check, draft or other obligation of such prospective purchaser shall be construed to be a deposit and the action shall not be maintained by any person

against the seller by reason thereof, if payment of said check, draft or obligation is refused through no fault of the seller, notwithstanding any recitation of a receipt of said deposit in any written agreement.

*History.*—s. 1, ch. 24304, 1947; s. 11, ch. 25035, 1949.

**715.03 Laundries and drycleaners; disposition of unclaimed articles.**—If any person shall fail to claim any garment, clothing, household article or other articles delivered for laundering, cleaning, or pressing to any laundry or drycleaning establishment for a period of 6 months after the delivery of such article for laundering, cleaning or processing the laundry or drycleaning establishment to whom the garment, clothing or household article is delivered shall have the right to dispose of such garment, clothing or household article by whatsoever means it may choose without incurring liability or responsibility to the owner provided, however, that before such laundry or drycleaning establishment may claim the benefits of this section it shall at the time of the receiving of such garment, clothing or household articles, give to the individual delivering such article notice in writing that the articles so delivered may be disposed of by such laundry or drycleaning establishment unless such articles are reclaimed within 6 months from date of delivery to such laundry or drycleaning establishments. Provided, further, that if any garment, clothing, household article or other articles referred to above is left at a laundry or drycleaning establishment for storage, and insurance is charged for thereon, then, in that event, the said 6 months as set forth above in this section shall not start to run until the period for which the article so insured has expired and when the time for which the insurance on said garment, clothing or household article shall have expired then the laundry or drycleaning establishment may dispose of the property as though no insurance had been placed on said property in the same way as is provided hereinabove in this section.

*History.*—s. 1, ch. 57-416.

**715.04 Pawnbrokers; disposition of pledged property for nonpayment of principal or interest.—**

(1) Any article or articles placed with a licensed pawnbroker within this state pledged as security for a loan of money shall be subject to sale and disposal at public or private sale when there has been no payment on account of principal or interest made for a period of 6 months, subject to the provisions of this section.

(2) Every pawn ticket or receipt for such pledge shall have printed thereon the provisions of subsections (1) and (2) which shall constitute notice to the pledgor of such sale and disposal and shall further constitute notice of intention to sell and dispose of the property without further notice to the pledgor, and shall further constitute consent to such sale by the pledgor. Any sale or disposal of property under this section shall terminate all liability of the pledgee to the pledgor and shall vest in a purchaser the

right, title and interest of the pledgor and pawnbroker.

History.—ss. 1, 2, ch. 57-811.

**715.041 Recovery of stolen property from pawnbrokers.—**

(1) Any person who sells property to a pawnbroker or pledges the property as security for a loan shall present either a driver's license or other comparable identification to the pawnbroker. The pawnbroker shall record the date of the transaction, the type of identification, the name and address as it appears on the item of identification, and the identifying number appearing thereon and have the record signed by the person from whom he receives the property. This record shall be made available to any law enforcement agency or officer upon request.

(2) The lawful owner of any stolen property in the possession of a pawnbroker may recover such property by informing any law enforcement agency of the location of such property and providing the agency with proof of ownership of the property provided a timely report of the theft of the property was made to the proper authorities. Upon the receipt of such proof, any law enforcement officer is authorized to recover the property from the pawnbroker, without expense to the lawful owner thereof, unless the pawnbroker presents evidence of having received proof of ownership of such property by the person who sold it to the pawnbroker or pledged the property as security for a loan. Any property recovered from a pawnbroker pursuant to this section shall be returned to the lawful owner subject to its use as evidence in any criminal proceeding.

(3) When the lawful owner recovers stolen property and the person who sold or pledged the stolen property to the pawnbroker is convicted of theft, the court may order the defendant to make restitution pursuant to s. 775.089.

History.—s. 1, ch. 79-249.

**715.05 Reporting of unclaimed motor vehicles.—**

(1) The person in charge of any garage or repair shop or automotive service, storage, or parking place shall report in writing to the city police department, or the nearest police department where the establishment is located outside of an incorporated municipality, and the sheriff's department, the nearest Florida Highway Patrol Office, and the Department of Highway Safety and Motor Vehicles on a form prescribed, prepared in quadruplicate, and furnished by the Department of Highway Safety and Motor Vehicles, any motor vehicle involuntarily brought and left unclaimed in his place of business for more than 10 days from date of storage.

(2) When the department receives notice of an unclaimed vehicle as prescribed in subsection (1), it shall search its files to determine the owner's name and if any person has filed a lien upon the vehicle as provided by s. 319.27(2) and (3). Within 10 days of the receipt of the notice, the department shall by certified mail notify the owner and any lienholders shown in its files of the location of the vehicle and of the fact that it is unclaimed.

(3) Nothing herein contained shall apply to any licensed public lodging establishment.

(4) Failure to comply with subsection (1) shall preclude the imposition of any unreasonable storage charges against such vehicle after 3 weeks from the date of storage.

History.—ss. 1-3, ch. 63-431; s. 1, ch. 65-112; ss. 24, 35, ch. 69-106; s. 1, ch. 79-271.

**715.06 Real estate; exploration for minerals.**

—Where title to the surface of real property and title to the subsurface and minerals on or under such real property is divided into different ownerships, then the surface owner and his heirs, successors and assigns shall be entitled to explore, drill and prospect such real property, including the subsurface thereof, for all minerals except oil, gas and sulphur without being liable to the owners of the minerals, or any party or parties claiming under such owners, for any damages or for the value of such minerals, as it is usual by customary prospecting methods and procedures to take from such land for the purpose of analyzing and determining the kind and extent thereof.

History.—s. 1, ch. 67-120.

**715.065 Jewelry stores; television or radio repair stores; disposition of unclaimed articles.—**

If any person fails to claim any article of jewelry or other article delivered to a jewelry store or television or radio repair store for repair, cleaning, or adjustment, for a period of 1 year after such delivery, the jewelry store or television or radio repair store shall have the right to dispose of such jewelry or other article by whatever means it may choose, without incurring liability or responsibility to the owner of such jewelry or other article. However, before the jewelry store or television or radio repair store may claim the benefits of this section, it shall, at the time of receiving such jewelry or other article, give to the individual delivering such jewelry or other article notice in writing that the jewelry or other article delivered may be disposed of by the jewelry store or television or radio repair store unless the jewelry or other article is reclaimed within 1 year from the date of delivery. Notice by certified mail shall be given to the person who deposits the jewelry or other article of the intended disposition thereof 15 days prior to said disposition. Any value of the jewelry or other articles sold or disposed of pursuant to this section which is in excess of the costs and expenses incurred by the store shall be tendered to the person who deposited the article, within 15 days after the sale or other disposition of the article.

History.—s. 1, ch. 76-255.

**715.07 Vehicles parked on private property; towing.—**

(1) As used in this section, "vehicle" means any mobile item which normally uses wheels, whether motorized or not.

(2) The owner or lessor of real property, or any person authorized by the owner or lessor, which person may be the designated representative of the condominium association if the real property is a condominium, may cause any vehicle parked on such property without his or her permission to be removed by a person regularly engaged in the business of towing vehicles, without liability for the costs of removal, transportation, or storage or damages

caused by such removal, transportation, or storage, under any of the following circumstances:

(a) The towing or removal of any vehicle from private property without the consent of the registered owner or other legally authorized person in control of that vehicle is subject to strict compliance with the following conditions and restrictions:

1. Any towed or removed vehicle must be stored at a site within 5 miles from the point of removal in any county of 500,000 or more, and within 15 miles from the point of removal in any county of less than 500,000 population. That site must be open for the purpose of redemption of vehicles on any day that the person or firm towing said vehicle is open for towing purposes, from 11:00 a.m. to 11:00 p.m., and, when closed, shall have prominently posted a sign indicating a telephone number where the operator of the site can be reached at all times. Upon receipt of a telephoned request to open the site to redeem a vehicle, the operator shall have 1 hour to return to the site or he shall be in violation of this section.

2. The person or firm towing or removing the vehicle shall, within 30 minutes of completion of such towing or removal, notify the municipal police department or, in an unincorporated area, the sheriff of such towing or removal, the storage site, the time it was towed or removed, and the make, model, color, and license plate number of that vehicle and shall obtain the name of the person at that department to whom such information was reported and note that name on the trip record.

3. If the registered owner or other legally authorized person in control of the vehicle shall arrive at the scene prior to removal or towing of the vehicle, the vehicle shall be disconnected from the towing or removal apparatus, and that person shall be allowed to remove the vehicle without interference upon the payment of a reasonable service fee of not more than one-half of the posted rate for such towing service as provided in subparagraph 6., for which a receipt shall be given, unless said person refuses to remove the vehicle which is otherwise unlawfully parked.

4. The rebate or payment of money or any other valuable consideration from the individual or firm towing or removing vehicles to the owners or operators of the premises from which the vehicles are towed or removed, for the privilege of removing or towing those vehicles, is prohibited.

5. Except for property appurtenant to and obviously a part of a single-family residence, and except for instances when notice is personally given to the owner or other legally authorized person in control of the vehicle that the area in which that vehicle is parked is reserved or otherwise unavailable for unauthorized vehicles and subject to being removed at the owner's or operator's expense, any property owner or lessor, or person authorized by the property owner or lessor, prior to towing or removing any vehicle from private property without the consent of the owner or other legally authorized person in control of that vehicle, must post a notice meeting the following requirements:

a. The notice must be prominently placed at each driveway access or curb cut allowing vehicular access to the property, within 5 feet from the public right-of-way line. If there are no curbs or access bar-

riers, the signs must be posted not less than one sign each 25 feet of lot frontage.

b. The notice must clearly indicate, in not less than 2-inch high, light-reflective letters on a contrasting background, that unauthorized vehicles will be towed away at the owner's expense. The words "tow-away zone" must be included on the sign in not less than 4-inch high letters.

c. The notice must also provide the name and current telephone number of the person or firm towing or removing the vehicles, if the property owner, lessor, or person in control of the property has a written contract with the towing company.

d. The sign structure containing the required notices must be permanently installed with the bottom of the sign not less than 4 feet above ground level and must be continuously maintained on the property for not less than 24 hours prior to the towing or removal of any vehicles.

e. The local government may require permitting and inspection of these signs prior to any towing or removal of vehicles being authorized.

6. Any person or firm that tows or removes vehicles and proposes to require an owner, operator, or person in control of a vehicle to pay the costs of towing and storage prior to redemption of the vehicle must file and keep on record with the local law enforcement agency a complete copy of the current rates to be charged for such services and post at the storage site an identical rate schedule and any written contracts with property owners, lessors, or persons in control of property which authorize them to remove vehicles as provided in this section.

7. Any person or firm towing or removing any vehicles from private property without the consent of the owner or other legally authorized person in control of the vehicles shall, on any trucks or other vehicles used in said towing or removal, have clearly indicated, in at least 2-inch letters, such person's or firm's name, address, and telephone number on the driver and passenger side doors.

8. Vehicle entry for the purpose of removing the vehicle shall be allowed with reasonable care on the part of the person or firm towing the vehicle. Said person or firm shall be liable for any damage occasioned to the vehicle if such entry is not in accordance with the standard of reasonable care.

9. When a vehicle has been towed or removed pursuant to this section, it must be released to its owner or custodian within ½ hour after requested. Any vehicle owner, custodian, or agent shall have the right to inspect the vehicle before accepting its return, and no release or waiver of any kind which would release the person or firm towing the vehicle from liability for damages noted by the owner or other legally authorized person at the time of the redemption may be required from any vehicle owner, custodian, or agent as a condition of release of the vehicle to its owner. A detailed, signed receipt showing the legal name of the company or person towing or removing the vehicle must be given to the person paying towing or storage charges at the time of payment, whether requested or not.

(b) These requirements shall be the minimum standards and shall not preclude enactment of additional regulations by any municipality or county.



(3) This section shall not apply to law enforcement, firefighting, rescue squad, ambulance, or other emergency vehicles which are marked as such or to property owned by any governmental entity.

(4) When a person improperly causes a vehicle to be removed, such person shall be liable to the owner

or lessee of the vehicle for the cost of removal, transportation, and storage; any damages resulting from the removal, transportation, or storage of the vehicle; attorneys' fees; and court costs.

**History.**—s. 1, ch. 76-83; s. 221, ch. 77-104; s. 2, ch. 79-206; s. 2, ch. 79-271; s. 2, ch. 79-410.

## CHAPTER 716

## ESCHEATS

- 716.01 Declaration of policy.
- 716.02 Escheat of funds in the possession of federal agencies.
- 716.03 Department to institute proceedings to recover escheated property.
- 716.04 Jurisdiction.
- 716.05 Money recovered to be paid into the state treasury.
- 716.06 Public records.
- 716.07 Recovery of escheated property by claimant.

**716.01 Declaration of policy.**—It is hereby declared to be the policy of the state, while protecting the interests of the owners thereof, to possess all unclaimed and abandoned money and property for the benefit of all the people of the state, and this law shall be liberally construed to accomplish such purpose.

History.—s. 1, ch. 24333, 1947.

**716.02 Escheat of funds in the possession of federal agencies.**—All property within the provisions of subsections (1), (2), (3), (4) and (5), are declared to have escheated, or to escheat, including all principal and interest accruing thereon, and to have become the property of the state.

(1) All money or other property which has remained in, or has been deposited in the custody of, or under the control of, any court of the United States, in and for any district within this state, or which has been deposited with and is in the custody of any depository, registry, clerk or other officer of such court, or the United States treasury, which money or other property the rightful owner or owners thereof, either:

(a) Has been unknown for a period of 5 or more consecutive years; or,

(b) Has died, without having disposed thereof, and without having left heirs, next of kin or distributees, or

(c) Has made no demand for such money or other property for 5 years;

are declared to have escheated, or to escheat, together with all interest accrued thereon, and to have become the property of the state.

(2) After June 16, 1947, all money or other property which has remained in, or has been deposited in the custody of, or under the control of, any court of the United States, in and for any district within this state, for a period of 4 years, the rightful owner or owners of which, either:

(a) Shall have been unknown for a period of 4 years; or,

(b) Shall have died without having disposed thereof, and without having left or without leaving heirs, next of kin or distributees; or,

(c) Shall have failed within 4 years to demand the payment or delivery of such funds or other prop-

erty;

is hereby declared to have escheated, or to escheat, together with all interest accrued thereon, and to have become the property of the state.

(3) All money or other property which has remained in, or has been deposited in the custody of, or under the control of any officer, department or agency of the United States for 5 or more consecutive years, which money or other property had its situs or source in this state, except as hereinafter provided in subsection (4), the sender of which is unknown, or who sent the money or other property for an unknown purpose, or money which is credited as "unknown," and which said governmental agency is unable to credit to any particular account, or the sender of which has been unknown for a period of 5 or more consecutive years; or when known, has died without having disposed thereof, and without leaving heirs, next of kin or distributees, or for any reason is unclaimed from such governmental agency.

(4) In the event any money is due to any resident of this state as a refund, rebate or tax rebate from the United States Commissioner of Internal Revenue, the United States Treasurer, or other governmental agency or department, which said resident will, or is likely to have his rights to apply for and secure such refund or rebate barred by any statute of limitations or, in any event, has failed for a period of 1 year after said resident could have filed a claim for said refund or rebate, the Department of Banking and Finance is hereby appointed agent of such resident to demand, file and apply for said refund or rebate, and is hereby appointed to do any act which a natural person could do to recover said money, and it is hereby declared that when the department files said application or any other proceeding to secure said refund or rebate, its agency is coupled with an interest in the money sought and money recovered.

(5) It is the purpose of this chapter to include all funds or other property in the possession of the government of the United States, and of its departments, officers, and agencies, which property has its situs in this state or belonged to a resident thereof, and not to limit the application of this chapter by the naming of any particular agency. This chapter shall include all funds held in the Veterans' Administration, Comptroller of Currency, United States Treasury, Department of Internal Revenue, federal courts, registry of federal courts, and such evidences of indebtedness as adjusted service bonds, old matured debts issued prior to 1917, unclaimed and interest thereon, postal savings bonds, liberty bonds, victory notes, treasury bonds, treasury notes, certificates of indebtedness, treasury bills, treasurer's savings certificates, bonuses and adjusted compensation, allotments, and all unclaimed refunds or rebates of whatever kind or nature, which are subjects of escheat, under the terms of this chapter. Provided,

however, that nothing in this chapter shall be construed to mean that any refunds due ratepayers under order of any court of the United States shall become the property of the state.

**History.**—s. 2, ch. 24333, 1947; s. 11, ch. 25035, 1949; ss. 12, 35, ch. 69-106; s. 1, ch. 70-405.

**716.03 Department to institute proceedings to recover escheated property.**—When there exists, or may exist, escheated funds or property under this chapter, the Department of Banking and Finance shall demand or institute proceedings in the name of the state for an adjudication that an escheat to the state of such funds or property has occurred; and shall take appropriate action to recover such funds or property.

**History.**—s. 3, ch. 24333, 1947; s. 11, ch. 25035, 1949; ss. 12, 35, ch. 69-106.

**716.04 Jurisdiction.**—Whenever the Department of Banking and Finance is of the opinion an escheat has occurred, or shall occur, of any money or other property deposited in the custody of, or under the control of, any court of the United States, in and for any district within the state, or in the custody of any depository, registry or clerk or other officer of such court, or the treasury of the United States, it shall cause to be filed a complaint in the circuit court of Leon County, or in any other court of competent jurisdiction, to ascertain if any escheat has occurred, and to cause said court to enter a judgment or decree of escheat in favor of the state, with costs, disbursements, and attorney fee.

**History.**—s. 4, ch. 24333, 1947; ss. 12, 35, ch. 69-106.

**716.05 Money recovered to be paid into the state treasury.**—When any funds or property which have been escheated within the meaning of this chapter, shall have been recovered by the Department of Banking and Finance, it shall first pay all costs incident to the collection and recovery of such funds and property, and shall promptly deposit the remaining balance of said funds or property with the treasurer of the state, to be distributed in accordance with law.

**History.**—s. 5, ch. 24333, 1947; ss. 12, 35, ch. 69-106.

**716.06 Public records.**—All records in the office of the state treasurer or the Department of Banking and Finance relating to federal funds, pur-

suant to this chapter, shall be public records.

**History.**—s. 6, ch. 24333, 1947; ss. 12, 35, ch. 69-106.

**716.07 Recovery of escheated property by claimant.**—

(1) Any person who claims any property, funds or money delivered to the state treasurer under this chapter, shall, within 5 years from the date of receipt of said property, funds or money, file a verified claim with the state treasurer, setting forth the facts upon which said party claims to be entitled to recover said money or property. The state treasurer, within 5 days after receipt of such claim, shall submit said verified claim or a verified copy thereof, to the Department of Banking and Finance. All claims made for recovery of property, funds or money, not filed within 5 years from the date that said property, funds or money is received by the state treasurer, shall be forever barred, and the treasurer of the state shall be without power to consider or determine any claims so made by any claimant after 5 years from the date that the property, funds or money was received by the state treasurer.

(2) The Comptroller shall approve or disapprove the claim. If the claim is approved, the funds, money, or property of the claimant, less any expenses and costs which shall have been incurred by the state in securing the possession of said property, as provided by this chapter, shall be delivered to him by the State Treasurer upon warrant issued according to law and his receipt taken therefor. If the court finds, upon any judicial review, that the claimant is entitled to the property, money, or funds claimed, and shall render judgment in his or its favor, declaring that the claimant is entitled to said property, funds, or money, then upon presentation of said judgment or a certified copy thereof to the State Comptroller, said Comptroller shall draw his warrant for the amount of money stated in said judgment, without interest or cost to the state, less any sum paid by the state as costs or expenses in securing possession of said property, funds, or money. When payment has been made to any claimant, no action thereafter shall be maintained by any other claimant against the state or any officer thereof, for or on account of said money, property, or funds.

**History.**—s. 7, ch. 24333, 1947; s. 30, ch. 63-559; ss. 12, 35, ch. 69-106; s. 7, ch. 78-95.



## CHAPTER 717

## DISPOSITION OF UNCLAIMED PROPERTY

- 717.01 Short title.
- 717.02 Definitions and use of terms.
- 717.03 Property held by banking or financial organizations.
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- 717.30 Repeal.

**717.01 Short title.**—This act may be cited as the "Florida Disposition of Unclaimed Property Act."

*History.*—s. 31, ch. 61-10.

**717.02 Definitions and use of terms.**—As used in this act, unless the context otherwise requires:

(1) "Banking organization" means any state or national bank, trust company, savings bank, industrial bank, land bank, or safe deposit company, whether organized or operated under state or federal law.

(2) "Business association" means any corporation, joint stock company, business trust, partner-

ship, or any association for business purposes of two or more individuals.

(3) "Financial organization" means any savings and loan association, building and loan association, credit union, cooperative bank, or investment company, engaged in business in this state, whether organized or operated under state or federal law.

(4) "Holder" means any person in possession of property subject to this act belonging to another, or who is trustee in case of a trust, or indebted to another on an obligation subject to this act.

(5) "Insurance corporation" means any association or corporation transacting within this state the business of insurance on the lives of persons or insurance appertaining thereto, including, but not by way of limitation, endowments and annuities; disability, accident and health insurance; and property, casualty and surety insurance; as all said terms are defined in chapter 624, part V.

(6) "Owner" means a depositor, or a person entitled to receive the funds as reflected on the records of the bank or financial organization, in case of a deposit, a beneficiary in case of a trust, a creditor, claimant, or payee in case of other choses in action, or any person having a legal or equitable interest in property subject to this act, or his legal representative.

(7) "Person" means any individual, business association, government or political subdivision, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity.

(8) "Utility" means any person who owns or operates within this state, for public use, any plant, equipment, property, franchise, or license for the transmission of communications, for the production, storage, transmission, sale, delivery or furnishing of electricity, water, steam, or gas, or for the transportation of persons or property.

(9) "Department" means the Department of Banking and Finance.

*History.*—s. 1, ch. 61-10; ss. 12, 35, ch. 69-106; s. 279, ch. 71-377; s. 1, ch. 77-236.

**717.03 Property held by banking or financial organizations.**—The following property held or owing by a banking or financial organization is presumed abandoned:

(1) Any demand, savings, or matured time deposit made in this state with a banking organization, together with any interest or dividends thereon, excluding any charges that may lawfully be withheld, unless the owner has, within 10 years:

(a) Increased or decreased the amount of the deposit, or presented the passbook or other similar evidence of the deposit for the crediting of interest;

(b) Corresponded in writing with the banking organization concerning the deposit; or

(c) Otherwise indicated an interest in the deposit as evidenced by a memorandum on file with the banking organization.

(2) Any funds paid in this state toward the purchase of shares or other interest in a financial organ-

ization, or any deposit made therewith in this state, and any interest or dividends thereon, excluding any charges that may lawfully be withheld, unless the owner has, within 10 years:

(a) Increased or decreased the amount of the funds or deposit, or presented an appropriate record for the crediting of interest or dividends;

(b) Corresponded in writing with the financial organization concerning the funds or deposit; or

(c) Otherwise indicated an interest in the fund or deposit as evidenced by a memorandum on file with the financial organization.

(3) Any sum payable on checks certified in this state or on written instruments issued in this state on which a banking or financial organization is directly liable, including by way of illustration but not of limitation, certificates of deposit, drafts, and traveler's checks, that, with the exception of traveler's checks, has been outstanding for more than 10 years from the date it was payable, or from the date of its issuance if payable on demand, or, in the case of traveler's checks, that has been outstanding for more than 15 years from the date of issuance, unless the owner has within 10 years, or within 15 years in the case of traveler's checks, corresponded in writing with the banking or financial organization concerning it, or otherwise indicated an interest as evidenced by a memorandum on file with the banking or financial organization.

(4) Any funds or other personal property, tangible or intangible, removed from a safe-deposit box, or agency or collateral deposit box, in this state on which the lease or rental period has expired due to nonpayment of rental charges or other reason, or any surplus amounts arising from the sale thereof pursuant to law, that have been unclaimed by the owner for more than 7 years from the date on which the lease or rental period expired.

History.—s. 2, ch. 61-10; s. 2, ch. 77-236.

#### **717.04 Unclaimed funds held by insurance corporations.—**

##### **(1) LIFE INSURANCE.—**

(a) Unclaimed funds, as defined in this subsection, held and owing by a life insurance corporation shall be presumed abandoned if the last known address, according to the records of the corporation, of the person entitled to the funds is within this state. If a person other than the insured or annuitant is entitled to the funds and no address of such person is known to the corporation or if it is not definite and certain from the records of the corporation what person is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the corporation.

(b) "Unclaimed funds," as used in subsection (1), means all moneys held and owing by any life insurance corporation, unclaimed and unpaid for more than 7 years after the moneys become due and payable, as established from the records of the corporation, under any life or endowment insurance policy or annuity contract which has matured or terminated. A life insurance policy not matured by actual proof of the death of the insured is deemed to be matured, and the proceeds thereof are deemed to be

due and payable, if such policy was in force when the insured attained the limiting age under the mortality table on which the reserve is based, unless the person appearing entitled thereto has within the preceding 7 years:

1. Assigned, readjusted, or paid premiums on the policy, or subjected the policy to loan; or

2. Corresponded in writing with the life insurance corporation concerning the policy.

##### **(2) INSURANCE OTHER THAN LIFE INSURANCE.—**

(a) Unclaimed funds as defined in subsection (1), held and owing by a fire, casualty or surety insurance corporation shall be presumed abandoned if the last known address according to the records of the corporation, of the person entitled to the funds is within this state. If a person other than the insured, the principal, or the claimant is entitled to the funds and no address of such person is known to the corporation or if it is not definite and certain from the records of the corporation what person is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured, the principal, or the claimant according to the records of the corporation.

(b) "Unclaimed funds," as used in subsection (2), means all moneys held and owing by any fire, casualty, or surety insurance corporation, unclaimed and unpaid for more than 7 years after the moneys become due and payable, as established from the records of the corporation, either to an insured, a principal, or a claimant under any fire, casualty, or surety insurance policy or contract.

(3) Moneys otherwise payable according to the records of the corporation are deemed due and payable although the policy or contract has not been surrendered as required.

History.—s. 3, ch. 61-10; s. 3, ch. 77-236.

#### **717.05 Deposits and refunds held by utilities.**

—The following funds held or owing by any utility are presumed abandoned:

(1) Any deposit made by a subscriber with a utility to secure payment for, or any sum paid in advance for, utility services to be furnished in this state, less any lawful deductions, together with any interest thereon, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than 7 years after the termination of the services for which the deposit or advance payment was made.

(2) Any sum which a utility has been ordered to refund and which was received for utility services rendered in this state, together with any interest thereon, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than 7 years after the date it became payable, in accordance with the final determination or order providing for the refund.

(3) Any sum paid to a utility for a utility service, which service has not, within 7 years of such payment, been rendered.

History.—s. 4, ch. 61-10; s. 4, ch. 77-236.

**717.06 Undistributed dividends, distribution of business associations, stock or certificate of ownership.—**

(1) Any dividend, profit, distribution, interest, payment on principal, or other sum held or owing by a business association for or to a shareholder, certificate holder, member, bondholder, or other security holder, or a participating patron of a cooperative, who has not claimed it, or corresponded in writing with the business association concerning it, within 7 years after the date prescribed for payment or delivery, is presumed abandoned if:

(a) The records of the business association indicate that the last known address of the apparent owner is in this state.

(b) No address of the apparent owner appears on the records of the business association and:

1. The last known address of the apparent owner is in this state; or

2. The business association is domiciled in this state and has not previously paid the property to the state of the last known address of the apparent owner.

(c) The last known address of the apparent owner, as shown on the records of the holder, is in a state designated by regulation adopted by the department as a state that does not provide by law for the escheat or other disposition of such property to the state, and the business association is domiciled in this state.

(d) The last known address of the apparent owner, as shown on the records of the business association, is in a foreign nation and the business association is domiciled in this state.

(2) When any dividend, profit, distribution, interest, payment on principal, or other sum under subsection (1) is presumed abandoned, the intangible interest in the business association, as evidenced by the stock records or membership records of the association, pursuant to which the sum in subsection (1) became owing to the owner, shall be presumed abandoned at the same time the sum is presumed abandoned. With respect to such interest, the business association shall be deemed the holder.

(3) Any dividend or stock split or exchange, or any distribution held and owing to a person at the time the stock or other security to which it attaches is presumed abandoned, shall also be presumed abandoned as of the same time.

*History.—s. 5, ch. 61-10; s. 4, ch. 77-236.*

**717.07 Property of business associations and banking or financial organizations held in course of dissolution.—**All intangible personal property distributable in the course of a voluntary or involuntary dissolution of a corporation, business association, banking organization, credit union, or other financial organization organized under the laws of, or created in, this state that is unclaimed by the owner within 7 years after the date for final distribution, is presumed abandoned.

*History.—s. 6, ch. 61-10; s. 4, ch. 77-236.*

**717.08 Property held by fiduciaries.—**All intangible personal property, and any income or increment thereon, held in a fiduciary capacity for the benefit of another person is presumed abandoned unless the owner has, within 7 years after it becomes

payable or distributable, increased or decreased the principal, accepted payment of principal or income, corresponded in writing concerning the property, or otherwise indicated an interest as evidenced by a memorandum on file with the fiduciary:

(1) If the property is held by a banking organization or a financial organization, or by a business association organized under the laws of, or created in, this state;

(2) If it is held by a business association doing business in this state but not organized under the laws of, or created in, this state, and the records of the business association indicate that the last known address of the person entitled thereto is in this state; or

(3) If it is held in this state by any other person.

*History.—s. 7, ch. 61-10; s. 4, ch. 77-236.*

*cf.—s. 733.816 Disposition of unclaimed funds held by personal representatives.*

**717.09 Property held by state courts and public officers and agencies.—**All intangible personal property held for the owner by any court, public corporation, public authority, or public officer of this state, or a political subdivision thereof, that has remained unclaimed by the owner for more than 7 years is presumed abandoned.

*History.—s. 8, ch. 61-10; s. 4, ch. 77-236.*

**717.10 Miscellaneous personal property held for another person.—**All intangible personal property, not otherwise covered by this act, including any income or increment thereon and deducting any lawful charges, that is held or owing in this state in the ordinary course of the holder's business and has remained unclaimed by the owner for more than 7 years after it became payable or distributable is presumed abandoned.

*History.—s. 9, ch. 61-10; s. 4, ch. 77-236.*

**717.11 Reciprocity for property presumed abandoned or escheated under the laws of another state.—**If specific property which is subject to the provisions of this act is held for or owed or distributable to an owner whose last known address is in another state by a holder who is subject to the jurisdiction of that state, the specific property is not presumed abandoned in this state and subject to this act if:

(1) It may be claimed as abandoned or escheated under the laws of such other state; and

(2) The laws of such other state make reciprocal provision that similar specific property is not presumed abandoned or escheatable by such other state when held for or owed or distributable to an owner whose last known address is within this state by a holder who is subject to the jurisdiction of this state.

*History.—s. 10, ch. 61-10.*

**717.12 Report of abandoned property.—**

(1) Every person holding funds or other property, tangible or intangible, presumed abandoned under this act shall report to the Department of Banking and Finance with respect to the property as herein-after provided.

(2) The report shall be verified and shall include:

(a) The name, if known, and last known address, if any, of each person appearing from the records of



the holder to be the owner of any property of the value of \$25 or more presumed abandoned under this act;

(b) In case of unclaimed funds of life insurance corporations, the full name of the insured or annuitant and his last known address according to the life insurance corporation's records;

(c) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, except that items of value under \$25 each may be reported in aggregate;

(d) The date when the property became payable, demandable, or returnable, and the date of the last transaction with the owner with respect to the property; and

(e) Other information which the department prescribes by rule as necessary for the administration of this act.

(3) If the person holding property presumed abandoned is a successor to other persons who previously held the property for the owner, or if the holder has changed his name while holding the property, he shall file with his report all prior known names and addresses of each holder of the property.

(4) The report shall be filed before November 1 of each year as of June 30 next preceding, but the report of insurance corporations shall be filed before May 1 of each year as of December 31 next preceding. The department may postpone the reporting date upon written request by any person required to file a report.

(5) If the holder of property presumed abandoned under this act knows the whereabouts of the owner and if the owner's claim has not been barred by the statute of limitations, the holder shall, before filing the annual report, communicate with the owner and take necessary steps to prevent abandonment from being presumed. The holder shall exercise due diligence to ascertain the whereabouts of the owner.

(6) Verification, if made by a partnership, shall be executed by a partner; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer.

*History.*—s. 11, ch. 61-10; ss. 12, 35, ch. 69-106; s. 222, ch. 77-104.

### **717.13 Notice and publication of lists of abandoned property.**

(1) Within 120 days from the filing date as set forth in s. 717.12, the department shall cause notice to be published at least once each week for 2 successive weeks in a newspaper of general circulation in the county in this state in which is located the last known address of any person to be named in the notice. If no address is listed, or if the address is outside this state, the notice shall be published in the county in which the holder of the abandoned property has his principal place of business within this state.

(2) The published notice shall be entitled "Notice of names of persons appearing to be owners of abandoned property," and shall contain:

(a) The names in alphabetical order and last known addresses, if any, of persons listed in the report and entitled to notice within the county as hereinbefore specified.

(b) A statement that information concerning the

amount or description of the property and the name and address of the holder may be obtained by any persons possessing an interest in the property by addressing an inquiry to the department.

(c) A statement that if proof of claim is not presented by the owner to the holder and if the owner's right to receive the property is not established to the holder's satisfaction within 65 days from the date of the second published notice, the abandoned property will be placed not later than 85 days after such publication date in the custody of the department to which all further claims must thereafter be directed.

(3) The department is not required to publish in such notice any item of less than \$25 unless it deems such publication to be in the public interest.

(4) Within 120 days from the final filing date of the report required by s. 717.12, the department shall mail a notice to each person having an address listed therein who appears to be entitled to property of the value of \$25 or more presumed abandoned under this act.

(5) The mail notice shall contain:

(a) A statement that, according to a report filed with the department property is being held to which the addressee appears entitled.

(b) The name and address of the person holding the property and any necessary information regarding changes of name and address of the holder.

(c) A statement that, if satisfactory proof of claim is not presented by the owner to the holder by the date specified in the published notice, the property will be placed in the custody of the department to which all further claims must be directed.

*History.*—s. 12, ch. 61-10; ss. 12, 35, ch. 69-106; s. 5, ch. 77-236.

**717.131 Petition for administrative declaration of abandoned property.**—The holder of any item of personal property, tangible or intangible, may file with the department a petition requesting the department to accept custody of the property, alleging that special circumstances exist, showing compliance with s. 717.12(1), (2), (3), (5) and (6), and attaching proof that a diligent search and inquiry has been made to locate the owner. If the department finds that the proof of diligent search is satisfactory and that acceptance will preserve and protect the interests of the owner and the state, it shall give notice as provided in s. 717.13 and may accept custody of the property prior to the expiration of the statutory waiting period. Upon acceptance by the department, such property is presumed abandoned.

*History.*—s. 1, ch. 67-35; ss. 12, 35, ch. 69-106; s. 6, ch. 77-236.

**717.14 Payments or delivery of abandoned property.**—Every person who has filed a report as provided by s. 717.12 shall, within 20 days after the time specified in s. 717.13 for claiming the property from the holder, pay or deliver to the department all abandoned property specified in the report, except that, if the owner establishes his right to receive the abandoned property to the satisfaction of the holder within the time specified in s. 717.13, or if it appears that for some other reason the presumption of abandonment is erroneous, the holder need not pay or deliver the property, which will no longer be presumed abandoned, to the department, but in lieu thereof shall file a verified written explanation of

the proof of claim or of the error in the presumption of abandonment.

**History.**—s. 13, ch. 61-10; ss. 12, 35, ch. 69-106; s. 7, ch. 77-236.

**717.15 Relief from liability by payment or delivery.**—

(1) Upon the payment or delivery of abandoned property to the department, the state shall assume custody and shall be responsible for the safekeeping thereof. The retention of related pertinent records shall remain the responsibility of the original holder. Any person who pays or delivers abandoned property to the department under this act is relieved of all liability to the extent of the value of the property so paid or delivered for any claim which then exists or which thereafter may arise or be made in respect to the property. Any holder who has paid moneys to the department pursuant to this act may make payment to any person appearing to such holder to be entitled thereto, and upon proof of such payment and proof that the payee was entitled thereto, the department shall forthwith reimburse the holder for the payment.

(2) The holder of any interest under s. 717.06(2) or (3) or s. 717.10 shall deliver a duplicate certificate to the department within the time specified in s. 717.14. Upon delivery to the department, the holder and any transfer agent, registrar, or other person acting for or on behalf of the holder in executing or delivering such duplicate certificate shall be relieved from all liability to any person, including, but not limited to, any person acquiring the certificate presumed abandoned or the certificate issued to the department, for any losses or damages resulting to such person by the issuance and delivery to the department of such duplicate certificate.

**History.**—s. 14, ch. 61-10; ss. 12, 35, ch. 69-106; s. 7, ch. 77-236.

**717.16 Income accruing after payment or delivery.**—When cash property is paid or delivered to the department under this act, the owner is not entitled to receive income or other increments accruing thereafter. When income-producing property other than money is delivered to the department under this act, any dividends, interest, or other increments realized or accruing on such property at or prior to liquidation or conversion thereof into cash shall be credited to the owner's account by the department.

**History.**—s. 15, ch. 61-10; ss. 12, 35, ch. 69-106; s. 7, ch. 77-236.

**717.17 Periods of limitation not a bar.**—The expiration of any period of time specified by statute or court order, during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property, shall not prevent the money or property from being presumed abandoned property, nor affect any duty to file a report required by this act or to pay or deliver abandoned property to the department.

**History.**—s. 16, ch. 61-10; ss. 12, 35, ch. 69-106.

**717.18 Sale of abandoned property.**—

(1) All abandoned property, other than money, delivered to the department under this act may be sold by it. All stocks, certificates of ownership, and bonds of value received by the department shall be sold within 1 year from receipt. However, the depart-

ment shall have the discretion to withhold from sale any abandoned property that the department deems to be of benefit to the people of this state. Any sale of property other than stocks and bonds shall be to the highest bidder at public sale in whatever place in the state affords in its judgment the most favorable market for the property involved. The department may decline the highest bid and reoffer the property for sale if it considers the price bid insufficient. It need not offer any property for sale if, in its opinion, the probable cost of sale exceeds the value of the property.

(2) Any sale held under this section shall be preceded by a single publication of notice thereof, at least 3 weeks in advance of sale in a newspaper of general circulation in the county where the property is to be sold.

(3) The department may make, execute, and deliver to the purchaser a good and sufficient bill of sale, assignment, or transfer of title of the property sold. If a bond, certificate of shares of stock, or certificate of membership in a corporation or association is sold and assigned, the assignment thereof shall have the same force and effect as though made by the original owner and shall entitle the purchaser to all rights of ownership in and to such certificate. The department shall execute such assignment and transfer as the duly constituted agent and trustee of such original owner.

(4) If the department determines that any property delivered to it pursuant to this act has no apparent value, it may at any time thereafter destroy or dispose of same with the written approval of the Department of State. In that event, no action or proceeding shall be brought or maintained against the state, any state employee, or against the holder on account of any action taken by the department pursuant to this subsection with respect to said property.

**History.**—s. 17, ch. 61-10; ss. 12, 35, ch. 69-106; s. 1, ch. 72-192; s. 8, ch. 77-236.

**717.19 Deposit of funds.**—All funds received under this act, including the proceeds from the sale of abandoned property under s. 717.18, shall forthwith be deposited by the department in the state school fund of the state, except that the department shall retain in a separate account an amount not exceeding \$150,000 from which it shall make prompt payment of claims duly allowed by it as hereinafter provided and for all expenses incurred in administering this act. Before making the deposit it shall record the name and last known address of each person appearing from the holders' reports to be entitled to the abandoned property and the name and last known address of each insured person or annuitant, and with respect to each policy or contract listed in the report of an insurance corporation, its number, the name of the corporation, and the amount due. The record shall be available for public inspection at all reasonable business hours.

**History.**—s. 18, ch. 61-10; ss. 12, 35, ch. 69-106; s. 9, ch. 77-236.

**717.195 Administration of abandoned property.**—Abandoned property under this chapter shall be administered by the Division of Finance of the Department of Banking and Finance and shall be funded from funds available in the regulatory trust

fund under the division. An amount equal to the actual costs incurred in the administration of this chapter shall be transferred from the separate account specified in s. 717.19 to the regulatory trust fund annually.

**History.**—s. 1, ch. 72-174; s. 9, ch. 77-236; s. 261, ch. 79-400.

**717.20 Claim for abandoned property paid or delivered.**—Any person claiming at any time an interest in any property delivered to the state under this act may file a claim thereto or to the proceeds from the sale thereof on the form prescribed by the department.

**History.**—s. 19, ch. 61-10; ss. 12, 35, ch. 69-106.

**717.21 Determination of claims.**—

(1) The department shall determine any claim filed under this act.

(2) If the claim is allowed, the department shall make payment forthwith. The claim shall be paid without deduction for costs of notices or sale or for service charges.

**History.**—s. 20, ch. 61-10; ss. 12, 35, ch. 69-106; s. 7, ch. 78-95.

**717.22 Judicial action upon determination.**—

Any person aggrieved by a decision of the department, or as to whose claim the department has failed to act within 90 days after the filing of the claim, may petition for review as provided in chapter 120 to establish his claim. The proceeding shall be brought within 90 days after the decision of the department or within 180 days from the filing of the claim if the department fails to act.

**History.**—s. 21, ch. 61-10; ss. 12, 35, ch. 69-106; s. 9, ch. 77-236.

**717.23 Election to take payment or delivery.**

—The department, after receiving reports of property deemed abandoned pursuant to this act, may decline to receive any property reported which it deems to have a value less than the cost of giving notice and holding sale or it may, if it deems it desirable because of the small sum involved, postpone taking possession until a sufficient sum accumulates.

**History.**—s. 22, ch. 61-10; ss. 12, 35, ch. 69-106.

**717.24 Examination of records.**—The department may at reasonable times and upon reasonable notice examine the records of any person if it has reason to believe that such person has failed to report property that should have been reported pursuant to this act. If any person refuses to permit the examination of his records, the department may issue subpoena to compel such person to testify and produce his records; said subpoena to be served by the sheriff of the county where the person resides or may be found. Such person shall be entitled to the same per diem and mileage as witnesses appearing in the circuit court of the state which shall be paid by the state. If any person shall refuse to obey any

subpoena so issued or shall refuse to testify or produce his records, the department may present its petition to the circuit court of the county where any such person is served with the subpoena or where he resides, whereupon said court shall issue its rule nisi to such person requiring him to obey forthwith the subpoena issued by the department or show cause why he fails to obey the same, and unless the said person shows sufficient cause for failing to obey the said subpoena, the court shall forthwith direct such person to obey the same, and upon his refusal to comply, he shall be adjudged in contempt of court and shall be punished as the court may direct.

**History.**—s. 23, ch. 61-10; ss. 12, 35, ch. 69-106; s. 223, ch. 77-104.

**717.25 Proceeding to compel delivery of abandoned property.**—If any person refuses to deliver property to the department as required under this act, it shall bring an action in a court of appropriate jurisdiction to enforce such delivery.

**History.**—s. 24, ch. 61-10; ss. 12, 35, ch. 69-106.

**717.27 Penalties.**—

(1) Any person who willfully fails to render any report or perform other duties required under this act shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Any person who willfully refuses to pay or deliver abandoned property to the department as required under this act shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(3) Any person who willfully or fraudulently conceals, destroys, damages, or makes unlawful disposition of any property or of the books, records, or accounts pertaining to property which is subject to the provisions of this act is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 26, ch. 61-10; ss. 12, 35, ch. 69-106; s. 688, ch. 71-136; s. 10, ch. 77-236.

**717.28 Rules and regulations.**—The department is hereby authorized to make necessary rules and regulations to carry out the provisions of this act.

**History.**—s. 27, ch. 61-10; ss. 12, 35, ch. 69-106.

**717.29 Effect of laws of other states.**—This act shall not apply to any property that has been presumed abandoned or escheated under the laws of another state prior to September 30, 1961.

**History.**—s. 28, ch. 61-10.

**717.30 Repeal.**—This act shall not repeal, but shall be additional and supplemental to the existing provisions of ss. 43.18, 43.19, 402.17, and 550.164 and chapter 716.

**History.**—s. 30, ch. 61-10; s. 175, ch. 79-164.



## CHAPTER 718

## CONDOMINIUMS

## PART I GENERAL PROVISIONS (ss. 718.101-718.126)

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(ss. 718.201-718.203)PART III RIGHTS AND OBLIGATIONS OF ASSOCIATION  
(ss. 718.301-718.304)PART IV SPECIAL TYPES OF CONDOMINIUMS  
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CONDOMINIUMS (ss. 718.501-718.508)

## PART I

## Florida.

## GENERAL PROVISIONS

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**718.101 Short title.**—This chapter shall be known and may be cited as the "Condominium Act."

**History.**—s. 1, ch. 76-222.

**718.102 Purposes.**—The purpose of this chapter is:

- (1) To give statutory recognition to the condominium form of ownership of real property.
- (2) To establish procedures for the creation, sale, and operation of condominiums.

Every condominium created and existing in this state shall be subject to the provisions of this chapter.

**History.**—s. 1, ch. 76-222.

**718.103 Definitions.**—As used in this chapter:

- (1) "Assessment" means a share of the funds required for the payment of common expenses, which from time to time is assessed against the unit owner.
- (2) "Association" means the corporate entity responsible for the operation of a condominium.
- (3) "Board of administration" means the board of directors or other representative body responsible for administration of the association.
- (4) "Conspicuous type" means type in capital letters no smaller than the largest type on the page on which it appears.
- (5) "Bylaws" means the bylaws of the association existing from time to time.
- (6) "Common elements" means the portions of the condominium property not included in the units.
- (7) "Common expenses" means all expenses and assessments properly incurred by the association for the condominium.
- (8) "Common surplus" means the excess of all receipts of the association—including, but not limited to, assessments, rents, profits, and revenues on account of the common elements—over the common expenses.
- (9) "Condominium" means that form of ownership of real property which is created pursuant to the provisions of this chapter and which is comprised of units that may be owned by one or more persons, and there is, appurtenant to each unit, an undivided

share in common elements.

(10) "Condominium parcel" means a unit, together with the undivided share in the common elements which is appurtenant to the unit.

(11) "Condominium property" means the lands, leaseholds, and personal property that are subjected to condominium ownership, whether or not contiguous, and all improvements thereon and all easements and rights appurtenant thereto intended for use in connection with the condominium.

(12) "Declaration" or "declaration of condominium" means the instrument or instruments by which a condominium is created, as they are from time to time amended.

(13) "Developer" means a person who creates a condominium or offers condominium parcels for sale or lease in the ordinary course of business, but does not include an owner or lessee of a unit who has acquired his unit for his own occupancy.

(14) "Limited common elements" means those common elements which are reserved for the use of a certain condominium unit or units to the exclusion of other units, as specified in the declaration of condominium.

(15) "Operation" or "operation of the condominium" includes the administration and management of the condominium property.

(16) "Unit" means a part of the condominium property which is subject to exclusive ownership. A unit may be in improvements, land, or land and improvements together, as specified in the declaration.

(17) "Unit owner" or "owner of a unit" means the owner of a condominium parcel.

(18) "Residential condominium" means a condominium consisting of condominium units, any of which are intended for use as a private temporary or permanent residence, except that a condominium is not a residential condominium if the use for which the units are intended is primarily commercial or industrial and not more than three units are intended to be used for private residence, and are intended to be used as housing for maintenance, managerial, janitorial, or other operational staff of the condominium. If a condominium is a residential condominium but contains units intended to be used for commercial or industrial purposes, then, with respect to those units which are not intended for or used as private residences, the condominium is not a residential condominium.

(19) "Time-share estate" means any interest in a unit under which the exclusive right of use, possession, or occupancy of the unit circulates among the various owners of time-share estates in such unit in accordance with a fixed time schedule on a periodically recurring basis for a period of time established by such schedule.

(20) "Time-share unit" means a unit in which time-share estates have been created.

History.—s. 1, ch. 76-222; s. 1, ch. 78-328.

**718.104 Creation of condominiums; contents of declaration.**—Every condominium created in Florida shall be created pursuant to this chapter.

(1) A condominium may be created on land owned in fee simple or held under a lease complying with the provisions of s. 718.401.

(2) A condominium is created by recording a dec-

laration in the public records of the county where the land is located, executed and acknowledged with the requirements for a deed. All persons having record title to the interest in the land being submitted to condominium ownership, or their lawfully authorized agents, must join in the execution of the declaration.

(3) All persons having any record interest in any mortgage encumbering the interest in the land being submitted to condominium ownership must either join in the execution of the declaration or execute, with the requirements for deed, and record, a consent to the declaration or an agreement subordinating their mortgage interest to the declaration.

(4) The declaration must contain or provide for the following matters:

(a) A statement submitting the property to condominium ownership.

(b) The name by which the condominium property is to be identified, which shall include the word "condominium" or be followed by the words "a condominium."

(c) The legal description of the land and, if a leasehold estate is submitted to condominium, an identification of the lease.

(d) An identification of each unit by letter, name, or number, or combination thereof, so that no unit bears the same designation as any other unit.

(e) A survey of the land and a graphic description of the improvements in which units are located and a plot plan thereof that, together with the declaration, are in sufficient detail to identify the common elements and each unit and their relative locations and approximate dimensions. The survey, graphic description, and plot plan may be in the form of exhibits consisting of building plans, floor plans, maps, surveys, or sketches. If the construction of the condominium is not substantially completed, there shall be a statement to that effect, and, upon substantial completion of construction, the developer or the association shall amend the declaration to include the certificate described below. The amendment may be accomplished by referring to the recording data of a survey of the condominium that complies with the certificate. A certificate of a surveyor authorized to practice in this state shall be included in or attached to the declaration or the survey or graphic description as recorded under s. 718.105 that the construction of the improvements is substantially complete so that the material, together with the provisions of the declaration describing the condominium property, is an accurate representation of the location and dimensions of the improvements and so that the identification, location, and dimensions of the common elements and of each unit can be determined from these materials. Completed units within each substantially completed building in a condominium development may be conveyed to purchasers, notwithstanding that other buildings in the condominium are not substantially completed, provided that all planned improvements, including, but not limited to, landscaping, utility services and access to the unit, and common element facilities serving such building, as set forth in the declaration, are first completed and the declaration of condominium is first recorded and provided that as to

the units being conveyed there is a certificate of a surveyor as required above, including certification that all planned improvements, including, but not limited to, landscaping, utility services and access to the unit, and common element facilities serving the building in which the units to be conveyed are located have been substantially completed, and such certificate is recorded with the original declaration or as an amendment to said declaration. This section shall not, however, operate to require development of improvements and amenities declared to be included in future phases pursuant to s. 718.403 prior to conveying a unit as provided herein. For the purposes of this section, a "certificate of a surveyor" means certification by a surveyor in the form provided herein and may include, along with certification by a surveyor, when appropriate, certification by an architect or engineer authorized to practice in this state. Notwithstanding the requirements of substantial completion provided in this section, nothing contained herein shall prohibit or impair the validity of a mortgage encumbering units together with an undivided interest in the common elements as described in a declaration of condominium recorded prior to the recording of a certificate of a surveyor as provided herein.

(f) The undivided share in the common elements appurtenant to each unit stated as percentages or fractions, which, in the aggregate, must equal the whole.

(g) The proportions or percentages of and manner of sharing common expenses and owning common surplus, which, for a residential condominium, must be the same as the undivided shares in the common elements.

(h) The name of the association, which must be a corporation for profit or a corporation not for profit.

(i) Unit owners' membership and voting rights in the association.

(j) The document or documents creating the association, which may be attached as an exhibit.

(k) A copy of the bylaws, which may be attached as an exhibit. Defects or omissions in the bylaws shall not affect the validity of the condominium or title to the condominium parcels.

(l) Other desired provisions not inconsistent with this chapter.

(m) The creation of a nonexclusive easement for ingress and egress over streets, walks, and other rights-of-way serving the units of a condominium, as part of the common elements necessary to provide reasonable access to the public ways, or a dedication of the streets, walks, and other rights-of-way to the public. All easements for ingress and egress shall not be encumbered by any leasehold or lien other than those on the condominium parcels, unless:

1. Any such lien is subordinate to the rights of unit owners, or

2. The holder of any encumbrance or leasehold of any easement has executed and recorded an agreement that the use-rights of each unit owner will not be terminated as long as the unit owner has not been evicted because of a default under the encumbrance or lease, and the use-rights of any mortgagee of a unit who has acquired title to a unit may not be terminated.

(n) If time-share estates will or may be created with respect to any unit in the condominium, a statement in conspicuous type declaring that time-share estates will or may be created with respect to units in the condominium. In addition, the degree, quantity, nature, and extent of the time-share estates that will or may be created shall be defined and described in detail in the declaration, with a specific statement as to the minimum duration of the recurring periods of rights of use, possession, or occupancy that may be created with respect to any unit.

(5) The declaration may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property. However, the rule against perpetuities shall not defeat a right given any person or entity by the declaration for the purpose of allowing unit owners to retain reasonable control over the use, occupancy, and transfer of units.

(6) A person who joins in, or consents to the execution of, a declaration subjects his interest in the condominium property to the provisions of the declaration.

(7) All provisions of the declaration are enforceable equitable servitudes, run with the land, and are effective until the condominium is terminated.

**History.**—s. 1, ch. 76-222; s. 1, ch. 77-174; s. 2, ch. 78-328; s. 7, ch. 78-340; s. 1, ch. 79-314.

**718.1045 Time-share estates; limitation on creation.**—No time-share estates shall be created with respect to any condominium unit except pursuant to provisions in the declaration expressly permitting the creation of such estates.

**History.**—s. 3, ch. 78-328.

#### **718.105 Recording of declaration.—**

(1) When executed as required by s. 718.104, a declaration together with all exhibits and all amendments is entitled to recordation as an agreement relating to the conveyance of land.

(2) Graphic descriptions of improvements constituting exhibits to a declaration, when accompanied by the certificate of a surveyor required by s. 718.104, may be recorded as a part of a declaration without approval of any public body or officer.

(3) The clerk of the circuit court recording the declaration may, for his convenience, file the exhibits of a declaration which contains graphic descriptions of improvements in a separate book, and shall indicate the place of filing upon the margin of the record of the declaration.

(4) If the declaration or the survey or graphic description of the improvements required under s. 718.104(4)(e) does not have the certificate required, the developer shall deliver to the clerk an estimate of the cost of a final survey or graphic description containing and complying with the certificate prescribed by s. 718.104(4)(e) and shall deposit with the clerk the sum of money specified in the estimate. The clerk shall hold the money until an amendment to the declaration is recorded that complies with the certificate requirements of s. 718.104(4)(e). At that time, the clerk shall pay to the developer or the association presenting the amendment to the declaration the sum of money deposited with him without making any charge for holding the sum, receiving it,



or paying out, other than the fees required for recording the condominium documents.

History.—s. 1, ch. 76-222; s. 1, ch. 77-174; s. 8, ch. 78-340.

**718.106 Condominium parcels; appurtenances; possession and enjoyment.—**

(1) A condominium parcel created by the declaration is a separate parcel of real property, even though the condominium is created on a leasehold.

(2) There shall pass with a unit, as appurtenances thereto:

(a) An undivided share in the common elements and common surplus.

(b) The exclusive right to use such portion of the common elements as may be provided by the declaration.

(c) An exclusive easement for the use of the airspace occupied by the unit as it exists at any particular time and as the unit may lawfully be altered or reconstructed from time to time. An easement in airspace which is vacated shall be terminated automatically.

(d) Other appurtenances as may be provided in the declaration.

(3) A unit owner is entitled to the exclusive possession of his unit, subject to the provisions of s. 718.111(5). He shall be entitled to use the common elements in accordance with the purposes for which they are intended, but no use may hinder or encroach upon the lawful rights of other unit owners.

History.—s. 1, ch. 76-222.

**718.1065 Restraint upon partition of time-share units.—**No action for partition of any time-share unit shall lie.

History.—s. 4, ch. 78-328.

**718.107 Restraint upon separation and partition of common elements.—**

(1) The undivided share in the common elements which is appurtenant to a unit shall not be separated from it and shall pass with the title to the unit, whether or not separately described.

(2) The share in the common elements appurtenant to a unit cannot be conveyed or encumbered except together with the unit.

(3) The shares in the common elements appurtenant to units are undivided, and no action for partition of the common elements shall lie.

History.—s. 1, ch. 76-222.

**718.108 Common elements.—**

(1) "Common elements" includes within its meaning the following:

(a) The condominium property which is not included within the units.

(b) Easements through units for conduits, ducts, plumbing, wiring, and other facilities for the furnishing of utility services to units and the common elements.

(c) An easement of support in every portion of a unit which contributes to the support of a building.

(d) The property and installations required for the furnishing of utilities and other services to more than one unit or to the common elements.

(2) The declaration may designate other parts of the condominium property as common elements.

History.—s. 1, ch. 76-222.

**718.109 Legal description of condominium parcels.—**

Following the recording of the declaration, a description of a condominium parcel by the number or other designation by which the unit is identified in the declaration, together with the recording data identifying the declaration, shall be a sufficient legal description for all purposes. The description includes all appurtenances to the unit concerned, whether or not separately described, including, but not limited to, the undivided share in the common elements appurtenant thereto.

History.—s. 1, ch. 76-222.

**718.110 Amendment of declaration.—**

(1) If the declaration fails to provide a method of amendment, the declaration may be amended as to all matters except those described in subsection (4) or subsection (8) if the amendment is approved by the owners of not less than two-thirds of the units.

(2) An amendment, other than amendments made by the developer pursuant to ss. 718.104 and 718.403 and any rights the developer may have in the declaration to amend without consent of the unit owners, shall be evidenced by a certificate of the association which shall include the recording data identifying the declaration and shall be executed in the form required for the execution of a deed. Amendments by the developer must be evidenced in writing, but a certificate of the association is not required.

(3) An amendment of a declaration is effective when properly recorded in the public records of the county where the declaration is recorded.

(4) Unless otherwise provided in the declaration as originally recorded, no amendment may change the configuration or size of any condominium unit in any material fashion, materially alter or modify the appurtenances to the unit, or change the proportion or percentage by which the owner of the parcel shares the common expenses and owns the common surplus unless the record owner of the unit and all record owners of liens on it join in the execution of the amendment and unless all the record owners of all other units approve the amendment.

(5) If it appears that through scrivener's error a unit has not been designated as owning an appropriate undivided share of the common elements or does not bear an appropriate share of the common expenses or that all the common expenses or interest in the common surplus or all of the common elements in the condominium have not been distributed in the declaration, so that the sum total of the shares of common elements which have been distributed or the sum total of the shares of the common expenses or ownership of common surplus fails to equal 100 percent, or if it appears that more than 100 percent of common elements or common expenses or ownership of the common surplus have been distributed, the error may be corrected by filing an amendment to the declaration approved by the board of administration or a majority of the unit owners. To be effective, the amendment must be executed by the association and the owners of the units

and the owners of mortgages thereon affected by the modifications being made in the shares of common elements, common expenses, or common surplus. No other unit owner is required to join in or execute the amendment.

(6) The common elements designated by the declaration may be enlarged by an amendment to the declaration. The amendment must describe the interest in the property and must submit the property to the terms of the declaration. The amendment must be approved and executed as provided in this section. The amendment divests the association of title to the land and vests title in the unit owners as part of the common elements, without naming them and without further conveyance, in the same proportion as the undivided shares in the common elements that are appurtenant to the unit owned by them.

(7) The declarations, bylaws, and common elements of two or more independent condominiums of a single complex may be merged to form a single condominium, upon the approval of 80 percent of all the unit owners of each condominium and of all record owners of liens and upon the recording of new or amended articles of incorporation, declarations, and bylaws.

(8) Unless otherwise provided in the declaration as originally recorded, no amendment to the declaration may permit time-share estates to be created in any unit of the condominium, unless the record owner of each unit of the condominium and the record owners of liens on each unit of the condominium join in the execution of the amendment.

(9) Any vote to amend the declaration of condominium relating to a change in percentage of ownership in the common elements or sharing of the common expense shall be conducted by secret ballot.

**History.**—s. 1, ch. 76-222; s. 8, ch. 77-221; s. 6, ch. 77-222; s. 5, ch. 78-328; s. 2, ch. 78-340.

#### **718.111 The association.—**

(1) The operation of the condominium shall be by the association, which must be a corporation for profit or a corporation not for profit. However, any association which was in existence on January 1, 1977, need not be incorporated. The owners of units shall be shareholders or members of the association. The officers and directors of the association have a fiduciary relationship to the unit owners. An association may operate more than one condominium.

(2) The association may contract, sue, or be sued with respect to the exercise or nonexercise of its powers. For these purposes, the powers of the association include, but are not limited to, the maintenance, management, and operation of the condominium property. After control of the association is obtained by unit owners other than the developer, the association may institute, maintain, settle, or appeal actions or hearings in its name on behalf of all unit owners concerning matters of common interest, including, but not limited to, the common elements; the roof and structural components of a building or other improvements; mechanical, electrical, and plumbing elements serving an improvement or a building; representations of the developer pertaining to any existing or proposed commonly used facilities; and protesting ad valorem taxes on

commonly used facilities. If the association has the authority to maintain a class action, the association may be joined in an action as representative of that class with reference to litigation and disputes involving the matters for which the association could bring a class action. Nothing herein limits any statutory or common law right of any individual unit owner or class of unit owners to bring any action which may otherwise be available.

(3) A unit owner does not have any authority to act for the association by reason of being a unit owner.

(4) The powers and duties of the association include those set forth in this section and those set forth in the declaration and bylaws, if not inconsistent with this chapter.

(5) The association has the irrevocable right to access to each unit during reasonable hours, when necessary for the maintenance, repair, or replacement of any common elements or for making emergency repairs necessary to prevent damage to the common elements or to another unit or units.

(6) The association has the power to make and collect assessments and to lease, maintain, repair, and replace the common elements.

(7) The association shall maintain accounting records for each condominium it manages in the county where the condominium is located, according to good accounting practices. The records shall be open to inspection by unit owners or their authorized representatives at reasonable times, and written summaries of them shall be supplied at least annually to unit owners or their authorized representatives. Failure to permit inspection of the association's accounting records by unit owners or their authorized representatives entitles any person prevailing in an enforcement action to recover reasonable attorney's fees from the person in control of the books and records who, directly or indirectly, knowingly denies access to the books and records for inspection. The records shall include, but are not limited to:

(a) A record of all receipts and expenditures.

(b) An account for each unit, designating the name and current mailing address of the unit owner, the amount of each assessment, the dates and amounts in which the assessments come due, the amount paid upon the account, and the balance due.

(8) The association has the power, unless prohibited by the declaration, articles of incorporation, or bylaws of the association, to purchase units in the condominium and to acquire and hold, lease, mortgage, and convey them.

(9)(a) The association shall use its best efforts to obtain and maintain adequate insurance to protect the association and the common elements. A copy of each policy of insurance in effect shall be made available for inspection by unit owners at reasonable times.

(b) All hazard policies issued to protect condominium buildings shall provide that the word "building" wherever used in the policy shall include, but shall not necessarily be limited to, fixtures, installations, or additions comprising that part of the building within the unfinished interior surfaces of the perimeter walls, floors, and ceilings of the indi-

vidual units initially installed or replacements thereof, in accordance with the original plans and specifications. With respect to the coverage provided for by this paragraph, the unit owners shall be considered additional insureds under the policy.

(10) Unless prohibited by the declaration, the association has the authority, without the joinder of any unit owner, to modify or move any easement for ingress and egress or for the purposes of utilities if the easement constitutes part of or crosses the condominium property. This subsection does not authorize the association to modify or move any easement created in whole or in part for the use or benefit of anyone other than the unit owners, or crossing the property of anyone other than the unit owners, without their consent or approval as required by law or the instrument creating the easement. Nothing in this subsection affects the minimum requirements of s. 718.104(4)(m).

(11) Notwithstanding any provision of this chapter, an association may operate residential condominiums in a phase project initially created pursuant to former s. 711.64, and may continue to so operate said project as though it was a single condominium for purposes of financial matters, including budgets, assessments, accounting, record keeping, and similar matters, if provision is made for such consolidated operation in the applicable declarations of each such condominium as initially recorded or in the bylaws as initially adopted. Notwithstanding any provision in this chapter, common expenses for residential condominiums in such a project being operated by a single association may be assessed against all unit owners in such project pursuant to the proportions or percentages established therefor in the declarations as initially recorded or in the bylaws as initially adopted, subject, however, to the limitations of ss. 718.116 and 718.302.

(12) The association has the power to purchase any land or recreation lease upon the approval of two-thirds of the unit owners of each condominium, unless a different number or percentage is provided in the declaration or declarations.

(13) Within 60 days following the end of the fiscal or calendar year or annually on such date as is otherwise provided in the bylaws of the association, the board of administration of the association shall mail or furnish by personal delivery to each unit owner a complete financial report of actual receipts and expenditures for the previous 12 months. The report shall show the amounts of receipts by accounts and receipt classifications and shall show the amounts of expenses by accounts and expense classifications including, if applicable, but not limited to, the following:

- (a) Costs for security;
- (b) Professional and management fees and expenses;
- (c) Taxes;
- (d) Costs for recreation facilities;
- (e) Expenses for refuse collection and utility services;
- (f) Expenses for lawn care;
- (g) Costs for building maintenance and repair;
- (h) Insurance costs;
- (i) Administrative and salary expenses; and

(j) General reserves, maintenance reserves, and depreciation reserves.

History.—s. 1, ch. 76-222; s. 2, ch. 78-340; ss. 2, 3, 5, ch. 79-314.

#### 718.112 Bylaws.—

(1) The administration of the association and the operation of the condominium property shall be governed by bylaws, which shall be set forth in or included as an exhibit to the declaration. No modification of or amendment to the bylaws is valid unless set forth in or annexed to a recorded amendment to the declaration. The method of amending bylaws shall be governed by separate provisions for amending bylaws and not by the method for amending the declaration.

(2) The bylaws shall provide for the following, and if they do not do so, shall be deemed to include the following:

(a) The form of administration of the association shall be described, indicating the title of the officers and board of administration and specifying the powers, duties, manner of selection and removal, and compensation, if any, of officers and boards. In the absence of such a provision, the board of administration shall be composed of five members, except in the case of condominiums having five or fewer units, in which case one owner of each unit shall be a member of the board of administration. In the absence of provisions to the contrary in the bylaws, the board of administration shall have a president, a secretary, and a treasurer, who shall perform the duties of such officers customarily performed by officers of corporations. Unless prohibited in the bylaws, the board of administration may appoint other officers and grant them the duties it deems appropriate. Unless otherwise provided in the bylaws, the officers shall serve without compensation and at the pleasure of the board of administration.

(b)1. Unless otherwise provided in the bylaws, the percentage of unit owners or voting rights required to make decisions and to constitute a quorum shall be a majority of the units, and decisions shall be made by owners of a majority of the units represented at a meeting at which a quorum is present. Unit owners may vote by proxy.

2. Any proxy given shall be effective only for the specific meeting for which originally given and any lawfully adjourned meetings thereof. In no event shall any proxy be valid for a period longer than 90 days after the date of the first meeting for which it was given. Every proxy shall be revocable at any time at the pleasure of the unit owner executing it.

(c) Meetings of the board of administration shall be open to all unit owners. Adequate notice of all meetings shall be posted conspicuously on the condominium property at least 48 hours in advance, except in an emergency. Notice of any meeting in which assessments against unit owners are to be considered for any reason shall specifically contain a statement that assessments will be considered and the nature of any such assessments.

(d) There shall be an annual meeting of the unit owners. Unless the bylaws provide otherwise, vacancies on the board of administration caused by the expiration of a director's term shall be filled by electing new board members. If there is no provision in the bylaws for terms of the members of the board of



administration, the terms of all members of the board of administration shall expire upon the election of their successors at the annual meeting. The bylaws shall not restrict any unit owner desiring to be a candidate for board membership from being nominated from the floor. The bylaws shall provide the method of calling meetings of unit owners, including annual meetings. Written notice shall be given to each unit owner and shall be posted in a conspicuous place on the condominium property at least 14 days prior to the annual meeting. Unless a unit owner waives in writing the right to receive notice of the annual meeting by mail, the notice of the annual meeting shall be sent by mail to each unit owner, and the post office certificate of mailing shall be retained as proof of such mailing. Unit owners may waive notice of specific meetings and may take action by written agreement without meetings, if allowed by the bylaws, the declaration of condominium, or any Florida statute.

(e) The minutes of all meetings of unit owners and the board of administration shall be kept in a book available for inspection by unit owners, or their authorized representatives, and board members at any reasonable time. The association shall retain these minutes for a period of not less than 7 years.

(f) The board of administration shall mail a meeting notice and copies of the proposed annual budget of common expenses to the unit owners not less than 30 days prior to the meeting at which the budget will be considered. If the bylaws or declaration provides that the budget may be adopted by the board of administration, then the unit owners shall be given written notice of the time and place of the meeting of the board of administration which will consider the budget. The meeting shall be open to the unit owners. If an adopted budget requires assessment against the unit owners in any fiscal or calendar year exceeding 115 percent of the assessments for the preceding year, the board, upon written application of 10 percent of the unit owners to the board, shall call a special meeting of the unit owners within 30 days, upon not less than 10 days' written notice to each unit owner. At the special meeting, unit owners shall consider and enact a budget. Unless the bylaws require a larger vote, the adoption of the budget shall require a vote of not less than a majority vote of all unit owners. The board of administration may propose a budget to the unit owners at a meeting of members or in writing, and if the budget or proposed budget is approved by the unit owners at the meeting or by a majority of all unit owners in writing, the budget shall be adopted. In determining whether assessments exceed 115 percent of similar assessments in prior years, any authorized provisions for reasonable reserves for repair or replacement of the condominium property, anticipated expenses by the condominium association which are not anticipated to be incurred on a regular or annual basis, or assessments for betterments to the condominium property shall be excluded from the computation. However, as long as the developer is in control of the board of administration, the board shall not impose an assessment for any year greater than 115 percent of the prior fiscal or calendar year's assessment without approval of a

majority of all unit owners.

(g) Subject to the provisions of s. 718.301, any member of the board of administration may be recalled and removed from office with or without cause by the vote or agreement in writing by a majority of all unit owners. A special meeting of the unit owners to recall a member or members of the board of administration may be called by 10 percent of the unit owners giving notice of the meeting as required for a meeting of unit owners, and the notice shall state the purpose of the meeting.

(h) The manner of collecting from the unit owners their shares of the common expenses shall be stated in the bylaws. Assessments shall be made against unit owners not less frequently than quarterly, in an amount no less than required to provide funds in advance for payment of all of the anticipated current operating expenses and for all of the unpaid operating expenses previously incurred.

(i) The method by which the bylaws may be amended consistent with the provisions of this chapter shall be stated. If the bylaws fail to provide a method of amendment, the bylaws may be amended if the amendment is approved by owners of not less than two-thirds of the units. No bylaw shall be revised or amended by reference to its title or number only. Proposals to amend existing bylaws shall contain the full text of the bylaws to be amended; new words shall be inserted in the text underlined, and words to be deleted shall be lined through with hyphens. However, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but, instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of bylaw ..... for present text." Nonmaterial errors or omissions in the bylaw process shall not invalidate an otherwise properly promulgated amendment.

(j) If the transfer, lease, sale, or sublease of units is subject to approval of any body, no fee shall be charged in connection with a transfer, sale, or approval in excess of the expenditures reasonably required for the transfer or sale, and this expense shall not exceed \$50. No charge shall be made in connection with an extension or renewal of a lease.

(k) The proposed annual budget of common expenses shall be detailed and shall show the amounts budgeted by accounts and expense classifications, including, if applicable, but not limited to those expenses listed in s. 718.504(20). In addition to annual operating expenses, the budget shall include reserve accounts for capital expenditures and deferred maintenance. These accounts shall include, but not be limited to, roof replacement, building painting, and pavement resurfacing. The amount to be reserved shall be computed by means of a formula which is based upon estimated life and estimated replacement cost of each reserve item. This subsection shall not apply to budgets in which the level of assessments has been guaranteed pursuant to s. 718.116(8) prior to October 1, 1979, provided that the absence of reserves is disclosed to purchasers, or to

budgets in which the members of an association have, by a two-thirds vote at a duly called meeting of the association, determined for a fiscal year to provide no reserves or reserves less adequate than required by this subsection.

(1) The fidelity bonding of all officers or directors of any association existing on or after October 1, 1978, who control or disburse funds of the association. The association shall bear the cost of bonding. This paragraph shall not apply to associations operating a condominium consisting of 50 units or less; however, any condominium association may bond any officer of the association, and said association shall bear the cost of bonding.

(3) The bylaws may provide for the following:

(a) A method of adopting and amending administrative rules and regulations governing the details of the operation and use of the common elements.

(b) Restrictions on, and requirements for the use, maintenance, and appearance of, the units and the use of the common elements.

(c) Other provisions not inconsistent with this chapter or with the declaration as may be desired.

**History.**—s. 1, ch. 76-222; s. 1, ch. 77-174; s. 5, ch. 77-221; ss. 3, 4, ch. 77-222; s. 1, ch. 78-340; s. 6, ch. 79-314.

#### **718.113 Maintenance; limitation upon improvement.**

(1) Maintenance of the common elements is the responsibility of the association. The declaration may provide that limited common elements shall be maintained by those entitled to use the limited common elements.

(2) There shall be no material alteration or substantial additions to the common elements except in a manner provided in the declaration.

(3) A unit owner shall not make any alterations to his unit which would remove any portion of, or make any additions to, common elements or do anything which would adversely affect the safety or soundness of the common elements or any portion of the condominium property which is to be maintained by the association.

**History.**—s. 1, ch. 76-222.

**718.114 Association powers.**—An association has the power to enter into agreements, to acquire leaseholds, memberships, and other possessory or use interests in lands or facilities such as country clubs, golf courses, marinas, and other recreational facilities. It has this power whether or not the lands or facilities are contiguous to the lands of the condominium, if they are intended to provide enjoyment, recreation, or other use or benefit to the unit owners. All of these leaseholds, memberships, and other possessory or use interests existing or created at the time of recording the declaration must be stated and fully described in the declaration. Subsequent to the recording of the declaration, the association may not acquire or enter into agreements acquiring these leaseholds, memberships, or other possessory or use interests except as authorized by the declaration. The declaration may provide that the rental, membership fees, operations, replace-

ments, and other expenses are common expenses and may impose covenants and restrictions concerning their use and may contain other provisions not inconsistent with this chapter.

**History.**—s. 1, ch. 76-222; s. 4, ch. 79-314.

#### **718.115 Common expenses and common surplus.**

(1) Common expenses include the expenses of the operation, maintenance, repair, or replacement of the common elements, costs of carrying out the powers and duties of the association, and any other expense designated as common expense by this chapter, the declaration, the documents creating the condominium, or the bylaws.

(2) Funds for the payment of common expenses shall be collected by assessments against unit owners in the proportions or percentages provided in the declaration. In a residential condominium, unit owners' shares of common expenses shall be in the same proportions as their ownership interest in the common elements.

(3) Common surplus is owned by unit owners in the same shares as their ownership interest in the common elements.

**History.**—s. 1, ch. 76-222; s. 1, ch. 77-174.

#### **718.116 Assessments; liability; lien and priority; interest; collection.**

(1)(a) A unit owner, regardless of how title is acquired, including a purchaser at a judicial sale, shall be liable for all assessments coming due while he is the unit owner. In a voluntary conveyance, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor for his share of the common expenses up to the time of the conveyance, without prejudice to any right the grantee may have to recover from the grantor the amounts paid by the grantee.

(b) With respect to each time-share unit, each owner of a time-share estate therein shall be jointly and severally liable for the payment of all assessments and other charges levied pursuant to the declaration or bylaws against or with respect to that unit, except to the extent that the declaration or bylaws may provide to the contrary.

(2) The liability for assessments may not be avoided by waiver of the use or enjoyment of any common elements or by abandonment of the unit for which the assessments are made.

(3) Assessments and installments on them not paid when due bear interest at the rate provided in the declaration, from the due date until paid. This rate may not exceed the rate allowed by law, and, if no rate is provided in the declaration, then interest shall accrue at the legal rate.

(4)(a) The association has a lien on each condominium parcel for any unpaid assessments with interest and, if the declaration so allows, for reasonable attorney's fees incurred by the association incident to the collection of the assessment or enforcement of the lien. The lien is effective from and after recording a claim of lien in the public records in the county in which the condominium parcel is located, stating the description of the condominium parcel, the name of the record owner, the amount due, and the due dates. The lien is in effect until all sums

secured by it have been fully paid or until barred by chapter 95. The claim of lien includes only assessments which are due when the claim is recorded. A claim of lien must be signed and acknowledged by an officer or agent of the association. Upon payment, the person making the payment is entitled to a satisfaction of the lien. By recording a notice in substantially the following form, a unit owner or his agent or attorney may require the association to enforce a recorded claim of lien against his condominium parcel:

#### NOTICE OF CONTEST OF LIEN

TO: (Name and address of association).....

You are notified that the undersigned contests the claim of lien filed by you on ..... 19....., and recorded in Official Records Book ..... at Page ....., of the public records of ..... County, Florida, and that the time within which you may file suit to enforce your lien is limited to 90 days from the date of service of this notice.

Executed this ..... day of ....., 19.....

Signed: (Owner or Attorney).....

(b) The Clerk of the Circuit Court shall mail a copy of the recorded notice of contest to the lien claimant at the address shown in the claim of lien or most recent amendment to it, shall certify to the service on the face of the notice, and shall record the notice. Service is complete upon mailing. After service, the association has 90 days in which to file an action to enforce the lien, and if the action is not filed within the 90-day period, the lien is void.

(5)(a) The association may bring an action in its name to foreclose a lien for assessments in the manner a mortgage of real property is foreclosed and may also bring an action to recover a money judgment for the unpaid assessments without waiving any claim of lien.

(b) No foreclosure judgment may be entered until at least 30 days after the association gives written notice to the unit owner of its intention to foreclose its lien to collect the unpaid assessments. If this notice is not given at least 30 days before the foreclosure action is filed, and if the unpaid assessments, including those coming due after the claim of lien is recorded, are paid before the entry of a final judgment of foreclosure, the association shall not recover attorney's fees or costs. The notice must be given by delivery of a copy of it to the unit owner or by certified mail, return receipt requested, addressed to the unit owner. If, after diligent search and inquiry, the association cannot find the unit owner or a mailing address at which the unit owner will receive the notice, the court may proceed with the foreclosure action and may award attorney's fees and costs as permitted by law. The notice requirements of this subsection are satisfied if the unit owner records a Notice of Contest of Lien as provided in subsection (4).

(c) If the unit owner remains in possession of the unit and the claim of lien is foreclosed, the court, in its discretion, may require the unit owner to pay a reasonable rental for the unit, and the association is

entitled to the appointment of a receiver to collect the rent.

(d) The association, unless prohibited by the declaration, the documents creating the association, or its bylaws, has the power to purchase the condominium parcel at the foreclosure sale and to hold, lease, mortgage, or convey it.

(6) When the mortgagee of a first mortgage of record, or other purchaser, of a condominium unit obtains title to the condominium parcel as a result of foreclosure of the first mortgage, or, if the declaration so provides, as a result of a deed given in lieu of foreclosure, such acquirer of title and his successors and assigns shall not be liable for the share of common expenses or assessments by the association pertaining to the condominium parcel or chargeable to the former unit owner of the parcel which became due prior to acquisition of title as a result of the foreclosure, unless the share is secured by a claim of lien for assessments that is recorded prior to the recording of the foreclosed mortgage. The unpaid share of common expenses or assessments are common expenses collectible from all of the unit owners, including such acquirer and his successors and assigns. If the declaration so provides, the foregoing provision may apply to any mortgage of record and shall not be restricted to first mortgages of record. A first mortgagee acquiring title to a condominium parcel as a result of foreclosure, or a deed in lieu of foreclosure, may not, during the period of its ownership of such parcel, whether or not such parcel is unoccupied, be excused from the payment of some or all of the common expenses coming due during the period of such ownership.

(7) Any unit owner has the right to require from the association a certificate showing the amount of unpaid assessments against him with respect to his condominium parcel. The holder of a mortgage or other lien of record has the same right as to any condominium parcel upon which he has a lien.

(8) No unit owner may be excused from the payment of his share of the common expense of a condominium unless all unit owners are likewise proportionately excused from payment, except as provided in subsection (6) and in the following cases:

(a) If the declaration so provides, a developer or other person owning condominium units offered for sale may be excused from the payment of the share of the common expenses and assessments related to those units for a stated period of time subsequent to the recording of the declaration of condominium. The period must terminate no later than the first day of the fourth calendar month following the month in which the closing of the purchase and sale of the first condominium unit occurs. However, the developer must pay the portion of common expenses incurred during that period which exceed the amount assessed against other unit owners.

(b) A developer or other person owning condominium units or having an obligation to pay condominium expenses may be excused from the payment of his share of the common expense which would have been assessed against those units during the period of time that he shall have guaranteed to each purchaser in the purchase contract, declaration, or prospectus, or by agreement between the



developer and a majority of the unit owners other than the developer, that the assessment for common expenses of the condominium imposed upon the unit owners would not increase over a stated dollar amount and shall have obligated himself to pay any amount of common expenses incurred during that period and not produced by the assessments at the guaranteed level receivable from other unit owners.

(9) Any unit owner shall have the right to require from the association a certificate showing the amount of unpaid assessments against him with respect to his condominium parcel. The holder of a mortgage or other lien shall have the same right as to any condominium parcel upon which he has a lien. Any person other than the owner who relies upon such certificate shall be protected thereby.

**History.**—s. 1, ch. 76-222; s. 1, ch. 77-174; s. 9, ch. 77-221; s. 7, ch. 77-222; s. 6, ch. 78-328.

#### **718.117 Termination.—**

(1) Unless otherwise provided in the declaration, the condominium property may be removed from the provisions of this chapter only by consent of all of the unit owners, evidenced by a recorded instrument to that effect, and upon the written consent by all of the holders of recorded liens affecting any of the condominium parcels.

(2) Unless otherwise provided in the declaration as originally recorded or as amended pursuant to s. 718.110(5), upon removal of the condominium property from the provisions of this chapter, the condominium property is owned in common by the unit owners in the same undivided shares as each owner previously owned in the common elements. All liens shall be transferred to the undivided share in the condominium property attributable to the unit originally encumbered by the lien in its same priority.

(3) The termination of a condominium does not bar the creation of another condominium affecting all or any portion of the same property.

**History.**—s. 1, ch. 76-222.

**718.118 Equitable relief.**—In the event of substantial damage to or destruction of all or a substantial part of the condominium property, and if the property is not repaired, reconstructed, or rebuilt within a reasonable period of time, any unit owner may petition a court for equitable relief, which may include a termination of the condominium and a partition.

**History.**—s. 1, ch. 76-222.

#### **718.119 Limitation of liability.—**

(1) The liability of the owner of a unit for common expenses is limited to the amounts for which he is assessed for common expenses from time to time in accordance with this chapter, the declaration, and bylaws.

(2) The owner of a unit may be personally liable for the acts or omissions of the association in relation to the use of the common elements, but only to the extent of his pro rata share of that liability in the same percentage as his interest in the common elements, and then in no case shall that liability exceed the value of his unit.

(3) In any legal action in which the association may be exposed to liability in excess of insurance

coverage protecting it and the unit owners, the association shall give notice of the exposure within a reasonable time to all unit owners, and they shall have the right to intervene and defend.

**History.**—s. 1, ch. 76-222; s. 6, ch. 77-221; s. 5, ch. 77-222.

#### **718.120 Separate taxation of condominium parcels; survival of declaration after tax sale.—**

(1) Ad valorem taxes and special assessments by taxing authorities shall be assessed against the condominium parcels and not upon the condominium property as a whole. Each condominium parcel shall be separately assessed for ad valorem taxes and special assessments as a single parcel. The taxes and special assessments levied against each condominium parcel shall constitute a lien only upon the condominium parcel assessed and upon no other portion of the condominium property.

(2) All provisions of a declaration relating to a condominium parcel which has been sold for taxes or special assessments survive and are enforceable after the issuance of a tax deed or master's deed, upon foreclosure of an assessment, a certificate or lien, a tax deed, tax certificate, or tax lien, to the same extent that they would be enforceable against a voluntary grantee of the title immediately prior to the delivery of the tax deed, master's deed, or clerk's certificate of title as provided in s. 197.281.

**History.**—s. 1, ch. 76-222.

#### **718.121 Liens.—**

(1) Subsequent to recording the declaration and while the property remains subject to the declaration, no liens of any nature are valid against the condominium property as a whole except with the unanimous consent of the unit owners. During this period, liens may arise or be created only against individual condominium parcels.

(2) Labor performed on or materials furnished to a unit shall not be the basis for the filing of a lien pursuant to the Mechanics' Lien Law against the unit or condominium parcel of any unit owner not expressly consenting to or requesting the labor or materials. Labor performed on or materials furnished to the common elements are not the basis for a lien on the common elements, but if authorized by the association, the labor or materials are deemed to be performed or furnished with the express consent of each unit owner and may be the basis for the filing of a lien against all condominium parcels in the proportions for which the owners are liable for common expenses.

(3) If a lien against two or more condominium parcels becomes effective, each owner may relieve his condominium parcel of the lien by exercising any of the rights of a property owner under chapter 713, or by payment of the proportionate amount attributable to his condominium parcel. Upon the payment, the lienor shall release the lien of record for that condominium parcel.

**History.**—s. 1, ch. 76-222.

#### **718.122 Unconscionability of certain leases; rebuttable presumption.—**

(1) A lease pertaining to use by condominium unit owners of recreational or other common facilities, irrespective of the date on which such lease was

entered into, is presumptively unconscionable if all of the following elements exist:

(a) The lease was executed by persons none of whom at the time of the execution of the lease were elected by condominium unit owners, other than the developer, to represent their interests;

(b) The lease requires either the condominium association or the condominium unit owners to pay real estate taxes on the subject real property;

(c) The lease requires either the condominium association or the condominium unit owners to insure buildings or other facilities on the subject real property against fire or any other hazard;

(d) The lease requires either the condominium association or the condominium unit owners to perform some or all maintenance obligations pertaining to the subject real property or facilities located upon the subject real property;

(e) The lease requires either the condominium association or the condominium unit owners to pay rents to the lessor for a period of 21 years or more;

(f) The lease provides that failure of the lessee to make payments of rents due under the lease either creates, establishes, or permits establishment of a lien upon individual condominium units of the condominium to secure claims for rent;

(g) The lease requires an annual rental which exceeds 25 percent of the appraised value of the leased property as improved, provided that, for purposes of this paragraph, "annual rental" means the amount due during the first 12 months of the lease for all units, regardless of whether such units were in fact occupied or sold during that period, and "appraised value" means the appraised value placed upon the leased property the first tax year after the sale of a unit in the condominium;

(h) The lease provides for a periodic rental increase based upon reference to a price index; and

(i) The lease or other condominium documents require that every transferee of a condominium unit must assume obligations under the lease.

(2) The Legislature expressly finds that many leases involving use of recreational or other common facilities by residents of condominiums were entered into by parties wholly representative of the interests of a condominium developer at a time when the condominium unit owners not only did not control the administration of their condominium, but also had little or no voice in such administration. Such leases often contain numerous obligations on the part of either or both a condominium association and condominium unit owners with relatively few obligations on the part of the lessor. Such leases may or may not be unconscionable in any given case. Nevertheless, the Legislature finds that a combination of certain onerous obligations and circumstances warrants the establishment of a rebuttable presumption of unconscionability of certain leases, as specified in subsection (1). The presumption may be rebutted by a lessor upon the showing of additional facts and circumstances to justify and validate what otherwise appears to be an unconscionable lease under this section. Failure of a lease to contain all the enumerated elements shall neither preclude a determination of unconscionability of the lease nor raise a presumption as to its conscionability. It is the intent of

the Legislature that this section is remedial and does not create any new cause of action to invalidate any condominium lease, but shall operate as a statutory prescription on procedural matters in actions brought on one or more causes of action existing at the time of the execution of such lease.

History.—s. 3, ch. 77-221.

#### **718.123 Right of owners to peaceably assemble.—**

(1) All common elements, common areas, and recreational facilities serving any condominium shall be reserved exclusively for the use and benefit of the unit owners and their invited guests. Each association shall adopt reasonable rules and regulations pertaining to the use of such common elements, common areas, and recreational facilities. The use of such common elements, common areas, and recreational facilities shall be subject only to those rules and regulations as are adopted by the association; however, such rules and regulations shall not unreasonably restrict any unit owner's right to peaceably assemble or right to invite public officers or candidates for public office to appear and speak on common elements, common areas, and recreational facilities.

(2) Any owner prevented from exercising rights guaranteed by subsection (1) may bring an action in the appropriate court of the county in which the alleged infringement occurred, and, upon favorable adjudication, the court shall enjoin the enforcement of any provision contained in any condominium document or rule which operates to deprive the owner of such rights.

History.—s. 1, ch. 77-222; s. 262, ch. 79-400.

**718.124 Limitation on actions by association.**—The statute of limitations for any actions in law or equity which a condominium association or a cooperative association may have shall not begin to run until the unit owners have elected a majority of the members of the board of administration.

History.—s. 9, ch. 77-222; s. 263, ch. 79-400.

**718.125 Attorney's fees.**—If a contract or lease between a condominium unit owner or association and a developer contains a provision allowing attorney's fees to the developer, should any litigation arise under the provisions of the contract or lease, the court shall also allow reasonable attorney's fees to the unit owner or association when the unit owner or association prevails in any action by or against the unit owner or association with respect to the contract or lease.

History.—s. 9, ch. 78-340.

**718.126 Application of chapter 78-340, Laws of Florida.**—The amendments to this chapter by chapter 78-340, Laws of Florida, shall apply to all contracts in effect on the effective date of chapter 78-340 and to all contracts entered into after the effective date of chapter 78-340.

History.—s. 11, ch. 78-340.

## PART II

RIGHTS AND OBLIGATIONS  
OF DEVELOPERS

- 718.201 Taxes; bond for payment of liability during construction.  
 718.202 Sales or reservation deposits prior to closing.  
 718.203 Warranties.

**718.201 Taxes; bond for payment of liability during construction.—**

(1) Prior to the commencement of any construction activity with respect to a proposed condominium apartment development, the developer thereof shall post a bond or place an amount of money in escrow as provided in this section, conditioned for payment to the tax collector in the county in which the property or parcel lies, or his successor, upon default in payment of property taxes or special assessments assessed against the property or parcel prior to time of closing with a unit owner. The developer may select whether to post a bond or place an amount of money in escrow, but, if such selection is not made and bond posted or amount of money placed in escrow prior to the beginning of construction, the tax collector or his successor shall make the selection and require compliance with the provisions of this section. However, the developer shall be exempt from the provisions of this section upon furnishing to the clerk of the circuit court evidence of payment of all taxes and assessments due on the property or parcel.

(2) The bond required to be posted or the amount of money required to be placed in escrow under the provisions of this section shall be in the amount equal to 110 percent of the total ad valorem tax liability against the property or parcel in the year immediately preceding the year in which construction is proposed to be commenced. Such bond or account in escrow shall be posted or placed, as appropriate, with the clerk of the circuit court in the county in which the property or parcel lies.

(3) No interest shall be paid upon any bond posted or sum of money placed in escrow under the provisions of this section.

*History.—s. 1, ch. 76-222; s. 1, ch. 77-174.*

**718.202 Sales or reservation deposits prior to closing.—**

(1) If a developer contracts to sell a condominium parcel and the construction, furnishing, and landscaping of the property submitted to condominium ownership has not been substantially completed in accordance with the plans and specifications and representations made by the developer in the disclosures required by this chapter, the developer shall pay into an escrow account established with a bank or trust company having trust powers, an attorney who is a member of The Florida Bar, a real estate broker registered under chapter 475, or a title insurance company authorized to insure title to real property in the State of Florida, all payments up to 10 percent of the sale price received by the developer from the buyer towards the sale price. The escrow agent shall give to the purchaser a receipt for the

deposit, upon request. The escrowed funds may be deposited in separate accounts or in common escrow or trust accounts or commingled with other escrow or trust accounts handled by or received by the escrow agent. The escrow agent may invest the escrow funds in securities of the United States or any agency thereof or in savings or time deposits in institutions insured by an agency of the United States. Funds shall be released from escrow as follows:

(a) If a buyer properly terminates the contract pursuant to its terms or pursuant to this chapter, the funds shall be paid to the buyer together with any interest earned.

(b) If the buyer defaults in the performance of his obligations under the contract of purchase and sale, the funds shall be paid to the developer together with any interest earned.

(c) If the contract does not provide for the payment of any interest earned on the escrowed funds, interest shall be paid to the developer at the closing of the transaction.

(d) If the funds of a buyer have not been previously disbursed in accordance with the provisions of this subsection, they may be disbursed to the developer by the escrow agent at the closing of the transaction, unless prior to the disbursement the escrow agent receives from the buyer written notice of a dispute between the buyer and developer.

(2) All payments in excess of the 10 percent of the sale price described in subsection (1) received prior to completion of construction by the developer from the buyer on a contract for purchase of a condominium parcel shall be held in a special escrow account by the developer or his agent and may not be used by the developer prior to closing the transaction, except as provided in subsection (3) or except for refund to the buyer. If the money remains in this special account for more than 3 months and earns interest, the interest shall be paid as provided in subsection (1).

(3) If the contract for sale of the condominium unit so provides, the developer may withdraw escrow funds in excess of 10 percent of the purchase price from the special account required by subsection (2) when the construction of improvements has begun. He may use the funds in the actual construction and development of the condominium property in which the unit to be sold is located. However, no part of these funds may be used for salaries, commissions, or expenses of salesmen or for advertising purposes. A contract which permits use of the advance payments for these purposes shall include the following legend conspicuously printed or stamped in boldface type on the first page of the contract and immediately above the place for signature of the buyer: ANY PAYMENT IN EXCESS OF 10 PERCENT OF THE PURCHASE PRICE MADE TO DEVELOPER PRIOR TO CLOSING PURSUANT TO THIS CONTRACT MAY BE USED FOR CONSTRUCTION PURPOSES BY THE DEVELOPER.

(4) "Completion of construction" means issuance of a certificate of occupancy for the entire building or improvement, or the equivalent authorization issued by the governmental body having jurisdiction, and, in jurisdictions where no certificate of occupancy or equivalent authorization is issued, it means



substantial completion of construction, finishing, and equipping of the building or improvements according to the plans and specifications.

(5) Failure to comply with the provisions of this section renders the contract voidable by the buyer, and, if voided, all sums deposited or advanced under the contract shall be refunded with interest at the highest rate then being paid on savings accounts, excluding certificates of deposit, by savings and loan associations in the area in which the condominium property is located.

(6) If a developer enters into a reservation agreement, the developer shall pay into an escrow account established with a trust company, a bank having trust powers, an attorney who is a member of The Florida Bar, a real estate broker registered under chapter 475, or a title insurance company authorized to insure title to real property in this state all reservation deposit payments. The escrow agent shall give to the prospective purchaser a receipt for the deposit upon request. The funds in escrow may be deposited in separate accounts or in common escrow or trust accounts handled by or received by the escrow agent and may be placed in either interest-bearing or noninterest-bearing accounts, provided that the funds shall at all reasonable times be available for withdrawal in full by the escrow agent. Upon written request to the escrow agent by the prospective purchaser or developer, the funds shall be immediately and without qualification refunded in full to the prospective purchaser. Upon such refund, any interest shall be paid to the prospective purchaser, unless otherwise provided in the reservation agreement. Upon the execution of a purchase agreement for a unit, any funds paid by the purchaser as a deposit to reserve the unit pursuant to a reservation agreement, and any interest thereon, shall cease to be subject to the provisions of this subsection and shall instead be subject to the provisions of subsections (1)-(5).

(7) Any developer who willfully fails to pay all required funds into the escrow accounts required by this section is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 1, ch. 76-222; s. 7, ch. 79-314.

### 718.203 Warranties.—

(1) The developer shall be deemed to have granted to the purchaser of each unit an implied warranty of fitness and merchantability for the purposes or uses intended as follows:

(a) As to each unit, a warranty for 3 years commencing with the completion of the building containing the unit.

(b) As to the personal property that is transferred with, or appurtenant to, each unit, a warranty which is for the same period as that provided by the manufacturer of the personal property, commencing with the date of closing of the purchase or the date of possession of the unit, whichever is earlier.

(c) As to all other improvements for the use of unit owners, a 3-year warranty commencing with the date of completion of the improvements.

(d) As to all other personal property for the use of unit owners, a warranty which shall be the same

as that provided by the manufacturer of the personal property.

(e) As to the roof and structural components of a building or other improvements and as to mechanical, electrical, and plumbing elements serving improvements or a building, except mechanical elements serving only one unit, a warranty for a period beginning with the completion of construction of each building or improvement and continuing for 3 years thereafter or 1 year after owners other than the developer obtain control of the association, whichever occurs last, but in no event more than 5 years.

(f) As to all other property which is conveyed with a unit, a warranty to the initial purchaser of each unit for a period of 1 year from the date of closing of the purchase or the date of possession, whichever occurs first.

(2) The contractor and all subcontractors and suppliers grant to the developer and to the purchaser of each unit implied warranties of fitness as to the work performed or materials supplied by them as follows:

(a) For a period of 3 years from the date of completion of construction of a building or improvement, a warranty as to the roof and structural components of the building or improvement and mechanical and plumbing elements serving a building or an improvement, except mechanical elements serving only one unit.

(b) For a period of 1 year after completion of all construction, a warranty as to all other improvements and materials.

(3) "Completion of a building or improvement" means issuance of a certificate of occupancy for the entire building or improvement, or the equivalent authorization issued by the governmental body having jurisdiction, and in jurisdictions where no certificate of occupancy or equivalent authorization is issued, it means substantial completion of construction, finishing, and equipping of the building or improvement according to the plans and specifications.

(4) These warranties are conditioned upon routine maintenance being performed, unless the maintenance is an obligation of the developer or a developer-controlled association.

(5) The warranties provided by this section shall inure to the benefit of each owner and his successor owners and to the benefit of the developer.

(6) Nothing in this section affects a condominium as to which rights are established by contracts for sale of 10 percent or more of the units in the condominium by the developer to prospective unit owners prior to July 1, 1974, or as to condominium buildings on which construction has been commenced prior to July 1, 1974.

(7) Residential condominiums may be covered by an insured warranty program underwritten by a licensed insurance company registered in this state, provided that such warranty program meets the minimum requirements of this chapter; to the degree that such warranty program does not meet the minimum requirements of this chapter, such requirements shall apply.

History.—s. 1, ch. 76-222; s. 1, ch. 77-221; s. 8, ch. 77-222; s. 3, ch. 78-340; s. 9, ch. 79-314.

## PART III

RIGHTS AND OBLIGATIONS  
OF ASSOCIATION

- 718.301 Transfer of association control.
- 718.302 Agreements entered into by the association.
- 718.3025 Agreements for operation, maintenance, or management of condominiums; specific requirements.
- 718.303 Obligations of owners.
- 718.304 Association's right to amend declaration of condominium.

**718.301 Transfer of association control.—**

(1) When unit owners other than the developer own 15 percent or more of the units in a condominium that will be operated ultimately by an association, the unit owners other than the developer shall be entitled to elect no less than one-third of the members of the board of administration of the association. Unit owners other than the developer are entitled to elect not less than a majority of the members of the board of administration of an association:

(a) Three years after 50 percent of the units that will be operated ultimately by the association have been conveyed to purchasers;

(b) Three months after 90 percent of the units that will be operated ultimately by the association have been conveyed to purchasers;

(c) When all the units that will be operated ultimately by the association have been completed, some of them have been conveyed to purchasers, and none of the others are being offered for sale by the developer in the ordinary course of business; or

(d) When some of the units have been conveyed to purchasers and none of the others are being constructed or offered for sale by the developer in the ordinary course of business,

whichever occurs first. The developer is entitled to elect at least one member of the board of administration of an association as long as the developer holds for sale in the ordinary course of business at least 5 percent, in condominiums with fewer than 500 units, and 2 percent, in condominiums with more than 500 units, of the units in a condominium operated by the association.

(2) Within 60 days after the unit owners other than the developer are entitled to elect a member or members of the board of administration of an association, the association shall call, and give not less than 30 days' or more than 40 days' notice of, a meeting of the unit owners to elect the members of the board of administration. The meeting may be called and the notice given by any unit owner if the association fails to do so.

(3) If a developer holds units for sale in the ordinary course of business, none of the following actions may be taken without approval in writing by the developer:

(a) Assessment of the developer as a unit owner for capital improvements.

(b) Any action by the association that would be detrimental to the sales of units by the developer.

However, an increase in assessments for common expenses without discrimination against the developer shall not be deemed to be detrimental to the sales of units.

(4) Prior to, or not more than 60 days after, the time that unit owners other than the developer elect a majority of the members of the board of administration of an association, the developer shall relinquish control of the association, and the unit owners shall accept control. Simultaneously, the developer shall deliver to the association all property of the unit owners and of the association held or controlled by the developer, including, but not limited to, the following items, if applicable, as to each condominium operated by the association:

(a)1. The original or a photocopy of the recorded declaration of condominium and all amendments thereto. If a photocopy is provided, it shall be certified by affidavit of the developer, or an officer or agent of the developer, as being a complete copy of the actual recorded declaration.

2. A certified copy of the association's articles of incorporation, or if the association was created prior to the effective date of this act and it is not incorporated, then copies of the documents creating the association.

3. A copy of the bylaws.

4. The minute books, including all minutes, and other books and records of the association, if any.

5. Any house rules and regulations which have been promulgated.

(b) Resignations of officers and members of the board of administration who are required to resign because the developer is required to relinquish control of the association.

(c) An audit and accounting, which need not be certified, for all association funds, performed by an auditor independent of the developer, including capital accounts, reserve accumulations in accordance with s. 718.504(20)(c) 1.k., and contributions.

(d) Association funds or control thereof.

(e) All tangible personal property that is property of the association, represented by the developer to be part of the common elements or ostensibly part of the common elements, and an inventory of that property.

(f) A copy of the plans and specifications utilized in the construction or remodeling of improvements and the supplying of equipment to the condominium and in the construction and installation of all mechanical components serving the improvements and the site, with a certificate in affidavit form of the developer, his agent, or an architect or engineer authorized to practice in this state that such plans and specifications represent, to the best of their knowledge and belief, the actual plans and specifications utilized in the construction and improvement of the condominium property and for the construction and installation of the mechanical components serving the improvements. If the condominium property has been declared a condominium more than 3 years after the completion of construction or remodeling of the improvements, the requirements of this paragraph shall not apply.

(g) Insurance policies.

(h) Copies of any certificates of occupancy which

may have been issued for the condominium property.

(i) Any other permits issued by governmental bodies applicable to the condominium property in force or issued within 1 year prior to the date the unit owners other than the developer take control of the association.

(j) All written warranties of the contractor, subcontractors, suppliers, and manufacturers, if any, that are still effective.

(k) A roster of unit owners and their addresses and telephone numbers, if known, as shown on the developer's records.

(l) Leases of the common elements and other leases to which the association is a party.

(m) Employment contracts or service contracts in which the association is one of the contracting parties or service contracts in which the association or the unit owners have an obligation or responsibility, directly or indirectly, to pay some or all of the fee or charge of the person or persons performing the service.

(n) All other contracts to which the association is a party.

**History.**—s. 1, ch. 76-222; s. 7, ch. 77-221; s. 10, ch. 79-314; s. 264, ch. 79-400.

#### **718.302 Agreements entered into by the association.—**

(1) Any grant or reservation made by a declaration, lease, or other document, and any contract made by an association prior to assumption of control of the association by unit owners other than the developer, that provides for operation, maintenance, or management of a condominium association or property serving the unit owners of a condominium shall be fair and reasonable, and may be canceled by unit owners other than the developer:

(a) If the association operates only one condominium and the unit owners other than the developer have assumed control of the association, or if unit owners other than the developer own not less than 75 percent of the units in the condominium, the cancellation shall be by concurrence of the owners of not less than 75 percent of the units other than the units owned by the developer. If a grant, reservation, or contract is so canceled and the unit owners other than the developer have not assumed control of the association, the association shall make a new contract or otherwise provide for maintenance, management, or operation in lieu of the canceled obligation, at the direction of the owners of not less than a majority of the units in the condominium other than the units owned by the developer.

(b) If the association operates more than one condominium and the unit owners other than the developer have not assumed control of the association, and if unit owners other than the developer own at least 75 percent of the units in a condominium operated by the association, any grant, reservation, or contract for maintenance, management, or operation of buildings containing the units in that condominium or of improvements used only by unit owners of that condominium may be canceled by concurrence of the owners of at least 75 percent of the units in the condominium other than the units owned by the developer. No grant, reservation, or contract for maintenance, management, or opera-

tion of recreational areas or any other property serving more than one condominium, and operated by more than one association, may be canceled except pursuant to paragraph (d). If a grant, reservation, or contract is canceled under this provision, the association shall provide for maintenance, management, or operation of the property in a manner consented to by the owners of not less than a majority of the units in the condominium other than the units owned by the developer.

(c) If the association operates more than one condominium and the unit owners other than the developer have assumed control of the association, the cancellation shall be by concurrence of the owners of not less than 75 percent of the total number of units in all condominiums operated by the association other than the units owned by the developer.

(d) If the owners of units in a condominium have the right to use property in common with owners of units in other condominiums and those condominiums are operated by more than one association, no grant, reservation, or contract for maintenance, management, or operation of the property serving more than one condominium may be canceled until unit owners other than the developer have assumed control of all of the associations operating the condominiums that are to be served by the recreational area or other property, after which cancellation may be effected by concurrence of the owners of not less than 75 percent of the total number of units in those condominiums other than units owned by the developer.

(e)1. Notwithstanding the provisions of this subsection, a developer may obligate an association under a lease agreement or other contractual agreement for vending equipment to be used in common by unit owners or for space at the condominium property whereupon vending equipment will be used in common by unit owners, and such lease or agreement shall not be subject to cancellation as provided herein, provided that:

a. The agreement is with an entity which is duly licensed to transact business in the state and independent of the developer. As used in this paragraph, "independent of the developer" means that the developer has no direct or indirect financial interest in the entity and is not related by blood or marriage to any person who does have a direct or indirect interest in the entity;

b. The terms and conditions of the agreement, including but not limited to the amount of rental fees and other costs, are fair and reasonable and in substantial conformity with those prevailing in agreements for similar purposes in the locality;

c. The agreement is for an initial term not exceeding 4 years or, if for a longer term, shall be enforceable for no longer than 4 years, and no renewal or extension of the agreement can be effective other than by mutual consent;

d. The vending equipment contemplated by the agreement is new and unused when originally installed on the condominium property and meets applicable nationally recognized standards for fitness and safety;

e. The association has no obligation under the agreement to maintain or repair the vending equip-



ment, and the owner thereof is obligated to make periodic inspections (not less frequently than monthly) and to ensure that all of the same remain in good working order; and

f. The agreement contains the entire understanding of the parties with respect to the subject matters covered thereby, without the necessity of reference to, or dependence upon, any other oral or written understanding.

2. As used in this paragraph, the term "vending equipment" shall mean any machine by which a service or product is dispensed, whether such machine is operated by coin, electronic ticket, or token.

(2) Any grant or reservation made by a declaration, lease, or other document, and any contract made by an association, whether before or after assumption of control of the association by unit owners other than the developer, that provides for operation, maintenance, or management of a condominium association or property serving the unit owners of a condominium shall not be in conflict with the powers and duties of the association or the rights of the unit owners as provided in this chapter. This subsection is intended only as a clarification of existing law.

(3) Any grant or reservation made by a declaration, lease, or other document, and any contract made by an association prior to assumption of control of the association by unit owners other than the developer, shall be fair and reasonable.

(4) It is declared that the public policy of this state prohibits the inclusion or enforcement of escalation clauses in management contracts for condominiums, and such clauses are hereby declared void for public policy. For the purposes of this section, an escalation clause is any clause in a condominium management contract which provides that the fee under the contract shall increase at the same percentage rate as any nationally recognized and conveniently available commodity or consumer price index.

(5) Any action to compel compliance with the provisions of this section or of s. 718.301 may be brought pursuant to the summary procedure provided for in s. 51.011. In any such action brought to compel compliance with the provisions of s. 718.301, the prevailing party shall be entitled to recover reasonable attorney's fees.

*History.*—s. 1, ch. 76-222; s. 1, ch. 77-174; s. 11, ch. 79-314.

#### **718.3025 Agreements for operation, maintenance, or management of condominiums; specific requirements.—**

(1) No written contract between a party contracting to provide maintenance or management services and an association which contract provides for operation, maintenance, or management of a condominium association or property serving the unit owners of a condominium shall be valid or enforceable unless the contract:

(a) Specifies the services, obligations, and responsibilities of the party contracting to provide maintenance or management services to the unit owners.

(b) Specifies those costs incurred in the performance of those services, obligations, or responsibilities which are to be reimbursed by the association to the

party contracting to provide maintenance or management services.

(c) Provides an indication of how often each service, obligation, or responsibility is to be performed, whether stated for each service, obligation, or responsibility or in categories thereof.

(d) Specifies a minimum number of personnel to be employed by the party contracting to provide maintenance or management services for the purpose of providing service to the association.

(e) Discloses any financial or ownership interest which the developer, if the developer is in control of the association, holds with regard to the party contracting to provide maintenance or management services.

(2) In any case in which the party contracting to provide maintenance or management services fails to provide such services in accordance with the contract, the association is authorized to procure such services from some other party and shall be entitled to collect any fees or charges paid for service performed by another party from the party contracting to provide maintenance or management services.

(3) Any services or obligations not stated on the face of the contract shall be unenforceable.

*History.*—s. 5, ch. 78-340; s. 12, ch. 79-314.

#### **718.303 Obligations of owners.—**

(1) Each unit owner and each association shall be governed by, and shall comply with the provisions of, this chapter, the declaration, the documents creating the association, and the association bylaws. Actions for damages or for injunctive relief, or both, for failure to comply with these provisions may be brought by the association or by a unit owner against:

(a) The association.

(b) A unit owner.

(c) Directors designated by the developer, for actions taken by them prior to the time control of the association is assumed by unit owners other than the developer.

(d) Any director who willfully and knowingly fails to comply with these provisions.

The prevailing party is entitled to recover reasonable attorney's fees. This relief does not exclude other remedies provided by law.

(2) A provision of this chapter may not be waived if the waiver would adversely affect the rights of a unit owner or the purpose of the provision, except that unit owners or members of a board of administration may waive notice of specific meetings in writing if provided by the bylaws. Any instrument given in writing by the unit owner to an escrow agent may be relied upon by an escrow agent, whether or not such instruction and the payment of funds thereunder might constitute a waiver of any provision of this chapter.

*History.*—s. 1, ch. 76-222; s. 1, ch. 77-174.

#### **718.304 Association's right to amend declaration of condominium.—**

(1) If there is an omission or error in a declaration of condominium, or in other documents required by law to establish the condominium, the association may correct the error or omission by an

amendment to the declaration, or the other documents required to create a condominium, in the manner provided in the declaration to amend the declaration, or, if none is provided, then by vote of a majority of the unit owners. The amendment is effective when passed and approved and a certificate of the amendment is executed and recorded as provided in s. 718.104. This procedure for amendment cannot be used if such an amendment would materially or adversely affect property rights of unit owners, unless the affected unit owners consent in writing. This subsection does not restrict the powers of the association to otherwise amend the declaration, or other documentation, but authorizes a simple process of amendment requiring a lesser vote for the purpose of curing defects, errors, or omissions when the property rights of unit owners are not materially or adversely affected.

(2) If there is an omission or error in a declaration of condominium, or other documents required to establish the condominium, which would affect the valid existence of the condominium and which may not be corrected by the amendment procedures in the declaration or this chapter, then the Circuit Courts have jurisdiction to entertain petitions of one or more of the unit owners therein, or of the association, to correct the error or omission, and the action may be a class action. The court may require that one or more methods of correcting the error or omission be submitted to the unit owners to determine the most acceptable correction. All unit owners and the association must be joined as parties to the action. Service of process on owners may be by publication, but the plaintiff shall furnish all unit owners not personally served with process with copies of the petition and final decree of the court by certified mail, return receipt requested, at their last known residence address. If an action to determine whether the declaration or other condominium documents comply with the mandatory requirements for the formation of a condominium contained in this chapter is not brought within 3 years of the filing of the declaration, the declaration and other documents shall be effective under this chapter to create a condominium, whether or not the documents substantially comply with the mandatory requirements of this chapter. However, both before and after the expiration of this 3-year period, Circuit Courts have jurisdiction to entertain petitions permitted under this subsection for the correction of the documentation, and other methods of amendment may be utilized to correct the errors or omissions at any time.

History.—s. 1, ch. 76-222; s. 1, ch. 77-174.

#### PART IV

#### SPECIAL TYPES OF CONDOMINIUMS

- 718.401 Leaseholds.
- 718.402 Conversion of existing improvements to condominium.
- 718.403 Phase condominiums.

**718.401 Leaseholds.**—A condominium may be created on lands held by a developer under lease or may include recreational facilities or other common elements or commonly used facilities on a leasehold,

if, on the date the first unit is conveyed by the developer to a bona fide purchaser, the lease has an unexpired term of at least 50 years. If rent under the lease is payable by the association or by the unit owners, the lease shall include the following requirements:

(1) The leased land must be identified by a description that is sufficient to pass title, and the leased personal property must be identified by a general description of the items of personal property and the approximate number of each item of personal property that the developer is committing to furnish for each room or other facility. In the alternative, the personal property may be identified by a representation as to the minimum amount of expenditure that will be made to purchase the personal property for the facility. Unless the lease is of a unit, the identification of the land shall be supplemented by a survey showing the relation of the leased land to the land included in the common elements. This provision shall not prohibit adding additional land or personal property in accordance with the terms of the lease, provided there is no increase in rent or material increase in maintenance costs to the individual unit owner.

(2) The lease shall not contain a reservation of the right of possession or control of the leased property by the lessor or any person other than unit owners or the association, and shall not create rights to possession or use of the leased property in any parties other than the association or unit owners of the condominium to be served by the leased property, unless the reservations and rights created are conspicuously disclosed. Any provision for use of the leased property by anyone other than unit owners of the condominium to be served by the leased property shall require the other users to pay a fair and reasonable share of the maintenance and repair obligations and other exactions due from users of the leased property.

(3) The lease shall state the minimum number of unit owners that will be required, directly or indirectly, to pay the rent under the lease and the maximum number of units that will be served by the leased property. The limitation of the number of units to be served shall not preclude enlargement of the facilities leased and an increase in their capacity, if approved by the association operating the leased property after unit owners other than the developer have assumed control of the association.

(4)(a) In any action by the lessor to enforce a lien for rent payable or in any action by the association or a unit owner with respect to the obligations of the lessee or the lessor under the lease, the unit owner or the association may raise any issue or interpose any defenses, legal or equitable, that he or it may have with respect to the lessor's obligations under the lease. If the unit owner or the association initiates any action or interposes any defense other than payment of rent under the lease, the unit owner or the association shall, upon service of process upon the lessor, pay into the registry of the court any allegedly accrued rent and the rent which accrues during the pendency of the proceeding, when due. If the unit owner or the association fails to pay the rent into the registry of the court, it shall constitute an absolute waiver of the unit owner's or association's

defenses other than payment, and the lessor shall be entitled to default. The unit owner or the association shall notify the lessor of any deposits. When the unit owner or the association has deposited the required funds into the registry of the court, the lessor may apply to the court for disbursement for all or part of the funds shown to be necessary for the payment of taxes, mortgage payments, maintenance and operating expenses, and other necessary expenses incident to maintaining and equipping the leased facilities. The court, after an evidentiary hearing, may award all or part of the funds on deposit to the lessor for such purpose. The court shall require the lessor to post bond or other security, as a condition to the release of funds from the registry, when the value of the leased land and improvements, apart from the lease itself, is inadequate to fully secure the sum of existing encumbrances on the leased property and the amounts released from the court registry.

(b) When the association or unit owners have deposited funds into the registry of the court pursuant to this subsection and the unit owners and association have otherwise complied with their obligations under the lease or agreement, other than paying rent into the registry of the court rather than to the lessor, the lessor cannot hold the association or unit owners in default on their rental payments, nor may the lessor file liens or initiate foreclosure proceedings against unit owners. If the lessor in violation of this subsection, attempts such liens or foreclosures, then the lessor may be liable for damages plus attorney's fees and costs that the association or unit owners incurred in satisfying said liens or foreclosures.

(c) Nothing in this subsection shall affect litigation commenced prior to October 1, 1979.

(5) If the lease is of recreational facilities or other commonly used facilities that are not completed, rent shall not commence until some of the facilities are completed. Until all of the facilities leased are completed, rent shall be prorated and paid only for the completed facilities in the proportion that the value of the completed facilities bears to the estimated value, when completed, of all of the facilities that are leased. The facilities shall be complete when they have been constructed, finished, and equipped and are available for use.

(6)(a) A lease of recreational or other commonly used facilities entered into by the association prior to the time the control of the association is turned over to unit owners other than the developer shall grant to the lessee an option to purchase the leased property, payable in cash, on any anniversary date of the beginning of the lease term after the tenth anniversary, at a price then determined by agreement. If there is no agreement as to the price, then the price shall be determined by arbitration.

(b) If the lessor wishes to sell his interest and has received a bona fide offer to purchase it, the lessor shall send the association and each unit owner a copy of the executed offer. For 90 days following receipt of the offer by the association, the association has the option to purchase the interest on the terms and conditions in the offer. The option shall be exercised, if at all, by notice in writing given to the lessor within the 90-day period. If the association does not exercise the option, the lessor shall have the right,

for a period of 60 days after the 90-day period has expired, to complete the transaction described in the offer to purchase. If for any reason such transaction is not concluded within the 60 days, the offer shall have been abandoned, and the provisions of this subsection shall be reimposed.

(c) The option shall be exercised upon approval by owners of two-thirds of the units served by the leased property.

(d) The provisions of this subsection shall not apply if the lessor is the Government of the United States or the State of Florida or any political subdivision thereof or, in the case of an underlying land lease, a person or entity which is not the developer or directly or indirectly owned or controlled by the developer and did not obtain, directly or indirectly, ownership of the leased property from the developer.

(7) The lease or a subordination agreement executed by the lessor must provide either:

(a) That any lien which encumbers a unit for rent or other moneys or exactions payable is subordinate to any mortgage held by an institutional lender, or

(b) That, upon the foreclosure of any mortgage held by an institutional lender or upon delivery of a deed in lieu of foreclosure, the lien for the unit owner's share of the rent or other exactions shall not be extinguished, but shall be foreclosed and unenforceable against the mortgagee with respect to that unit's share of the rent and other exactions which mature or become due and payable on or before the date of the final judgment of foreclosure, in the event of foreclosure, or on or before the date of delivery of the deed in lieu of foreclosure. The lien may, however, automatically and by operation of the lease or other instrument, reattach to the unit and secure the payment of the unit's proportionate share of the rent or other exactions coming due subsequent to the date of final decree of foreclosure or the date of delivery of the deed in lieu of foreclosure.

(8)(a) It is declared that the public policy of this state prohibits the inclusion or enforcement of escalation clauses in leases or agreements for recreational facilities, land, or other commonly used facilities serving condominiums, and such clauses are hereby declared void for public policy. For the purposes of this section, an escalation clause is any clause in a condominium lease or agreement which provides that the rental under the lease or agreement shall increase at the same percentage rate as any nationally recognized and conveniently available commodity or consumer price index.

(b) The provisions of this subsection shall not apply if the lessor is the Government of the United States or the State of Florida or any political subdivision thereof or any agency of any political subdivision thereof.

**History.**—s. 1, ch. 76-222; s. 1, ch. 77-174; ss. 6, 13, ch. 78-340; s. 1, ch. 79-166; s. 13, ch. 79-314.

#### **718.402 Conversion of existing improvements to condominium.—**

(1) A developer may create a condominium by converting existing, previously occupied improvements to such ownership by complying with part I of this chapter.

(2)(a) If existing improvements are converted to



ownership as a residential condominium, each residential tenant of the existing improvements shall have the right to extend an expiring lease or tenancy upon the same terms for a period that will expire no later than 180 days after written notice to the tenant of the intended conversion. A tenant must give written notice to the developer of his intention to extend his lease or tenancy within 30 days after he receives notice of the intended conversion.

(b) Any discount to an existing tenant on the purchase price of a condominium parcel in a conversion of existing improvements shall be offered for a period of not less than 60 days from the date of first offering to such tenant.

(3)(a) It is the policy of this state that provisions of contracts, leases, or other undertakings which allow landlords or developers, at their option, to cancel and terminate the terms of such leases upon the conversion of the property and improvements to condominium ownership upon less than 120 days' notice to the tenant are against public policy. Any provisions in any contract, lease, or undertaking which provides for cancellation or termination of the term of any lease for an apartment or other residence at the option of the landlord or developer for reason of its intended conversion to a condominium form of ownership without at least 120 days' notice shall be unenforceable except in the following cases:

1. If the term of the lease has less than 150 days remaining after such notification is given.

2. If the lease grants the tenant an option to purchase the apartment or other residence in which he resides at a price equal to or less than that offered to nontenants, which option is exercisable by the tenant during a period of not less than 90 days after the mailing of a notice of the intended conversion to the tenant.

3. If the lease provides that the lessor or developer shall not convert to condominium ownership except with the consent of the tenants of not less than 60 percent of the apartments or other dwellings in improvements intended to be converted. For the purpose of this vote, unoccupied apartments or dwellings shall be counted and the developer or lessor may vote those apartments.

(b) If the lease provides for a notification to the tenant of less than 120 days and if the term of the lease has more than 150 days remaining after notification is given, notification of termination to the tenant will be effective if the notice provides that the tenant shall have 150 days or more before cancellation or termination becomes effective.

(c) Leases executed subsequent to the developer's or landlord's announcement of intention to convert to condominium ownership may provide for cancellation or termination upon not less than 60 days' notice to the tenant, provided the landlord conspicuously discloses in the lease the intention to convert the property containing the leased premises to condominium ownership and that the lease may be canceled upon 60 days' notice to the tenant.

(d) The notice requirements of this subsection shall not apply to a lease entered into simultaneously with, or subsequent to, a contract to purchase the unit.

(4) All notices to tenants shall be given when

deposited in the United States mail addressed to the tenant at his last known residence, which may be the address of the property subject to the lease, sent by certified or registered mail, postage prepaid. Notice may not be waived by a tenant unless the tenant's lease states that the building is to be converted.

History.—s. 1, ch. 76-222; s. 14, ch. 79-314.

#### 718.403 Phase condominiums.—

(1) A developer may develop a condominium in phases, if the original declaration of condominium submitting the initial phase to condominium ownership provides for and describes in detail all anticipated phases; the impact, if any, which the completion of subsequent phases would have upon the initial phase; and the time period within which each phase must be completed.

(2) The original declaration of condominium shall describe:

(a) The land which may become part of the condominium and the land on which each phase is to be built. The descriptions shall include metes and bounds or other legal descriptions of the land for each phase, plot plans, and surveys.

(b) The number and general size of units to be included in each phase.

(c) Each unit's percentage ownership in the common elements as each phase is added.

(d) The recreation areas and facilities to be owned as common elements by all unit owners and all personal property to be provided and a description of those facilities or areas which may not be built or provided if any phase or phases are not developed and added as a part of the condominium.

(e) The membership vote and ownership in the association attributable to each unit in each phase and the results if any phase or phases are not developed and added as a part of the condominium.

(f) Whether or not time-share estates will or may be created with respect to units in any phase, and if so, the degree, quantity, nature, and extent of such estates, specifying the minimum duration of the recurring periods of rights of use, possession, or occupancy that may be established with respect to any unit.

(3) The developer shall notify owners of existing units of the commencement of, or the decision not to add, one or more additional phases. Notice shall be by certified mail addressed to each owner at the address of his unit or at his last known address.

(4) If one or more phases are not built, the units which are built are entitled to 100 percent ownership of all common elements within the phases actually developed and added as a part of the condominium.

(5) If the declaration requires the developer to convey any additional lands or facilities to the condominium after the completion of the first phase and he fails to do so within the time specified, or within a reasonable time if none is specified, then any owner of a unit or the association may enforce such obligations against the developer or bring an action against the developer for damages caused by the developer's failure to convey to the association such additional lands or facilities.

(6) Notwithstanding the provisions of s. 718.110, amendments adding phases to a condominium shall

not require the execution of such amendments or consents thereto by unit owners other than the developer, unless the amendment permits the creation of time-share estates in any unit of the additional phase of the condominium and such creation is not authorized by the original declaration.

History.—s. 1, ch. 76-222; s. 7, ch. 78-328.

## PART V

### REGULATION AND DISCLOSURE PRIOR TO SALE OF RESIDENTIAL CONDOMINIUMS

- 718.501 Regulation by Division of Florida Land Sales and Condominiums.
- 718.502 Filing prior to sale or lease.
- 718.503 Disclosure prior to sale.
- 718.504 Prospectus or offering circular.
- 718.505 Good faith effort to comply.
- 718.506 Publication of false and misleading information.
- 718.507 Zoning and building.
- 718.508 Regulation by Division of Hotels and Restaurants.

#### 718.501 Regulation by Division of Florida Land Sales and Condominiums.—

(1) The Division of Florida Land Sales and Condominiums of the Department of Business Regulation, referred to as the division in this part, in addition to other powers and duties prescribed by chapter 478, has the power to enforce and insure compliance with the provisions of this chapter and rules promulgated pursuant hereto relating to the development, construction, sale, lease, ownership, operation, and management of residential condominium units. In performing its duties, the division shall have the following powers and duties:

(a) The division shall receive, and may investigate pursuant to the authority specified in s. 478.151, complaints relating to the violation of the provisions of this chapter or rules promulgated pursuant hereto, including disputes arising from the internal affairs and management of condominium associations, and may conduct informal hearings for the purpose of seeking amicable settlement of disputes and voluntary compliance with the provisions of law.

(b) Notwithstanding any remedies available to unit owners and associations, if the division has reasonable cause to believe that a violation of any provision of this chapter or rules promulgated pursuant hereto has occurred, the division may institute enforcement proceedings in its own name against any developer or association, or its assignees or agents, as follows:

1. The division may issue cease and desist orders pursuant to s. 478.171.
2. The division may bring an action in circuit court for declaratory relief, injunctive relief, or restitution on behalf of a class of unit owners or lessees.
3. The division may impose civil penalties against any developer or association, or its assignees or agents, for violations of this chapter or rules promulgated pursuant hereto. A penalty may be imposed on the basis of each day of continuing viola-

tion, but in no event shall the penalty for any offense exceed \$5,000. All amounts collected shall be deposited with the Treasurer to the credit of the Florida Land Sales and Condominiums Trust Fund. If a developer fails to pay the civil penalty, the division shall thereupon issue an order directing that such developer cease and desist from further operation until such time as the civil penalty is paid and may pursue enforcement of the penalty in a court of competent jurisdiction. If an association fails to pay the civil penalty, the division shall thereupon pursue enforcement in a court of competent jurisdiction. In order to permit the developer or association an opportunity either to appeal such decision administratively or to seek relief in a court of competent jurisdiction, the order imposing the civil penalty or the cease and desist order shall not become effective until 20 days after the date of such order. Any action commenced by the division shall be brought in the county in which the division has its executive offices or in the county where the violation occurred.

(c) The division is authorized to prepare and disseminate a prospectus and other information to assist prospective owners, purchasers, lessees, and developers of residential condominiums in assessing the rights, privileges, and duties pertaining thereto.

(d) The division is authorized to promulgate rules and regulations, pursuant to chapter 120, necessary to implement, enforce, and interpret this chapter.

(e) The division shall furnish each association which pays the fees required by subsection (3)(a) a copy of this part and all amendments prior to the date they become effective.

(2)(a) There is hereby created an advisory board to advise the division in carrying out its duties, to be composed of seven members, of which three members shall be citizens from the condominium development industry, two members shall be nondeveloper unit owners who are association board members, and two members shall be nondeveloper unit owners who are not association officers or board members. Members of the advisory board shall be appointed by the Secretary of Business Regulation to serve at his pleasure. The advisory board shall assist and advise the division in residential condominium problems and, when possible, shall arbitrate controversies between unit owners and their associations.

(b) At the discretion of the board, in arbitrating controversies between unit owners and their associations, the board is authorized to utilize hearing officers as described in s. 120.65. The proceedings shall be conducted in accordance with chapter 120. Neither the findings of fact nor the conclusions of law, administrative rulings, or orders of the hearing officer or the commission shall be binding upon the parties unless agreed to by the parties, in writing, at the time of the hearing; and all proceedings in the courts of this state involving the same parties or any of them and the arbitrated disputes shall commence and proceed de novo. The proceedings shall not be transcribed by a court reporter unless provided by the affected parties at their own expense. The board may reject or modify the conclusion of law and interpretation of administrative rules submitted by the hearing officer, but may not reject the findings of

fact unless the board first determines from a review of the complete record that the findings of fact were not based upon competent substantial evidence or that the proceedings upon which the findings were based did not comply with essential requirements of law.

(3)(a) Each condominium association shall pay to the division, on or before January 1 of each year, an annual fee in the amount of 50 cents for each residential unit in condominiums operated by the association. If the fee is not paid by June 1, then the association shall be assessed a penalty of 10 percent of the amount due, and the association shall not have standing to maintain or defend any action in the courts of Florida until the amount due plus any penalty is paid.

(b) Any person filing a complaint with the division under this section shall pay a filing fee of \$10 for each complaint.

(c) All fees shall be deposited in the Land Sales Trust Fund as provided by law.

**History.**—s. 1, ch. 76-222; s. 1, ch. 77-174; s. 2, ch. 77-221; s. 4, ch. 78-323; ss. 4, 12, ch. 78-340; s. 32, ch. 79-4; s. 15, ch. 79-314.

**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

#### 718.502 Filing prior to sale or lease.—

(1) A developer of a residential condominium shall file with the division one copy of each of the documents and items required to be furnished to a buyer or lessee by ss. 718.503 and 718.504, if applicable. Until the developer has so filed, a contract for sale or lease of a unit for more than 5 years shall be voidable by the purchaser or lessee prior to the closing of his purchase or lease of a unit.

(2) Prior to filing as required by subsection (1), a developer shall not offer a contract for purchase or lease of a unit for more than 5 years but may accept deposits for reservations upon filing with the Division of Florida Land Sales and Condominiums of the Department of Business Regulation an escrow agreement and reservation agreement form. The division shall notify the developer within 20 days of receipt of the reservation filing of any deficiencies contained therein. Such notification shall not preclude the determination of reservation filing deficiencies at a later date, nor shall it relieve the developer of any responsibility under the law. The escrow agreement and the reservation agreement form shall include a statement of the right of the prospective purchaser to an immediate unqualified refund of the reservation deposit moneys upon written request to the escrow agent by the prospective purchaser or the developer. The reservation agreement form shall also include the following:

(a) A statement of the obligation of the developer to file condominium documents with the division prior to entering into a binding purchase or lease agreement for more than 5 years.

(b) A statement of the right of the prospective purchaser to receive all condominium documents as required by this chapter.

(c) The name and address of the escrow agent and a statement that the prospective purchaser may obtain a receipt from the agent upon request.

(d) A statement as to whether the developer assures that the purchase price represented in or pursuant to the reservation agreement will be the price

in the contract for purchase and sale, or that the price represented may be exceeded within a stated amount or percentage, or that no assurance is given as to the price in the contract for purchase or sale.

(3) Upon filing as required by subsection (1), the developer shall pay to the division a filing fee of \$10 for each residential unit to be sold by the developer which is described in the documents filed. If the condominium is to be built or sold in phases, the fee shall be paid prior to offering for sale units in any subsequent phase.

(4) Any developer who complies with this section shall not be required to file with any other division or agency of this state for approval to sell the units in the condominium, the information for the condominium for which he filed.

**History.**—s. 1, ch. 76-222; s. 8, ch. 79-314.

#### 718.503 Disclosure prior to sale.—

(1) **CONTENTS OF CONTRACTS.**—Any contracts for the sale of a unit or a lease thereof for an unexpired term of more than 5 years shall contain:

(a) The following legend in conspicuous type: THIS AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 15 DAYS AFTER THE DATE OF EXECUTION OF THIS AGREEMENT BY THE BUYER, AND RECEIPT BY BUYER OF ALL OF THE ITEMS REQUIRED TO BE DELIVERED TO HIM BY THE DEVELOPER UNDER SECTION 718.503, FLORIDA STATUTES. BUYER MAY EXTEND THE TIME FOR CLOSING FOR A PERIOD OF NOT MORE THAN 15 DAYS AFTER THE BUYER HAS RECEIVED ALL OF THE ITEMS REQUIRED. BUYER'S RIGHT TO VOID THIS AGREEMENT SHALL TERMINATE AT CLOSING.

(b) The following caveat in conspicuous type shall be placed upon the first page of the contract: ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY STATING THE REPRESENTATIONS OF THE DEVELOPER. FOR CORRECT REPRESENTATIONS, REFERENCE SHOULD BE MADE TO THIS CONTRACT AND THE DOCUMENTS REQUIRED BY SECTION 718.503, FLORIDA STATUTES, TO BE FURNISHED BY A DEVELOPER TO A BUYER OR LESSEE.

(c) If the unit has been occupied by someone other than the buyer, a statement that the unit has been occupied.

(d) If the contract is for the sale or transfer of a unit subject to a lease, the contract shall include as an exhibit a copy of the executed lease and shall contain within the text in conspicuous type: THE UNIT IS SUBJECT TO A LEASE (OR SUBLEASE).

(e) If the contract is for the lease of a unit for a term of 5 years or more, the contract shall include as an exhibit a copy of the proposed lease.

(f) If the contract is for the sale or lease of a unit that is subject to a lien for rent payable under a lease of a recreational facility or other commonly used facility, the contract shall contain within the text the following statement in conspicuous type: THIS CONTRACT IS FOR THE TRANSFER OF A UNIT THAT IS SUBJECT TO A LIEN FOR RENT PAYABLE UNDER A LEASE OF COMMONLY USED FA-



**CILITIES. FAILURE TO PAY RENT MAY RESULT IN FORECLOSURE OF THE LIEN.**

(g) The contract shall state the name and address of the escrow agent required by s. 718.202 and shall state that the purchaser may obtain a receipt for his deposit from the escrow agent upon request.

(h) If the contract is for the sale or transfer of a unit in a condominium in which time-share estates have or may be created, the contract shall contain within the text in conspicuous type: **UNITS IN THIS CONDOMINIUM ARE SUBJECT TO TIME-SHARE ESTATES.**

**(2) COPIES OF DOCUMENTS TO BE FURNISHED TO PROSPECTIVE BUYER OR LESSEE.**

—Until such time as the developer has furnished the documents listed below to a person who has entered into a contract to purchase a unit or lease it for more than 5 years, the contract may be voided by such person, entitling such person to a refund of any deposit together with interest thereon as provided in s. 718.202. The contract may be terminated by written notice from the proposed buyer or lessee delivered to the developer within 15 days after the buyer or lessee receives all of the documents required by this section. The documents to be delivered to the prospective buyer are the prospectus or disclosure statement with all exhibits, if the development is subject to the provisions of s. 718.504, or, if not, then copies of the following which are applicable:

(a) The declaration of condominium, or the proposed declaration if the declaration has not been recorded, which shall include the certificate of a surveyor approximately representing the locations required by s. 718.104.

(b) The documents creating the association.

(c) The bylaws.

(d) The ground lease or other underlying lease of the condominium.

(e) The management contract, maintenance contract, and other contracts for management of the association and operation of the condominium and facilities used by the unit owners having a service term in excess of 1 year, and any management contracts that are renewable.

(f) The estimated operating budget for the condominium and a schedule of expenses for each type of unit.

(g) The lease of recreational and other facilities that will be used only by unit owners of the subject condominium.

(h) The lease of recreational and other common facilities that will be used by unit owners in common with unit owners of other condominiums.

(i) The form of unit lease if the offer is of a leasehold.

(j) Any declaration of servitude of properties serving the condominium but not owned by unit owners or leased to them or the association.

(k) If the development is to be built in phases or if the association is to manage more than one condominium, a description of the plan of phase development or the arrangements for the association to manage two or more condominiums.

(l) If the condominium is a conversion of existing improvements, a statement of the condition of the

improvements and of inspection for termite damage and treatment thereof.

(m) The form of agreement for sale or lease of units.

(n) A copy of the floor plan of the unit and the plot plan showing the location of the residential buildings and the recreation and other common areas.

(o) A copy of all covenants and restrictions which will affect the use of the property and which are not contained in the foregoing.

**(3) OTHER DISCLOSURE.—**

(a) If condominium parcels are offered for sale or lease prior to completion of construction of the units and of improvements to the common elements, or prior to completion of remodeling of previously occupied buildings, the developer shall make available to each prospective purchaser or lessee, for his inspection at a place convenient to the site, a copy of the complete plans and specifications for the construction or remodeling of the unit offered to him and of the improvements to the common elements appurtenant to the unit.

(b) Sales brochures, if any, shall be provided to each purchaser, and the following caveat in conspicuous type shall be placed on the inside front cover or on the first page containing text material of the sales brochure, or otherwise conspicuously displayed: **ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY STATING REPRESENTATIONS OF THE DEVELOPER. FOR CORRECT REPRESENTATIONS, MAKE REFERENCE TO THIS BROCHURE AND TO THE DOCUMENTS REQUIRED BY SECTION 718.503, FLORIDA STATUTES, TO BE FURNISHED BY A DEVELOPER TO A BUYER OR LESSEE.** If time-share estates have or may be created with respect to any unit in the condominium, such sales brochure shall contain the following statement in conspicuous type: **UNITS IN THIS CONDOMINIUM ARE SUBJECT TO TIME-SHARE ESTATES.**

**History.**—s. 1, ch. 76-222; s. 1, ch. 77-174; s. 8, ch. 78-328; s. 16, ch. 79-314.

**718.504 Prospectus or offering circular.**—Every developer of a residential condominium which contains more than twenty residential units, or which is part of a group of residential condominiums which will be served by property to be used in common by unit owners of more than twenty residential units, shall prepare a prospectus or offering circular and file it with the Division of Florida Land Sales and Condominiums prior to entering into an enforceable contract of purchase and sale of any unit or lease of a unit for more than 5 years, and furnish a copy of the prospectus or offering circular to each buyer. The prospectus or offering circular may include more than one condominium, although not all such units are being offered for sale as of the date of the prospectus or offering circular. The prospectus or offering circular must contain the following information:

(1) The front cover or the first page must contain only:

(a) The name of the condominium.

(b) The following statements in conspicuous type:

1. THIS PROSPECTUS (OFFERING CIRCULAR)

LAR) CONTAINS IMPORTANT MATTERS TO BE CONSIDERED IN ACQUIRING A CONDOMINIUM UNIT.

2. THE STATEMENTS CONTAINED HEREIN ARE ONLY SUMMARY IN NATURE. A PROSPECTIVE PURCHASER SHOULD REFER TO ALL REFERENCES, ALL EXHIBITS HERETO, THE CONTRACT DOCUMENTS, AND SALES MATERIALS.

3. ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY STATING THE REPRESENTATIONS OF THE DEVELOPER. REFER TO THIS PROSPECTUS (OFFERING CIRCULAR) AND ITS EXHIBITS FOR CORRECT REPRESENTATIONS.

(2) Summary: The next page must contain all statements required to be in conspicuous type in the prospectus or offering circular.

(3) A separate index of the contents and exhibits of the prospectus.

(4) Beginning on the first page of the text (not including the summary and index), a description of the condominium, including, but not limited to, the following information:

(a) Its name and location.

(b) A description of the condominium property, including, without limitation:

1. The number of buildings, the number of units in each building, the number of bathrooms and bedrooms in each unit, and the total number of units.

2. The page in the condominium documents where a copy of the plot plan and survey of the condominium is located.

3. The estimated latest date of completion of constructing, finishing, and equipping. In lieu of a date, a statement that the estimated date of completion of the condominium is in the purchase agreement and a reference to the article or paragraph containing that information.

(c) The maximum number of units that will use facilities in common with the condominium. If the maximum number of units will vary, a description of the basis for variation and the minimum amount of dollars per unit to be spent for additional recreational facilities, or enlargement of such facilities. If the addition or enlargement of facilities will result in a material increase of a unit owner's maintenance expense or rental expense, if any, the maximum increase and limitations thereon shall be stated.

(5)(a) A statement in conspicuous type describing whether the condominium is created and being sold as fee simple interests or as leasehold interests. If the condominium is created or being sold on a leasehold, the location of the lease in the disclosure materials shall be stated.

(b) If time-share estates are or may be created with respect to any unit in the condominium, a statement in conspicuous type stating that time-share estates are created and being sold in units in the condominium.

(6) A description of the recreational and other commonly used facilities that will be used only by unit owners of the condominium, including, but not limited to, the following:

(a) Each room and its intended purposes, loca-

tion, approximate floor area, and capacity in numbers of people.

(b) Each swimming pool, as to its general location, approximate size and depths, approximate deck size and capacity, and whether heated.

(c) Additional facilities, as to the number of each facility, its approximate location, approximate size, and approximate capacity.

(d) A general description of the items of personal property and the approximate number of each item of personal property that the developer is committing to furnish for each room or other facility or, in the alternative, a representation as to the minimum amount of expenditure that will be made to purchase the personal property for the facility.

(e) The estimated date when each room or other facility will be available for use by the unit owners.

(f)1. An identification of each room or other facility to be used by unit owners that will not be owned by the unit owners or the association;

2. A reference to the location in the disclosure materials of the lease or other agreements providing for the use of those facilities; and

3. A description of the terms of the lease or other agreements, including the length of the term; the rent payable, directly or indirectly, by each unit owner, and the total rent payable to the lessor, stated in monthly and annual amounts for the entire term of the lease; and a description of any option to purchase the property leased under any such lease, including the time the option may be exercised, the purchase price or how it is to be determined, the manner of payment, and whether the option may be exercised for a unit owner's share or only as to the entire leased property.

(g) A statement as to whether the developer may provide additional facilities not described above; their general locations and types; improvements or changes that may be made; the approximate dollar amount to be expended; and the maximum additional common expense or cost to the individual unit owners that may be charged during the first annual period of operation of the modified or added facilities.

Descriptions as to locations, areas, capacities, numbers, volumes, or sizes may be stated as approximations or minimums.

(7) A description of the recreational and other facilities that will be used in common with other condominiums, which require the payment of the maintenance and expenses of such facilities, either directly or indirectly, by the unit owners. The description shall include, but not be limited to, the following:

(a) Each building and facility committed to be built.

(b) Facilities not committed to be built except under certain conditions, and a statement of those conditions or contingencies.

(c) As to each facility committed to be built, or which will be committed to be built upon the happening of one of the conditions in paragraph (b), a statement of whether it will be owned by the unit owners having the use thereof or by an association or other entity which will be controlled by them, or others,

and the location in the exhibits of the lease or other document providing for use of those facilities.

(d) The year in which each facility will be available for use by the unit owners or, in the alternative, the maximum number of unit owners in the project at the time each of all of the facilities is committed to be completed.

(e) A general description of the items of personal property, and the approximate number of each item of personal property, that the developer is committing to furnish for each room or other facility or, in the alternative, a representation as to the minimum amount of expenditure that will be made to purchase the personal property for the facility.

(f) If there are leases, a description thereof, including the length of the term, the rent payable, and a description of any option to purchase.

Descriptions shall include location, areas, capacities, numbers, volumes, or sizes, and may be stated as approximations or minimums.

(8) Recreation lease or associated club membership:

(a) If any recreational facilities or other facilities offered by the developer and available to, or to be used by, unit owners are to be leased or have club membership associated, the following statement in conspicuous type shall be included: **THERE IS A RECREATIONAL FACILITIES LEASE ASSOCIATED WITH THIS CONDOMINIUM; or, THERE IS A CLUB MEMBERSHIP ASSOCIATED WITH THIS CONDOMINIUM.** There shall be a reference to the location in the disclosure materials where the recreation lease or club membership is described in detail.

(b) If it is mandatory that unit owners pay a fee, rent, dues, or other charges under a recreational facilities lease or club membership for the use of facilities, there shall be in conspicuous type the applicable statement:

1. **MEMBERSHIP IN THE RECREATIONAL FACILITIES CLUB IS MANDATORY FOR UNIT OWNERS;** or

2. **UNIT OWNERS ARE REQUIRED, AS A CONDITION OF OWNERSHIP, TO BE LESSEES UNDER THE RECREATIONAL FACILITIES LEASE;** or

3. **UNIT OWNERS ARE REQUIRED TO PAY THEIR SHARE OF THE COSTS AND EXPENSES OF MAINTENANCE, MANAGEMENT, UPKEEP, REPLACEMENT, RENT, AND FEES UNDER THE RECREATIONAL FACILITIES LEASE (OR THE OTHER INSTRUMENTS PROVIDING THE FACILITIES);** or

4. A similar statement of the nature of the organization or the manner in which the use rights are created, and that unit owners are required to pay.

Immediately following the applicable statement, the location in the disclosure materials where the development is described in detail shall be stated.

(c) If the developer, or any other person other than the unit owners and other persons having use rights in the facilities, shall reserve, or be entitled to receive, any rent, fee, or other payment for the use of the facilities, then there shall be the following statement in conspicuous type: **THE UNIT OWN-**

**ERS OR THE ASSOCIATION(S) MUST PAY RENT OR LAND-USE FEES FOR RECREATIONAL OR OTHER COMMONLY USED FACILITIES.** Immediately following this statement, the location in the disclosure materials where the rent or land-use fees are described in detail shall be stated.

(d) If, in any recreation format, whether leasehold, club, or other, any person other than the association shall have the right to a lien on the units to secure the payment of assessments, rent, or other exactions, there shall appear a statement in conspicuous type in substantially the following form:

1. **THERE IS A LIEN OR LIEN RIGHT AGAINST EACH UNIT TO SECURE THE PAYMENT OF RENT AND OTHER EXACTIONS UNDER THE RECREATION LEASE. THE UNIT OWNER'S FAILURE TO MAKE THESE PAYMENTS MAY RESULT IN FORECLOSURE OF THE LIEN;** or

2. **THERE IS A LIEN OR LIEN RIGHT AGAINST EACH UNIT TO SECURE THE PAYMENT OF ASSESSMENTS OR OTHER EXACTIONS COMING DUE FOR THE USE, MAINTENANCE, UPKEEP, OR REPAIR OF THE RECREATIONAL OR COMMONLY USED FACILITIES. THE UNIT OWNER'S FAILURE TO MAKE THESE PAYMENTS MAY RESULT IN FORECLOSURE OF THE LIEN.**

Immediately following the applicable statement, the location in the disclosure materials where the lien or lien right is described in detail shall be stated.

(9) If the developer or any other person shall have the right to increase or add to the recreational facilities at any time after the establishment of the condominium whose unit owners have use rights therein, without the consent of the unit owners or associations being required, there shall appear a statement in conspicuous type in substantially the following form: **RECREATIONAL FACILITIES MAY BE EXPANDED OR ADDED WITHOUT CONSENT OF UNIT OWNERS OR THE ASSOCIATION(S).** Immediately following this statement, the location in the disclosure materials where such reserved rights are described shall be stated.

(10) A statement of whether the developer's plan includes a program of leasing units rather than selling them, or leasing units and selling them subject to such leases. If so, there shall be a description of the plan, including the number and identification of the units and the provisions and term of the proposed leases, and a statement in boldface type that: **THE UNITS MAY BE TRANSFERRED SUBJECT TO A LEASE.**

(11) The arrangements for management of the association and maintenance and operation of the condominium property and of other property that will serve the unit owners of the condominium property, and a description of the management contract and all other contracts for these purposes having a term in excess of 1 year, including the following:

- (a) The names of contracting parties.
- (b) The term of the contract.
- (c) The nature of the services included.
- (d) The compensation, stated on a monthly and



annual basis, and provisions for increases in the compensation.

(e) A reference to the volumes and pages of the condominium documents and of the exhibits containing copies of such contracts.

Copies of all described contracts shall be attached as exhibits. If there is a contract for the management of the condominium property, then a statement in conspicuous type in substantially the following form shall appear, identifying the proposed or existing contract manager: **THERE IS (IS TO BE) A CONTRACT FOR THE MANAGEMENT OF THE CONDOMINIUM PROPERTY WITH (NAME OF THE CONTRACT MANAGER).** Immediately following this statement, the location in the disclosure materials of the contract for management of the condominium property shall be stated.

(12) If the developer or any other person or persons other than the unit owners has the right to retain control of the board of administration of the association for a period of time which can exceed 1 year after the closing of the sale of a majority of the units in that condominium to persons other than successors or alternate developers, then a statement in conspicuous type in substantially the following form shall be included: **THE DEVELOPER (OR OTHER PERSON) HAS THE RIGHT TO RETAIN CONTROL OF THE ASSOCIATION AFTER A MAJORITY OF THE UNITS HAVE BEEN SOLD.** Immediately following this statement, the location in the disclosure materials where this right to control is described in detail shall be stated.

(13) If there are any restrictions upon the sale, transfer, conveyance, or leasing of a unit, then a statement in conspicuous type in substantially the following form shall be included: **THE SALE, LEASE, OR TRANSFER OF UNITS IS RESTRICTED OR CONTROLLED.** Immediately following this statement, the location in the disclosure materials where the restriction, limitation, or control on the sale, lease, or transfer of units is described in detail shall be stated.

(14) If the condominium is part of a phase project, there shall be a statement to that effect and a complete description of the phasing.

(15) If the condominium is created by conversion of existing improvements, the following information shall be stated concerning the improvements:

- (a) The date and type of construction.
- (b) The prior use.
- (c) The condition of the roof and the mechanical, electrical, plumbing, and structural elements, which statement shall be substantiated by attaching a copy of a certificate of a registered architect or engineer.
- (d) Whether there is termite damage, and that termite infestation, if any, has been properly treated. The statement shall be substantiated by including, as an exhibit, a copy of an inspection report by a certified pest control operator.

(e) A caveat that there are no warranties unless they are expressly stated in writing by the developer.

(16) A summary of the restrictions, if any, to be imposed on units concerning the use of any of the condominium property, including statements as to

whether there are restrictions upon children and pets, and reference to the volumes and pages of the condominium documents where such restrictions are found, or if such restrictions are contained elsewhere, then a copy of the documents containing the restrictions shall be attached as an exhibit.

(17) If there is any land that is offered by the developer for use by the unit owners and that is neither owned by them nor leased to them, the association, or any entity controlled by unit owners and other persons having the use rights to such land, a statement shall be made as to how such land will serve the condominium. If any part of such land will serve the condominium, the statement shall describe the land and the nature and term of service, and the declaration or other instrument creating such servitude shall be included as an exhibit.

(18) The manner in which utility and other services, including, but not limited to, sewage and waste disposal, water supply, and storm drainage will be provided, and the person or entity furnishing them.

(19) An explanation of the manner in which the apportionment of common expenses and ownership of the common elements has been determined.

(20) An estimated operating budget for the condominium and the association, and a schedule of the unit owner's expenses shall be attached as an exhibit and shall contain the following information:

(a) The estimated monthly and annual expenses of the condominium and the association that are collected from unit owners by assessments.

(b) The estimated monthly and annual expenses of each unit owner for a unit, other than assessments payable to the association, payable by the unit owner to persons or entities other than the association, and the total estimated monthly and annual expense. There may be excluded from this estimate expenses that are personal to unit owners, which are not uniformly incurred by all unit owners or which are not provided for or contemplated by the condominium documents, including, but not limited to, the costs of private telephone; maintenance of the interior of condominium units, which is not the obligation of the association; maid or janitorial services privately contracted for by the unit owners; utility bills billed directly to each unit owner for utility services to his unit; insurance premiums other than those incurred for policies obtained by the condominium; and similar personal expenses of the unit owner. A unit owner's estimated payments for assessments shall also be stated in the estimated amounts for the times when they will be due.

(c) The estimated items of expenses of the condominium and the association, except as excluded under paragraph (b), including, but not limited to, the following items, which shall be stated either as an association expense collectible by assessments or as unit owners' expenses payable to persons other than the association:

1. Expenses for the association and condominium:
  - a. Administration of the association.
  - b. Management fees.
  - c. Maintenance.
  - d. Rent for recreational and other commonly used facilities.

- e. Taxes upon association property.
- f. Taxes upon leased areas.
- g. Insurance.
- h. Security provisions.
- i. Other expenses.
- j. Operating capital.
- k. Reserves.
- l. Fees payable to the division.
- 2. Expenses for a unit owner:
  - a. Rent for the unit, if subject to a lease.
  - b. Rent payable by the unit owner directly to the lessor or agent under any recreational lease or lease for the use of commonly used facilities, which use and payment is a mandatory condition of ownership and is not included in the common expense or assessments for common maintenance paid by the unit owners to the association.
- (d) The estimated amounts shall be stated for a period of at least 12 months and may distinguish between the period prior to the time unit owners other than the developer elect a majority of the board of administration and the period after that date.
- (21) A schedule of estimated closing expenses to be paid by a buyer or lessee of a unit and a statement of whether title opinion or title insurance policy is available to the buyer and, if so, at whose expense.
- (22) The identity of the developer and the chief operating officer or principal directing the creation and sale of the condominium and a statement of its and his experience in this field.
- (23) Copies of the following, to the extent they are applicable, shall be included as exhibits:
  - (a) The declaration of condominium, or the proposed declaration if the declaration has not been recorded.
  - (b) The articles of incorporation creating the association.
  - (c) The bylaws of the association.
  - (d) The ground lease or other underlying lease of the condominium.
  - (e) The management agreement and all maintenance and other contracts for management of the association and operation of the condominium and facilities used by the unit owners having a service term in excess of 1 year.
  - (f) The estimated operating budget for the condominium and the required schedule of unit owners' expenses.
  - (g) A copy of the floor plan of the unit and the plot plan showing the location of the residential buildings and the recreation and other common areas.
  - (h) The lease of recreational and other facilities that will be used only by unit owners of the subject condominium.
  - (i) The lease of facilities used by owners and others.
  - (j) The form of unit lease, if the offer is of a leasehold.
  - (k) A declaration of servitude of properties serving the condominium but not owned by unit owners or leased to them or the association.
  - (l) The statement of condition of the existing building or buildings, if the offering is of units in an

operation being converted to condominium ownership.

(m) The statement of inspection for termite damage and treatment of the existing improvements, if the condominium is a conversion.

(n) The form of agreement for sale or lease of units.

(o) A copy of the agreement for escrow of payments made to the developer prior to closing.

(p) A copy of the documents containing any restrictions on use of the property required by subsection (16).

(24) Any prospectus or offering circular complying, prior to the effective date of this act, with the provisions of former ss. 711.69 and 711.802 may continue to be used without amendment or may be amended to comply with the provisions of this chapter.

**History.**—s. 1, ch. 76-222; s. 1, ch. 77-174; s. 9, ch. 78-328; s. 17, ch. 79-314.

**718.505 Good faith effort to comply.**—If a developer, in good faith, has attempted to comply with the requirements of this part, and if, in fact, he has substantially complied with the disclosure requirements of this chapter, nonmaterial errors or omissions in the disclosure materials shall not be actionable.

**History.**—s. 1, ch. 76-222.

**718.506 Publication of false and misleading information.**—

(1) Any person who, in reasonable reliance upon any material statement or information that is false or misleading and published by or under authority from the developer in advertising and promotional materials, including, but not limited to, a prospectus, the items required as exhibits to a prospectus, brochures, and newspaper advertising, pays anything of value toward the purchase of a condominium parcel located in this state shall have a cause of action to rescind the contract or collect damages from the developer for his loss prior to the closing of the transaction. After the closing of the transaction, the purchaser shall have a cause of action against the developer for damages under this section from the time of closing until 1 year after the date upon which the last of the events described in paragraphs (a) through (d) shall occur:

(a) The closing of the transaction;

(b) The first issuance by the applicable governmental authority of a certificate of occupancy or other evidence of sufficient completion of construction of the building containing the unit to allow lawful occupancy of the unit. In counties or municipalities in which certificates of occupancy or other evidences of completion sufficient to allow lawful occupancy are not customarily issued, for the purpose of this section, evidence of lawful occupancy shall be deemed to be given or issued upon the date that such lawful occupancy of the unit may first be allowed under prevailing applicable laws, ordinances, or statutes;

(c) The completion by the developer of the common elements and such recreational facilities, whether or not the same are common elements, which the developer is obligated to complete or provide under the terms of the written contract or writ-

ten agreement for purchase or lease of the unit; or

(d) In the event there shall not be a written contract or agreement for sale or lease of the unit, then the completion by the developer of the common elements and such recreational facilities, whether or not the same are common elements, which the developer would be obligated to complete under any rule of law applicable to the developer's obligation.

Under no circumstances shall a cause of action created or recognized under this section survive for a period of more than 5 years after the closing of the transaction.

(2) In any action for relief under this section or under s. 718.503, the prevailing party shall be entitled to recover reasonable attorney's fees.

History.—s. 1, ch. 76-222.

**718.507 Zoning and building.**—All laws, ordinances, and regulations concerning buildings or zoning shall be construed and applied with reference to the nature and use of such property, without regard to the form of ownership. No law, ordinance, or regu-

lation shall establish any requirement concerning the use, location, placement, or construction of buildings or other improvements which are, or may thereafter be, subjected to the condominium form of ownership, unless such requirement shall be equally applicable to all buildings and improvements of the same kind not then, or thereafter to be, subjected to the condominium form of ownership.

History.—s. 1, ch. 76-222.

**718.508 Regulation by Division of Hotels and Restaurants.**—In addition to the authority, regulation, or control exercised by the Division of Florida Land Sales and Condominiums pursuant to this act with respect to condominiums, buildings included in a condominium property shall be subject to the authority, regulation, or control of the Division of Hotels and Restaurants of the Department of Business Regulation, to the extent provided for in chapter 399.

History.—s. 1, ch. 76-222.



## CHAPTER 719

## COOPERATIVES

## PART I GENERAL PROVISIONS (ss. 719.101-719.112)

PART II RIGHTS AND OBLIGATIONS OF DEVELOPERS  
(ss. 719.201-719.203)PART III RIGHTS AND OBLIGATIONS OF ASSOCIATION  
(ss. 719.301-719.304)PART IV SPECIAL TYPES OF COOPERATIVES  
(ss. 719.401-719.403)PART V REGULATION AND DISCLOSURE PRIOR TO SALE OF RESIDENTIAL  
COOPERATIVES (ss. 719.501-719.508)

## PART I

## GENERAL PROVISIONS

- 719.101 Short title.
- 719.102 Purpose.
- 719.103 Definitions.
- 719.104 Cooperatives; access to units; records; financial reports.
- 719.105 Cooperative parcels; appurtenances; possession and enjoyment.
- 719.106 Bylaws; cooperative ownership.
- 719.107 Common expenses; assessment.
- 719.108 Rents and assessments; liability; lien and priority; interest; collection; cooperative ownership.
- 719.109 Right of owners to peaceably assemble.
- 719.110 Limitation on actions by association.
- 719.111 Attorney's fees.
- 719.112 Unconscionability of certain leases; rebuttable presumption.

**719.101 Short title.**—This chapter shall be known and may be cited as the "Cooperative Act."

*History.*—s. 2, ch. 76-222.

**719.102 Purpose.**—The purpose of this chapter is to give statutory recognition to the cooperative form of ownership of real property. It shall not be construed as repealing or amending any law now in effect, except those in conflict herewith, and any such conflicting laws shall be affected only insofar as they apply to cooperatives.

*History.*—s. 2, ch. 76-222.

**719.103 Definitions.**—As used in this chapter:

(1) "Assessment" means a share of the funds required for the payment of common expenses, which from time to time is assessed against the unit owner.

(2) "Association" means the corporation for profit or not for profit that owns the record interest in the cooperative property or a leasehold of the property of a cooperative and that is responsible for the operation of the cooperative.

(3) "Board of administration" means the board of directors or other body responsible for administration of the association.

(4) "Bylaws" means the bylaws for the government of the cooperative, as they exist from time to time.

(5) "Common areas" means the portions of the cooperative property not included in the units.

(6) "Common expenses" means the expenses for which the unit owners are liable to the association.

(7) "Common surplus" means the excess of all receipts of the association—including, but not limited to, assessments, rents, profits, and revenues on account of the common areas—over the amount of common expenses.

(8) "Cooperative" means that form of ownership of improved real property under which there are units subject to ownership by one or more owners, and the ownership is evidenced by an ownership interest in the association and a lease or other muniment of title or possession granted by the association as the owner of all the cooperative property.

(9) "Cooperative documents" means:

(a) The documents that create a cooperative, including, but not limited to, articles of incorporation of the association, bylaws, and the ground lease or other underlying lease, if any.

(b) The document evidencing a unit owner's membership or share in the association.

(c) The document recognizing a unit owner's title or right of possession to his unit.

(10) "Cooperative parcel" means a unit, together with the undivided share in the assets of the association which is appurtenant to the unit.

(11) "Cooperative property" means the lands, leaseholds, and personal property subject to cooperative ownership and all other property owned by the association.

(12) "Developer" means a person who creates a cooperative or who offers cooperative parcels for sale or lease in the ordinary course of business, but does not include the owner or lessee of a unit who has acquired or leased his unit for his own occupancy.

(13) "Operation" or "operation of the cooperative" includes the administration and management of the cooperative property.

(14) "Unit" means a part of the cooperative property which is subject to exclusive use and possession. A unit may be improvements, land, or land and im-

provements together, as specified in the cooperative documentation.

(15) "Unit owner" or "owner of a unit" means the person holding a lease or other muniment of title or possession of a unit that is granted by the association as the owner of the cooperative property.

(16) "Residential cooperative" means a cooperative consisting of cooperative units, any of which are intended for use as a private residence, domicile, or homestead. A cooperative is not a residential cooperative if the use of the units is intended as primarily commercial or industrial and not more than three units are intended to be used for private residence, domicile, or homestead, or if the units are intended to be used as housing for maintenance, managerial, janitorial, or other operational staff of the cooperative. If a cooperative is a residential cooperative under this definition, but has units intended to be commercial or industrial, then the cooperative is a residential cooperative with respect to those units intended for use as a private residence, domicile, or homestead, but not a residential cooperative with respect to those units intended for use commercially or industrially.

History.—s. 2, ch. 76-222; s. 1, ch. 77-174.

#### **719.104 Cooperatives; access to units; records; financial reports.—**

(1) The association has the irrevocable right of access to each unit from time to time during reasonable hours when necessary for the maintenance, repair, or replacement of any structural components of the building or of any mechanical, electrical, or plumbing elements. The access must be necessary to prevent damage to the building or to another unit.

(2) The association shall maintain accounting records according to generally accepted accounting practices. The records shall be open to inspection by unit owners or their authorized representatives at reasonable times, and written summaries shall be supplied at least annually to unit owners or their authorized representatives. The records shall include:

(a) A record of all receipts and expenditures.

(b) An account for each unit, designating the name and address of the unit owner, the amount of each assessment, the dates and amounts in which the assessments are due, the amounts paid upon the account, and the balance due.

(3) A copy of each insurance policy obtained by the association shall be made available for inspection at reasonable times by unit owners.

(4) Failure of the association to permit inspection of its records by unit owners or their authorized representatives entitles any unit owners prevailing in an action for enforcement of the right to inspect records to recover reasonable attorney's fees from the association.

(5) Within 60 days following the end of the fiscal or calendar year or annually on such date as is otherwise provided in the bylaws of the association, the board of administration of the association shall mail or furnish by personal delivery to each unit owner a complete financial report of actual receipts and expenditures for the previous 12 months. The report shall show the amounts of receipts by accounts and receipt classifications and shall show the amounts of

expenses by accounts and expense classifications including, if applicable, but not limited to, the following:

- (a) Costs for security;
- (b) Professional and management fees and expenses;
- (c) Taxes;
- (d) Costs for recreation facilities;
- (e) Expenses for refuse collection and utility services;
- (f) Expenses for lawn care;
- (g) Costs for building maintenance and repair;
- (h) Insurance costs;
- (i) Administrative and salary expenses;
- (j) General reserves, maintenance reserves, and depreciation reserves.

History.—s. 2, ch. 76-222; s. 1, ch. 77-174; s. 1, ch. 79-284.

#### **719.105 Cooperative parcels; appurtenances; possession and enjoyment.—**

(1) Each unit has, as appurtenances thereto:

(a) Evidence of membership, ownership of shares, or other interest in the association.

(b) An undivided share in the assets of the association.

(c) The exclusive right to use that portion of the common areas as may be provided by the cooperative documents.

(d) An undivided share in the common surplus attributable to the unit.

(e) Any other appurtenances provided for in the cooperative documents.

(2) Each unit owner is entitled to the exclusive possession of his unit. He is entitled to use the common areas in accordance with the purposes for which they are intended, but no use may hinder or encroach upon the rights of other unit owners.

History.—s. 2, ch. 76-222.

#### **719.106 Bylaws; cooperative ownership.—**

(1) The bylaws or other cooperative documents include the following provisions:

(a) The form of administration of the association shall be described, providing for the titles of the officers and for a board of administration and specifying the powers, duties, manner of selection and removal, and compensation, if any, of officers and board members. Unless otherwise provided in the bylaws, the board of administration shall be composed of five members, except in the case of cooperatives having five or fewer units, in which case one owner of each unit shall be a member of the board of administration. Unless otherwise provided in the bylaws, the board of administration shall have a president, a secretary, and a treasurer, who shall perform the duties of those offices customarily performed by officers of corporations, and these officers shall serve without compensation and at the pleasure of the board of administration. Unless otherwise provided in the bylaws, the board of administration may appoint and designate other officers and grant them those duties it deems appropriate.

(b) The owners of a majority of the units constitute a quorum. Decisions shall be made by owners of a majority of the units represented at a meeting at which a quorum is present. In addition, provision shall be made in the bylaws for definition and use of

proxy. However, no one person may be designated to hold more than five proxies for any purpose unless the cooperative has been registered with the Securities and Exchange Commission. Any proxy given shall be effective only for the specific meeting for which originally given and any lawfully adjourned meetings thereof. In no event shall any proxy be valid for a period longer than 90 days after the date of the first meeting for which it was given. Every proxy shall be revocable at any time at the pleasure of the unit owner executing it.

(c) Meetings of the board of administration shall be open to all unit owners, and notice of meetings shall be posted in a conspicuous place upon the cooperative property at least 48 hours in advance, except in an emergency. Notice of any meeting in which assessments against unit owners are to be considered for any reason shall specifically contain a statement that assessments will be considered and the nature of any such assessments.

(d) Unit owners shall meet at least once each calendar year, and the meeting shall be the annual meeting. All members of the board of administration shall be elected at the annual meeting unless the bylaws provide for staggered election terms or for their election at another meeting. The bylaws shall not restrict any unit owner desiring to be a candidate for board membership from being nominated from the floor. The bylaws shall provide the method for calling the unit owners to meetings, including annual meetings. The method shall provide at least 14 days' written notice to each unit owner in advance of the meeting and require the posting in a conspicuous place on the cooperative property of a notice of the meeting at least 14 days prior to the meeting. Unless a unit owner waives in writing the right to receive notice of the annual meeting by certified mail, the notice of the annual meeting shall be sent by certified mail to each unit owner, and the mailing constitutes notice. These meeting requirements do not prevent unit owners from waiving notice of meetings or from acting by written agreement without meetings, if allowed by the bylaws or the other cooperative documents or by this chapter.

(e) Minutes of all meetings of unit owners and of the board of administration shall be kept in a businesslike manner and shall be available for inspection by unit owners, or their authorized representative, and board members at reasonable times. The association shall retain these minutes for a period of not less than 7 years.

(f)1. Copies of a proposed annual budget of common expenses shall be mailed to the unit owners not less than 30 days prior to the meeting at which the budget will be considered, together with the notice of that meeting.

2. The board of administration shall mail a meeting notice and copies of the proposed annual budget of common expenses to the unit owners not less than 30 days prior to the meeting at which the budget will be considered. If the bylaws or other cooperative documents provide that the budget may be adopted by the board of administration, then the unit owners shall be given written notice of the time and place at which the meeting of the board of administration to consider the budget will be held. The meeting shall

be open to the unit owners.

3. If a budget is adopted by the board of administration which requires assessment against the unit owners in any fiscal or calendar year exceeding 115 percent of such assessments for the preceding year, a special meeting of the unit owners shall be held upon written application of 10 percent of the unit owners. Not less than 10 days' written notice shall be given to each unit owner, but the meeting shall be held within 30 days of delivery of such application to the board of administration or any member thereof. At the special meeting, unit owners may consider and enact a revision of the budget or recall any or all members of the board of administration and elect their successors, unless at that time the developer is in control of the board of administration. In either case, unless the bylaws shall require a larger vote, the revision of the budget or the recall of any or all members of the board of administration shall require a vote of not less than a majority of the whole number of votes of all unit owners.

4. The board of administration may, in any event, propose a budget to the unit owners at a meeting of members or by writing, and if the budget or proposed budget is approved by the unit owners at the meeting or by a majority of their whole number in writing, that budget shall not thereafter be examined by the unit owners nor shall the board of administration be recalled under the terms of this section.

5. In determining whether assessments exceed 115 percent of similar assessments for prior years, there shall be excluded from the computation any provision for reasonable reserves made by the board of administration for repair or replacement of cooperative property or for anticipated expenses by the association which are not anticipated to be incurred on a regular or annual basis, and the computation shall not include assessment for betterments to the cooperative property, if the bylaws so provide or allow the establishment of reserves or assessments for betterments to be imposed by the board of administration. However, as long as the developer is in control of the board of administration, the board shall not impose an assessment for any year greater than 115 percent of the prior fiscal or calendar year's assessment without approval of a majority of all unit owners.

(g) The manner of collecting from the unit owners their shares of the common expenses shall be stated. Assessments shall be made against unit owners not less frequently than quarterly, in amounts no less than are required to provide funds in advance for payment of all of the anticipated current operating expense and for all of the unpaid operating expense previously incurred.

(h) If the transfer, lease, or sublease of a unit is subject to approval of any body, no fee may be charged in connection with a transfer or approval in excess of the expenditures reasonably required for the transfer or \$50, whichever is less. No charge may be made in connection with an extension or renewal of a lease or sublease.

(i) The method by which the bylaws may be amended consistent with the provisions of this chapter shall be stated. If the bylaws fail to provide a method of amendment, the bylaws may be amended



if the amendment is approved by owners of not less than two-thirds of the units. No bylaw shall be revised or amended by reference to its title or number only. Proposals to amend existing bylaws shall contain the full text of the bylaws to be amended; new words shall be inserted in the text underlined, and words to be deleted shall be lined through with hyphens. However, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but, instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of bylaw. See bylaw..... for present text." Nonmaterial errors or omissions in the bylaw process shall not invalidate an otherwise properly promulgated amendment.

(j) The officers and directors of the association have a fiduciary relationship to the unit owners.

(k) Subject to the provisions of s. 719.301, any member of the board of administration may be recalled and removed from office with or without cause by the vote or agreement in writing by a majority of all unit owners. A special meeting of the unit owners to recall a member or members of the board of administration may be called by 10 percent of the unit owners giving notice of the meeting as required for a meeting of unit owners, and the notice shall state the purpose of the meeting.

(l) The proposed annual budget of common expenses shall be detailed and shall show the amounts budgeted by accounts and expense classifications, including, if applicable, but not limited to, those expenses listed in s. 719.504(20). In addition to annual operating expenses, the budget shall include reserve accounts for capital expenditures and deferred maintenance. These accounts shall include, but not be limited to, roof replacement, building painting, and pavement resurfacing. The amount to be reserved shall be computed by means of a formula which is based upon estimated life and estimated replacement cost of each reserve item. This subsection shall not apply to budgets in which the members of an association have by a two-thirds vote at a duly called meeting of the association determined for a fiscal year to provide no reserves or reserves less adequate than required by this subsection.

(m) The association has the power to purchase any land or recreation lease upon the approval of two-thirds of the unit owners, unless a different number or percentage is provided in the bylaws or other cooperative documents.

(2) The bylaws may provide for the following:

(a) A method of adopting and of amending administrative rules and regulations governing the details of the operation and use of the common areas.

(b) Restrictions on, and requirements respecting, the use and maintenance of the units and the use of the common areas, not inconsistent with the cooperative documents, designed to prevent unreasonable interference with the use of the units and common areas.

(c) Other provisions not inconsistent with this

chapter or with the cooperative documents as may be desired.

(3) Unless otherwise provided in the cooperative documents as originally recorded, no amendment thereto may change the configuration or size of any cooperative unit in any material fashion, materially alter or modify the appurtenances of the unit, or change the proportion or percentage by which the owner of the parcel shares the common expenses and owns the common surplus, unless the record owner of the unit and all record owners of liens on it join in the execution of the amendment and unless all other units approve the amendment.

**History.**—s. 2, ch. 76-222; s. 1, ch. 77-174; s. 2, ch. 79-284.

#### **719.107 Common expenses; assessment.—**

(1) Common expenses shall include:

(a) The expenses of the operation, maintenance, repair, or replacement of the cooperative property.

(b) Costs of carrying out the powers and duties of the association.

(c) Any other expense designated as common expense by this chapter or the cooperative documents.

(2) Funds for the payment of common expenses shall be collected by assessments against unit owners in the proportions or percentages of sharing common expenses provided in the cooperative documents.

**History.**—s. 2, ch. 76-222; s. 1, ch. 77-174.

#### **719.108 Rents and assessments; liability; lien and priority; interest; collection; cooperative ownership.—**

(1) A unit owner, regardless of how title is acquired, including, without limitation, a purchaser at a judicial sale, shall be liable for all rents and assessments coming due while he is the owner of a unit. In a voluntary conveyance, the grantee shall be jointly and severally liable with the grantor for all unpaid rents and assessments against the grantor for his share of the common expenses up to the time of the voluntary conveyance, without prejudice to the rights of the grantee to recover from the grantor the amounts paid by the grantee therefor.

(2) The liability for rents and assessments may not be avoided by waiver of the use or enjoyment of any common areas or by abandonment of the unit for which the rents and assessments are made.

(3) Unpaid rents and assessments and installments thereon shall bear interest from the date due until paid. The rate shall be as provided in the cooperative documents, not to exceed the maximum lawful rate, and, if no rate is provided, then at the legal rate.

(4) The association shall have a lien on each cooperative parcel for any unpaid rents and assessments, plus interest, against the unit owner of the cooperative parcel. If authorized by the cooperative documents, said lien shall also secure reasonable attorney's fees incurred by the association incident to the collection of the rents and assessments or enforcement of such lien.

(5) Liens for rents and assessments may be foreclosed by suit brought in the name of the association, in like manner as a foreclosure of a mortgage on real property. In any foreclosure, the unit owner shall pay a reasonable rental for the cooperative parcel, if

so provided in the cooperative documents, and the plaintiff in the foreclosure is entitled to the appointment of a receiver to collect the rent. The association has the power, unless prohibited by the cooperative documents, to bid on the cooperative parcel at the foreclosure sale and to acquire and hold, lease, mortgage, or convey it. Suit to recover a money judgment for unpaid rents and assessments may be maintained without waiving the lien securing them.

(6) Any unit owner has the right to require from the association a certificate showing the amount of unpaid rents and assessments against him with respect to his cooperative parcel. The association is bound by the certificate to any person who relies upon the certificate other than the owner.

(7) The remedies provided in this section do not exclude other remedies provided by the cooperative documents and permitted by law.

History.—s. 2, ch. 76-222; s. 1, ch. 77-174.

#### **719.109 Right of owners to peaceably assemble.—**

(1) All common elements, common areas, and recreational facilities serving any cooperative shall be reserved exclusively for the use and benefit of the unit owners and their invited guests. Each association shall adopt reasonable rules and regulations pertaining to the use of such common elements, common areas, and recreational facilities. The use of such common elements, common areas, and recreational facilities shall be subject only to those rules and regulations as are adopted by the association; however, such rules and regulations shall not unreasonably restrict any unit owner's right to peaceably assemble or right to invite public officers or candidates for public office to appear and speak on common elements, common areas, and recreational facilities.

(2) Any owner prevented from exercising rights guaranteed by subsection (1) may bring an action in the appropriate court of the county in which the alleged infringement occurred, and, upon favorable adjudication, the court shall enjoin the enforcement of any provision contained in any cooperative document or rule which operates to deprive the owner of such rights.

History.—s. 2, ch. 77-222; s. 265, ch. 79-400.

**719.110 Limitation on actions by association.**—The statute of limitations for any actions in law or equity which a condominium association or a cooperative association may have shall not begin to run until the unit owners have elected a majority of the members of the board of administration.

History.—s. 9, ch. 77-222; s. 266, ch. 79-400.

#### **719.111 Attorney's fees.—**

(1) If a contract or lease between a cooperative unit owner or association and a developer contains a provision allowing attorney's fees to the developer, should any litigation arise under the provisions of the contract or lease, the court shall also allow reasonable attorney's fees to the unit owner or association when the unit owner or association prevails in any action by or against the unit owner or association with respect to the contract or lease.

(2) This section shall apply to all contracts in

effect on June 19, 1978, and to all contracts entered into after June 19, 1978.

History.—ss. 10, 11, ch. 78-340.

#### **719.112 Unconscionability of certain leases; rebuttable presumption.—**

(1) The Legislature expressly finds that many leases involving use of recreational or other common facilities by residents of cooperatives were entered into by parties wholly representative of the interests of a cooperative developer at a time when the cooperative unit owners not only did not control the administration of their cooperative but also had little or no voice in such administration. Such leases often contain numerous obligations on the part of either or both a cooperative association and cooperative unit owners with relatively few obligations on the part of the lessor. Such leases may or may not be unconscionable in any given case. Nevertheless, the Legislature finds that a combination of certain onerous obligations and circumstances warrants the establishment of a rebuttable presumption of unconscionability of certain leases, as specified in subsection (2). The presumption may be rebutted by a lessor upon the showing of additional facts and circumstances to justify and validate what otherwise appears to be an unconscionable lease under this section. Failure of a lease to contain all the enumerated elements shall neither preclude a determination of unconscionability of the lease nor raise a presumption as to its unconscionability. It is the intent of the Legislature that this section is remedial and does not create any new cause of action to invalidate any cooperative lease, but shall operate as a statutory prescription on procedural matters in actions brought on one or more causes of action existing at the time of the execution of such lease.

(2) A lease pertaining to use by cooperative unit owners of recreational or other common facilities, irrespective of the date on which such lease was entered into, is presumptively unconscionable if all of the following elements exist:

(a) The lease was executed by persons none of whom at the time of the execution of the lease were elected by cooperative unit owners, other than the developer, to represent their interests.

(b) The lease requires either the cooperative association or the cooperative unit owners to pay real estate taxes on the real property which is the subject of the lease.

(c) The lease requires either the cooperative association or the cooperative unit owners to insure buildings or other facilities on the real property which is the subject of the lease against fire or any other hazard.

(d) The lease requires either the cooperative association or the cooperative unit owners to perform some or all maintenance obligations pertaining to the real property which is the subject of the lease or facilities located upon such real property.

(e) The lease requires either the cooperative association or the cooperative unit owners to pay rent to the lessor for a period of 21 years or more.

(f) The lease provides that failure of the lessee to make payment of rent due under the lease either creates, establishes, or permits establishment of a lien upon individual cooperative units of the cooper-

ative to secure claims for rent.

(g) The lease requires an annual rental which exceeds 25 percent of the appraised value of the leased property as improved. For purposes of this paragraph, "annual rental" means the amount due during the first 12 months of the lease for all units, regardless of whether such units were in fact occupied or sold during that period, and "appraised value" means the appraised value placed upon the leased property the first tax year after the sale of a unit in the cooperative.

(h) The lease provides for a periodic rental increase based upon reference to a price index.

(i) The lease or other cooperative documents require that every transferee of a cooperative unit must assume obligations under the lease.

History.—s. 3, ch. 79-284.

## PART II

### RIGHTS AND OBLIGATIONS OF DEVELOPERS

719.201 Taxes, bond for payment of liability during construction.

719.202 Sales or reservation deposits prior to closing.

719.203 Warranties.

#### 719.201 Taxes, bond for payment of liability during construction.—

(1) Prior to the commencement of any construction activity with respect to a proposed cooperative apartment development, the developer thereof shall post a bond or place an amount of money in escrow, as provided in this section, conditioned for payment to the tax collector in the county in which the property or parcel lies, or his successor, upon default in payment of property taxes or special assessments assessed against the property or parcel prior to the time of closing with a unit owner. The developer may select whether to post a bond or place an amount of money in escrow, but if such selection is not made and bond posted or amount of money placed in escrow prior to the beginning of construction, the tax collector or his successor shall make the selection and require compliance with the provisions of this section. However, the developer shall be exempt from the provisions of this section upon furnishing to the clerk of the circuit court evidence of payment of all taxes and assessments due on the property or parcel.

(2) The bond required to be posted or the amount of money required to be placed in escrow under the provisions of this section shall be in the amount equal to 110 percent of the total ad valorem tax liability against the property or parcel in the year immediately preceding the year in which construction is proposed to be commenced. Such bond or account in escrow shall be posted or placed, as appropriate, with the clerk of the circuit court in the county in which the property or parcel lies.

(3) No interest shall be paid upon any bond post-

ed or sum of money placed in escrow under the provisions of this section.

History.—s. 2, ch. 76-222; s. 1, ch. 77-174.

#### 719.202 Sales or reservation deposits prior to closing.—

(1) If a developer contracts to sell a cooperative and the construction, furnishing, and landscaping of the property submitted to cooperative ownership has not been substantially completed in accordance with the plans and specifications and representations made by the developer in the disclosures required by this chapter, the developer shall pay into an escrow account established with a bank or trust company having trust powers, an attorney who is a member of The Florida Bar, a real estate broker registered under chapter 475, or a title insurance company authorized to insure title to real property in the State of Florida, all payments up to 10 percent of the sale price received by the developer from the buyer towards the sale price. The escrow agent shall give to the purchaser a receipt for the deposit, upon request. The escrowed funds may be deposited in separate accounts or in common escrow or trust accounts or commingled with other escrow or trust accounts handled by or received by the escrow agent. The escrow agent may invest the escrow funds in securities of the United States or an agency thereof or in savings or time deposits in institutions insured by an agency of the United States. Funds shall be released from the escrow as follows:

(a) If a buyer properly terminates the contract pursuant to its terms or pursuant to this chapter, the funds shall be paid to the buyer together with any interest earned.

(b) If the buyer defaults in the performance of his obligations under the contract of purchase and sale, the funds shall be paid to the developer together with any interest earned.

(c) If the contract does not provide for the payment of any interest earned on the escrowed funds, interest shall be paid to the developer at the closing of the transaction.

(d) If the funds of a buyer have not been previously disbursed in accordance with the provisions of this subsection, they may be disbursed to the developer by the escrow agent at the closing of the transaction, unless prior to the disbursement the escrow agent receives from the buyer written notice of a dispute between the buyer and developer.

(2) All payments in excess of the 10 percent of the sale price described in subsection (1) received prior to completion of construction by the developer from the buyer on a contract for purchase of a cooperative shall be held in a special escrow account by the developer or his agent and may not be used by the developer prior to closing the transaction, except as provided in subsection (3) or except for refund to the buyer. If the money remains in this special account for more than 3 months and earns interest, the interest shall be paid as provided in subsection (1).

(3) If the contract for sale of the cooperative so provides, the developer may withdraw escrow funds in excess of 10 percent of the purchase price from the special account required by subsection (2) when the construction of improvements has begun. He may use the funds in the actual construction and develop-



ment of the cooperative property in which the unit to be sold is located. However, no part of these funds may be used for salaries, commissions, or expenses of salesmen or for advertising purposes. A contract which permits use of the advance payments for these purposes shall include the following legend conspicuously printed or stamped in boldface type on the first page of the contract and immediately above the place for signature of the buyer: ANY PAYMENT IN EXCESS OF 10 PERCENT OF THE PURCHASE PRICE MADE TO DEVELOPER PRIOR TO CLOSING PURSUANT TO THIS CONTRACT MAY BE USED FOR CONSTRUCTION PURPOSES BY THE DEVELOPER.

(4) "Completion of construction" means issuance of a certificate of occupancy for the entire building or improvement, or the equivalent authorization issued by the governmental body having jurisdiction, and in jurisdictions where no certificate of occupancy or equivalent authorization is issued, it means substantial completion of construction, finishing, and equipping of the building or improvements according to the plans and specifications.

(5) Failure to comply with the provisions of this section renders the contract voidable by the buyer, and, if voided, all sums deposited or advanced under the contract shall be refunded with interest at the highest rate then being paid on savings accounts, excluding certificates of deposit, by savings and loan associations in the area in which the cooperative property is located.

(6) If a developer enters into a reservation agreement, the developer shall pay into an escrow account established with a trust company, a bank having trust powers, an attorney who is a member of The Florida Bar, a real estate broker registered under chapter 475, or a title insurance company authorized to insure title to real property in this state all reservation deposit payments. The escrow agent shall give to the prospective purchaser a receipt for the deposit upon request. The funds in escrow may be deposited in separate accounts or in common escrow or trust accounts handled by or received by the escrow agent and may be placed in either interest-bearing or noninterest-bearing accounts, provided that the funds shall at all reasonable times be available for withdrawal in full by the escrow agent. Upon written request to the escrow agent by the prospective purchaser or developer, the fund shall be immediately and without qualification refunded in full to the prospective purchaser. Upon such refund, any interest shall be paid to the prospective purchaser, unless otherwise provided in the reservation agreement. Upon execution of a purchase agreement for a unit, any funds paid by the purchaser as a deposit to reserve the unit pursuant to a reservation agreement, and any interest thereon, shall cease to be subject to the provisions of this subsection and shall instead be subject to the provisions of subsections (1)-(5).

(7) Any developer who willfully fails to pay all required funds into the escrow accounts required by this section is guilty of a felony of the third degree,

punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 2, ch. 76-222; s. 4, ch. 79-284.

#### 719.203 Warranties.—

(1) The developer shall be deemed to have granted to the purchaser of each unit an implied warranty of fitness and merchantability for the purposes or uses intended as follows:

(a) As to each unit, a warranty for 3 years commencing with the completion of the building containing the unit.

(b) As to the personal property that is transferred with, or appurtenant to, each unit, a warranty which is for the same period as that provided by the manufacturer of the personal property, commencing with the date of closing of the purchase or the date of possession of the unit, whichever is earlier.

(c) As to all other improvements for the use of unit owners, a 3-year warranty commencing with the date of completion of the improvements.

(d) As to all other personal property for the use of unit owners, a warranty which shall be the same as that provided by the manufacturer of the personal property.

(e) As to the roof and structural components of a building or other improvements and as to mechanical, electrical, and plumbing elements serving improvements or a building, except mechanical elements serving only one unit, a warranty for a period beginning with the completion of construction of each building or improvement and continuing for 3 years thereafter or 1 year after owners other than the developer obtain control of the association, whichever occurs first.

(f) As to all other property which is conveyed with a unit, a warranty to the initial purchaser of each unit for a period of 1 year from the date of closing of the purchase or the date of possession, whichever occurs first.

(2) The contractor and all subcontractors and suppliers grant to the developer and to the purchaser of each unit implied warranties of fitness as to the work performed or materials supplied by them as follows:

(a) For a period of 3 years from the date of completion of construction of a building or improvement, a warranty as to the roof and structural components of the building or improvement and mechanical and plumbing elements serving a building or an improvement, except mechanical elements serving only one unit.

(b) For a period of 1 year after completion of all construction, a warranty as to all other improvements and materials.

(3) "Completion of a building or improvement" means issuance of a certificate of occupancy for the entire building or improvement, or the equivalent authorization issued by the governmental body having jurisdiction, and in jurisdictions where no certificate of occupancy or equivalent authorization is issued, it means substantial completion of construction, finishing, and equipping of the building or improvement according to the plans and specifications.

(4) These warranties are conditioned upon routine maintenance being performed, unless the maintenance is the obligation of the developer or a devel-

oper-controlled association.

(5) The warranties provided by this section shall inure to the benefit of each owner and his successor owners and to the benefit of the developer.

(6) Nothing in this section affects a cooperative as to which rights are established by contracts for sale of 10 percent or more of the units in the cooperative by the developer to prospective unit owners prior to July 1, 1974, or as to cooperative buildings on which construction has been commenced prior to July 1, 1974.

*History.*—s. 1, ch. 76-222; s. 6, ch. 79-284.

### PART III

#### RIGHTS AND OBLIGATIONS OF ASSOCIATION

719.301 Transfer of association control.

719.302 Agreements entered into by the association.

719.303 Obligations of owners.

719.304 Association's right to amend cooperative documents.

#### 719.301 Transfer of association control.—

(1) When unit owners other than the developer own 15 percent or more of the units in a cooperative that will be operated ultimately by an association, the unit owners other than the developer shall be entitled to elect not less than one-third of the members of the board of administration of the association. Unit owners other than the developer are entitled to elect not less than a majority of the members of the board of administration of an association:

(a) Three years after 50 percent of the units that will be operated ultimately by the association have been conveyed to purchasers;

(b) Three months after 90 percent of the units that will be operated ultimately by the association have been conveyed to purchasers;

(c) When all the units that will be operated ultimately by the association have been completed; or

(d) When some of the units have been conveyed to purchasers and none of the others are being constructed or offered for sale by the developer in the ordinary course of business,

whichever occurs first. The developer is entitled to elect at least one member of the board of administration of an association as long as the developer holds for sale in the ordinary course of business any unit in a cooperative operated by the association.

(2) Within 60 days after the unit owners other than the developer are entitled to elect a member or members of the board of administration of an association, the association shall call, and give not less than 30 days' or more than 40 days' notice of, a meeting of the unit owners to elect the members of the board of administration. The meeting may be called and the notice given by any unit owner if the association fails to do so.

(3) If a developer holds units for sale in the ordinary course of business, none of the following actions may be taken without approval in writing by the developer:

(a) Assessment of the developer as a unit owner

for capital improvements.

(b) Any action by the association that would be detrimental to the sales of units by the developer. However, an increase in assessments for common expenses without discrimination against the developer shall not be deemed to be detrimental to the sales of units.

(4) Prior to, or not more than 60 days after, the time that unit owners other than the developer elect a majority of the members of the board of administration of an association, the developer shall relinquish control of the association, and the unit owners shall accept control. Simultaneously, the developer shall deliver to the association all property of the unit owners and of the association held or controlled by the developer, including, but not limited to, the following items, if applicable, as to each cooperative operated by the association:

(a)1. The original or a photocopy of the recorded cooperative documents and all amendments thereto. If a photocopy is provided, it shall be certified by affidavit of the developer, or an officer or agent of the developer, as being a complete copy of the actual recorded cooperative documents.

2. A certified copy of the association's articles of incorporation, or if it is not incorporated, then copies of the documents creating the association.

3. A copy of the bylaws.

4. The minute books, including all minutes, and other books and records of the association, if any.

5. Any house rules and regulations which have been promulgated.

(b) Resignations of officers and members of the board of administration who are required to resign because the developer is required to relinquish control of the association.

(c) An audit and accounting, which need not be certified, for all association funds, performed by an auditor independent of the developer, including capital accounts, reserve accumulations in accordance with s. 719.504(20)(c)1.k., and contributions.

(d) Association funds or control thereof.

(e) All tangible personal property that is property of the association, represented by the developer to be part of the common areas or ostensibly part of the common areas, and an inventory of that property.

(f) A copy of the plans and specifications utilized in the construction or remodeling of improvements and the supplying of equipment to the cooperative and in the construction and installation of all mechanical components serving the improvements and the site, with a certificate in affidavit form of the developer, his agent, or an architect or engineer authorized to practice in this state that such plans and specifications represent, to the best of their knowledge and belief, the actual plans and specifications utilized in the construction and improvement of the cooperative property and for the construction and installation of the mechanical components serving the improvements. If the cooperative property has been organized as a cooperative more than 3 years after the completion of construction or remodeling of the improvements, the requirements of this paragraph shall not apply.

(g) Insurance policies.

(h) Copies of any certificates of occupancy which

may have been issued for the cooperative property.

(i) Any other permits issued by governmental bodies applicable to the cooperative property in force or issued within 1 year prior to the date the unit owners other than the developer take control of the association.

(j) All written warranties of the contractor, subcontractors, suppliers, and manufacturers, if any, that are still effective.

(k) A roster of unit owners and their addresses and telephone numbers, if known, as shown on the developer's records.

(l) Leases of the common areas and other leases to which the association is a party.

(m) Employment contracts or service contracts in which the association is one of the contracting parties or service contracts in which the association or the unit owners have an obligation or responsibility, directly or indirectly, to pay some or all of the fee or charge of the person or persons performing the service.

(n) All other contracts to which the association is a party.

*History.*—s. 2, ch. 76-222; s. 7, ch. 79-284.

### **719.302 Agreements entered into by the association.—**

(1) Any grant or reservation made by a cooperative document, lease, or other document, and any contract made by an association prior to assumption of control of the association by unit owners other than the developer, that provides for operation, maintenance, or management of a cooperative association or property serving the unit owners of a cooperative shall be fair and reasonable, and may be canceled by unit owners other than the developer:

(a) If the association operates only one cooperative and the unit owners other than the developer have assumed control of the association, or if unit owners other than the developer own not less than 75 percent of the units in the cooperative, the cancellation shall be by concurrence of the owners of not less than 75 percent of the units other than the units owned by the developer. If a grant, reservation, or contract is so canceled and the unit owners other than the developer have not assumed control of the association, the association shall make a new contract or otherwise provide for maintenance, management, or operation in lieu of the canceled obligation, at the direction of the owners of not less than a majority of the units in the cooperative other than the units owned by the developer.

(b) If the association operates more than one cooperative and the unit owners other than the developer have not assumed control of the association, and if unit owners other than the developer own at least 75 percent of the units in a cooperative operated by the association, any grant, reservation, or contract for maintenance, management, or operation of buildings containing the units in that cooperative or of improvements used only by unit owners of that cooperative may be canceled by concurrence of the owners of at least 75 percent of the units in the cooperative other than the units owned by the developer. No grant, reservation, or contract for maintenance, management, or operation of recreational areas or any other property serving more than one

cooperative, and operated by more than one association, may be canceled except pursuant to paragraph (d). If a grant, reservation, or contract is canceled under this provision, the association shall provide for maintenance, management, or operation of the property in a manner consented to by the owners of not less than a majority of the units in the cooperative other than the units owned by the developer.

(c) If the association operates more than one cooperative and the unit owners other than the developer have assumed control of the association, the cancellation shall be by concurrence of the owners of not less than 75 percent of the total number of units in all cooperatives operated by the association other than the units owned by the developer.

(d) If the owners of units in a cooperative have the right to use property in common with owners of units in other cooperatives and those cooperatives are operated by more than one association, no grant, reservation, or contract for maintenance, management, or operation of the property serving more than one cooperative may be canceled until unit owners other than the developer have assumed control of all of the associations operating the cooperatives that are to be served by the recreational area or other property, after which cancellation may be effected by concurrence of the owners of not less than 75 percent of the total number of units in those cooperatives other than units owned by the developer.

(2) Any grant or reservation made by a declaration, lease, or other document, and any contract made by an association, whether before or after assumption of control of the association by unit owners other than the developer, that provides for operation, maintenance, or management of a cooperative association or property serving the unit owners of a cooperative shall not be in conflict with the powers and duties of the association or the rights of unit owners as provided in this chapter. This subsection is intended only as a clarification of existing law.

(3) Any grant or reservation made by a cooperative document, lease, or other document, and any contract made by an association prior to assumption of control of the association by unit owners other than the developer, shall be fair and reasonable.

(4) It is declared that the public policy of this state prohibits the inclusion or enforcement of escalation clauses in management contracts for cooperatives, and such clauses are hereby declared void for public policy. For the purposes of this section, an escalation clause is any clause in a cooperative management contract which provides that the fee under the contract shall increase at the same percentage rate as any nationally recognized and conveniently available commodity or consumer price index.

(5) Any action to compel compliance with the provisions of this section or of s. 719.301 may be brought pursuant to the summary procedure provided for in s. 51.011. In any such action brought to compel compliance with the provisions of s. 719.301, the prevailing party shall be entitled to recover reasonable attorney's fees.

*History.*—s. 2, ch. 76-222; s. 1, ch. 77-174; s. 8, ch. 79-284.



**719.303 Obligations of owners.—**

(1) Each unit owner and each association shall be governed by, and shall comply with the provisions of, this chapter, the cooperative documents, the documents creating the association, and the association bylaws. Actions for damages or for injunctive relief, or both, for failure to comply with these provisions may be brought by the association or by a unit owner against:

- (a) The association.
- (b) A unit owner.

(c) Directors designated by the developer, for actions taken by them prior to the time control of the association is assumed by unit owners other than the developer.

(d) Any director who willfully and knowingly fails to comply with these provisions.

The prevailing party is entitled to recover reasonable attorney's fees. This relief does not exclude other remedies provided by law.

(2) A provision of this chapter may not be waived if the waiver would adversely affect the rights of a unit owner or the purpose of the provision, except that unit owners or members of a board of administration may waive notice of specific meetings in writing if provided by the bylaws. Any instrument given in writing by the unit owner to an escrow agent may be relied upon by an escrow agent, whether or not such instruction and the payment of funds thereunder might constitute a waiver of any provision of this chapter.

*History.*—s. 2, ch. 76-222; s. 1, ch. 77-174.

**719.304 Association's right to amend cooperative documents.—**

(1) If there is an omission or error in any cooperative document, or in other documents required by law to establish the cooperative, the association may correct the error or omission by an amendment to the cooperative document, or the other documents required to create a cooperative, in the manner provided in the declaration to amend the declaration, or, if none is provided, then by vote of a majority of the unit owners. The amendment is effective when passed and approved. This procedure for amendment cannot be used if such an amendment would materially or adversely affect property rights of unit owners, unless the affected owners consent in writing. This subsection does not restrict the powers of the association to otherwise amend the cooperative documents, or other documentation, but authorizes a simple process of amendment requiring a lesser vote for the purpose of curing defects, errors, or omissions when the property rights of unit owners are not materially or adversely affected.

(2) If there is an omission or error in a cooperative document, or other documents required to establish the cooperative, which would affect the valid existence of the cooperative and which may not be corrected by the amendment procedures in the cooperative documents or this chapter, then the Circuit Courts have jurisdiction to entertain petitions of one or more of the unit owners therein, or of the association, to correct the error or omission, and the action may be a class action. The court may require that one or more methods of correcting the error or omission

be submitted to the unit owners to determine the most acceptable correction. All unit owners and the association must be joined as parties to the action. Service of process on owners may be by publication, but the plaintiff shall furnish all unit owners not personally served with process with copies of the petition and final decree of the court by certified mail, return receipt requested, at their last known residence address. If an action to determine whether the cooperative documents or other documents comply with the mandatory requirements for the formation of a cooperative contained in this chapter is not brought within 3 years of the filing of the cooperative documents, the cooperative documents and other documents shall be effective under this chapter to create a cooperative, whether or not the documents substantially comply with the mandatory requirements of this chapter. However, both before and after the expiration of this 3-year period, Circuit Courts have jurisdiction to entertain petitions permitted under this subsection for the correction of the documentation, and other methods of amendment may be utilized to correct the errors or omissions at any time.

*History.*—s. 2, ch. 76-222; s. 224, ch. 77-104.

**PART IV****SPECIAL TYPES OF COOPERATIVES**

719.401 Leaseholds.

719.402 Conversion of existing improvements to cooperative.

719.403 Phase cooperatives.

**719.401 Leaseholds.**—A cooperative may be created on lands held by a developer under lease or may include recreational facilities or other common elements or commonly used facilities on a leasehold, if, on the date the first unit is conveyed by the developer to a bona fide purchaser, the lease has an unexpired term of at least 50 years. If rent under the lease is payable by the association or by the unit owners, the lease shall include the following requirements:

(1) The leased land must be identified by a description that is sufficient to pass title, and the leased personal property must be identified by a general description of the items of personal property and the approximate number of each item of personal property that the developer is committing to furnish for each room or other facility. In the alternative, the personal property may be identified by a representation as to the minimum amount of expenditure that will be made to purchase the personal property for the facility. Unless the lease is of a unit, the identification of the land shall be supplemented by a survey showing the relation of the leased land to the land included in the common areas. This provision shall not prohibit adding additional land or personal property in accordance with the terms of the lease, provided there is no increase in rent or material increase in maintenance costs to the individual unit owner.

(2) The lease shall not contain a reservation of the right of possession or control of the leased property by the lessor or any person other than unit owners or the association, and shall not create rights

to possession or use of the leased property in any parties other than the association or unit owners of the cooperative to be served by the leased property, unless the reservations and rights created are conspicuously disclosed. Any provision for use of the leased property by anyone other than unit owners of the cooperatives to be served by the leased property shall require the other users to pay a fair and reasonable share of the maintenance and repair obligations and other exactions due from users of the leased property.

(3) The lease shall state the minimum number of unit owners that will be required, directly or indirectly, to pay the rent under the lease and the maximum number of units that will be served by the leased property. The limitation of the number of units to be served shall not preclude enlargement of the facilities leased and an increase in their capacity, if approved by the association operating the leased property after unit owners other than the developer have assumed control of the association.

(4)(a) In any action by the lessor to enforce a lien for rent payable or in any action by the association or a unit owner with respect to the obligations of the lessee or the lessor under the lease, the unit owner or the association may raise any issue or interpose any defenses, legal or equitable, that he or it may have with respect to the lessor's obligations under the lease. If the unit owner or the association initiates any action or interposes any defense other than payment of rent under the lease, the unit owner or the association shall, upon service of process upon the lessor, pay into the registry of the court any allegedly accrued rent and the rent which accrues during the pendency of the proceeding, when due. If the unit owner or the association fails to pay the rent into the registry of the court, it shall constitute an absolute waiver of the unit owner's or association's defenses other than payment, and the lessor shall be entitled to default. The unit owner or the association shall notify the lessor of any deposits. When the unit owner or the association has deposited the required funds into the registry of the court, the lessor may apply to the court for disbursement for all or part of the funds shown to be necessary for the payment of taxes, mortgage payments, maintenance and operating expenses, and other necessary expenses incident to maintaining and equipping the leased facilities. The court, after an evidentiary hearing, may award all or part of the funds on deposit to the lessor for such purpose. The court shall require the lessor to post bond or other security, as a condition to the release of funds from the registry, when the value of the leased land and improvements, apart from the lease itself, is inadequate to fully secure the sum of existing encumbrances on the leased property and the amounts released from the court registry.

(b) When the association or unit owners have deposited funds into the registry of the court pursuant to this subsection, and the unit owners and association have otherwise complied with their obligations under the lease or agreement, other than paying rent into the registry of the court rather than to the lessor, the lessor cannot hold the association or unit owners in default on their rental payments nor may the lessor file liens or initiate foreclosure proceed-

ings against unit owners. If the lessor, in violation of this subsection, attempts such liens or foreclosures, then the lessor may be liable for damages plus attorney's fees and costs which the association or unit owners incurred in satisfying said liens or foreclosures.

(c) Nothing in this subsection enacted to be effective October 1, 1979, shall affect litigation commenced prior to such date.

(5) If the lease is of recreational facilities or other commonly used facilities that are not completed, rent shall not commence until some of the facilities are completed. Until all of the facilities leased are completed, rent shall be prorated and paid only for the completed facilities in the proportion that the value of the completed facilities bears to the estimated value, when completed, of all of the facilities that are leased. The facilities shall be complete when they have been constructed, finished, and equipped and are available for use.

(6)(a) A lease of recreational or other commonly used facilities entered into by the association prior to the time the control of the association is turned over to unit owners other than the developer shall grant to the lessee an option to purchase the leased property, payable in cash on any anniversary date of the beginning of the lease term after the 10th anniversary, at a price then determined by agreement. If there is no agreement as to the price, then the price shall be determined by arbitration.

(b) If the lessor wishes to sell his interest and has received a bona fide offer to purchase it, the lessor shall send the association and each unit owner a copy of the executed offer. For 90 days following receipt of the offer by the association, the association has the option to purchase the interest on the terms and conditions in the offer. The option shall be exercised, if at all, by notice in writing given to the lessor within the 90-day period. If the association does not exercise the option, the lessor shall have the right, for a period of 60 days after the 90-day period has expired, to complete the transaction described in the offer to purchase. If for any reason such transaction is not concluded within the 60 days, the offer shall have been abandoned, and the provisions of this subsection shall be reimposed.

(c) The option shall be exercised upon approval by owners of two-thirds of the units served by the leased property.

(d) The provisions of this subsection shall not apply if the lessor is the Government of the United States or the State of Florida or any political subdivision thereof or, in the case of an underlying land lease, a person or entity which is not the developer or directly or indirectly owned or controlled by the developer and did not obtain, directly or indirectly, ownership of the leased property from the developer.

(7) The lease or a subordination agreement executed by the lessor must provide either:

(a) That any lien which encumbers a unit for rent or other moneys or exactions payable is subordinate to any mortgage held by an institutional lender, or

(b) That, upon the foreclosure of any mortgage held by an institutional lender or upon delivery of a deed in lieu of foreclosure, the lien for the unit own-

er's share of the rent or other exactions shall not be extinguished, but shall be foreclosed and unenforceable against the mortgagee with respect to that unit's share of the rent and other exactions which mature or become due and payable on or before the date of the final judgment of foreclosure, in the event of foreclosure, or on or before the date of delivery of the deed in lieu of foreclosure. The lien may, however, automatically and by operation of the lease or other instrument, reattach to the unit and secure the payment of the unit's proportionate share of the rent or other exactions coming due subsequent to the date of final decree of foreclosure or the date of delivery of the deed in lieu of foreclosure.

(8) It is declared that the public policy of this state prohibits the inclusion or enforcement of escalation clauses in leases or agreements for recreational facilities, land, or other commonly used facilities serving cooperatives, and such clauses are hereby declared void for public policy. For the purposes of this section, an escalation clause is any clause in a cooperative lease or agreement which provides that the rental under the lease or agreement shall increase at the same percentage rate as any nationally recognized and conveniently available commodity or consumer price index.

History.—s. 2, ch. 76-222; s. 1, ch. 77-174; s. 9, ch. 79-284.

#### **719.402 Conversion of existing improvements to cooperative.—**

(1) A developer may create a cooperative by converting existing, previously occupied improvements to such ownership by complying with part I of this chapter.

(2)(a) If existing improvements are converted to ownership as a residential cooperative, each residential tenant of the existing improvements shall have the right to extend an expiring lease or tenancy upon the same terms for a period that will expire no later than 180 days after written notice to the tenant of the intended conversion. A tenant must give written notice to the developer of his intention to extend his lease or tenancy within 30 days after he receives notice of the intended conversion.

(b) Any discount to an existing tenant on the purchase price of a cooperative parcel in a conversion of existing improvements shall be offered for a period of not less than 60 days from the date of first offering to such tenant.

(3)(a) It is the policy of this state that provisions of contracts, leases, or other undertakings which allow landlords or developers, at their option, to cancel and terminate the terms of such leases upon the conversion of the property and improvements to cooperative ownership upon less than 120 days' notice to the tenant are against public policy. Any provisions in any contract, lease, or undertaking which provides for cancellation or termination of the term of any lease for an apartment or other residence at the option of the landlord or developer for reason of its intended conversion to a cooperative form of ownership without at least 120 days' notice shall be unenforceable except in the following cases:

1. If the term of the lease has less than 150 days remaining after such notification is given.
2. If the lease grants the tenant an option to purchase the apartment or other residence in which he

resides at a price equal to or less than that offered to non-tenants, which option is exercisable by the tenant during a period of not less than 90 days after the mailing of a notice of the intended conversion to the tenant.

3. If the lease provides that the lessor or developer shall not convert to cooperative ownership except with the consent of the tenants of not less than 60 percent of the apartments or other dwellings in improvements intended to be converted. For the purpose of this vote, unoccupied apartments or dwellings shall be counted and the developer or lessor may vote those apartments.

(b) If the lease provides for a notification to the tenant of less than 120 days and if the term of the lease has more than 150 days remaining after notification is given, notification of termination to the tenant will be effective if the notice provides that the tenant shall have 150 days or more before cancellation or termination becomes effective.

(c) Leases executed subsequent to the developer's or landlord's announcement of intention to convert to cooperative ownership may provide for cancellation or termination upon not less than 60 days' notice to the tenant, provided the landlord conspicuously discloses in the lease the intention to convert the property containing the leased premises to cooperative ownership and that the lease may be canceled upon 60 days' notice to the tenant.

(d) The notice requirements of this subsection shall not apply to a lease entered into simultaneously with, or subsequent to, a contract to purchase the unit.

(4) All notices to tenants shall be given when deposited in the United States mail addressed to the tenant at his last known residence, which may be the address of the property subject to the lease, sent by certified or registered mail, postage prepaid. Notice may not be waived by a tenant unless the tenant's lease states that the building is to be converted.

History.—s. 2, ch. 76-222; s. 10, ch. 79-284.

#### **719.403 Phase cooperatives.—**

(1) A developer may develop a cooperative in phases, if the original cooperative documents submitting the initial phase to cooperative ownership provide for and describe in detail all anticipated phases, the impact, if any, which the completion of subsequent phases would have upon the initial phase, and the time period within which each phase must be completed.

(2) The original cooperative documents shall describe:

(a) The land which may become part of the cooperative and the land on which each phase is to be built. The descriptions shall include metes and bounds or other legal descriptions of the land for each phase, plot plans, and surveys.

(b) The number and general size of units to be included in each phase.

(c) Each unit's percentage ownership in the common areas as each phase is added.

(d) The recreation areas and facilities to be owned as common areas by all unit owners and all personal property to be provided and those facilities or areas which may not be built or provided if any



phase or phases are not developed and added as a part of the cooperative.

(e) The membership vote and ownership in the association attributable to each unit in each phase and the results if any phase or phases are not developed and added as a part of the cooperative.

(3) The developer shall notify owners of existing units of the commencement of, or the decision not to add, one or more additional phases. Notice shall be by certified mail addressed to each owner at the address of his unit or at his last known address.

(4) If one or more phases are not built, the units which are built are entitled to 100 percent ownership of all common areas within the phases actually developed and added as a part of the cooperative.

(5) If the cooperative documents require the developer to convey any additional lands or facilities to the cooperative after the completion of the first phase and he fails to do so within the time specified, or within a reasonable time if none is specified, then any owner of a unit or the association may enforce such obligations against the developer or bring an action against the developer for damages caused by the developer's failure to convey to the association such additional lands or facilities.

(6) Amendments adding phases to a cooperative shall not require the execution of such amendments or consents thereto by unit owners other than the developer.

*History.*—s. 2, ch. 76-222; s. 225, ch. 77-104; s. 1, ch. 77-174.

## PART V

### REGULATION AND DISCLOSURE PRIOR TO SALE OF RESIDENTIAL COOPERATIVES

- 719.501 Regulation by Division of Florida Land Sales and Condominiums.
- 719.502 Filing prior to sale or lease.
- 719.503 Disclosure prior to sale.
- 719.504 Prospectus or offering circular.
- 719.505 Good faith effort to comply.
- 719.506 Publication of false and misleading information.
- 719.507 Zoning and building.
- 719.508 Regulation by Division of Hotels and Restaurants.

#### **719.501 Regulation by Division of Florida Land Sales and Condominiums.—**

(1) The Division of Florida Land Sales and Condominiums of the Department of Business Regulation, referred to as the division in this part, in addition to other powers and duties prescribed by chapter 478, has the power to enforce and insure compliance with the provisions of this chapter and rules promulgated pursuant hereto relating to the development, construction, sale, lease, ownership, operation, and management of residential cooperative units. In performing its duties, the division shall have the following powers and duties:

(a) The division shall receive, and may investigate pursuant to the authority specified in s. 478.151, complaints relating to the violation of the provisions of this chapter or rules promulgated pursuant hereto, including disputes arising from the in-

ternal affairs and management of cooperative associations, and may conduct informal hearings for the purpose of seeking amicable settlement of disputes and voluntary compliance with the provisions of law.

(b) Notwithstanding any remedies available to unit owners and associations, if the division has reasonable cause to believe that a violation of any provision of this chapter or rules promulgated pursuant hereto has occurred, the division may institute enforcement proceedings in its own name against any developer or association, or its assignees or agents, as follows:

1. The division may issue cease and desist orders pursuant to s. 478.171.

2. The division may bring an action in circuit court for declaratory relief, injunctive relief, or restitution on behalf of a class of unit owners or lessees.

3. The division may impose civil penalties against any developer or association, or its assignees or agents, for violations of this chapter or rules promulgated pursuant hereto. A penalty may be imposed on the basis of each day of continuing violation, but in no event shall the penalty for any offense exceed \$5,000. All amounts collected shall be deposited with the Treasurer to the credit of the Florida Land Sales and Condominiums Trust Fund. If a developer fails to pay the civil penalty, the division shall thereupon issue an order directing that such developer cease and desist from further operation until such time as the civil penalty is paid and may pursue enforcement of the penalty in a court of competent jurisdiction. If an association fails to pay the civil penalty, the division shall thereupon pursue enforcement in a court of competent jurisdiction. In order to permit the developer or association an opportunity either to appeal such decision administratively or to seek relief in a court of competent jurisdiction, the order imposing the civil penalty or the cease and desist order shall not become effective until 20 days after the date of such order. Any action commenced by the division shall be brought in the county in which the division has its executive offices or in the county where the violation occurred.

(c) The division is authorized to prepare and disseminate a prospectus and other information to assist prospective owners, purchasers, lessees, and developers of residential cooperatives in assessing the rights, privileges, and duties pertaining thereto.

(d) The division is authorized to promulgate rules and regulations, pursuant to chapter 120, necessary to implement, enforce, and interpret this chapter.

(e) The division shall furnish each association which pays the fees required by subsection (3)(a) a copy of this part and all amendments prior to the date they become effective.

<sup>1</sup>(2) There is hereby created an advisory board to advise the division in carrying out its duties, to be composed of seven members, of which three members shall be citizens from the cooperative development industry, two members shall be nondeveloper unit owners who are association board members, and two members shall be nondeveloper unit owners who are not association officers or board members. Members of the advisory board shall be appointed by the Secretary of Business Regulation to serve at his

pleasure and shall be confirmed by the Senate. The advisory board shall assist and advise the division in residential cooperative problems and, when possible, shall arbitrate controversies between unit owners and their associations.

(3)(a) Each cooperative association shall pay to the division, on or before January 1 of each year, an annual fee in the amount of 50 cents for each residential unit in cooperatives operated by the association. If the fee is not paid by June 1, then the association shall be assessed a penalty of 10 percent of the amount due, and the association shall not have the standing to maintain or defend any action in the courts of this state until the amount due is paid.

(b) Any person filing a complaint with the division under this section shall pay a filing fee of \$10 for each complaint.

(c) All fees shall be deposited in the Land Sales Trust Fund as provided by law.

**History.**—s. 2, ch. 76-222; s. 1, ch. 77-174; s. 4, ch. 78-323; s. 33, ch. 79-4; s. 11, ch. 79-284.

<sup>1</sup>**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this subsection prior to that date.

#### 719.502 Filing prior to sale or lease.—

(1) A developer of a residential cooperative shall file with the division one copy of each of the documents and items required to be furnished to a buyer or lessee by ss. 719.503 and 719.504, if applicable. Until the developer has so filed, a contract for sale or lease of a unit for more than 5 years shall be voidable by the purchaser or lessee prior to the closing of his purchase or lease of a unit.

(2) Prior to filing as required by subsection (1), a developer shall not offer a contract for purchase or lease of a unit for more than 5 years but may accept deposits for reservations upon filing with the Division of Florida Land Sales and Condominiums of the Department of Business Regulation an escrow agreement and reservation agreement form. The division shall notify the developer within 20 days of receipt of the reservation filing of any deficiencies contained therein. Such notification shall not preclude the determination of reservation filing deficiencies at a later date, nor shall it relieve the developer of any responsibility under the law. The escrow agreement and the reservation agreement form shall include a statement of the right of the prospective purchaser to an immediate unqualified refund of the reservation deposit moneys upon written request to the escrow agent by the prospective purchaser or the developer. The reservation agreement form shall also include the following:

(a) A statement of the obligation of the developer to file cooperative documents with the division prior to entering into a binding purchase or lease agreement for more than 5 years.

(b) A statement of the right of the prospective purchaser to receive all cooperative documents as required by this chapter.

(c) The name and address of the escrow agent and a statement that the prospective purchaser may obtain a receipt from the agent upon request.

(d) A statement as to whether the developer assures that the purchase price represented in or pursuant to the reservation agreement will be the price in the contract for purchase and sale, or that the price represented may be exceeded within a stated

amount or percentage, or that no assurance is given as to the price in the contract for purchase and sale.

(3) Upon filing as required by subsection (1), the developer shall pay to the division a filing fee of \$10 for each residential unit to be sold by the developer which is described in the documents filed. If the cooperative is to be built or sold in phases, the fee shall be paid prior to offering for sale units in any subsequent phase.

(4) Any developer who complies with this section shall not be required to file with any other division or agency of this state for approval to sell the units in the cooperative, the information for the cooperative for which he filed.

**History.**—s. 2, ch. 76-222; s. 5, ch. 79-284.

#### 719.503 Disclosure prior to sale.—

(1) **CONTENTS OF CONTRACTS.**—Any contracts for the sale of a unit or a lease thereof for an unexpired term of more than 5 years shall contain:

(a) The following legend in conspicuous type: **THIS AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 15 DAYS AFTER THE DATE OF EXECUTION OF THIS AGREEMENT BY THE BUYER, AND RECEIPT BY BUYER OF ALL OF THE ITEMS REQUIRED TO BE DELIVERED TO HIM BY THE DEVELOPER UNDER SECTION 719.503, FLORIDA STATUTES. BUYER MAY EXTEND THE TIME FOR CLOSING FOR A PERIOD OF NOT MORE THAN 15 DAYS AFTER THE BUYER HAS RECEIVED ALL OF THE ITEMS REQUIRED. BUYER'S RIGHT TO VOID THIS AGREEMENT SHALL TERMINATE AT CLOSING.**

(b) The following caveat in conspicuous type shall be placed upon the first page of the contract: **ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY STATING THE REPRESENTATIONS OF THE DEVELOPER. FOR CORRECT REPRESENTATIONS, REFERENCE SHOULD BE MADE TO THIS CONTRACT AND THE DOCUMENTS REQUIRED BY SECTION 719.503, FLORIDA STATUTES, TO BE FURNISHED BY A DEVELOPER TO A BUYER OR LESSEE.**

(c) If the unit has been occupied by someone other than the buyer, a statement that the unit has been occupied.

(d) If the contract is for the sale or transfer of a unit subject to a lease, the contract shall include as an exhibit a copy of the executed lease and shall contain within the text in conspicuous type: **THE UNIT IS SUBJECT TO A LEASE (OR SUBLEASE).**

(e) If the contract is for the lease of a unit for a term of 5 years or more, the contract shall include as an exhibit a copy of the proposed lease.

(f) If the contract is for the sale or lease of a unit that is subject to a lien for rent payable under a lease of a recreational facility or other common areas, the contract shall contain within the text the following statement in conspicuous type: **THIS CONTRACT IS FOR THE TRANSFER OF A UNIT THAT IS SUBJECT TO A LIEN FOR RENT PAYABLE UNDER A LEASE OF COMMON AREAS. FAILURE TO PAY RENT MAY RESULT IN FORECLOSURE OF THE LIEN.**

(g) The contract shall state the name and address of the escrow agent required by s. 719.202 and shall state that the purchaser may obtain a receipt for his deposit from the escrow agent, upon request.

(2) **COPIES OF DOCUMENTS TO BE FURNISHED TO PROSPECTIVE BUYER OR LESSEE.**—Until such time as the developer has furnished the documents listed below to a person who has entered into a contract to purchase a unit or lease it for more than 5 years, the contract may be voided by such person, entitling such person to a refund of any deposit together with interest thereon as provided in s. 719.202. The contract may be terminated by written notice from the proposed buyer or lessee delivered to the developer within 15 days after the buyer or lessee receives all of the documents required by this section. The documents to be delivered to the prospective buyer are the prospectus or disclosure statement with all exhibits, if the development is subject to the provisions of s. 719.504, or, if not, then copies of the following which are applicable:

(a) The cooperative documents, or the proposed cooperative documents if the documents have not been recorded, which shall include the certificate of a surveyor approximately representing the locations required by s. 719.104.

(b) The documents creating the association.

(c) The bylaws.

(d) The ground lease or other underlying lease of the cooperative.

(e) The management contract, maintenance contract, and other contracts for management of the association and operation of the cooperative and facilities used by the unit owners having a service term in excess of 1 year, and any management contracts that are renewable.

(f) The estimated operating budget for the cooperative and a schedule of expenses for each type of unit.

(g) The lease of recreational and other facilities that will be used only by unit owners of the subject cooperative.

(h) The lease of recreational and other common areas that will be used by unit owners in common with unit owners of other cooperatives.

(i) The form of unit lease if the offer is of a leasehold.

(j) Any declaration of servitude of properties serving the cooperative but not owned by unit owners or leased to them or the association.

(k) If the development is to be built in phases or if the association is to manage more than one cooperative, a description of the plan of phase development or the arrangements for the association to manage two or more cooperatives.

(l) If the cooperative is a conversion of existing improvements, a statement of the condition of the improvements and of inspection for termite damage and treatment thereof.

(m) The form of agreement for sale or lease of units.

(n) A copy of the floor plan of the unit and the plot plan showing the location of the residential buildings and the recreation and other common areas.

(o) A copy of all covenants and restrictions which

will affect the use of the property and which are not contained in the foregoing.

(3) **OTHER DISCLOSURE.**—

(a) If cooperative parcels are offered for sale or lease prior to completion of construction of the units and of improvements to the common areas, or prior to completion of remodeling of previously occupied buildings, the developer shall make available to each prospective purchaser or lessee, for his inspection at a place convenient to the site, a copy of the complete plans and specifications for the construction or remodeling of the unit offered to him and of the improvements to the common areas appurtenant to the unit.

(b) Sales brochures, if any, shall be provided to each purchaser, and the following caveat in conspicuous type shall be placed on the inside front cover or on the first page containing text material of the sales brochure, or otherwise conspicuously displayed: **ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY STATING REPRESENTATIONS OF THE DEVELOPER. FOR CORRECT REPRESENTATIONS, MAKE REFERENCE TO THIS BROCHURE AND TO THE DOCUMENTS REQUIRED BY SECTION 719.503, FLORIDA STATUTES, TO BE FURNISHED BY A DEVELOPER TO A BUYER OR LESSEE.**

**History.**—s. 2, ch. 76-222; s. 1, ch. 77-174; s. 12, ch. 79-284.

**Note.**—The cross reference is erroneous.

**719.504 Prospectus or offering circular.**—Every developer of a residential cooperative which contains more than twenty residential units, or which is part of a group of residential cooperatives which will be served by property to be used in common by unit owners of more than twenty residential units, shall prepare a prospectus or offering circular and file it with the Division of Florida Land Sales and Condominiums prior to entering into an enforceable contract of purchase and sale of any unit or lease of a unit for more than 5 years, and furnish a copy of the prospectus or offering circular to each buyer. The prospectus or offering circular may include more than one cooperative, although not all such units are being offered for sale as of the date of the prospectus or offering circular. The prospectus or offering circular must contain the following information:

(1) The front cover or the first page must contain only:

(a) The name of the cooperative.

(b) The following statements in conspicuous type:

1. **THIS PROSPECTUS (OFFERING CIRCULAR) CONTAINS IMPORTANT MATTERS TO BE CONSIDERED IN ACQUIRING A COOPERATIVE UNIT.**

2. **THE STATEMENTS CONTAINED HEREIN ARE ONLY SUMMARY IN NATURE. A PROSPECTIVE PURCHASER SHOULD REFER TO ALL REFERENCES, ALL EXHIBITS HERETO, THE CONTRACT DOCUMENTS, AND SALES MATERIALS.**

3. **ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY STATING THE REPRESENTATIONS OF THE DEVELOPER. REFER TO THIS PROSPECTUS (OFFERING CIRCULAR).**



**LAR) AND ITS EXHIBITS FOR CORRECT REPRESENTATIONS.**

(2) Summary: The next page must contain all statements required to be in conspicuous type in the prospectus or offering circular.

(3) A separate index of the contents and exhibits of the prospectus.

(4) Beginning on the first page of the text (not including the summary and index), a description of the cooperative, including, but not limited to, the following information:

(a) Its name and location.

(b) A description of the cooperative property, including, without limitation:

1. The number of buildings, the number of units in each building, the number of bathrooms and bedrooms in each unit, and the total number of units.

2. The page in the cooperative documents where a copy of the survey and plot plan of the cooperative is located.

3. The estimated latest date of completion of constructing, finishing, and equipping. In lieu of a date, a statement that the estimated date of completion of the cooperative is in the purchase agreement and a reference to the article or paragraph containing that information.

(c) The maximum number of units that will use facilities in common with the cooperative. If the maximum number of units will vary, a description of the basis for variation and the minimum amount of dollars per unit to be spent for additional recreational facilities, or enlargement of such facilities. If the addition or enlargement of facilities will result in a material increase of a unit owner's maintenance expense or rental expense, if any, the maximum increase and limitations thereon shall be stated.

(5) A statement in conspicuous type describing whether the cooperative is created and being sold as fee simple interests or as leasehold interests. If the cooperative is created or being sold on a leasehold, the location of the lease in the disclosure materials shall be stated.

(6) A description of the recreational and other common areas that will be used only by unit owners of the cooperative, including, but not limited to, the following:

(a) Each room and its intended purposes, location, approximate floor area, and capacity in numbers of people.

(b) Each swimming pool, as to its general location, approximate size and depths, approximate deck size and capacity, and whether heated.

(c) Additional facilities, as to the number of each facility, its approximate location, approximate size, and approximate capacity.

(d) A general description of the items of personal property and the approximate number of each item of personal property that the developer is committing to furnish for each room or other facility or, in the alternative, a representation as to the minimum amount of expenditure that will be made to purchase the personal property for the facility.

(e) The estimated date when each room or other facility will be available for use by the unit owners.

(f)1. An identification of each room or other facility to be used by unit owners that will not be owned

by the unit owners or the association;

2. A reference to the location in the disclosure materials of the lease or other agreements providing for the use of those facilities; and

3. A description of the terms of the lease or other agreements, including the length of the term; the rent payable, directly or indirectly, by each unit owner, and the total rent payable to the lessor, stated in monthly and annual amounts for the entire term of the lease; and a description of any option to purchase the property leased under any such lease, including the time the option may be exercised, the purchase price or how it is to be determined, the manner of payment, and whether the option may be exercised for a unit owner's share or only as to the entire leased property.

(g) A statement as to whether the developer may provide additional facilities not described above, their general locations and types, improvements or changes that may be made, the approximate dollar amount to be expended, and the maximum additional common expense or cost to the individual unit owners that may be charged during the first annual period of operation of the modified or added facilities.

Descriptions as to locations, areas, capacities, numbers, volumes, or sizes may be stated as approximations or minimums.

(7) A description of the recreational and other facilities that will be used in common with other cooperatives which require the payment of the maintenance and expenses of such facilities, either directly or indirectly, by the unit owners. The description shall include, but not be limited to, the following:

(a) Each building and facility committed to be built.

(b) Facilities not committed to be built except under certain conditions, and a statement of those conditions or contingencies.

(c) As to each facility committed to be built, or which will be committed to be built upon the happening of one of the conditions in paragraph (b), a statement of whether it will be owned by the unit owners having the use thereof or by an association or other entity which will be controlled by them, or others, and the location in the exhibits of the lease or other document providing for use of those facilities.

(d) The year in which each facility will be available for use by the unit owners or, in the alternative, the maximum number of unit owners in the project at the time each of all of the facilities is committed to be completed.

(e) A general description of the items of personal property, and the approximate number of each item of personal property, that the developer is committing to furnish for each room or other facility or, in the alternative, a representation as to the minimum amount of expenditure that will be made to purchase the personal property for the facility.

(f) If there are leases, a description thereof, including the length of the term, the rent payable, and

a description of any option to purchase.

Descriptions shall include location, areas, capacities, numbers, volumes, or sizes, and may be stated as approximations or minimums.

(8) Recreation lease or associated club membership:

(a) If any recreational facilities or other common areas offered by the developer and available to, or to be used by, unit owners are to be leased or have club membership associated, the following statement in conspicuous type shall be included: **THERE IS A RECREATIONAL FACILITIES LEASE ASSOCIATED WITH THIS COOPERATIVE; or, THERE IS A CLUB MEMBERSHIP ASSOCIATED WITH THIS COOPERATIVE.** There shall be a reference to the location in the disclosure materials where the recreation lease or club membership is described in detail.

(b) If it is mandatory that unit owners pay a fee, rent, dues, or other charges under a recreational facilities lease or club membership for the use of facilities, there shall be in conspicuous type the applicable statement:

1. **MEMBERSHIP IN THE RECREATIONAL FACILITIES CLUB IS MANDATORY FOR UNIT OWNERS; or**

2. **UNIT OWNERS ARE REQUIRED, AS A CONDITION OF OWNERSHIP, TO BE LESSEES UNDER THE RECREATIONAL FACILITIES LEASE; or**

3. **UNIT OWNERS ARE REQUIRED TO PAY THEIR SHARE OF THE COSTS AND EXPENSES OF MAINTENANCE, MANAGEMENT, UPKEEP, REPLACEMENT, RENT, AND FEES UNDER THE RECREATIONAL FACILITIES LEASE (OR THE OTHER INSTRUMENTS PROVIDING THE FACILITIES); or**

4. A similar statement of the nature of the organization or manner in which the use rights are created, and that unit owners are required to pay.

Immediately following the applicable statement, the location in the disclosure materials where the development is described in detail shall be stated.

(c) If the developer, or any other person other than the unit owners and other persons having use rights in the facilities, shall reserve, or be entitled to receive, any rent, fee, or other payment for the use of the facilities, then there shall be the following statement in conspicuous type: **THE UNIT OWNERS OR THE ASSOCIATION(S) MUST PAY RENT OR LAND-USE FEES FOR RECREATIONAL OR OTHER COMMON AREAS.** Immediately following this statement, the location in the disclosure materials where the rent or land-use fees are described in detail shall be stated.

(d) If, in any recreation format, whether leasehold, club, or other, any person other than the association shall have the right to a lien on the units to secure the payment of assessments, rent, or other exactions, there shall appear a statement in conspicuous type in substantially the following form:

1. **THERE IS A LIEN OR LIEN RIGHT AGAINST EACH UNIT TO SECURE THE PAYMENT OF RENT AND OTHER EXACTIONS UNDER THE RECREATION LEASE. THE UNIT**

**OWNER'S FAILURE TO MAKE THESE PAYMENTS MAY RESULT IN FORECLOSURE OF THE LIEN; or**

2. **THERE IS A LIEN OR LIEN RIGHT AGAINST EACH UNIT TO SECURE THE PAYMENT OF ASSESSMENTS OR OTHER EXACTIONS COMING DUE FOR THE USE, MAINTENANCE, UPKEEP, OR REPAIR OF THE RECREATIONAL OR COMMONLY USED AREAS. THE UNIT OWNER'S FAILURE TO MAKE THESE PAYMENTS MAY RESULT IN FORECLOSURE OF THE LIEN.**

Immediately following the applicable statement, the location in the disclosure materials where the lien or lien right is described in detail shall be stated.

(9) If the developer or any other person shall have the right to increase or add to the recreational facilities at any time after the establishment of the cooperative whose unit owners have use rights therein, without the consent of the unit owners or associations being required, there shall appear a statement in conspicuous type in substantially the following form: **RECREATIONAL FACILITIES MAY BE EXPANDED OR ADDED WITHOUT CONSENT OF UNIT OWNERS OR THE ASSOCIATION(S).** Immediately following this statement, the location in the disclosure materials where such reserved rights are described shall be stated.

(10) A statement of whether the developer's plan includes a program of leasing units rather than selling them, or leasing units and selling them subject to such leases. If so, there shall be a description of the plan, including the number and identification of the units and the provisions and term of the proposed leases, and a statement in boldface type that: **THE UNITS MAY BE TRANSFERRED SUBJECT TO A LEASE.**

(11) The arrangements for management of the association and maintenance and operation of the cooperative property and of other property that will serve the unit owners of the cooperative property, and a description of the management contract and all other contracts for these purposes having a term in excess of 1 year, including the following:

(a) The names of contracting parties.

(b) The term of the contract.

(c) The nature of the services included.

(d) The compensation, stated on a monthly and annual basis, and provisions for increases in the compensation.

(e) A reference to the volumes and pages of the cooperative documents and of the exhibits containing copies of such contracts.

Copies of all described contracts shall be attached as exhibits. If there is a contract for the management of the cooperative property, then a statement in conspicuous type in substantially the following form shall appear, identifying the proposed or existing contract manager: **THERE IS (IS TO BE) A CONTRACT FOR THE MANAGEMENT OF THE COOPERATIVE PROPERTY WITH (NAME OF THE CONTRACT MANAGER).** Immediately following this statement, the location in the disclosure materials of the contract for management of the coopera-

tive property shall be stated.

(12) If the developer or any other person or persons other than the unit owners has the right to retain control of the board of administration of the association for a period of time which can exceed 1 year after the closing of the sale of a majority of the units in that cooperative to persons other than successors or alternate developers, then a statement in conspicuous type in substantially the following form shall be included: **THE DEVELOPER (OR OTHER PERSON) HAS THE RIGHT TO RETAIN CONTROL OF THE ASSOCIATION AFTER A MAJORITY OF THE UNITS HAVE BEEN SOLD.** Immediately following this statement, the location in the disclosure materials where this right to control is described in detail shall be stated.

(13) If there are any restrictions upon the sale, transfer, conveyance, or leasing of a unit, then a statement in conspicuous type in substantially the following form shall be included: **THE SALE, LEASE, OR TRANSFER OF UNITS IS RESTRICTED OR CONTROLLED.** Immediately following this statement, the location in the disclosure materials where the restriction, limitation, or control on the sale, lease, or transfer of units is described in detail shall be stated.

(14) If the cooperative is part of a phase project, there shall be a statement to that effect and a complete description of the phasing.

(15) If the cooperative is created by conversion of existing improvements, the following information shall be stated concerning the improvements:

- (a) The date and type of construction.
- (b) The prior use.
- (c) The condition of the roof and the mechanical, electrical, plumbing, and structural elements, which statement shall be substantiated by attaching a copy of a certificate of a registered architect or engineer.
- (d) Whether there is termite damage and that termite infestation, if any, has been properly treated. The statement shall be substantiated by including, as an exhibit, a copy of an inspection report by a certified pest control operator.

(e) A caveat that there are no warranties unless they are expressly stated in writing by the developer.

(16) A summary of the restrictions, if any, to be imposed on units concerning the use of any of the cooperative property, including statements as to whether there are restrictions upon children and pets, and reference to the volumes and pages of the cooperative documents where such restrictions are found, or if such restrictions are contained elsewhere, then a copy of the documents containing the restrictions shall be attached as an exhibit.

(17) If there is any land that is offered by the developer for use by the unit owners and that is neither owned by them nor leased to them, the association, or any entity controlled by unit owners and other persons having the use rights to such land, a statement shall be made as to how such land will serve the cooperative. If any part of such land will serve the cooperative, the statement shall describe the land and the nature and term of service, and the cooperative documents or other instrument creating such servitude shall be included as an exhibit.

(18) The manner in which utility and other services, including, but not limited to, sewage and waste disposal, water supply, and storm drainage will be provided, and the person or entity furnishing them.

(19) An explanation of the manner in which the apportionment of common expenses and ownership of the common areas has been determined.

(20) An estimated operating budget for the cooperative and the association, and a schedule of the unit owner's expenses shall be attached as an exhibit and shall contain the following information:

(a) The estimated monthly and annual expenses of the cooperative and the association that are collected from unit owners by assessments.

(b) The estimated monthly and annual expenses of each unit owner for a unit, other than assessments payable to the association, payable by the unit owner to persons or entities other than the association, and the total estimated monthly and annual expense. There may be excluded from this estimate expenses that are personal to unit owners, which are not uniformly incurred by all unit owners, or which are not provided for or contemplated by the cooperative documents, including, but not limited to, the costs of private telephone; maintenance of the interior of cooperative units, which is not the obligation of the association; maid or janitorial services privately contracted for by the unit owners; utility bills billed directly to each unit owner for utility services to his unit; insurance premiums other than those incurred for policies obtained by the cooperative; and similar personal expenses of the unit owner. A unit owner's estimated payments for assessments shall also be stated in the estimated amounts for the times when they will be due.

(c) The estimated items of expenses of the cooperative and the association, except as excluded under paragraph (b), including, but not limited to, the following items, which shall be stated either as an association expense collectible by assessments or as unit owners' expenses payable to persons other than the association:

- 1. Expenses for the association and cooperative:
  - a. Administration of the association.
  - b. Management fees.
  - c. Maintenance.
  - d. Rent for recreational and other commonly used areas.
  - e. Taxes upon association property.
  - f. Taxes upon leased areas.
  - g. Insurance.
  - h. Security provisions.
  - i. Other expenses.
  - j. Operating capital.
  - k. Reserves.
- 1. Fee payable to the division.
- 2. Expenses for a unit owner:
  - a. Rent for the unit, if subject to a lease.
  - b. Rent payable by the unit owner directly to the lessor or agent under any recreational lease or lease for the use of commonly used areas, which use and payment is a mandatory condition of ownership and is not included in the common expense or assessments for common maintenance paid by the unit owners to the association.

(d) The estimated amounts shall be stated for a



period of at least 12 months and may distinguish between the period prior to the time unit owners other than the developer elect a majority of the board of administration and the period after that date.

(21) A schedule of estimated closing expenses to be paid by a buyer or lessee of a unit and a statement of whether title opinion or title insurance policy is available to the buyer and, if so, at whose expense.

(22) The identity of the developer and the chief operating officer or principal directing the creation and sale of the cooperative and a statement of its and his experience in this field.

(23) Copies of the following, to the extent they are applicable, shall be included as exhibits:

(a) The cooperative documents, or the proposed cooperative documents if the documents have not been recorded.

(b) The articles of incorporation creating the association.

(c) The bylaws of the association.

(d) The ground lease or other underlying lease of the cooperative.

(e) The management agreement and all maintenance and other contracts for management of the association and operation of the cooperative and facilities used by the unit owners having a service term in excess of 1 year.

(f) The estimated operating budget for the cooperative and the required schedule of unit owners' expenses.

(g) A copy of the floor plan of the unit and the plot plan showing the location of the residential buildings and the recreation and other common areas.

(h) The lease of recreational and other facilities that will be used only by unit owners of the subject cooperative.

(i) The lease of facilities used by owners and others.

(j) The form of unit lease, if the offer is of a leasehold.

(k) A declaration of servitude of properties serving the cooperative but not owned by unit owners or leased to them or the association.

(l) The statement of condition of the existing building or buildings, if the offering is of units in an operation being converted to cooperative ownership.

(m) The statement of inspection for termite damage and treatment of the existing improvements, if the cooperative is a conversion.

(n) The form of agreement for sale or lease of units.

(o) A copy of the agreement for escrow of payments made to the developer prior to closing.

(p) A copy of the documents containing any restrictions on use of the property required by subsection (16).

(24) Any prospectus or offering circular complying with the provisions of former ss. 711.69 and 711.802 prior to the effective date of this act may continue to be used without amendment, or may be amended to comply with the provisions of this chapter.

History.—s. 2, ch. 76-222; s. 1, ch. 77-174; s. 13, ch. 79-284.

**719.505 Good faith effort to comply.**—If a developer, in good faith, has attempted to comply with the requirements of this part, and if, in fact, he has substantially complied with the disclosure requirements of this chapter, nonmaterial errors or omissions in the disclosure materials shall not be actionable.

History.—s. 1, ch. 76-222.

**719.506 Publication of false and misleading information.**—

(1) Any person who, in reasonable reliance upon any material statement or information that is false or misleading and published by or under authority from the developer in advertising and promotional materials, including, but not limited to, a prospectus, the items required as exhibits to a prospectus, brochures, and newspaper advertising, pays anything of value toward the lease of a cooperative parcel located in this state shall have a cause of action to rescind the contract or collect damages from the developer for his loss prior to the closing of the transaction. After the closing of the transaction, the lessee shall have a cause of action against the developer for damages under this section from the time of closing until 1 year after the date upon which the last of the events described in paragraphs (a) through (d) shall occur:

(a) The closing of the transaction;

(b) The first issuance by the applicable governmental authority of a certificate of occupancy or other evidence of sufficient completion of construction of the building containing the unit to allow lawful occupancy of the unit. In counties or municipalities in which certificates of occupancy or other evidences of completion sufficient to allow lawful occupancy are not customarily issued, for the purpose of this section, evidence of lawful occupancy shall be deemed given or issued upon the date that such lawful occupancy of the unit may first be allowed under prevailing applicable laws, ordinances, or statutes;

(c) The completion by the developer of the common areas and such recreational facilities, whether or not the same are common areas, which the developer is obligated to complete or provide under the terms of the written contract or written agreement for purchase or lease of the unit; or

(d) In the event there shall not be a written contract or agreement for sale or lease of the unit, then the completion by the developer of the common areas and such recreational facilities, whether or not the same are common areas, which the developer would be obligated to complete under any rule of law applicable to the developer's obligation.

Under no circumstances shall a cause of action created or recognized under this section survive for a period of more than 5 years after the closing of the transaction.

(2) In any action for relief under this section or under s. 719.503, the prevailing party shall be entitled to recover reasonable attorney's fees.

History.—s. 2, ch. 76-222.

**719.507 Zoning and building.**—All laws, ordinances, and regulations concerning buildings or zoning shall be construed and applied with reference to the nature and use of such property, without regard to the form of ownership. No law, ordinance, or regulation shall establish any requirement concerning the use, location, placement, or construction of buildings or other improvements which are, or may thereafter be, subjected to the cooperative form of ownership, unless such requirement shall be equally applicable to all buildings and improvements of the same kind not then, or thereafter to be, subjected to the cooperative form of ownership.

**History.**—s. 2, ch. 76-222.

**719.508 Regulation by Division of Hotels and Restaurants.**—In addition to the authority, regulation, or control exercised by the Division of Florida Land Sales and Condominiums pursuant to this act with respect to cooperatives, buildings included in a cooperative property shall be subject to the authority, regulation, or control of the Division of Hotels and Restaurants of the Department of Business Regulation, to the extent provided for in chapter 509 and chapter 399.

**History.**—s. 2, ch. 76-222.

# TITLE XLI

## STATUTE OF FRAUDS, FRAUDULENT CONVEYANCES, AND GENERAL ASSIGNMENTS

### CHAPTER 725

#### UNENFORCEABLE CONTRACTS

- 725.01 Promise to pay another's debt, etc.
- 725.03 Newspaper subscription.
- 725.04 Voluntary payment; pleading.
- 725.05 Satisfaction for less than amount due.
- 725.06 Construction contracts; limitation on indemnification.
- 725.07 Discrimination on basis of sex, marital status, or race forbidden.

**725.01 Promise to pay another's debt, etc.—**No action shall be brought whereby to charge any executor or administrator upon any special promise to answer or pay any debt or damages out of his own estate, or whereby to charge the defendant upon any special promise to answer for the debt, default or miscarriage of another person or to charge any person upon any agreement made upon consideration of marriage, or upon any contract for the sale of lands, tenements or hereditaments, or of any uncertain interest in or concerning them, or for any lease thereof for a period longer than 1 year, or upon any agreement that is not to be performed within the space of 1 year from the making thereof, or whereby to charge any health care provider upon any guarantee, warranty, or assurance as to the results of any medical, surgical, or diagnostic procedure performed by any physician licensed under chapter 458, osteopath licensed under chapter 459, chiropractor licensed under chapter 460, podiatrist licensed under chapter 461, or dentist licensed under chapter 466, unless the agreement or promise upon which such action shall be brought, or some note or memorandum thereof shall be in writing and signed by the party to be charged therewith or by some other person by him thereunto lawfully authorized.

**History.**—s. 10, Nov. 15, 1828; RS 1995; GS 2517; RGS 3872; CGL 5779; s. 10, ch. 75-9.

**725.03 Newspaper subscription.**—No person shall be liable to pay for any newspaper, periodical or other like matter, unless he shall subscribe for or order the same in writing.

**History.**—s. 1, ch. 379, 1851; RS 1997; GS 2519; RGS 3874; CGL 5781.

**725.04 Voluntary payment; pleading.**—When a suit is instituted by a party to a contract to recover a payment made pursuant to the contract and by the terms of the contract there was no enforceable obli-

gation to make the payment or the making of the payment was excused, the defense of voluntary payment may not be interposed by the person receiving payment to defeat recovery of the payment.

**History.**—ss. 1, 2, ch. 21902, 1943; s. 1, ch. 29737, 1955; s. 41, ch. 67-254.  
**Note.**—Former s. 52.24.

**725.05 Satisfaction for less than amount due.**—When the amount of any debt or obligation is liquidated, the parties may satisfy the debt by a written instrument other than by endorsement on a check for less than the full amount due.

**History.**—s. 1, ch. 71-94.

**725.06 Construction contracts; limitation on indemnification.**—Any portion of any agreement or contract for, or in connection with, any construction, alteration, repair, or demolition of a building, structure, appurtenance, or appliance, including moving and excavating connected with it, or any guarantee of, or in connection with, any of them, between an owner of real property and an architect, engineer, general contractor, subcontractor, sub-subcontractor, or materialman, or between any combination thereof, wherein any party referred to herein obtains indemnification from liability for damages to persons or property caused in whole or in part by any act, omission, or default of that party arising from the contract or its performance shall be void and unenforceable unless:

(1) The contract contains a monetary limitation on the extent of the indemnification and shall be a part of the project specifications or bid documents, if any, or

(2) The person indemnified by the contract gives a specific consideration to the indemnitor for the indemnification that shall be provided for in his contract and section of the project specifications or bid documents, if any.

**History.**—s. 1, ch. 72-52.  
**Note.**—Former s. 768.085.

**725.07 Discrimination on basis of sex, marital status, or race forbidden.**—

(1) No person, as defined in s. 1.01(3) shall discriminate against any person based on sex, marital status, or race in the areas of loaning money, granting credit, or providing equal pay for equal services performed.

(2) Any violation of this section may be brought in the courts of this state by the individual upon



whom the discrimination has been perpetrated in a civil action, and said individual shall be entitled to collect, not only compensatory damages, but, in addi-

tion thereto, punitive damages and reasonable attorney fees for a violation of this section.

**History.**—ss. 1, 2, ch. 73-251.

## CHAPTER 726

## FRAUDULENT CONVEYANCES, SALES, AND LOANS

- 726.01 Fraudulent conveyances void.  
 726.07 Fraudulent conveyance void against subsequent purchasers.  
 726.08 Conveyances with power of revocation void against subsequent purchasers.  
 726.09 Fraudulent loans void.  
 726.10 Watches, used; sales regulated.

**726.01 Fraudulent conveyances void.**—Every feoffment, gift, grant, alienation, bargain, sale, conveyance, transfer and assignment of lands, tenements, hereditaments, and of goods and chattels, or any of them, or any lease, rent, use, common or other profit, benefit or charge whatever out of lands, tenements, hereditaments or goods and chattels, or any of them, by writing or otherwise, and every bond, note, contract, suit, judgment and execution which shall at any time hereafter be had, made or executed, contrived or devised of fraud, covin, collusion or guile, to the end, purpose or intent to delay, hinder or defraud creditors or others of their just and lawful actions, suits, debts, accounts, damages, demands, penalties or forfeitures, shall be from henceforth as against the person or persons, or bodies politic or corporate, his, her or their successors, executors, administrators and assigns, and every one of them so intended to be delayed, hindered or defrauded, deemed, held, adjudged and taken to be utterly void, frustrate and of none effect, any pretense, color, feigned consideration, expressing of use or any other matter or thing to the contrary notwithstanding; provided, that this section, or anything therein contained, shall not extend to any estate or interest in lands, tenements, hereditaments, leases, rents, uses, commons, profits, goods or chattels which shall be had, made, conveyed or assured if such estate shall be, upon good consideration and bona fide, lawfully conveyed or assured to any person or persons, or body politic or corporate, not having at the time of such conveyance or assurance to them made any manner of notice or knowledge of such covin, fraud or collusion as aforesaid, anything in this section to the contrary notwithstanding.

**History.**—s. 1, Jan. 28, 1823; RS 1991; GS 2513; RGS 3864; CGL 5771; s. 7, ch. 22858, 1945.

**726.07 Fraudulent conveyance void against subsequent purchasers.**—Every feoffment, deed, conveyance, mortgage, grant, charge, lease, transfer, assignment, estate, encumbrance, interest, and limitation of use or uses of, in or out of any lands, tenements or other hereditaments whatsoever, which shall at any time hereafter be had, made, executed or contrived for the intent and purpose of defrauding and deceiving such person or persons, bodies politic or corporate, as shall afterward purchase the same lands, tenements and hereditaments, or any part thereof, or any estate, interest, rent, property, right or commodity, in, to or out of the same, or any part thereof, so formerly conveyed, granted, leased, charged, transferred, assigned, encumbered or limited in use, shall be deemed, adjudged, taken and held as against the person or persons, bodies politic or

corporate, their heirs, successors, executors, administrators and assigns, and against all and every person and persons lawfully having or claiming by, from, through or under them, or any of them who shall have so purchased for money or other good consideration the same lands, tenements or hereditaments, or any part thereof, or any estate, right, interest, profit, benefit or commodity, in, to or out of the same, to be utterly void, frustrate and of none effect, any pretense, feigned consideration or expressing of use or uses to the contrary notwithstanding; provided, that nothing in this section contained shall extend or be construed to impeach, make void or frustrate any conveyance, assignment or lease, assurance, grant, charge, lease, estate, interest or limitation, or use or uses of, in, to or out of any lands, tenements or hereditaments, which shall be made upon and for good consideration and bona fide, to any person or persons, bodies politic or corporate, anything in this section to the contrary notwithstanding.

**History.**—s. 2, Jan. 28, 1823; RS 1992; GS 2514; RGS 3869; CGL 5776.

**726.08 Conveyances with power of revocation void against subsequent purchasers.**—If any person or persons shall make any conveyance, gift, grant, demise, charge, limitation of use or uses, or assurance of, in or out of any lands, tenements or hereditaments, with any clause, provision, article or condition of revocation, determination or alteration at his, her or their will or pleasure, of such conveyance, gift, assurance, grant, demise, charge, limitation of use or uses contained in the same, or in any other writing whatever of, in or out of the said lands, tenements or hereditaments, or any part and parcel of them, and after such conveyance, grant, gift, demise, charge, limitation of uses or assurance so made or had, shall or do bargain, sell, demise, grant, convey, transfer or charge the same lands, tenements or hereditaments, or any part or parcel thereof, or any estate, right or interest in the same to any other person or persons, bodies politic or corporate, for money or other good consideration (the said first conveyance, assurance, gift, grant, demise, charge or limitation not being revoked, made void or altered according to the power and authority reserved or expressed in and by the said first conveyance or other writing), then the said former conveyance, assurance, grant, demise, charge or limitations, as touching the said lands, tenements and hereditaments and estate, right or interest in the same so afterward bargained, sold, granted, conveyed, demised, transferred or charged, as against the said bargainees, vendees, grantees, lessees and every of them, their heirs, successors, executors, administrators and assigns, and as against all and every person and persons who shall or may lawfully claim by, through, from or under them, or any of them, shall be deemed, taken and adjudged to be void and of none effect.

**History.**—s. 3, Jan. 28, 1823; RS 1993; GS 2515; RGS 3870; CGL 5777.

**726.09 Fraudulent loans void.**—When any loan of goods and chattels shall be pretended to have been made to any person with whom or those claiming under him, possession shall have remained for the space of 2 years without demand and pursued by due process of law on the part of the pretended lender, or where any reservation or limitation shall be pretended to have been made of a use or property by way of condition, reversion, remainder or otherwise in goods and chattels, and the possession thereof shall have remained in another as aforesaid, the same shall be taken, as to the creditors and purchasers of the persons aforesaid so remaining in possession, to be fraudulent within this chapter, and the absolute property shall be with the possession, unless such loan, reservation or limitation of use or property were declared by will or deed in writing proved and recorded.

**History.**—s. 4, Jan. 28, 1823; s. 1, ch. 872, 1859; RS 1994; GS 2516; RGS 3871; CGL 5778.

**726.10 Watches, used; sales regulated.**—

(1) The purpose of this law is to identify all watches other than new, with a label or designation of "used" in order to safeguard the public from being misled in purchasing used, rebuilt or reconditioned watches as new.

(2) Any person, firm, partnership, association or corporation engaged in the business of buying or selling watches, or any agent or servant thereof, who shall sell or exchange, or offer for sale or exchange, expose for sale or exchange, possess with the intent to sell or exchange, or display with the intent to sell or exchange any used watch, shall affix and keep affixed to the same a tag with the word "used" clearly and legibly written or printed thereon, and the said tag shall be so placed that the word "used" shall be in plain sight at all times.

(3) Any person, firm, partnership, association or corporation engaged in the business of buying or selling watches, or any agent or servant thereof, who shall sell a used watch or in any other way pass title thereto shall deliver to the vendee a written invoice bearing the words "used watch" in bold letters larger than any of the other written matter upon said invoice. Said invoice shall further set forth the name and address of the vendor, the name and address of the vendee, the date of the sale, the name of the watch or its maker, and the serial numbers, if any, and any other distinguishing numbers or identification marks upon its case and movement. If the serial numbers or other distinguishing numbers or identification marks shall have been erased, defaced, removed, altered or covered, said invoice shall so state.

The vendor shall keep on file a duplicate of said invoice for at least 2 years from the date of the sale thereof, which shall be open to inspection during all business hours by the sheriff or any prosecuting officer of the county in which the vendor is engaged in business.

(4) Any person, firm, partnership, association or corporation, or any agent or servant thereof, who may advertise or display in any manner a used watch for sale or exchange shall state clearly in such advertisement or display that said watch is a used watch.

(5) A watch shall be deemed to be used if:

(a) It as a whole or the case thereof or the movement thereof has been previously sold to or acquired by any person who bought or acquired the same for his use or the use of another, but not for resale; provided, however, that a watch which has been so sold or acquired and is thereafter returned either through an exchange or for credit to the original individual, firm, partnership, association or corporation who sold or passed title to such watch within 10 days after the sale or acquisition thereof, shall not be deemed to be a used watch for the purpose of this section, if such vendor shall keep a written or printed record setting forth the name of the purchaser thereof, the date of the sale or transfer thereof and the serial number, if any, on the case and the movement, and any other distinguishing numbers or identification marks, which said record shall be kept for at least 2 years from the date of such sale or transfer and shall be open for inspection during all business hours by the sheriff or any prosecuting officer of the county in which such vendor is engaged in business; or,

(b) Its case serial numbers or movement numbers or other distinguishing numbers or identification marks shall be erased, defaced, removed, altered or covered; or,

(c) Its movement is more than 5 years old and has been repaired by any person or persons, including the vendor. Cleaning and oiling a watch movement or recasing the movement in a new case shall not be deemed a watch repair for the purpose of this section.

(6) Any person, firm, partnership, association or corporation, or any agent or servant thereof, who shall violate any of the provisions of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—ss. 1-6, ch. 22040, 1943; s. 689, ch. 71-136.



## CHAPTER 727

## GENERAL ASSIGNMENTS

- 727.01 To be in writing and to contain no preferences.
- 727.02 Oath of assignor.
- 727.03 Record of assignment and oath.
- 727.04 Qualifications of assignee.
- 727.05 Notice of assignment.
- 727.06 Disposition of property.
- 727.07 Semiannual statements.
- 727.08 Application for discharge of assignee.

**727.01 To be in writing and to contain no preferences.**—No assignment made for the benefit of creditors shall be valid in this state, except the same shall be made in writing and shall provide for an equal distribution of all the assignor's real and personal property, except such as is exempted by law from forced sale, among the several creditors of the said assignor in equal proportion to their respective demands.

*History.*—s. 1, ch. 3891, 1889; RS 2307; GS 2926; RGS 4666; CGL 6752.

**727.02 Oath of assignor.**—The said assignor shall make and subscribe an oath in writing before any officer authorized to administer oaths in the county in which he lives and does business, or of the county or counties wherein is situated the property assigned, not more than 10 days after the assignment, that he has placed or assigned, and that the true intention of his assignment was to place in the hands of his assignee all of his property of every description, except such as is exempt by law from forced sale, to be divided among the creditors in proportion to their respective demands.

*History.*—s. 2, ch. 3891, 1889; RS 2308; GS 2927; RGS 4667; CGL 6753.

**727.03 Record of assignment and oath.**—Both the said deed of assignment and oath of assignor shall be recorded in the office or offices of the clerk or clerks of the county or counties in which the property assigned is situated.

*History.*—s. 3, ch. 3891, 1889; RS 2309; GS 2928; RGS 4668; CGL 6754.

**727.04 Qualifications of assignee.**—No one shall be selected and appointed as assignee by the assignor, in such assignment, who does not give bond to be approved by the clerk of the circuit court of the county wherein the assignor lives or does business, or of the county wherein is situated the property assigned, payable to the governor of Florida, in double the value of the property assigned, conditioned for the faithful discharge of the duties devolved on him as such assignee, said bond to be filed in the office aforesaid, immediately upon the assignee's

taking possession of the assigned property.

*History.*—s. 4, ch. 3891, 1889; RS 2310; GS 2929; RGS 4669; CGL 6755.

**727.05 Notice of assignment.**—Said assignee immediately upon taking possession of the assigned property shall give notice by publication in a newspaper, published in the county where the assigned property is situated or wherein a portion of the same is, once a week for 4 consecutive weeks, to all the creditors of the assignor, of the fact of the assignment, and calling upon said creditors to file with him within 60 days, if such creditors reside in the state, or if beyond the limits of the state, within 4 months, sworn statements of their claims against said assignor, and he shall send by mail a copy of the newspaper containing said notice to each of the said creditors, as far as he may know them.

*History.*—s. 6, ch. 3891, 1889; RS 2311; GS 2930; RGS 4670; CGL 6756.

**727.06 Disposition of property.**—The said assignee shall, as soon as the foregoing provisions have been complied with, proceed to dispose of all the property mentioned in the deed of assignment to him, to the best interest of all the parties concerned, either at public or private sale, as to him may seem best, and to collect and to recover by law, or otherwise, all debts due the assignor in the same manner as said assignor might or could do in his own right if such assignment had not been made, and for this purpose said assignee may employ an attorney to prosecute such claims.

*History.*—s. 7, ch. 3891, 1889; RS 2312; GS 2931; RGS 4671; CGL 6757.

**727.07 Semiannual statements.**—Semiannually, as long as shall be necessary after his appointment, said assignee shall file his sworn statement in the office of the clerk of the circuit court, of all his doings and financial transactions as said assignee.

*History.*—s. 8, ch. 3891, 1889; RS 2313; GS 2932; RGS 4672; CGL 6758.

**727.08 Application for discharge of assignee.**—After the final statement of the assignee of all the matters pertaining to his position, he may, after publication for 30 days in a newspaper in the county where he published his notice mentioned in s. 727.05, apply by petition to the judge of the circuit court of said circuit for his letters of discharge as said assignee, and if the said circuit judge shall be satisfied that the said assignee has complied with his duties as such assignee, he shall then grant him such letters as prayed for.

*History.*—s. 9, ch. 3891, 1889; RS 2314; GS 2933; RGS 4673; CGL 6759.

# TITLE XLII

## ESTATES AND TRUSTS

### CHAPTER 731

#### PROBATE CODE: GENERAL PROVISIONS

##### PART I SHORT TITLE, CONSTRUCTION (ss. 731.005-731.111)

##### PART II DEFINITIONS (s. 731.201)

##### PART III NOTICE AND REPRESENTATION (ss. 731.301-731.303)

### PART I

#### SHORT TITLE, CONSTRUCTION

- 731.005 Short title.
- 731.011 Determination of substantive rights; procedures.
- 731.102 Construction against implied repeal.
- 731.103 Evidence as to death or status.
- 731.104 Verification of documents.
- 731.105 In rem proceeding.
- 731.106 Assets of nondomiciliaries.
- 731.107 Adversary proceedings.
- 731.109 Seal of the court.
- 731.110 Caveat; proceedings.
- 731.111 Notice to creditors.

**731.005 Short title.**—Chapters 731-735 shall be known and may be cited as the Florida Probate Code and herein referred to as "the code" in this act.

**History.**—s. 1, ch. 74-106; s. 1, ch. 75-220.

**731.011 Determination of substantive rights; procedures.**—The Florida Probate Code shall become effective on January 1, 1976. The substantive rights of all persons that have vested prior to January 1, 1976, shall be determined as provided in former chapters 731-737 and chapters 744-746 as they exist prior to January 1, 1976. The procedures for the enforcement of substantive rights that have vested before January 1, 1976, shall be as provided in this code.

**History.**—s. 4, ch. 74-106; ss. 2, 113, ch. 75-220.

**731.102 Construction against implied repeal.**—This code is intended as unified coverage of its subject matter. No part of it shall be impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

**History.**—s. 1, ch. 74-106; s. 2, ch. 75-220.

**731.103 Evidence as to death or status.**—In proceedings under this code, the rules of evidence in civil actions are applicable unless specifically changed by the code. The following additional rules relating to determination of death and status are applicable:

(1) An authenticated copy of a death certificate issued by an official or agency of the place where the death purportedly occurred is prima facie proof of the fact, place, date, and time of death and the identity of the decedent.

(2) A copy of any record or report of a governmental agency, domestic or foreign, that a person is alive, missing, detained, or, from the facts related, presumed dead is prima facie evidence of the status and of the dates, circumstances, and places disclosed by the record or report.

(3) A person who is absent from the place of his last known domicile for a continuous period of 5 years and whose absence is not satisfactorily explained after diligent search and inquiry is presumed to be dead. His death is presumed to have occurred at the end of the period unless there is evidence establishing that death occurred earlier.

**History.**—s. 1, ch. 74-106; s. 2, ch. 75-220.

**Note.**—Created from former s. 734.34.

**731.104 Verification of documents.**—When verification of a document is required in this code or by rule, the document filed shall include an oath or affirmation or the following statement: "Under penalties of perjury, I declare that I have read the foregoing, and the facts alleged are true, to the best of my knowledge and belief." Any person who shall willfully include a false statement in the document shall be guilty of perjury and upon conviction shall be punished accordingly.

**History.**—s. 1, ch. 74-106; s. 2, ch. 75-220.

**731.105 In rem proceeding.**—Probate proceedings are in rem proceedings.

**History.**—s. 3, ch. 75-220.

**731.106 Assets of nondomiciliaries.—**

(1) For purposes of aiding the determination concerning location of assets that may be relevant in cases involving nondomiciliaries, a debt in favor of a nondomiciliary, other than one evidenced by investment or commercial paper or other instrument, is located in the county where the debtor resides or, if the debtor is a person other than an individual, at the place where the debtor has its principal office. Commercial paper, investment paper, and other instruments are located where the instrument is at the time of death.

(2) When a nonresident decedent who is a citizen of the United States or a citizen or subject of a foreign country provides in his will that the testamentary disposition of his tangible or intangible personal property having a situs within this state, or of his real property in this state, shall be construed and regulated by the laws of this state, the validity and effect of the dispositions shall be determined by Florida law. The court may, and in the case of a decedent who was at the time of his death a resident of a foreign country the court shall, direct the personal representative appointed in this state to make distribution directly to those designated by the decedent's will as beneficiaries of the tangible or intangible property or to the persons entitled to receive the decedent's personal estate under the laws of the decedent's domicile, as the case may be.

History.—s. 3, ch. 75-220; s. 1, ch. 77-174.

**731.107 Adversary proceedings.**—The rules of civil procedure shall be applied in any adversary proceeding in probate.

History.—s. 3, ch. 75-220.

**731.109 Seal of the court.**—For the purposes of this code, the seal of the clerk of the circuit court is the seal of the court.

History.—s. 3, ch. 75-220.

**731.110 Caveat; proceedings.—**

(1) If any creditor of the estate of a decedent is apprehensive that an estate, either testate or intestate, will be administered without his knowledge, or if any person other than a creditor is apprehensive that an estate may be administered, or that a will may be admitted to probate, without his knowledge, he may file a caveat with the court.

(2) No caveat shall be effective unless it contains a statement of the interest of the caveator in the estate, the name and specific residence address of the caveator, and, if the caveator, other than a state agency, is a nonresident of the county, the additional name and specific residence address of some person residing in the county, designated as the agent of the caveator, upon whom service may be made.

History.—s. 3, ch. 75-220; s. 2, ch. 77-87.

**731.111 Notice to creditors.—**

(1) When a notice to creditors is required, a personal representative shall publish a notice once a week for 2 consecutive weeks, two publications being sufficient, in a newspaper published in the county where the estate is administered or, if there is no newspaper published in the county, in a newspaper of general circulation in that county. Proof of publi-

cation shall be filed. The notice shall notify all persons having claims or demands against the estate to file their claims with the clerk within 3 calendar months from the time of the first publication of the notice.

(2) Notwithstanding the provisions of subsection (1), the Department of Revenue shall not be barred from filing a claim against the estate of a decedent for taxes due under chapter 199 after the expiration of the 3-month period, provided the department files its claim within 30 days after the filing of the inventory by the personal representative.

History.—s. 3, ch. 75-220; s. 1, ch. 79-68.

**PART II****DEFINITIONS****731.201 General definitions.**

**731.201 General definitions.**—Subject to additional definitions in subsequent chapters that are applicable to specific chapters or parts, and unless the context otherwise requires, in this code and chapters 737, 738, and 744:

(1) "Authenticated," when referring to copies of documents or judicial proceedings required to be filed with the court under this code, shall mean a certified copy or a copy authenticated according to s. 1733 or s. 1741, Title 28, U.S.C.

(2) "Beneficiary" means heir at law, in an intestate estate; devisee, in a testate estate; and the owner of a beneficial interest, in a trust. The term does not apply to an heir at law, devisee, or owner of a beneficial interest in a trust after his interest in the estate or trust has been satisfied.

(3) "Child" includes a person entitled to take as a child under this code by intestate succession from the parent whose relationship is involved, and excludes any person who is only a stepchild, a foster child, a grandchild, or a more remote descendant.

(4) "Claims" means liabilities of the decedent, whether arising in contract, tort, or otherwise, and funeral expenses. The term does not include expenses of administration or estate, inheritance, succession, or other death taxes.

(5) "Clerk" means the clerk or deputy clerk of the court.

(6) "Court" means the circuit court.

(7) "Curator" means a person appointed by the court to take charge of the estate of a decedent until letters are issued.

(8) "Devise," when used as a noun, means a testamentary disposition of real or personal property and, when used as a verb, means to dispose of real or personal property by will. The term includes "gift," "give," "bequeath," "bequest," and "legacy."

(9) "Devisee" means a person designated in a will to receive a devise. In the case of a devise to an existing trust or trustee, or to a trustee of a trust described by will, the trust or trustee is the devisee. The beneficiaries of the trust are not devisees.

(10) "Distributee" means a person who has received estate property from a personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increments to them remaining



in his hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee. For purposes of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

(11) "Domicile" shall be a person's usual place of dwelling and shall be synonymous with "residence."

(12) "Estate" means property of a decedent that is the subject of administration.

(13) "Exempt property" means the property of a decedent's estate which is described in s. 732.402.

(14) "File" means to file with the court or clerk.

(15) "Foreign personal representative" means a personal representative of another state or a foreign country.

(16) "Formal notice" means notice under subsection 731.301(1).

(17) "Grantor" means one who creates or adds to a trust and includes "settlor" or "trustor" and a testator who creates or adds to a trust.

(18) "Heirs" or "heirs at law" means those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.

(19) "Incompetent" means a minor or a person adjudicated incompetent.

(20) "Informal notice" or "notice" means notice under subsection 731.301(2).

(21) "Interested person" means any person who may reasonably be expected to be affected by the outcome of the particular proceeding involved. In any proceeding affecting the estate or the rights of a beneficiary in the estate, the personal representative of the estate shall be deemed to be an interested person. The term does not include an heir at law or a devisee who has received his distribution. The meaning, as it relates to particular persons, may vary from time to time and must be determined according to the particular purpose of, and matter involved in, any proceedings.

(22) "Letters" means authority granted by the court to the personal representative to act on behalf of the estate of the decedent and refers to what has been known as letters testamentary and letters of administration. All letters shall be designated "letters of administration."

(23) "Other state" means any state of the United States other than Florida and includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

(24) "Parent" excludes any person who is only a stepparent, foster parent, or grandparent.

(25) "Personal representative" means the fiduciary appointed by the court to administer the estate and refers to what has been known as an administrator, administrator cum testamento annexo, administrator de bonis non, ancillary administrator, ancillary executor, or executor.

(26) "Petition" means a written request to the court for an order.

(27) "Probate of will" means all steps necessary to establish the validity of a will and to admit a will to probate.

(28) "Property" means both real and personal

property or any interest in it and anything that may be the subject of ownership.

(29) "Residence" means a person's usual place of dwelling and is synonymous with "domicile."

(30) "Security" means a security as defined in s. 517.02(1).

(31) "Security interest" means a security interest as defined in s. 671.201.

(32) "Trust" means an express trust, private or charitable, with additions to it, wherever and however created. It also includes a trust created or determined by a judgment or decree under which the trust is to be administered in the manner of an express trust. "Trust" excludes other constructive trusts, and it excludes resulting trusts; conservatorships; personal representatives; custodial arrangements pursuant to the Florida Gifts to Minors Act; business trusts providing for certificates to be issued to beneficiaries; common trust funds; land trusts under s. 689.05; trusts created by the form of the account or by the deposit agreement at a financial institution; voting trusts; security arrangements; liquidation trusts; trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind; and any arrangement under which a person is nominee or escrowee for another.

(33) "Trustee" includes an original, additional, surviving, or successor trustee, whether or not appointed or confirmed by court.

(34) "Will" means an instrument, including a codicil, executed by a person in the manner prescribed by this code, which disposes of his property on or after his death and includes an instrument which merely appoints a personal representative or revokes or revises another will.

**History.**—s. 1, ch. 74-106; s. 4, ch. 75-220; s. 1, ch. 77-174.  
**Note.**—Created from former s. 731.03.

## PART III

### NOTICE AND REPRESENTATION

731.301 Notice; method and time; proof.

731.302 Waiver and consent by interested person.

731.303 Representation.

#### 731.301 Notice; method and time; proof.—

##### (1) FORMAL NOTICE.—

(a) When formal notice of a petition or other proceeding is required, the petitioner shall serve a copy of the petition to any interested person or his attorney, if he has appeared by attorney or requested that notice be sent to his attorney. The petition shall be served:

1. By any form of mail requiring a signed receipt, as follows:

a. On his attorney of record, if any, or to the post office address given in his demand for notice, if any;

b. On an individual, other than an incompetent, by mailing a copy to his dwelling house or usual place of abode or to the place where he regularly conducts his business or profession;

c. On an incompetent person, by mailing a copy to the incompetent, to the person having custody of the incompetent, and to any legal guardian of the incompetent, at their respective dwelling houses,

usual places of abode, or regular places of business or profession;

d. On a corporation, by mailing a copy to the corporation at its last known address; or

2. As provided in chapter 48; or

3. In the circumstances provided in chapter 49, in the manner provided therein.

(b) If there is no answer served on the petitioner within 20 days from the service of the petition, the petition shall be considered ex parte. If an answer is served, a hearing shall be set and reasonable notice given.

(c) If service is made under subparagraph 2. or subparagraph 3., proof shall be made as provided in chapter 48 or chapter 49. If service is made by mail under subparagraph 1., proof shall be by a verified statement of the person mailing service who shall attach the signed receipt or other evidence satisfactory to the court that delivery was made to, or refused by, the addressee or his agent.

(d) Formal notice shall be sufficient to acquire jurisdiction over the person receiving formal notice to the extent of the person's interest in the estate.

(2) **INFORMAL NOTICE.**—

(a) When informal notice of a petition or other proceeding is required or permitted, it shall be served on the person or his attorney as provided in the Rules of Civil Procedure relating to service of pleadings.

(b) Proof of service shall be made by filing an attorney's certificate of service or, if filed by a person who is not a member of The Florida Bar, by a verified statement.

(3) **EFFECT OF NOTICE.**—Persons given notice of any petition shall be bound by all orders entered on the petition.

(4) **INFORMAL NOTICE REQUIRED.**—Unless otherwise specifically provided, informal notice of every petition affecting property rights or interests must be given to interested persons.

**History.**—s. 1, ch. 74-106; s. 5, ch. 75-220; s. 3, ch. 77-87; s. 1, ch. 77-174.  
**Note.**—Created from former s. 732.28.

**731.302 Waiver and consent by interested person.**—Unless this code specifically provides otherwise, an interested person, including a guardian ad litem, administrator ad litem, guardian of the property, personal representative, trustee, or other fiduciary, or a sole holder or all coholders of a power of revocation or a power of appointment, may waive any right or notice, and may consent to any action or proceeding which may be required or permitted by this code.

**History.**—s. 1, ch. 74-106; s. 6, ch. 75-220; s. 4, ch. 77-87; s. 267, ch. 79-400.  
**Note.**—Created from former s. 732.28.

**731.303 Representation.**—In proceedings in-

volving estates of decedents or trusts, the following apply:

(1) Interests to be affected shall be described in pleadings that give information by name or class, by reference to the instrument creating the interests, or in another appropriate manner.

(2) Persons are bound by orders binding others in the following cases:

(a) Orders binding the sole holder or all coholders of a power of revocation or a general power of appointment, including one in the form of a power of amendment, bind other persons to the extent that their interests (as objects, takers in default, or otherwise) are subject to the power.

(b) To the extent there is no conflict of interest between them or among the persons represented:

1. Orders binding a guardian of the property bind the ward whose estate he controls.

2. Orders binding a trustee bind beneficiaries of the trust in proceedings to probate a will, in establishing or adding to a trust, in reviewing the acts or accounts of a prior fiduciary, and in proceedings involving creditors or other third parties.

3. Orders binding a personal representative bind persons interested in the undistributed assets of a decedent's estate, in actions or proceedings by or against the estate.

(c) An unborn or unascertained person who is not otherwise represented is bound by an order to the extent that his interest is represented by another party having the same or greater quality of interest in the proceeding.

(3) Orders binding a guardian of the person shall not bind the ward.

(4) Notice is required as follows:

(a) Notice as prescribed by s. 731.301 shall be given to every interested person, or to one who can bind the interested person as described in paragraphs (2)(a) or (2)(b). Notice may be given both to the interested person and to another who can bind him.

(b) Notice is given to unborn or unascertained persons who are not represented pursuant to paragraphs (2)(a) or (2)(b) by giving notice to all known persons whose interests in the proceedings are the same as, or of a greater quality than, those of the unborn or unascertained persons.

(5) If the court determines that representation of the interest would otherwise be inadequate, the court may, at any time, appoint a guardian ad litem to represent the interests of an incompetent person, an unborn or unascertained person, or a person whose identity or address is unknown. If not precluded by conflict of interest, a guardian ad litem may be appointed to represent several persons or interests.

**History.**—s. 1, ch. 74-106; s. 7, ch. 75-220; s. 5, ch. 77-87; s. 1, ch. 77-174.

## CHAPTER 732

## PROBATE CODE: INTESTATE SUCCESSION AND WILLS

## PART I INTESTATE SUCCESSION (ss. 732.101-732.111)

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(ss. 732.201-732.215)PART III PRETERMITTED SPOUSE AND CHILDREN  
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## PART I

## INTESTATE SUCCESSION

- 732.101 Intestate estate.
- 732.102 Share of spouse.
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- 732.108 Adopted persons and persons born out of wedlock.
- 732.109 Debts to decedent.
- 732.1101 Aliens.
- 732.111 Dower and curtesy abolished.

**732.101 Intestate estate.—**

(1) Any part of the estate of a decedent not effectively disposed of by will passes to the decedent's heirs as prescribed in the following sections of this code.

(2) The decedent's death is the event that vests the heirs' right to intestate property.

*History.*—s. 1, ch. 74-106; s. 8, ch. 75-220.

*Note.*—Created from former s. 731.23.

**732.102 Share of spouse.—**

(1) The intestate share of the surviving spouse is:

(a) If there is no surviving lineal descendant of the decedent, the entire intestate estate.

(b) If there are surviving lineal descendants of the decedent, all of whom are lineal descendants of the surviving spouse also, the first \$20,000 of the intestate estate, plus one-half of the balance of the intestate estate. Property allocated hereunder to the surviving spouse to satisfy the \$20,000 shall be val-

ued at the fair market value on the date of the decedent's death.

(c) If there are surviving lineal descendants, one or more of whom are not lineal descendants of the surviving spouse, one-half of the intestate estate.

(2) The court shall allot the property to which the spouse is entitled, treating all beneficiaries equitably.

*History.*—s. 1, ch. 74-106; s. 8, ch. 75-220.

*Note.*—Created from former s. 731.23.

**732.103 Share of other heirs.**—The part of the intestate estate not passing to the surviving spouse under s. 732.102, or the entire intestate estate if there is no surviving spouse, descends as follows:

(1) To the lineal descendants of the decedent.

(2) If there is no lineal descendant, to the decedent's father and mother equally, or to the survivor of them.

(3) If there is none of the foregoing, to the decedent's brothers and sisters and the descendants of deceased brothers and sisters.

(4) If there is none of the foregoing, the estate shall be divided, one-half of which shall go to the decedent's paternal, and the other half to the decedent's maternal, kindred in the following order:

(a) To the grandfather and grandmother equally, or to the survivor of them.

(b) If there is no grandfather or grandmother, to uncles and aunts and descendants of deceased uncles and aunts of the decedent.

(c) If there is no paternal kindred or if there is no maternal kindred, the estate shall go to such of the kindred as shall survive in the order aforesaid.

(5) If there is no kindred of either part, the whole



of such property shall go to the kindred of the last deceased spouse of the decedent as if the deceased spouse had survived the decedent and then died intestate entitled to the estate.

**History.**—s. 1, ch. 74-106; s. 8, ch. 75-220; s. 1, ch. 77-174.  
**Note.**—Created from former s. 731.23.

**732.104 Inheritance per stirpes.**—Descent shall be per stirpes, whether to lineal descendants or to collateral heirs.

**History.**—s. 1, ch. 74-106; s. 9, ch. 75-220.  
**Note.**—Created from former s. 731.25.

**732.105 Halfblood.**—When property descends to the collateral kindred of the intestate and part of the collateral kindred are of the whole blood to the intestate and the other part of the halfblood, those of the halfblood shall inherit only half as much as those of the whole blood; but if all are of the halfblood they shall have whole parts.

**History.**—s. 1, ch. 74-106; s. 10, ch. 75-220.  
**Note.**—Created from former s. 731.24.

**732.106 Afterborn heirs.**—Heirs of the decedent conceived before his death, but born thereafter, inherit intestate property as if they had been born in the decedent's lifetime.

**History.**—s. 1, ch. 74-106; s. 10, ch. 75-220; s. 6, ch. 77-87.  
**Note.**—Created from former s. 731.11.

#### **732.107 Escheat.**—

(1) When a person leaving an estate dies without being survived by any person entitled to it, the property shall escheat to the state.

(2)(a) In this event, or when doubt exists about the existence of any person entitled to the estate, the personal representative shall institute a proceeding for the determination of beneficiaries, as provided in this code, within 1 year after letters have been issued to him, and notice shall be served on the Department of Legal Affairs. If the personal representative fails to institute the proceeding within the time fixed, it may be instituted by the Department of Legal Affairs.

(b) On or before January 15 of each year, each court shall furnish to the department a list of all estates being administered in which no person appears to be entitled to the property and the personal representative has not instituted a proceeding for the determination of beneficiaries.

(3) If the court determines that there is no person entitled to the estate and that the estate escheats, the property shall be sold and the proceeds paid to the Treasurer of the state and deposited by him in the State School Fund within a reasonable time to be fixed by the court.

(4) At any time within 10 years after the granting of letters, a person claiming to be entitled to the estate of the decedent may petition to reopen the administration and assert his rights to escheated property. If the claimant is entitled to any of the estate of the decedent, the court shall fix the amount to which he is entitled, and it shall be repaid to him with interest at the legal rate by the officials charged with the disbursement of state school funds. If no claim is asserted within the time fixed, the title of the state to the property and the proceeds shall become absolute.

(5) The Department of Legal Affairs shall represent the state in all proceedings concerning escheated estates.

(6) Except as herein provided, escheated estates shall be administered as other estates.

**History.**—s. 1, ch. 74-106; s. 10, ch. 75-220.  
**Note.**—Created from former s. 731.33.

#### **732.108 Adopted persons and persons born out of wedlock.**—

(1) For the purpose of intestate succession by or from an adopted person, the adopted person is a lineal descendant of the adopting parent and is one of the natural kindred of all members of the adopting parent's family, and he is not a lineal descendant of his natural parents, nor is he one of the kindred of any member of his natural parent's family or any prior adoptive parent's family, except that:

(a) Adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and the natural parent or the natural parent's family.

(b) Adoption of a child by a natural parent's spouse who married the natural parent after the death of the other natural parent has no effect on the relationship between the child and the family of the deceased natural parent.

(2) For the purpose of intestate succession in cases not covered by subsection (1), a person born out of wedlock is a lineal descendant of his mother and is one of the natural kindred of all members of the mother's family. The person is also a lineal descendant of his father and is one of the natural kindred of all members of the father's family, if:

(a) The natural parents participated in a marriage ceremony before or after the birth of the person born out of wedlock, even though the attempted marriage is void.

(b) The paternity of the father is established by an adjudication before or after the death of the father.

(c) The paternity of the father is acknowledged in writing by the father.

**History.**—s. 1, ch. 74-106; s. 11, ch. 75-220; s. 7, ch. 77-87; s. 1, ch. 77-174.  
**Note.**—Created from former ss. 731.29, 731.30.

**732.109 Debts to decedent.**—A debt owed to the decedent shall not be charged against the intestate share of any person except the debtor. If the debtor does not survive the decedent, the debt shall not be taken into account in computing the intestate share of the debtor's heirs.

**History.**—s. 1, ch. 74-106; s. 11, ch. 75-220.  
**Note.**—Created from former s. 736.01.

**732.1101 Aliens.**—No person is disqualified to take as an heir because he, or a person through whom he claims, is, or has been, an alien.

**History.**—s. 1, ch. 74-106; s. 113, ch. 75-220.  
**Note.**—Created from former s. 731.28.

**732.111 Dower and curtesy abolished.**—Dower and curtesy are abolished.

**History.**—s. 1, ch. 74-106; s. 113, ch. 75-220.

cf.—s. 732.213 Preexisting right to dower.

## PART II

### ELECTIVE SHARE OF SURVIVING SPOUSE

- 732.201 Right to elective share.
- 732.205 Elective share; restricted to Florida resident decedent.
- 732.206 Property entering into computation.
- 732.207 Amount of the elective share.
- 732.208 Interests in addition to elective share.
- 732.209 From what assets payable.
- 732.210 By whom exercisable.
- 732.211 Effect of exercise on testamentary or statutory disposition.
- 732.212 Time of election.
- 732.213 Preexisting right to dower.
- 732.214 Proceedings on the election.
- 732.215 Effect of elective share on taxes.

**732.201 Right to elective share.**—The surviving spouse of a person who dies domiciled in Florida shall have the right to a share of the estate of the deceased spouse as provided in this part, to be designated the elective share.

*History.*—s. 1, ch. 74-106; s. 13, ch. 75-220.  
*Note.*—Created from former s. 731.34.

**732.205 Elective share; restricted to Florida resident decedent.**—No elective share in Florida property of a decedent not domiciled in Florida shall exist.

*History.*—s. 15, ch. 75-220; s. 8, ch. 77-87.

**732.206 Property entering into computation.**—The elective share shall be computed by taking into account all property of the decedent wherever located that is subject to administration except real property not located in Florida.

*History.*—s. 15, ch. 75-220.

**732.207 Amount of the elective share.**—The elective share shall consist of an amount equal to 30 percent of the fair market value on the date of death of all assets referred to in s. 732.206, computed after deducting from the total value of the assets all valid claims against the estate paid or payable from the estate.

*History.*—s. 15, ch. 75-220.

**732.208 Interests in addition to elective share.**—The elective share shall be in addition to exempt property and allowances as provided in part IV.

*History.*—s. 15, ch. 75-220.

**732.209 From what assets payable.**—

(1) Unless otherwise provided in the will of the decedent, the elective share shall be paid from assets passing under the will which, but for the election, would have passed outright to the surviving spouse and then, to the extent such assets are insufficient, from assets in the order prescribed in s. 733.805.

(2) If property must otherwise be sold to provide the elective share, the person who would otherwise have been entitled to the property may pay the

amount assessed against the property interest to the personal representative and receive the property.

*History.*—s. 15, ch. 75-220.

**732.210 By whom exercisable.**—The right of election may be exercised:

- (1) By the surviving spouse.
- (2) By a guardian of the property of the surviving spouse. The court having jurisdiction of the probate proceeding shall determine the election as the best interests of the surviving spouse require.

*History.*—s. 15, ch. 75-220.

**732.211 Effect of exercise on testamentary or statutory disposition.**—If an election is filed, the remaining assets of the estate after payment of the elective share shall be distributed as though the surviving spouse had predeceased the decedent.

*History.*—s. 15, ch. 75-220; s. 1, ch. 77-174.

**732.212 Time of election.**—The election shall be filed within 4 months from the date of the first publication of notice of administration, but, if a proceeding occurs involving the construction, admission to probate, or validity of the will or on any other matter affecting the estate whereby the complete extent of the estate subject to the elective share may be in doubt, the surviving spouse shall have 40 days from the date of termination of all the proceedings in which to elect.

*History.*—s. 15, ch. 75-220.

**732.213 Preexisting right to dower.**—Whether or not her husband's estate is administered, dower of the widow of any man who died before October 1, 1973, shall be barred in any real property conveyed by her husband before his death and without her relinquishment of dower unless within 3 years after her husband's death she records with the clerk for the county where the real property is located an instrument executed by her describing the property in a manner sufficient to give constructive notice if contained in a recorded deed. The instrument shall name the record owner or owners of the property, state the date of the husband's death and his place of residence at the time of his death, and indicate that she has elected to take dower or that she may elect to do so. Nothing in this section shall extend the time for election, dispense with the necessity of filing an election in the court where the deceased husband's estate is being, or will be, administered, or dispense with the necessity of petitions for assignment of dower as formerly provided for in ss. 733.10 and 733.11. No dower shall be barred because of this section if the instrument was filed for record before January 1, 1973.

*History.*—s. 1, ch. 74-106; ss. 14, 15, ch. 75-220.

*Note.*—Created from former ss. 731.35 and 732.203.  
cf.—s. 732.111 Dower and curtesy abolished.

**732.214 Proceedings on the election.**—On petition of the personal representative or the surviving spouse and after notice and hearing, the court shall determine the amount of the elective share and order its payment in cash or in kind within a time certain from the assets of the estate subject to the elective share. No distribution shall be required until 6 months from the date of death, when no federal

estate tax return is required to be filed, or until the tax return is timely filed, when required. The order may provide for partial distributions. On petition of any interested party after notice, the court may suspend distribution of the elective share or any part of it until final settlement of the federal estate tax liability of the estate. Assets distributed in kind shall be distributed at fair market value on the date of distribution.

**History.**—s. 15, ch. 75-220.

**732.215 Effect of elective share on taxes.**—In any case in which the election of the elective share by the surviving spouse shall have the effect of increasing any estate, inheritance, or other death tax, the share of the surviving spouse shall bear the additional tax.

**History.**—s. 15, ch. 75-220.

### PART III

#### PRETERMITTED SPOUSE AND CHILDREN

732.301 Pretermitted spouse.

732.302 Pretermitted children.

**732.301 Pretermitted spouse.**—When a person marries after making a will and the spouse survives the testator, the surviving spouse shall receive a share in the estate of the testator equal in value to that which the surviving spouse would have received if the testator had died intestate, unless:

- (1) Provision has been made for, or waived by, the spouse by prenuptial or postnuptial agreement;
- (2) The spouse is provided for in the will; or
- (3) The will discloses an intention not to make provision for the spouse.

The share of the estate that is assigned to the pretermitted spouse shall be obtained in accordance with s. 733.805.

**History.**—s. 1, ch. 74-106; s. 16, ch. 75-220; s. 9, ch. 77-87.  
**Note.**—Created from former s. 731.10.

**732.302 Pretermitted children.**—When a testator omits to provide in his will for any of his children born or adopted after making the will and the child has not received a part of the testator's property equivalent to a child's part by way of advancement, the child shall receive a share of the estate equal in value to that he would have received if the testator had died intestate, unless:

- (1) It appears from the will that the omission was intentional; or
- (2) The testator had one or more children when the will was executed and devised substantially all his estate to the other parent of the pretermitted child.

The share of the estate that is assigned to the pretermitted child shall be obtained in accordance with s. 733.805.

**History.**—s. 1, ch. 74-106; s. 16, ch. 75-220.  
**Note.**—Created from former s. 731.11.

### PART IV

#### EXEMPT PROPERTY AND ALLOWANCES

732.401 Descent of homestead.

732.4015 Devise of homestead.

732.402 Exempt property.

732.403 Family allowance.

##### **732.401 Descent of homestead.**—

(1) If not devised as permitted by law and the Florida Constitution, the homestead shall descend in the same manner as other intestate property; but if the decedent is survived by a spouse and lineal descendants, the surviving spouse shall take a life estate in the homestead, with a vested remainder to the lineal descendants in being at the time of the decedent's death.

(2) If the decedent was domiciled in Florida and resided on real property that the decedent and the surviving spouse owned as tenants by the entirety, the real property shall not be homestead property.

**History.**—s. 1, ch. 74-106; s. 17, ch. 75-220.  
**Note.**—Created from former s. 731.27.

**732.4015 Devise of homestead.**—As provided by the Florida Constitution, the homestead shall not be subject to devise if the owner is survived by a spouse or minor child, except that the homestead may be devised to the owner's spouse if there is no minor child.

**History.**—s. 1, ch. 74-106; ss. 18, 30, ch. 75-220.  
cf.—s. 4, Art. X, State Constitution.

**732.402 Exempt property.**—In addition to the homestead property passing under the law and the State Constitution, and to the family allowance under s. 732.403, the surviving spouse of a decedent who was domiciled in Florida at the time of his death is entitled, subject to any perfected security interest, to automobiles and household furniture, furnishings, and appliances in the decedent's usual place of abode, up to a net value of \$5,000. In addition, the surviving spouse is entitled to personal effects of the decedent up to a net value of \$1,000, unless the personal effects are otherwise specifically disposed of by will. If there is no surviving spouse, minor children of the decedent are entitled jointly to the same exemptions. Rights to exempt property have priority over all claims against the estate other than a perfected security interest in any item of exempt property. These rights are in addition to any benefit or share passing to the surviving spouse or minor children by the will of the decedent, unless such will provides otherwise, or by intestate succession or elective share.

**History.**—s. 1, ch. 74-106; s. 19, ch. 75-220; s. 10, ch. 77-87; s. 1, ch. 77-174.  
**Note.**—Created from former s. 734.08.  
cf.—s. 222.16 Wages and unemployment compensation not subject to administration.

**732.403 Family allowance.**—In addition to homestead and exempt property, if the decedent was domiciled in Florida at the time of his death, the surviving spouse and the decedent's lineal heirs whom the decedent was obligated to support or who were in fact being supported by him are entitled to a reasonable allowance in money out of the estate for



their maintenance during administration. After notice and hearing, the court may order this allowance to be paid as a lump sum or in periodic installments. The allowance shall not exceed a total of \$6,000. It shall be paid to the surviving spouse, if living, for the use of the spouse and dependent lineal heirs. If the surviving spouse is not living, it shall be paid to the lineal heirs or to the persons having their care and custody. If any lineal heir is not living with the surviving spouse, the allowance may be made partly to the lineal heir or his guardian or other person having his care and custody and partly to the surviving spouse, as the needs of the dependent lineal heir and the surviving spouse appear. The family allowance shall have the priority established by s. 733.707. The family allowance is not chargeable against any benefit or share passing to the surviving spouse or to the dependent lineal heirs by intestate succession, elective share, or the will of the decedent, unless the will otherwise provides. The death of any person entitled to a family allowance terminates his right to the part of the allowance not paid. For purposes of this section, the term "lineal heir" or "lineal heirs" means lineal ascendants and lineal descendants of the decedent.

**History.**—s. 1, ch. 74-106; s. 19, ch. 75-220.  
**Note.**—Created from former s. 733.20.

## PART V WILLS

- 732.501 Who may make a will.
- 732.502 Execution of wills.
- 732.503 Self-proof of will.
- 732.504 Who may witness.
- 732.505 Revocation by writing.
- 732.506 Revocation by act.
- 732.507 Effect of subsequent marriage, birth, or dissolution of marriage.
- 732.508 Revival by revocation.
- 732.509 Revocation of codicil.
- 732.5105 Republication of wills by codicil.
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- 732.512 Incorporation by reference.
- 732.513 Devises to trustee.
- 732.514 Vesting of devises.
- 732.515 Separate writing identifying devises of tangible property.
- 732.5165 Effect of fraud, duress, mistake, and undue influence.
- 732.517 Penalty clause for contest.

**732.501 Who may make a will.**—Any person 18 or more years of age who is of sound mind may make a will.

**History.**—s. 1, ch. 74-106; s. 113, ch. 75-220.  
**Note.**—Created from former s. 731.04.

**732.502 Execution of wills.**—Every will must be in writing and executed as follows:

(1)(a) *Testator's signature.*—

1. The testator must sign the will at the end; or
2. The testator's name must be subscribed at the end of the will by some other person in the testator's presence and by his direction.

(b) *Witnesses.*—The testator's:

1. Signing, or
2. Acknowledgment:
  - a. That he has previously signed the will, or
  - b. That another person has subscribed the testator's name to it,

must be in the presence of at least two attesting witnesses.

(c) *Witnesses' signatures.*—The attesting witnesses must sign the will in the presence of the testator and in the presence of each other.

(2) Any will, other than a holographic or nuncupative will, executed by a nonresident of Florida, either before or after this law takes effect, is valid as a will in this state if valid under the laws of the state or country where the testator was at the time of execution. A will in the testator's handwriting that has been executed in accordance with subsection (1) shall not be considered a holographic will.

(3) No particular form of words is necessary to the validity of a will if it is executed with the formalities required by law.

(4) A codicil shall be executed with the same formalities as a will.

**History.**—s. 1, ch. 74-106; s. 21, ch. 75-220; s. 11, ch. 77-87.  
**Note.**—Created from former s. 731.07.

**732.503 Self-proof of will.**—A will or codicil executed in conformity with subsections 732.502(1) and (2) may be made self-proved at the time of its execution or at any subsequent date by the acknowledgment of it by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths and evidenced by the officer's certificate attached to or following the will, in substantially the following form:

State of .....

County of .....

We, ....., and ..... the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, having been sworn, declared to the undersigned officer that the testator, in the presence of witnesses, signed the instrument as his last will (codicil), that he (signed) (or directed another to sign for him), and that each of the witnesses, in the presence of the testator and in the presence of each other, signed the will as a witness.

.....(Testator).....

.....(Witness).....

.....(Witness).....

Subscribed and sworn to before me by ....., the testator, and by ..... and ....., the witnesses, on ....., 19.....

.....(Notary Public).....

Notary Seal

My Commission Expires: .....

**History.**—s. 1, ch. 74-106; s. 21, ch. 75-220; s. 12, ch. 77-87.  
**Note.**—Created from former s. 731.071.

**732.504 Who may witness.**—

- (1) Any person competent to be a witness may act as a witness to a will.
- (2) A will or codicil, or any part of either, is not

invalid because the will or codicil is signed by an interested witness.

**History.**—s. 1, ch. 74-106; s. 22, ch. 75-220; s. 1, ch. 77-174; s. 268, ch. 79-400.

**732.505 Revocation by writing.**—A will or codicil, or any part of either, is revoked:

(1) By a subsequent inconsistent will or codicil, even though the subsequent inconsistent will or codicil does not expressly revoke all previous wills or codicils, but the revocation extends only so far as the inconsistency exists.

(2) By a subsequent written will, codicil, or other writing declaring the revocation, if the same formalities required for the execution of wills are observed in the execution of the will, codicil, or other writing.

**History.**—s. 1, ch. 74-106; s. 23, ch. 75-220; s. 13, ch. 77-87; s. 269, ch. 79-400.

**Note.**—Created from former ss. 731.12, 731.13.

**732.506 Revocation by act.**—A will or codicil is revoked by the testator, or some other person in his presence and at his direction, by burning, tearing, canceling, defacing, obliterating, or destroying it with the intent, and for the purpose, of revocation.

**History.**—s. 1, ch. 74-106; s. 23, ch. 75-220.

**Note.**—Created from former s. 731.14.

**732.507 Effect of subsequent marriage, birth, or dissolution of marriage.**—

(1) Neither subsequent marriage nor subsequent marriage and birth or adoption of lineal descendants shall revoke the prior will of any person, but the pretermitted child or spouse shall inherit as set forth in ss. 732.301 and 732.302, regardless of the prior will.

(2) All wills made by husband and wife whose marriage has been subsequently dissolved or who become divorced shall become void by means of the dissolution of marriage or divorce as the will affects the surviving divorced spouse.

**History.**—s. 1, ch. 74-106; s. 113, ch. 75-220.

**Note.**—Created from former ss. 731.10, 731.101, 731.11.

**732.508 Revival by revocation.**—

(1) The revocation by the testator of a will that revokes a former will shall not revive the former will, even though the former will is in existence at the date of the revocation of the subsequent will.

(2) The revocation of a codicil to a will does not revoke the will, and, in the absence of evidence to the contrary, it shall be presumed that in revoking the codicil the testator intended to reinstate the provisions of a will or codicil that were changed or revoked by the revoked codicil, as if the revoked codicil had never been executed.

**History.**—s. 1, ch. 74-106; s. 25, ch. 75-220.

**Note.**—Created from former s. 731.15.

**732.509 Revocation of codicil.**—The revocation of a will revokes all codicils to that will.

**History.**—s. 1, ch. 74-106; s. 113, ch. 75-220.

**Note.**—Created from former s. 731.16.

**732.5105 Republication of wills by codicil.**—The execution of a codicil referring to a previous will has the effect of republishing the will as modified by the codicil.

**History.**—s. 1, ch. 74-106; s. 113, ch. 75-220.

**Note.**—Created from former s. 731.17.

**732.511 Republication of wills by reexecution.**—If a will has been revoked or if it is invalid for any other reason, it may be republished and made valid by its reexecution or the execution of a codicil republishing it with the formalities required by this law for the execution of wills.

**History.**—s. 1, ch. 74-106; s. 113, ch. 75-220.

**Note.**—Created from former s. 731.18.

**732.512 Incorporation by reference.**—

(1) A writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification.

(2) A will may dispose of property by reference to acts and events which have significance apart from their effect upon the dispositions made by the will, whether they occur before or after the execution of the will or before or after the testator's death. The execution or revocation of a will or trust by another person is such an event.

**History.**—s. 1, ch. 74-106; s. 27, ch. 75-220.

**732.513 Devises to trustee.**—

(1) A valid devise may be made to the trustee of a trust that is evidenced by a written instrument in existence at the time of making the will, or by a written instrument subscribed concurrently with making of the will, if the written instrument is identified in the will.

(2) The devise shall not be invalid for any or all of the following reasons:

(a) Because the trust is amendable or revocable, or both, by any person.

(b) Because the trust has been amended or revoked in part after execution of the will or a codicil to it.

(c) Because the trust instrument or any amendment to it was not executed in the manner required for wills.

(d) Because the only res of the trust is the possible expectancy of receiving, as a named beneficiary, death benefits as described in s. 733.808, and even though the testator or other person has reserved any or all rights of ownership in such death benefit policy, contract, or plan, including the right to change the beneficiary.

(e) Because of any of the provisions of s. 689.075.

(3) The devise shall dispose of property under the terms of the instrument that created the trust as theretofore or thereafter amended.

(4) An entire revocation of the trust by an instrument in writing before the testator's death shall invalidate the devise or bequest.

(5) Unless the will provides otherwise, the property devised shall not be held under a testamentary trust of the testator but shall become a part of the principal of the trust to which it is devised.

(6) This section shall be cumulative to all laws touching upon the subject matter.

**History.**—s. 1, ch. 74-106; s. 3, ch. 75-74; s. 113, ch. 75-220.

**Note.**—Created from former s. 736.17.

**732.514 Vesting of devises.**—The death of the

testator is the event that vests the right to devise unless the testator in his will has provided that some other event must happen before a devise shall vest.

**History.**—s. 1, ch. 74-106; ss. 28, 113, ch. 75-220.

**Note.**—Created from former ss. 731.21 and 733.102.

**732.515 Separate writing identifying devisees of tangible property.**—A will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money and property used in trade or business. To be admissible under this section as evidence of the intended disposition, the writing must be signed by the testator and must describe the items and the devisees with reasonable certainty. The writing may be referred to as one in existence at the time of the testator's death. It may be prepared before or after the execution of the will. It may be altered by the testator after its preparation. It may be a writing that has no significance apart from its effect upon the dispositions made by the will.

**History.**—s. 1, ch. 74-106; s. 29, ch. 75-220.

**732.5165 Effect of fraud, duress, mistake, and undue influence.**—A will is void if the execution is procured by fraud, duress, mistake, or undue influence. Any part of the will is void if so procured, but the remainder of the will not so procured shall be valid if it is not invalid for other reasons.

**History.**—s. 31, ch. 75-220.

**732.517 Penalty clause for contest.**—A provision in a will purporting to penalize any interested person for contesting the will or instituting other proceedings relating to the estate is unenforceable.

**History.**—s. 1, ch. 74-106; s. 113, ch. 75-220.

## PART VI

### RULES OF CONSTRUCTION

- 732.6005 Rules of construction and intention.
- 732.601 Simultaneous Death Law.
- 732.603 Antilapse; deceased devisee; class gifts.
- 732.604 Failure of testamentary provision.
- 732.605 Change in securities; accessions; nonademption.
- 732.606 Nonademption of specific devisees in certain cases; sale by guardian of the property; unpaid proceeds of sale, condemnation, or insurance.
- 732.607 Exercise of power of appointment.
- 732.608 Construction of generic terms.
- 732.609 Ademption by satisfaction.
- 732.611 Devises to be per stirpes.

**732.6005 Rules of construction and intention.**—

(1) The intention of the testator as expressed in his will controls the legal effect of his dispositions. The rules of construction expressed in this part shall apply unless a contrary intention is indicated by the will.

(2) Subject to the foregoing, a will is construed to pass all property which the testator owns at his death, including property acquired after the execution of the will.

**History.**—s. 1, ch. 74-106; ss. 33, 35, ch. 75-220.

**Note.**—Created from former ss. 732.41 and 732.602.

### 732.601 Simultaneous Death Law.—

(1) When title to property or its devolution depends on priority of death and there is insufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if he had survived, except as provided otherwise in this law.

(2) When two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is insufficient evidence that the beneficiaries died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal parts as there are successive beneficiaries and the parts shall be distributed to those who would have taken if each designated beneficiary had survived.

(3) When there is insufficient evidence that two joint tenants or tenants by the entirety died otherwise than simultaneously, the property so held shall be distributed one-half as if one had survived and one-half as if the other had survived. If there are more than two joint tenants and all of them so died, the property thus distributed shall be in the proportion that one bears to the whole number of joint tenants.

(4) When the insured and the beneficiary in a policy of life or accident insurance have died and there is insufficient evidence that they died otherwise than simultaneously, the proceeds of the policy shall be distributed as if the insured had survived the beneficiary.

(5) This law shall not apply in the case of wills, living trusts, deeds, or contracts of insurance in which provision has been made for distribution of property different from the provisions of this law.

**History.**—s. 1, ch. 74-106; s. 34, ch. 75-220.

**Note.**—Created from former s. 736.05.

**732.603 Antilapse; deceased devisee; class gifts.**—Unless a contrary intention appears in the will:

(1) If a devisee who is a grandparent, or a lineal descendant of a grandparent, of the testator:

- (a) Is dead at the time of the execution of the will,
- (b) Fails to survive the testator, or
- (c) Is required by the will to be treated as if he predeceased the testator,

then the descendants of the devisee take per stirpes in place of the deceased devisee. A person who would have been a devisee under a class gift if he had survived the testator shall be a devisee for purposes of this section whether his death occurred before or after the execution of the will.

(2) If a devisee who is not a grandparent, or a descendant of a grandparent, of the testator:

- (a) Is dead at the time of the execution of the will,
- (b) Fails to survive the testator, or
- (c) Is required by the will to be treated as if he predeceased the testator,



then the testamentary disposition to the devisee shall lapse unless an intention to substitute another in his place appears in the will.

**History.**—s. 1, ch. 74-106; s. 36, ch. 75-220.

**Note.**—Created from former s. 731.20.

#### **732.604 Failure of testamentary provision.—**

(1) Except as provided in s. 732.603, if a devise other than a residuary devise fails for any reason, it becomes a part of the residue.

(2) Except as provided in s. 732.603, if the residue is devised to two or more persons and the share of one of the residuary devisees fails for any reason, his share passes to the other residuary devisee, or to the other residuary devisees in proportion to their interests in the residue.

**History.**—s. 1, ch. 74-106; s. 113, ch. 75-220.

#### **732.605 Change in securities; accessions; nonademption.—**

(1) If the testator intended a specific devise of certain securities rather than their equivalent value, the specific devisee is entitled only to:

(a) As much of the devised securities as is a part of the estate at the time of the testator's death.

(b) Any additional or other securities of the same entity owned by the testator because of action initiated by the entity, excluding any acquired by exercise of purchase options.

(c) Securities of another entity owned by the testator as a result of a merger, consolidation, reorganization, or other similar action initiated by the entity.

(2) Distributions before death of a specifically devised security not provided for in subsection (1) are not part of the specific devise.

**History.**—s. 1, ch. 74-106; s. 113, ch. 75-220.

#### **732.606 Nonademption of specific devises in certain cases; sale by guardian of the property; unpaid proceeds of sale, condemnation, or insurance.—**

(1) If specifically devised property is sold by a guardian of the property for the care and maintenance of the ward or if a condemnation award or insurance proceeds are paid to a guardian of the property as a result of condemnation, fire, or casualty, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the condemnation award, or the insurance proceeds. This subsection does not apply if, subsequent to the sale, condemnation, or casualty, it is adjudicated that the disability of the testator has ceased and the testator survives the adjudication by 1 year. The right of the specific devisee under this subsection is reduced by any right he has under subsection (2).

(2) A specific devisee has the right to the remaining specifically devised property and:

(a) Any balance of the purchase price owing from a purchaser to the testator at death because of sale of the property plus any security interest.

(b) Any amount of a condemnation award for the taking of the property unpaid at death.

(c) Any proceeds unpaid at death on fire or casualty insurance on the property.

(d) Property owned by the testator at his death as a result of foreclosure, or obtained instead of foreclosure, of the security for the specifically devised obligation.

**History.**—s. 1, ch. 74-106; s. 38, ch. 75-220.

#### **732.607 Exercise of power of appointment.—**

A general residuary clause in a will, or a will making general disposition of all the testator's property, does not exercise a power of appointment held by the testator unless specific reference is made to the power or there is some other indication of intent to include the property subject to the power.

**History.**—s. 1, ch. 74-106; s. 38, ch. 75-220.

#### **732.608 Construction of generic terms.—**

Adopted persons and persons born out of wedlock are included in class gift terminology and terms of relationship, in accordance with rules for determining relationships for purposes of intestate succession.

**History.**—s. 1, ch. 74-106; s. 38, ch. 75-220.

#### **732.609 Ademption by satisfaction.—**

Property that a testator gave to a person in the testator's lifetime is treated as a satisfaction of a devise to that person, in whole or in part, only if the will provides for deduction of the lifetime gift, the testator declares in a contemporaneous writing that the gift is to be deducted from the devise or is in satisfaction of the devise, or the devisee acknowledges in writing that the gift is in satisfaction. For purposes of part satisfaction, property given during the testator's lifetime is valued at the time the devisee came into possession or enjoyment of the property or at the time of the death of the testator, whichever occurs first.

**History.**—s. 1, ch. 74-106; s. 38, ch. 75-220.

#### **732.611 Devises to be per stirpes.—**

Unless the will provides otherwise, all devises shall be per stirpes.

**History.**—s. 1, ch. 74-106; s. 38, ch. 75-220.

### **PART VII**

#### **CONTRACTUAL ARRANGEMENTS RELATING TO DEATH**

**732.701** Agreements concerning succession.

**732.702** Waiver of right to elect and of other rights.

#### **732.701 Agreements concerning succession.—**

(1) No agreement to make a will, to give a devise, not to revoke a will, not to revoke a devise, not to make a will, or not to make a devise shall be binding or enforceable unless the agreement is in writing and signed by the agreeing party in the presence of two attesting witnesses.

(2) The execution of a joint will or mutual wills neither creates a presumption of a contract to make a will nor creates a presumption of a contract not to revoke the will or wills.

**History.**—s. 1, ch. 74-106; s. 39, ch. 75-220.

**Note.**—Created from former s. 731.051.

**732.702 Waiver of right to elect and of other rights.—**

(1) The right of election of a surviving spouse, the rights of the surviving spouse as intestate successor or as a pretermitted spouse, and the rights of the surviving spouse to homestead, exempt property, and family allowance, or any of them, may be waived, wholly or partly, before or after marriage, by a written contract, agreement, or waiver, signed by the waiving party. Unless it provides to the contrary, a waiver of "all rights," or equivalent language, in the property or estate of a present or prospective spouse, or a complete property settlement entered into after, or in anticipation of, separation, dissolution of marriage, or divorce, is a waiver of all rights to elective share, intestate share, pretermitted share, homestead property, exempt property, and family allowance by each spouse in the property of the other and a renunciation by each of all benefits that would otherwise pass to either from the other by intestate succession or by the provisions of any will executed before the waiver or property settlement.

(2) Each spouse shall make a fair disclosure to the other of his or her estate if the agreement, contract, or waiver is executed after marriage. No disclosure shall be required for an agreement, contract, or waiver executed before marriage.

(3) No consideration other than the execution of the agreement, contract, or waiver shall be necessary to its validity, whether executed before or after marriage.

History.—s. 1, ch. 74-106; s. 39, ch. 75-220; s. 14, ch. 77-87.

**PART VIII****GENERAL PROVISIONS**

- 732.801 Disclaimer of interests in property passing by will or intestate succession or under certain powers of appointment.
- 732.802 Murderer.
- 732.803 Charitable devises.
- 732.804 Provisions relating to cremation.

**732.801 Disclaimer of interests in property passing by will or intestate succession or under certain powers of appointment.—**

(1) **DEFINITIONS.**—For purposes of this section:

(a) "Beneficiary" means a person who would succeed to an interest in property in any manner described in subsection (2).

(b) "Decedent" means the person by whom an interest in property was created or from whom it would have been received by a beneficiary.

(c) "Power of appointment" means any power described in subparagraph (d)3.

(d) An "interest in property" that may be disclaimed shall include:

1. The whole of any property, real or personal, legal or equitable, present or future interest, or any fractional part, share, or portion of property or specific assets thereof.

2. Any estate in the property.

3. Any power to appoint, consume, apply, or expend property, or any other right, power, privilege, or immunity relating to it.

**(2) SCOPE OF RIGHT TO DISCLAIM.—**

(a) A beneficiary may disclaim his succession to any interest in property that, unless disclaimed, would pass to the beneficiary:

1. By intestate succession or devise.

2. Under descent of homestead, exempt property, or family allowance or under s. 222.13.

3. Through exercise or nonexercise of a power of appointment exercisable by will.

4. Through testamentary exercise or nonexercise of a power of appointment exercisable by either deed or will.

5. As beneficiary of a testamentary trust.

6. As a beneficiary of a testamentary gift to any nontestamentary trust.

7. As donee of a power of appointment created by will.

8. By succession in any manner described in this subsection to a disclaimed interest.

9. In any manner not specifically enumerated herein under a testamentary instrument.

(b) Disclaimer may be made for a minor, incompetent, incapacitated person, or deceased beneficiary by the guardian or personal representative if the court having jurisdiction of the estate of the minor, incompetent, incapacitated person, or deceased beneficiary finds that the disclaimer:

1. Is in the best interests of those interested in the estate of the beneficiary and of those who take the beneficiary's interest by virtue of the disclaimer and

2. Is not detrimental to the best interests of the beneficiary.

The determination shall be made on a petition filed for that purpose and served on all interested persons. If ordered by the court, the guardian or personal representative shall execute and record the disclaimer on behalf of the beneficiary within the time and in the manner in which the beneficiary could disclaim if he were living, of legal age, and competent.

**(3) DISPOSITION OF DISCLAIMED INTERESTS.—**

(a) Unless the decedent or a donee of a power of appointment has otherwise provided by will or other appropriate instrument with reference to the possibility of a disclaimer by the beneficiary, the interest disclaimed shall descend, be distributed, or otherwise be disposed of in the same manner as if the disclaimant had died immediately preceding the death or other event that caused him to become finally ascertained as a beneficiary and his interest to become indefeasibly fixed both in quality and quantity. The disclaimer shall relate to that date for all purposes, whether recorded before or after the death or other event. An interest in property disclaimed shall never vest in the disclaimant. If the provisions of s. 732.603 would have been applicable had the disclaimant in fact died immediately preceding the death or other event, they shall be applicable to the disclaimed interest.

(b) Unless his disclaimer instrument so provides, a beneficiary who disclaims any interest that would pass to him in any manner described in subsection (2) shall not be excluded from sharing in any other

interest to which he may be entitled in any manner described in the subsection, including subparagraph (2)(a)8., even though the interest includes disclaimed assets by virtue of the beneficiary's disclaimer.

**(4) FORM, FILING, RECORDING, AND SERVICE OF DISCLAIMER INSTRUMENTS.—**

(a) To be a disclaimer, a writing shall declare the disclaimer and its extent, describe the interest in property disclaimed, and be signed, witnessed, and acknowledged in the manner provided for the conveyance of real property.

(b) A disclaimer shall be effective and irrevocable when the instrument is recorded by the clerk where the estate of the decedent is or has been administered. If no administration has been commenced, recording may be made with the clerk of any county where venue of administration is proper.

(c) The person disclaiming shall deliver or mail a copy of the disclaimer instrument to the personal representative, trustee, or other person having legal title to, or possession of, the property in which the disclaimed interest exists. No representative, trustee, or other person shall be liable for any otherwise proper distribution or other disposition made without actual notice of the disclaimer or, if the disclaimer is waived or barred as hereinafter provided, for any otherwise proper distribution or other disposition made in reliance on the disclaimer, if the distribution or disposition is made without actual notice of the facts constituting the waiver or barring the right to disclaim.

**(5) TIME FOR RECORDING DISCLAIMER.—**A disclaimer shall be recorded at any time after the creation of the interest, but in any event within 9 months after the event giving rise to the right to disclaim, including the death of the decedent; or, if the disclaimant is not finally ascertained as a beneficiary or his interest has not become indefeasibly fixed both in quality and quantity at the death of the decedent, then the disclaimer shall be recorded not later than 6 months after the event that would cause him to become finally ascertained and his interest to become indefeasibly fixed both in quality and quantity. However, a disclaimer may be recorded at any time after the creation of the interest, upon the written consent of all interested parties as provided in section 731.302.

**(6) WAIVER OR BAR TO RIGHT TO DISCLAIMER.—**

(a) The right to disclaim otherwise conferred by this section shall be barred if the beneficiary is insolvent at the time of the event giving rise to the right to disclaim and also by:

1. Making a voluntary assignment or transfer of, a contract to assign or transfer, or an encumbrance of, an interest in real or personal property.

2. Giving a written waiver of the right to disclaim the succession to an interest in real or personal property.

3. Making any sale or other disposition of an interest in real or personal property pursuant to judicial process by the beneficiary before he has recorded a disclaimer.

(b) The acceptance, assignment, transfer, encumbrance, or written waiver of the right to disclaim a part of an interest in property, or the sale pursuant

to judicial process of a part of an interest in property, shall not bar the right to disclaim any other part of the interest in property.

**(7) EFFECT OF RESTRAINTS.—**The right to disclaim granted by this section shall exist irrespective of any limitation imposed on the interest of the disclaimant in the nature of an express or implied spendthrift provision or similar restriction.

**(8) RIGHT TO DISCLAIM UNDER OTHER LAW NOT ABRIDGED.—**This law shall not abridge the right of any person to disclaim, renounce, alienate, release, or otherwise transfer or dispose of any interest in property under any other existing or future law.

**History.**—s. 1, ch. 74-106; s. 40, ch. 75-220; s. 15, ch. 77-87.

**Note.**—Created from former s. 731.37.

**732.802 Murderer.—**A person convicted of the murder of a decedent shall not be entitled to inherit from the decedent or to take any part of his estate as a devisee. The part of the decedent's estate to which the murderer would otherwise be entitled shall pass to the persons entitled to it as though the murderer had died during the lifetime of the decedent.

**History.**—s. 1, ch. 74-106; s. 113, ch. 75-220.

**Note.**—Created from former s. 731.31.

**732.803 Charitable devises.—**

(1) If a testator dies leaving lineal descendants or a spouse and his will devises part or all of the testator's estate:

(a) To a benevolent, charitable, educational, literary, scientific, religious, or missionary institution, corporation, association, or purpose,

(b) To this state, any other state or country, or a county, city, or town in this or any other state or country, or

(c) To a person in trust for any such purpose or beneficiary, whether or not the trust appears on the face of the instrument making the devise,

the devise shall be avoided in its entirety if one or more of the lineal descendants or a spouse who would receive any interest in the devise, if avoided, files written notice to this effect in the administration proceeding within 4 months after the date letters are issued, unless:

(d) The will was duly executed at least 6 months before the testator's death, or

(e) The testator made a valid charitable devise in substantially the same amount for the same purpose or to the same beneficiary, or to a person in trust for the same purpose or beneficiary, as was made in the last will or by a will or a series of wills duly executed immediately next to the last will, one of which was executed more than 6 months before the testator's death.

(2) The testator's making of a codicil that does not substantially change a charitable devise as herein defined within the 6-month period before the testator's death shall not render the charitable gift voidable under this section.

**History.**—s. 1, ch. 74-106; s. 42, ch. 75-220; s. 16, ch. 77-87; s. 1, ch. 77-174.

**Note.**—Created from former s. 731.19.



**732.804 Provisions relating to cremation.**—The fact that cremation occurred pursuant to a provision of a will or any written contract signed by the decedent in which he expressed his intent that his body be cremated is a complete defense to a cause of action against the personal representative or person providing the services.

*History.*—s. 1, ch. 74-106; s. 43, ch. 75-220.

## PART IX

### PRODUCTION OF WILLS

#### 732.901 Production of wills.

##### **732.901 Production of wills.**—

(1) The custodian of a will must deposit the will with the clerk of the court having venue of the estate of the decedent within 10 days after receiving information that the testator is dead. Willful failure to do so shall render the custodian responsible for all costs and damages sustained by anyone if the court finds that the custodian had no just or reasonable cause for withholding the deposit of the will.

(2) By petition and notice of it served on him, the custodian of any will may be compelled to produce and deposit the will as provided in subsection (1). All costs, damages, and a reasonable attorney's fee shall be adjudged to petitioner against the delinquent custodian if the court finds that the custodian had no just or reasonable cause for withholding the deposit of the will.

*History.*—s. 1, ch. 74-106; s. 44, ch. 75-220.

*Note.*—Created from former s. 732.22.

## PART X

### ANATOMICAL GIFTS

- 732.910 Legislative declaration.
- 732.911 Definitions.
- 732.912 Persons who may make an anatomical gift.
- 732.913 Persons who may become donees; purposes for which anatomical gifts may be made.
- 732.914 Manner of executing anatomical gifts.
- 732.915 Delivery of document.
- 732.916 Amendment or revocation of the gift.
- 732.917 Rights and duties at death.
- 732.918 Eye banks.
- 732.9185 Corneal removal by medical examiners.
- 732.919 Enucleation of eyes by licensed funeral directors.
- 732.921 Plastic pouches and uniform organ donor cards provided with driver's license; issuance, reissuance, or renewal.

**732.910 Legislative declaration.**—Because of the rapid medical progress in the fields of tissue and organ preservation, transplantation of tissue, and tissue culture, and because it is in the public interest to aid the development of this field of medicine, the Legislature in enacting this part intends to encourage and aid the development of reconstructive medicine and surgery and the development of medical research by facilitating premortem and postmortem

authorizations for donations of tissue and organs. It is the purpose of this part to regulate only the gift of a body or parts of a body to be made after the death of a donor.

*History.*—s. 1, ch. 74-106; s. 113, ch. 75-220.

*Note.*—Created from former s. 736.21.

**732.911 Definitions.**—For the purpose of this part:

(1) "Bank" or "storage facility" means a facility licensed, accredited, or approved under the laws of any state for storage of human bodies or parts thereof.

(2) "Donor" means an individual who makes a gift of all or part of his body.

(3) "Hospital" means a hospital licensed, accredited, or approved under the laws of any state and includes a hospital operated by the United States Government or a state, or a subdivision thereof, although not required to be licensed under state laws.

(4) "Physician" or "surgeon" means a physician or surgeon licensed to practice under chapter 458 or chapter 459 or similar laws of any state. "Surgeon" includes dental or oral surgeon.

*History.*—s. 1, ch. 74-106; s. 113, ch. 75-220.

*Note.*—Created from former s. 736.22.

##### **732.912 Persons who may make an anatomical gift.**—

(1) Any person who may make a will may give all or part of his body for any purpose specified in s. 732.910, the gift to take effect upon death.

(2) In the order of priority stated and in the absence of actual notice of contrary indications by the decedent or actual notice of opposition by a member of the same or a prior class, any of the following persons may give all or any part of the decedent's body for any purpose specified in s. 732.910:

- (a) The spouse;
- (b) An adult son or daughter;
- (c) Either parent;
- (d) An adult brother or sister; or
- (e) A guardian of the person of the decedent at the time of his death;

but no gift shall be made by the spouse if any adult son or daughter objects.

(3) If the donee has actual notice of contrary indications by the decedent or objection of an adult son or daughter or that a gift by a member of a class is opposed by a member of the same or a prior class, the donee shall not accept the gift.

(4) The persons authorized by subsection (2) may make the gift after death or immediately before death.

(5) A gift of all or part of a body authorizes any examination necessary to assure medical acceptability of the gift for the purposes intended.

(6) The rights of the donee created by the gift are paramount to the rights of others, except as provided by s. 732.917.

*History.*—s. 1, ch. 74-106; s. 45, ch. 75-220.

*Note.*—Created from former s. 736.23.

##### **732.913 Persons who may become donees; purposes for which anatomical gifts may be made.**—The following persons may become donees

of gifts of bodies or parts of them for the purposes stated:

(1) Any hospital, surgeon, or physician for medical or dental education or research, advancement of medical or dental science, therapy, or transplantation.

(2) Any accredited medical or dental school, college, or university for education, research, advancement of medical or dental science, or therapy.

(3) Any bank or storage facility for medical or dental education, research, advancement of medical or dental science, therapy, or transplantation.

(4) Any specified individual for therapy or transplantation needed by him.

**History.**—s. 1, ch. 74-106; s. 45, ch. 75-220.  
**Note.**—Created from former s. 736.24.

#### **732.914 Manner of executing anatomical gifts.—**

(1) A gift of all or part of the body under subsection 732.912(1) may be made by will. The gift becomes effective upon the death of the testator without waiting for probate. If the will is not probated or if it is declared invalid for testamentary purposes, the gift is nevertheless valid to the extent that it has been acted upon in good faith.

(2)(a) A gift of all or part of the body under subsection 732.912(1) may also be made by a document other than a will. The gift becomes effective upon the death of the donor. The document must be signed by the donor in the presence of two witnesses who shall sign the document in his presence. It may be a card designed to be carried on the person. If the donor cannot sign, the document may be signed for him at his direction and in his presence and the presence of two witnesses who must sign the document in his presence. Delivery of the document of gift during the donor's lifetime is not necessary to make the gift valid.

(b) The following form of written instrument shall be sufficient for any person to give all or part of his body for the purposes of this part:

#### **UNIFORM DONOR CARD**

The undersigned hereby makes this anatomical gift, if medically acceptable, to take effect on death. The words and marks below indicate my desires:  
I give:

(a) \_\_\_\_\_ any needed organs or parts;  
(b) \_\_\_\_\_ only the following organs or parts

[Specify the organ(s) or part(s)]

for the purpose of transplantation, therapy, medical research, or education;

(c) \_\_\_\_\_ my body for anatomical study if needed. Limitations or special wishes, if any:

[If applicable, list specific donee]

Signed by the donor and the following witnesses in the presence of each other:

(Signature of donor)	(Date of birth of donor)
(Date signed)	(City and State)
(Witness)	(Witness)
(Address)	(Address)

(3) The gift may be made to a specified donee or without specifying a donee. In the latter case, the gift may be accepted by the attending physician as donee upon or following the donor's death. If the gift is made to a specified donee who is not available at the time and place of death, the attending physician may accept the gift as donee upon or following death in the absence of any expressed indication that the donor desired otherwise. The physician who becomes a donee under this subsection shall not participate in the procedures for removing or transplanting a part.

(4) Notwithstanding subsection 732.917(2), the donor may designate in his will or other document of gift the surgeon or physician to carry out the appropriate procedures. In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the gift may employ or authorize any surgeon or physician for the purpose.

(5) Any gift by a person designated in subsection 732.912(2) shall be made by a document signed by him or made by his telegraphic, recorded telephonic, or other recorded message.

**History.**—s. 1, ch. 74-106; s. 45, ch. 75-220.  
**Note.**—Created from former s. 736.25.

**732.915 Delivery of document.**—If the gift is made by the donor to a specified donee, the document, other than a will, may be delivered to the donee to expedite the appropriate procedures immediately after death, but delivery is not necessary to the validity of the gift. The document may be deposited in any hospital, bank, storage facility, or registry office that accepts such documents for safekeeping or for facilitation of procedures after death. On request of any interested party upon or after the donor's death, the person in possession shall produce the document for examination.

**History.**—s. 1, ch. 74-106; s. 45, ch. 75-220.  
**Note.**—Created from former s. 736.26.

#### **732.916 Amendment or revocation of the gift.—**

(1) If the will or other document has been delivered to a specified donee, the donor may amend or revoke the gift by:

(a) The execution and delivery to the donee of a signed statement.

(b) An oral statement made in the presence of two persons and communicated to the donee.

(c) A statement during a terminal illness or injury addressed to an attending physician and communicated to the donee.

(d) A signed document found on his person or in his effects.

(2) A document of gift that has not been delivered to the donee may be revoked by the donor in the manner set out in subsection (1) or by destruction, cancellation, or mutilation of the document.

(3) Any gift made by a will may also be amended or revoked in the manner provided for amendment or revocation of wills or as provided in subsection (1).

**History.**—s. 1, ch. 74-106; s. 113, ch. 75-220.  
**Note.**—Created from former s. 736.27.

#### **732.917 Rights and duties at death.—**

(1) The donee may accept or reject the gift. If the donee accepts a gift of the entire body or a part of the body to be used for scientific purposes other than a

transplant, he may authorize embalming and the use of the body in funeral services, subject to the terms of the gift. If the gift is of a part of the body, the donee shall cause the part to be removed without unnecessary mutilation upon the death of the donor and before or after embalming. After removal of the part, custody of the remainder of the body vests in the surviving spouse, next of kin, or other persons under obligation to dispose of the body.

(2) The time of death shall be determined by a physician who attends the donor at his death or, if there is no such physician, the physician who certifies the death. This physician shall not participate in the procedures for removing or transplanting a part.

(3) A person who acts in good faith and without negligence in accord with the terms of this part or under the anatomical gift laws of another state or a foreign country is not liable for damages in any civil action or subject to prosecution for his acts in any criminal proceeding.

(4) The provisions of this part are subject to the laws of this state prescribing powers and duties with respect to autopsies.

**History.**—s. 1, ch. 74-106; s. 45, ch. 75-220.

**Note.**—Created from former s. 736.28.

#### **732.918 Eye banks.—**

(1) Any state, county, district, or other public hospital may purchase and provide the necessary facilities and equipment to establish and maintain an eye bank for restoration of sight purposes.

(2) The Department of Education may have prepared, printed, and distributed:

(a) A form document of gift for a gift of the eyes.

(b) An eye bank register consisting of the names of persons who have executed documents for the gift of their eyes.

(c) Wallet cards reciting the document of gift.

**History.**—s. 1, ch. 74-106; s. 45, ch. 75-220; s. 462, ch. 77-147.

**Note.**—Created from former s. 736.29.

#### **732.9185 Corneal removal by medical examiners.—**

(1) In any case in which a patient is in need of corneal tissue for a transplant, a district medical examiner or an appropriately qualified designee with training in ophthalmologic techniques may, upon request of any eye bank authorized under s. 732.918, provide the cornea of a decedent whenever all of the following conditions are met:

(a) A decedent who may provide a suitable cornea for the transplant is under the jurisdiction of the medical examiner and an autopsy is required in accordance with s. 406.11.

(b) No objection by the next of kin of the decedent is known by the medical examiner.

(c) The removal of the cornea will not interfere with the subsequent course of an investigation or autopsy.

(2) Neither the district medical examiner nor his appropriately qualified designee nor any eye bank

authorized under s. 732.918 may be held liable in any civil or criminal action for failure to obtain consent of the next of kin.

**History.**—s. 1, ch. 77-172; s. 1, ch. 78-191.

**732.919 Enucleation of eyes by licensed funeral directors.**—In respect to a gift of an eye as provided for in this part, a licensed funeral director as defined in chapter 470 who has completed a course in eye enucleation and has received a certificate of competence from the Department of Ophthalmology of the University of Florida School of Medicine or the University of Miami School of Medicine may enucleate eyes for gift after proper certification of death by a physician and in compliance with the intent of the gift as defined in this chapter. No properly certified funeral director acting in accordance with the terms of this part shall have any civil or criminal liability for eye enucleation.

**History.**—s. 1, ch. 74-106; s. 45, ch. 75-220.

**Note.**—Created from former s. 736.31.

#### **732.921 Plastic pouches and uniform organ donor cards provided with driver's license; issuance, reissuance, or renewal.—**

(1) Whenever any person applies for or requests issuance, reissuance, or renewal of any driver's license, the Division of Driver Licenses, Department of Highway Safety and Motor Vehicles, may cause to be furnished to that person a form, authorized under the provisions of s. 732.914, for the gift of all or a part of the donor's body, conditioned upon the donor's death. The form may be given to the applicant by an employee of the division. The Division of Driver Licenses may furnish to any person the necessary literature and material on anatomical gifts and may provide a small pouch of plastic, vinyl, or other suitable material that can be used to conveniently enclose both the driver's license and uniform donor card. This pouch should be of a design approved by the Department of Highway Safety and Motor Vehicles and the Department of Health and Rehabilitative Services. This program will be at no cost to the Department of Highway Safety and Motor Vehicles. The Department of Health and Rehabilitative Services may provide the necessary supplies, pouches, forms, and other accessories through funds appropriated from general revenue or contributions from interested voluntary, nonprofit organizations. The Department of Highway Safety and Motor Vehicles shall incur no liability in connection with the performance of any acts authorized herein.

(2) The Division of Driver Licenses of the Department of Highway Safety and Motor Vehicles and the Department of Health and Rehabilitative Services shall cooperate in the promulgation of rules and regulations to implement the provisions of this section according to the provisions of chapter 120.

**History.**—s. 1, ch. 75-71; s. 1, ch. 77-16; s. 463, ch. 77-147; s. 1, ch. 77-174.



## CHAPTER 733

## PROBATE CODE: ADMINISTRATION OF ESTATES

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## PART I

## GENERAL PROVISIONS

- 733.101 Venue of probate proceedings.
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- 733.109 Revocation of probate.

**733.101 Venue of probate proceedings.—**

(1) The venue of probate of all wills and granting of letters shall be:

(a) In the county in this state where the decedent had his domicile.

(b) If the decedent had no domicile in this state, then in any county where the decedent was possessed of any property.

(c) If the decedent had no domicile in this state and possessed no property in this state, then in the county where any debtor of the decedent resides.

(2) For the purpose of this section, a married woman whose husband is an alien or a nonresident of Florida may establish or designate a separate domicile in this state.

(3) When any proceeding is filed laying venue in the wrong county, the court may transfer the action in the same manner as provided in the Rules of Civil Procedure. Any action taken by the court or the parties before the transfer is not affected because of the improper venue.

**History.**—s. 1, ch. 74-106; s. 46, ch. 75-220.

**Note.**—Created from former s. 732.06.

**733.103 Effect of probate.—**

(1) Until admitted to probate in this state or in the state where the decedent was domiciled, the will shall be ineffective to prove title to, or the right to possession of, property of the testator.

(2) In any collateral action or proceeding relating to devised property, the probate of a will in Florida shall be conclusive of its due execution; that it was executed by a competent testator, free of fraud, duress, mistake, and undue influence; and of the fact that the will was unrevoked on the testator's death.

**History.**—s. 1, ch. 74-106; s. 48, ch. 75-220; s. 17, ch. 77-87; s. 1, ch. 77-174.

**Note.**—Created from former s. 732.26.

**733.104 Suspension of statutes of limitation in favor of the personal representative.—**

(1) If a person entitled to bring an action dies before the expiration of the time limited for the commencement of the action and the cause of action survives, the action may be commenced by his personal representative after the expiration and within 12 months from the date of the decedent's death.

(2) If a person against whom a cause of action exists dies before the expiration of the time limited for commencement of the action and the cause of action survives, claim shall be filed on the cause of action, and it shall then proceed as other claims against the estate, notwithstanding the expiration of the time limited for commencement of the action.

**History.**—s. 1, ch. 74-106; s. 48, ch. 75-220; s. 1, ch. 77-174.

**Note.**—Created from former s. 734.27.

**733.105 Determination of beneficiaries.—**

(1) When property passes by intestate succession or under a will to a person not sufficiently identified in the will and the personal representative is in doubt about:

- (a) Who is entitled to receive it or part of it, or
- (b) The shares and amounts that any person is entitled to receive,

the personal representative may file a petition setting forth the names, residences, and post-office addresses of all persons in interest, except creditors of the decedent, so far as known or ascertainable by diligent search and inquiry, and the nature of their respective interests, designating those who are believed by him to be minors or incompetents and stating whether those so designated are under legal guardianship in this state. If the personal representative believes that there are, or may be, persons whose names are not known to him who have claims against, or interest in, the estate as heirs or devisees, the petition shall so state.

(2) After formal notice and hearing, the court shall enter an order determining the heirs or devisees or the shares and amounts they are entitled to receive, or both. Any personal representative who makes distribution or takes any other action pursuant to the order shall be fully protected.

(3) When it is necessary to determine who are or were the heirs or devisees, the court may make a determination, on the petition of any interested person, in like proceedings and after formal notice, irrespective of whether the estate of the deceased person is administered or, if administered, whether the administration of the estate has been closed or the personal representative discharged. A separate civil action may be brought under this subsection when an estate is not being administered.

**History.**—s. 1, ch. 74-106; s. 48, ch. 75-220; s. 226, ch. 77-104; s. 1, ch. 77-174.  
**Note.**—Created from former s. 734.25.

#### 733.106 Costs and attorney fees.—

(1) In all probate proceedings costs may be awarded as in chancery actions.

(2) A person nominated as personal representative of the last known will, or any proponent of the will if the person so nominated does not act within a reasonable time, if in good faith justified in offering the will in due form for probate, shall receive his costs and attorney fees out of the estate even though he is unsuccessful.

(3) Any attorney who has rendered services to an estate may apply for an order awarding attorney fees, and after informal notice to the personal representative and all persons bearing the impact of the payment the court shall enter its order on the petition.

(4) When costs and attorney fees are to be paid out of the estate, the court may, in its discretion, direct from what part of the estate they shall be paid.

**History.**—s. 1, ch. 74-106; s. 49, ch. 75-220.  
**Note.**—Created from former s. 732.14.

**733.107 Burden of proof in contests.**—In all proceedings contesting the validity of a will, the burden shall be upon the proponent of the will to establish prima facie its formal execution and attestation. Thereafter, the contestant shall have the burden of establishing the grounds on which the probate of the will is opposed or revocation sought.

**History.**—s. 1, ch. 74-106; s. 50, ch. 75-220.  
**Note.**—Created from former s. 732.31.

#### 733.109 Revocation of probate.—

(1) Any interested person, including a beneficiary under a prior will, except those barred under s. 733.212 or s. 733.2123, may, before final discharge of the personal representative, petition the court in which the will was admitted to probate for revocation of probate.

(a) The petition shall state the interest of the petitioner and the grounds for revocation.

(b) The petition shall be served upon the personal representative and all interested persons by formal notice, and thereafter proceedings shall be conducted as an adversary proceeding under the rules of civil procedure.

(2) Pending the determination of any petition for revocation of probate, the personal representative shall proceed with the administration of the estate as if no revocation proceeding had been commenced, except that no distribution may be made to devisees in contravention of the rights of those who, but for the will, would be entitled to the property disposed of.

(3) Revocation of probate of a will shall not affect or impair the title to the property theretofore purchased in good faith for value from the personal representative.

**History.**—s. 1, ch. 74-106; s. 50, ch. 75-220; s. 18, ch. 77-87; s. 227, ch. 77-104.  
**Note.**—Created from former s. 732.30.

## PART II

### COMMENCING ADMINISTRATION

- 733.201 Proof of wills.
- 733.202 Petition.
- 733.203 Notice; when required.
- 733.204 Probate of a will written in a foreign language.
- 733.205 Probate of notarial will.
- 733.206 Probate of will of resident after foreign probate.
- 733.207 Establishment and probate of lost or destroyed will.
- 733.208 Discovery of later will.
- 733.209 Estates of missing persons.
- 733.212 Notice of administration; filing of objections and claims.
- 733.2123 Adjudication before issuance of letters.
- 733.213 Probate as prerequisite to petition for construction of will.

#### 733.201 Proof of wills.—

(1) Self-proved wills executed in accordance with this code may be admitted to probate without further proof.

(2) A will may be admitted to probate upon the oath of any attesting witness taken before any circuit judge, commissioner appointed by the court, or clerk.

(3) If it appears to the court that the attesting witnesses cannot be found or that they have become incompetent after the execution of the will or their testimony cannot be obtained within a reasonable time, a will may be admitted to probate upon the oath of the personal representative nominated by the will as provided in subsection (2), whether or not he is interested in the estate, or of any person having

no interest in the estate under the will, that he believes the writing exhibited to be the true last will of the decedent.

**History.**—s. 1, ch. 74-106; s. 51, ch. 75-220.  
**Note.**—Created from former s. 732.24.

### 733.202 Petition.—

(1) A verified petition for administration may be filed by any interested person.

(2) The petition for administration shall contain:

(a) A statement of the interest of the petitioner, his name and address, and the name and office address of his attorney.

(b) The name, last known address, and date and place of death of the decedent and the state and county of the decedent's domicile.

(c) So far as is known, the names and addresses of the beneficiaries and the ages of any who are minors.

(d) A statement showing venue.

(e) The priority under part III of the person whose appointment as the personal representative is sought.

(f) A statement of the approximate value and nature of the assets so the clerk can ascertain the amount of the filing fee and the court can determine the amount of any bond authorized by this code.

(3) If the decedent was a nonresident of this state, the petition shall state whether domiciliary proceedings are pending in another state or country, if known, and, if so, the name and address of the foreign personal representative and the court issuing letters.

(4) In an intestate estate, the petition shall:

(a) State that after the exercise of reasonable diligence the petitioner is unaware of any unrevoked wills or codicils or, if the petitioner is aware of any unrevoked wills or codicils, why the wills or codicils are not being probated, or

(b) Otherwise give the facts concerning the will or codicil.

(5) In a testate estate, the petition shall:

(a) Identify all unrevoked wills and codicils being presented for probate.

(b) State that the petitioner is unaware of any other unrevoked will or codicil or, if the petitioner is aware of any other unrevoked will or codicil, why the other will or codicil is not being probated.

(c) State that the original of the decedent's last will is in the possession of the court or accompanies the petition or that an authenticated copy of a will probated in another jurisdiction accompanies the petition.

**History.**—s. 1, ch. 74-106; s. 52, ch. 75-220; s. 19, ch. 77-87.  
**Note.**—Created from former s. 732.43.

### 733.203 Notice; when required.—

(1) If a caveat has been filed by an heir or a devisee under a will other than that being offered for probate, the procedure provided for in s. 733.2123 shall be followed.

(2) Except as may otherwise be provided in this part, no notice need be given of the petition for administration or of the order granting letters when it appears that the petitioner is entitled to preference of appointment. Before letters shall be granted to any person who is not entitled to preference, formal

notice shall be served on all known persons qualified to act as personal representative and entitled to preference equal to or greater than the applicant, unless those entitled to preference waive it in writing.

**History.**—s. 1, ch. 74-106; s. 53, ch. 75-220; s. 20, ch. 77-87; s. 227, ch. 77-104.  
**Note.**—Created from former s. 732.69.

### 733.204 Probate of a will written in a foreign language.—

(1) No will written in a foreign language shall be admitted to probate unless it is accompanied by a true and complete English translation.

(2) In admitting the will to probate, the court shall establish its correct English translation. If the original will is not or cannot be filed, a photographic copy of the original will shall be filed. At any time during the administration any interested person may have the correctness of the translation, or any part, redetermined after formal notice to all other interested persons. No personal representative who complies in good faith with the English translation of the will as may then be established by the court shall thereafter be held liable as a result of having done so.

**History.**—s. 1, ch. 74-106; s. 54, ch. 75-220; s. 1, ch. 77-174.  
**Note.**—Created from former s. 732.34.

### 733.205 Probate of notarial will.—

(1) When a copy of a notarial will in the possession of a notary entitled to its custody in a foreign state or country, the laws of which state or country require that the will remain in the custody of such notary, duly authenticated by the notary, whose official position, signature, and seal of office are further authenticated by an American consul, vice consul, or other American consular officer within whose jurisdiction the notary is a resident, is presented to the court, it may be admitted to probate if the original could have been admitted to probate in this state.

(2) The duly authenticated copy shall be prima facie evidence of its purported execution and of the facts stated in the certificate in compliance with subsection (1).

(3) Any interested person notified may oppose the probate of such notarial will or may petition for revocation of probate of such notarial will, as in the case of original probate of a will in this state.

**History.**—s. 1, ch. 74-106; s. 55, ch. 75-220.  
**Note.**—Created from former s. 732.37.

### 733.206 Probate of will of resident after foreign probate.—

(1) If a will of any person who dies a resident of this state is admitted to probate in any other state or country through inadvertence, error, or omission before probate in this state, the will may be admitted to probate in this state if the original could have been admitted to probate in this state.

(2) An authenticated copy of the will, foreign proof of the will, the foreign order of probate, and any letters issued shall be filed instead of the original will and shall be prima facie evidence of its execution and admission to foreign probate.

(3) Any interested person may oppose the probate of the will, or may petition for revocation of the



probate of the will, as in the case of the original probate of a will in this state.

**History.**—s. 1, ch. 74-106; s. 56, ch. 75-220.  
**Note.**—Created from former s. 732.35.

### **733.207 Establishment and probate of lost or destroyed will.—**

(1) The establishment and probate of a lost or destroyed will shall be in one proceeding. The court shall recite, and thereby establish and preserve, the full and precise terms and provisions of the will in the order admitting it to probate.

(2) The petition for probate of a lost or destroyed will shall contain a copy of the will or its substance. The testimony of each witness must be reduced to writing and filed and shall be evidence in any contest of the will if the witness has died or moved from the state.

(3) No lost or destroyed will shall be admitted to probate unless formal notice has been given to those who, but for the will, would be entitled to the property thereby devised. The content of the will must be clearly and distinctly proved by the testimony of two disinterested witnesses, or, if a correct copy is provided, it shall be proved by one disinterested witness.

**History.**—s. 1, ch. 74-106; s. 57, ch. 75-220.  
**Note.**—Created from former s. 732.27.

**733.208 Discovery of later will.**—On the discovery of a later will or codicil expressly or impliedly revoking the probated will in whole or in part, pending or during administration, any interested person may offer the later will for probate. The proceedings shall be similar to those for revocation of probate. No later will or codicil may be offered after the closing of the estate.

**History.**—s. 1, ch. 74-106; s. 58, ch. 75-220.  
**Note.**—Created from former s. 732.32.

**733.209 Estates of missing persons.**—The estates of missing persons shall be administered in the same manner as other estates. A petition for administration of the estate shall request entry of an order declaring the death of a missing person prior to appointing a personal representative and commencing administration.

**History.**—s. 1, ch. 74-106.  
**Note.**—Created from former s. 732.53.

### **733.212 Notice of administration; filing of objections and claims.—**

(1) The personal representative shall promptly publish a notice of administration and serve a copy of the notice on the surviving spouse and all beneficiaries known to the personal representative by mail in the manner provided for service of formal notice, unless served under s. 733.2123. He may similarly serve other heirs or devisees under a known prior will. The notice shall contain the name of the decedent, the file number of the estate, the court in which the proceedings are pending and its address, the name and address of the personal representative, and the name and address of the personal representative's attorney and state that the publication of the notice has begun. The notice shall require all interested persons to file with the court, within 3 months of the first publication of the notice:

(a) All claims against the estate.

(b) Any objection by an interested person to whom notice was mailed that challenges the validity of the will, the qualifications of the personal representative, venue, or jurisdiction of the court.

(2) Publication shall be once a week for 2 consecutive weeks, two publications being sufficient, in a newspaper published in the county where the estate is administered or, if there is no newspaper published in the county, in a newspaper of general circulation in that county. Proof of publication shall be filed.

(3) Objections under paragraph (1)(b), by persons to whom notice was mailed, that are not filed within 3 months following the date of first publication of the notice are forever barred. Claims under paragraph (1)(a) are barred as provided in s. 733.702.

**History.**—s. 1, ch. 74-106; s. 60, ch. 75-220; s. 227, ch. 77-104.  
**Note.**—Created from former s. 732.28.

**733.2123 Adjudication before issuance of letters.**—A petitioner may serve formal notice of his petition for administration on interested persons. No person who is served with formal notice of the petition for administration prior to the issuance of letters or who has waived notice may challenge the validity of the will, testacy of the decedent, qualifications of the personal representative, venue, or jurisdiction of the court, except in connection with the proceedings before issuance of letters.

**History.**—s. 60, ch. 75-220.

**733.213 Probate as prerequisite to petition for construction of will.**—No pleading seeking construction of a will may be maintained until the will has first been probated.

**History.**—s. 1, ch. 74-106; s. 61, ch. 75-220.  
**Note.**—Created from former s. 732.42.

## **PART III**

### **PRIORITY TO ADMINISTER AND QUALIFICATIONS OF PERSONAL REPRESENTATIVE**

- |         |   |
|---------|---|
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| 733.302 | Who may be appointed personal representative.         |
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**733.301 Preference in appointment of personal representative.**—In the granting of letters, the following preferences shall be observed:

(1) In testate estates:

(a) The personal representative, or his successor, nominated by the will or pursuant to a power conferred in the will.

(b) The person selected by a majority in interest of the persons entitled to the estate.

(c) A devisee under the will. If more than one devisee applies, the court may exercise its discretion

in selecting the one best qualified.

(2) In intestate estates:

(a) The surviving spouse.

(b) The person selected by a majority in interest of the heirs.

(c) The heir nearest in degree. If more than one applies, the court may exercise its discretion in selecting the one best qualified for the office.

(3) A guardian of the property of a ward who if competent would be entitled to appointment as, or to select, a personal representative may exercise the right to select the personal representative.

(4) In either a testate or an intestate estate, if no application is made by any of the persons named in subsections (1) or (2), the court shall appoint a capable person; but no person may be appointed under this subsection:

(a) Who works for, or holds public office under, the court.

(b) Who is employed by, or holds office under, any judge exercising probate jurisdiction.

(5) After letters have been granted in either a testate or an intestate estate, if a person who was entitled to, and has not waived, preference over the person appointed at the time of his appointment and on whom formal notice was not served seeks the appointment, the letters granted may be revoked and the person entitled to preference may have letters granted to him after formal notice and hearing.

(6) After letters have been granted in either a testate or an intestate estate, if any will is subsequently admitted to probate the letters shall be revoked and new letters granted as provided in subsection (1).

**History.**—s. 1, ch. 74-106; s. 62, ch. 75-220; s. 21, ch. 77-87; s. 1, ch. 77-174.  
**Note.**—Created from former s. 732.44.

**733.302 Who may be appointed personal representative.**—Subject to the limitations in this part, any person sui juris who is a resident of Florida at the time of the death of the person whose estate he seeks to administer is qualified to act as personal representative in Florida. A person who has been convicted of a felony or who, from sickness, intemperance, or want of understanding, is incompetent to discharge the duties of a personal representative is not qualified.

**History.**—s. 1, ch. 74-106; s. 63, ch. 75-220; s. 5, ch. 79-343.  
**Note.**—Created from former s. 732.45.

**733.303 Persons not qualified.—**

(1) A person is not qualified to act as a personal representative if:

(a) He has been convicted of a felony.

(b) He is mentally or physically unable to perform the duties.

(c) He is under the age of 18 years.

(2) If the person named as personal representative in the will is not qualified, letters shall be granted as provided in s. 733.301.

**History.**—s. 1, ch. 74-106; s. 63, ch. 75-220; s. 22, ch. 77-87.  
**Note.**—Created from former s. 732.46.

**733.304 Nonresidents.**—A person who is not domiciled in the state cannot qualify as personal representative unless the person is:

(1) A legally adopted child or adoptive parent of the decedent;

(2) Related by lineal consanguinity to the decedent;

(3) A spouse or a brother, sister, uncle, aunt, nephew, or niece of the decedent, or someone related by lineal consanguinity to any such person; or

(4) The spouse of a person otherwise qualified under this section.

**History.**—s. 1, ch. 74-106; s. 63, ch. 75-220; s. 6, ch. 79-343.

**Note.**—Created from former s. 732.47.

**733.305 Trust companies and other corporations.—**

(1) All trust companies incorporated under the laws of the state and all national banking associations authorized and qualified to exercise fiduciary powers in Florida shall be entitled to act as personal representatives and curators of estates.

(2) When a qualified corporation has been named as a personal representative in a will and thereafter transfers its business and assets to, consolidates or merges with, or is in any manner provided by law succeeded by, another qualified corporation, on the death of the testator, the successor corporation may qualify, and the court may issue letters to the successor corporation unless the will provides otherwise.

(3) A corporation authorized and qualified to act as a personal representative as a result of merger or consolidation shall succeed to the rights and duties of all predecessor corporations as the personal representative of estates upon filing proof in the court, and without a new appointment. A purchase of substantially all the assets and the assumption of substantially all the liabilities shall be deemed a merger for the purpose of this section.

**History.**—s. 1, ch. 74-106; s. 63, ch. 75-220; s. 1, ch. 77-174.

**Note.**—Created from former s. 732.49.

**733.306 Effect of appointment of debtor.—**

The appointment of a debtor as personal representative shall not extinguish the debt due to the decedent. This section shall not prevent a testator from releasing a debtor by will.

**History.**—s. 1, ch. 74-106; s. 63, ch. 75-220.

**Note.**—Created from former s. 732.51.

**733.307 Succession of administration.**—No personal representative of a personal representative as such shall be authorized to administer the estate of the first decedent. On the death of the sole or surviving personal representative, the court shall appoint a successor personal representative to complete the administration of the estate.

**History.**—s. 1, ch. 74-106; s. 64, ch. 75-220.

**Note.**—Created from former s. 732.52.

**733.308 Administrator ad litem.**—When it is necessary that an estate be represented and there is no personal representative of the estate, the court shall appoint an administrator ad litem without bond for that particular proceeding. The fact that the personal representative is seeking reimbursement for claims against the decedent paid by the personal representative does not require appointment of an administrator ad litem.

**History.**—s. 1, ch. 74-106; s. 65, ch. 75-220.

**Note.**—Created from former s. 732.55.

**733.309 Executor de son tort.**—No person shall be liable to a creditor of a decedent as executor de son tort, but any person taking, converting, or intermeddling with the property of a decedent shall be liable to the personal representative or curator, when appointed, for the value of all the property so taken or converted and for all damages to the estate caused by his wrongful action. This section shall not be construed to prevent a creditor of a decedent from suing anyone in possession of property fraudulently conveyed by the decedent to set aside the fraudulent conveyance.

**History.**—s. 1, ch. 74-106; s. 65, ch. 75-220.

#### PART IV

##### APPOINTMENT OF PERSONAL REPRESENTATIVE; BONDS

- 733.401 Issuance of letters.
- 733.402 Bond of personal representative; when required; form.
- 733.403 Amount of bond.
- 733.404 Liability of surety.
- 733.405 Release of surety.

##### **733.401 Issuance of letters.**—

- (1) After the petition for administration is filed:
  - (a) The will, if any, shall be proved as provided elsewhere in this code and shall be admitted to probate.
  - (b) The court shall appoint the person entitled and qualified to be personal representative.
  - (c) The court shall determine the amount of any bond required under this part. The clerk may approve the bond in the amount determined by the court and shall not charge a service fee.
  - (d) Any required oath or designation of, and acceptance by, a resident agent shall be filed.
- (2) Upon compliance with all of the foregoing, letters shall be issued to the personal representative.
- (3) Mistaken noncompliance with any of the requirements of subsection (1) shall not be jurisdictional.

**History.**—s. 1, ch. 74-106; s. 66, ch. 75-220; s. 23, ch. 77-87.

##### **733.402 Bond of personal representative; when required; form.**—

- (1) Unless the testator waived the requirement, every person to whom letters are granted shall execute and file a bond with surety, as defined in s. 45.011, to be approved by the clerk. The bond shall be payable to the Governor and his successors in office, conditioned on the performance of all duties as personal representative according to law. The bond must be joint and several.
- (2) No bond executed by a personal representative or curator shall be void or invalid because of an informality in it or an informality or illegality in the appointment of the fiduciary. The bond shall have the same force as if the appointment had been legally made and the bond executed in proper form.
- (3) The requirements of this section shall not ap-

ply to banks and trust companies authorized by law to act as personal representative.

**History.**—s. 1, ch. 74-106; s. 67, ch. 75-220; s. 24, ch. 77-87; s. 1, ch. 77-174.  
**Note.**—Created from former s. 732.61.

##### **733.403 Amount of bond.**—

(1) All bonds required by this part shall be in the penal sum that the court deems sufficient after consideration of the gross value of the estate, the relationship of the personal representative to the beneficiaries, exempt property and any family allowance, the type and nature of assets, and liens and encumbrances on the assets.

(2) On petition by any interested person or on the court's own motion, the court may waive the requirement of filing a bond, require a personal representative or curator to give bond, increase or decrease the bond, or require additional surety.

**History.**—s. 1, ch. 74-106; s. 67, ch. 75-220.

**Note.**—Created from former ss. 732.63, 732.64, 732.66.

**733.404 Liability of surety.**—No surety for any personal representative or curator shall be charged beyond the assets of an estate because of any omission or mistake in pleading or of false pleading of the personal representative or curator.

**History.**—s. 1, ch. 74-106; s. 68, ch. 75-220.

**Note.**—Created from former s. 732.65.

##### **733.405 Release of surety.**—

(1) On petitioning the surety, or the personal representative of a surety, on the bond of any personal representative or curator shall be entitled as a matter of right to be released from future liability upon the bond.

(2) Pending the hearing of the petition, the court may restrain the principal from acting in his representative capacity, except to preserve the estate.

(3) On hearing, the court shall enter an order prescribing the amount of the new bond for the personal representative or curator and the date when the bond shall be filed. If the principal fails to give the new bond, he shall be removed at once, and further proceedings shall be had as in cases of removal.

(4) The original surety or sureties shall be liable for all acts of the personal representative or surety until he has given the new bond and, after the giving of the new bond, shall remain liable for all the principal's acts to the time of the filing and approval of the new bond. The new surety shall be liable for the principal's acts only after the filing and approval of the new bond.

**History.**—s. 1, ch. 74-106; s. 68, ch. 75-220.

**Note.**—Created from former s. 732.68.

#### PART V

##### CURATORS; SUCCESSOR PERSONAL REPRESENTATIVES; REMOVAL

- 733.501 Curators.
- 733.502 Resignation of personal representative.
- 733.503 Appointment of successor upon resignation.
- 733.504 Causes of removal of personal representative.
- 733.505 Jurisdiction in removal proceedings.
- 733.506 Proceedings for removal.



- 733.507 Administration following resignation or removal.  
 733.508 Accounting upon removal.  
 733.509 Surrender of assets upon removal.

#### 733.501 Curators.—

(1) When it is necessary, the court may appoint a curator and issue letters of curatorship to take charge of the estate of a decedent until letters are granted. If the person entitled to letters is a resident of the county where the property is situated, no curator shall be appointed until formal notice is given to the person so entitled to letters. On appointment, the court shall direct the person in possession of the effects of the decedent to deliver them to the curator. The order may be enforced by contempt.

(2) If there is great danger that the property or any part of it is likely to be wasted, destroyed, or removed beyond the jurisdiction of the court and if the appointment of a curator would be delayed by giving notice, the court may appoint a curator without giving notice.

(3) On special order of the court, the curator may be authorized to perform any duty or function of a personal representative.

(4) Bond shall be required of the curator as the court deems necessary to secure the property. No bond shall be required of banks and trust companies as curators.

(5) The curator shall file an inventory of the property within 20 days. When the personal representative qualifies, the curator shall immediately account and deliver all assets of the estate in his hands to the personal representative within 20 days, and in default shall be subject to the provisions of this code relating to removal of personal representatives.

(6) Curators shall be allowed reasonable compensation for their services.

**History.**—s. 1, ch. 74-106; s. 69, ch. 75-220; s. 1, ch. 77-174.

**Note.**—Created from former s. 732.21.

**733.502 Resignation of personal representative.**—A personal representative may resign and be relieved of his office. Notice of the petition shall be given to all interested persons. Before relieving the personal representative from his duties and obligations, the court shall require him to file a true and correct account of his administration and deliver to his successor or to his joint personal representative all of the property of the decedent and all records concerning the estate. The acceptance of the resignation, after compliance with this section, shall not exonerate any personal representative or his surety from liability previously incurred.

**History.**—s. 1, ch. 74-106; s. 69, ch. 75-220; s. 25, ch. 77-87.

**Note.**—Created from former s. 734.09.

**733.503 Appointment of successor upon resignation.**—If there is no joint personal representative, a successor must be appointed and qualified before a personal representative may be relieved of his duties and obligations as provided in s. 733.502.

**History.**—s. 1, ch. 74-106; s. 69, ch. 75-220.

**Note.**—Created from former s. 734.10.

**733.504 Causes of removal of personal representative.**—A personal representative may be removed and his letters revoked for any of the following causes, and the removal shall be in addition to any penalties prescribed by law:

- (1) Adjudication of incompetency.
- (2) Physical or mental incapacity rendering him incapable of the discharge of his duties.
- (3) Failure to comply with any order of the court, unless the order has been superseded on appeal.
- (4) Failure to account for the sale of property or to produce and exhibit the assets of the estate when so required.
- (5) The wasting or maladministration of the estate.
- (6) Failure to give bond or security for any purpose.
- (7) Conviction of a felony.
- (8) Insolvency of, or the appointment of a receiver or liquidator for, any corporate personal representative.
- (9) The holding or acquiring by the personal representative of conflicting or adverse interests against the estate that will or may adversely interfere with the administration of the estate as a whole. This cause of removal shall not apply to the surviving spouse because of the exercise of the right to the elective share, family allowance, or exemptions, as provided elsewhere in this code.

(10) Revocation of the probate of the decedent's will that authorized or designated the appointment of such personal representative.

(11) Removal of domicile from Florida, if the personal representative is no longer qualified under part III of this chapter.

**History.**—s. 1, ch. 74-106; s. 69, ch. 75-220; s. 1, ch. 77-174.

**Note.**—Created from former s. 734.11.

**733.505 Jurisdiction in removal proceedings.**—A petition for removal shall be filed in the court issuing the letters.

**History.**—s. 1, ch. 74-106.

**Note.**—Created from former s. 734.12.

**733.506 Proceedings for removal.**—Proceedings for removal may be commenced by the court or by any interested person or joint personal representative.

**History.**—s. 1, ch. 74-106; s. 71, ch. 75-220.

**Note.**—Created from former s. 734.13.

**733.507 Administration following resignation or removal.**—When a personal representative has resigned or is removed and there is a remaining personal representative, no other personal representative shall be appointed unless the will otherwise requires. The remaining personal representative, together with any successor personal representative, if appointed, shall complete the administration of the estate. If the resigned or removed personal representative is a sole personal representative, the court shall appoint a successor personal representative as provided in s. 733.301.

**History.**—s. 1, ch. 74-106; s. 72, ch. 75-220; s. 26, ch. 77-87.

**Note.**—Created from former s. 734.14.

**733.508 Accounting upon removal.**—A removed personal representative shall file a full, true, and correct account of his administration within 30 days after his removal.

**History.**—s. 1, ch. 74-106.

**Note.**—Created from former s. 734.15.

**733.509 Surrender of assets upon removal.**—The removed personal representative shall deliver to the remaining or successor personal representative all of the property of the decedent and all records, documents, papers, and other property of or concerning the estate.

**History.**—s. 1, ch. 74-106; s. 73, ch. 75-220.

**Note.**—Created from former s. 734.16.

## PART VI

### DUTIES AND POWERS OF PERSONAL REPRESENTATIVE

- 733.601 Time of accrual of duties and powers.
- 733.602 General duties.
- 733.603 Personal representative to proceed without court order.
- 733.604 Inventory.
- 733.605 Appraisers.
- 733.606 Supplementary inventory.
- 733.607 Possession of estate.
- 733.608 General power of the personal representative.
- 733.609 Improper exercise of power; breach of fiduciary duty.
- 733.610 Sale, encumbrance or transaction involving conflict of interest.
- 733.611 Persons dealing with the personal representative; protection.
- 733.612 Transactions authorized for the personal representative; exceptions.
- 733.613 Personal representative's right to sell real property.
- 733.614 Powers and duties of successor personal representative.
- 733.615 Joint personal representatives; when joint action required.
- 733.616 Powers of surviving personal representatives.
- 733.617 Compensation of personal representatives and professionals.
- 733.6175 Proceedings for review of employment of agents and compensation of personal representatives and employees of estate.
- 733.619 Individual liability of personal representative.

**733.601 Time of accrual of duties and powers.**—The duties and powers of a personal representative commence upon his appointment. The powers of a personal representative relate back in time to give acts by the person appointed, occurring before appointment and beneficial to the estate, the same effect as those occurring thereafter. Before issuance of letters, a person named executor in a will may carry out written instructions of the decedent relating to his body and funeral and burial arrangements. A personal representative may ratify and accept acts

on behalf of the estate done by others when the acts would have been proper for a personal representative.

**History.**—s. 1, ch. 74-106; s. 74, ch. 75-220.

### 733.602 General duties.—

(1) A personal representative is a fiduciary who shall observe the standards of care applicable to trustees as described by s. 737.302. A personal representative is under a duty to settle and distribute the estate of the decedent in accordance with the terms of the decedent's will and this code as expeditiously and efficiently as is consistent with the best interests of the estate. He shall use the authority conferred upon him by this code, the authority in the will, if any, and the authority of any order in proceedings to which he is party, for the best interests of interested persons.

(2) A personal representative shall not be liable for any act of administration or distribution if the act was authorized at the time. Subject to other obligations of administration, a probated will is authority to administer and distribute the estate according to its terms. An order of appointment of a personal representative is authority to distribute apparently intestate assets to the heirs of the decedent if, at the time of distribution, the personal representative is not aware of a proceeding challenging intestacy or a proceeding questioning his appointment or fitness to continue. Nothing in this section affects the duty of the personal representative to administer and distribute the estate in accordance with the rights of interested persons.

**History.**—s. 1, ch. 74-106; s. 74, ch. 75-220; s. 27, ch. 77-87; s. 1, ch. 77-174; s. 270, ch. 79-400.

**733.603 Personal representative to proceed without court order.**—A personal representative shall proceed expeditiously with the settlement and distribution of a decedent's estate and, except as otherwise specified by this code or ordered by the court, shall do so without adjudication, order, or direction of the court. He may invoke the jurisdiction of the court to resolve judicial questions concerning the estate or its administration.

**History.**—s. 1, ch. 74-106.

### 733.604 Inventory.—

(1) Within 60 days after issuance of letters, a personal representative who is not a curator or a successor to another personal representative who has previously discharged the duty shall file an inventory of property of the estate, listing it with reasonable detail and including for each listed item its estimated fair market value at the date of the decedent's death.

(2) The personal representative shall send a copy of the inventory to interested persons who request it.

**History.**—s. 1, ch. 74-106; s. 76, ch. 75-220.

**Note.**—Created from former s. 733.03.

**733.605 Appraisers.**—The personal representative may employ a qualified and disinterested appraiser to assist him in ascertaining the fair market value of any asset at the date of the decedent's death or any other date that may be appropriate, the value of which may be subject to reasonable doubt. Differ-

ent persons may be employed to appraise different kinds of assets included in the estate.

**History.**—s. 1, ch. 74-106; s. 76, ch. 75-220.

**Note.**—Created from former ss. 733.04, 733.05.

**733.606 Supplementary inventory.**—If the personal representative learns of any property not included in the original inventory or that the estimated value or description indicated in the original inventory for any item is erroneous or misleading, he shall file a supplementary inventory showing the estimated value of the new item at the date of the decedent's death or the revised estimated value or description and furnish copies to interested persons who requested a copy of the inventory.

**History.**—s. 1, ch. 74-106; s. 76, ch. 75-220.

**733.607 Possession of estate.**—Except as otherwise provided by a decedent's will, every personal representative has a right to, and shall take possession or control of, the decedent's property, except the homestead, but any real property or tangible personal property may be left with, or surrendered to, the person presumptively entitled to it unless possession of the property by the personal representative will be necessary for purposes of administration. The request by a personal representative for delivery of any property possessed by a beneficiary is conclusive evidence that the possession of the property by the personal representative is necessary for the purposes of administration, in any action against the beneficiary for possession of it. The personal representative shall take all steps reasonably necessary for the management, protection, and preservation of the estate until distribution. He may maintain an action to recover possession of property or to determine the title to it.

**History.**—s. 1, ch. 74-106; s. 28, ch. 77-87.

**Note.**—Created from former s. 733.01.

**733.608 General power of the personal representative.**—All real and personal property of the decedent, except the homestead, within this state and the rents, income, issues, and profits from it shall be assets in the hands of the personal representative:

(1) For the payment of devises, debts, family allowance, estate and inheritance taxes, claims, charges, and expenses of administration.

(2) To enforce contribution and equalize advancement.

(3) For distribution.

**History.**—s. 1, ch. 74-106; s. 29, ch. 77-87.

**Note.**—Created from former s. 733.01(1).

**733.609 Improper exercise of power; breach of fiduciary duty.**—If the exercise of power concerning the estate is improper or in bad faith, the personal representative is liable to interested persons for damage or loss resulting from a breach of his fiduciary duty to the same extent as a trustee of an express trust. In all actions challenging the proper exercise of a personal representative's powers, the court shall award taxable costs as in chancery actions, including attorney's fees.

**History.**—s. 1, ch. 74-106; s. 78, ch. 75-220.

**733.610 Sale, encumbrance or transaction involving conflict of interest.**—Any sale or encumbrance to the personal representative or his spouse, agent, or attorney, or any corporation or trust in which he has a substantial beneficial interest, or any transaction that is affected by a conflict of interest on the part of the personal representative, is voidable by any interested person except one who has consented after fair disclosure, unless:

(1) The will or a contract entered into by the decedent expressly authorized the transaction; or

(2) The transaction is approved by the court after notice to interested persons.

**History.**—s. 1, ch. 74-106; s. 78, ch. 75-220.

**733.611 Persons dealing with the personal representative; protection.**—Except as provided in subsection 733.613(1), a person who in good faith either assists a personal representative or deals with him for value is protected as if the personal representative properly exercised his power. The fact that a person knowingly deals with the personal representative does not alone require the person to inquire into the existence of his power, the limits on his power, or the propriety of its exercise. A person is not bound to see to the proper application of estate assets paid or delivered to the personal representative. The protection here expressed extends to instances in which a procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters, including a case in which the alleged decedent is alive. The protection here expressed is not by substitution for that provided in comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries.

**History.**—s. 1, ch. 74-106; s. 78, ch. 75-220; s. 30, ch. 77-87; s. 1, ch. 77-174.

**733.612 Transactions authorized for the personal representative; exceptions.**—Except as otherwise provided by the will or by order of court, and subject to the priorities stated in s. 733.805, without order of court, a personal representative, acting reasonably for the benefit of the interested persons, may properly:

(1) Retain assets owned by the decedent, pending distribution or liquidation, including those in which the personal representative is personally interested or that are otherwise improper for trust investments.

(2) Perform or compromise, or, when proper, refuse performance of, the decedent's contracts. In performing enforceable contracts by the decedent to convey or lease real property, among other possible courses of action, the personal representative may:

(a) Convey the real property for cash payment of all sums remaining due or for the purchaser's note for the sum remaining due, secured by a mortgage on the land.

(b) Deliver a deed in escrow, with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the distributees of the decedent, as designated in the escrow agreement.

(3) Receive assets from fiduciaries or other sources.

(4) If funds are not needed to meet debts and expenses currently payable and are not immediately



distributable, deposit or invest liquid assets of the estate, including moneys received from the sale of other assets, in federally insured interest-bearing accounts, readily marketable secured loan arrangements, or other prudent investments that would be reasonable for use by trustees.

(5) Acquire or dispose of an asset, excluding real property in this or another state, for cash or on credit and at public or private sale, and manage, develop, improve, exchange, partition, or change the character of an estate asset.

(6) Make ordinary or extraordinary repairs or alterations in buildings or other structures; demolish improvements; or erect new party walls or buildings.

(7) Enter into a lease, as lessor or lessee, for a term within, or extending beyond, the period of administration, with or without an option to renew.

(8) Enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement.

(9) Abandon property when it is valueless or so encumbered, or in such condition, that it is of no benefit to the estate.

(10) Vote, or refrain from voting, stocks or other securities in person or by general or limited proxy.

(11) Pay calls, assessments, and other sums chargeable or accruing against, or on account of, securities, unless barred by the provisions relating to claims.

(12) Hold property in the name of a nominee or in other form without disclosure of the interest of the estate, but the personal representative is liable for any act of the nominee in connection with the property so held.

(13) Insure the assets of the estate against damage, loss, and liability and insure himself against liability to third persons.

(14) Borrow money, with or without security, to be repaid from the estate assets or otherwise, other than real property, and advance money for the protection of the estate.

(15) Extend, renew, or in any manner modify any obligation owing to the estate. If the personal representative holds a mortgage, security interest, or other lien upon property of another person, he may accept a conveyance or transfer of encumbered assets from the owner in satisfaction of the indebtedness secured by its lien instead of foreclosure.

(16) Pay taxes, assessments, and other expenses incident to the administration of the estate.

(17) Sell or exercise stock subscription or conversion rights or consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise.

(18) Allocate items of income or expense to either estate income or principal, as permitted or provided by law.

(19) Employ persons, including attorneys, accountants, auditors, investment advisors, and others, even if they are one and the same as the personal representative or are associated with the personal representative, to advise or assist the personal representative in the performance of his administrative duties; act upon the recommendations of such em-

ployed persons without independent investigation; and, instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary. Any fees and compensation paid to any such person who is the same as, associated with, or employed by, the personal representative shall be taken into consideration in determining the personal representative's compensation.

(20) Prosecute or defend claims or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of his duties.

(21) Sell, mortgage, or lease any personal property of the estate or any interest in it for cash, credit, or for part cash or part credit, and with or without security for the unpaid balance.

(22) Continue any unincorporated business or venture in which the decedent was engaged at the time of his death:

(a) In the same business form for a period of not more than 4 months from the date of his appointment, if continuation is a reasonable means of preserving the value of the business, including good will.

(b) In the same business form for any additional period of time that may be approved by order of court.

(23) Provide for exoneration of the personal representative from personal liability in any contract entered into on behalf of the estate.

(24) Satisfy and settle claims and distribute the estate as provided in this code.

(25) Enter into agreements with the proper officer or department head, commissioner, or agent of any department of the government of the United States, waiving the statute of limitations concerning the assessment and collection of any federal tax or any deficiency in a federal tax.

(26) Make part distribution to the beneficiaries of any part of the estate not necessary to satisfy claims, expenses of administration, taxes, family allowance, exempt property, and an elective share, in accordance with the decedent's will or as authorized by operation of law.

(27) Execute any instruments necessary in the exercise of the personal representative's powers.

**History.**—s. 1, ch. 74-106; s. 78, ch. 75-220; s. 3, ch. 76-172; s. 31, ch. 77-87; s. 1, ch. 77-174; s. 271, ch. 79-400.

### **733.613 Personal representative's right to sell real property.—**

(1) When a personal representative of a decedent dying intestate, or whose testator has not conferred upon him a power of sale or whose testator has granted a power of sale but his power is so limited by the will or by operation of law that it cannot be conveniently exercised, shall consider that it is for the best interest of the estate and of those interested in it that real property be sold, the personal representative may sell it at public or private sale. No title shall pass until the sale is authorized or confirmed by the court. Petition for authorization or confirmation of sale shall set forth the reasons for the sale, a description of the property sold or to be sold, and the price and terms of the sale. Except when interested persons have joined in the petition for sale of real property or have consented to the sale, notice of the

petition shall be given. No bona fide purchaser shall be required to examine any proceedings before the order of sale.

(2) When a decedent's will confers specific power to sell or mortgage real property or a general power to sell any asset of the estate, the personal representative may sell, mortgage, or lease, without authorization or confirmation of court, any real property of the estate or any interest therein for cash or credit, or for part cash and part credit, and with or without security for unpaid balances. The sale, mortgage, or lease need not be justified by a showing of necessity, and the sale pursuant to power of sale shall be valid.

History.—s. 1, ch. 74-106; s. 78, ch. 75-220.

Note.—Created from former s. 733.23.

**733.614 Powers and duties of successor personal representative.**—A successor personal representative has the same power and duty as the original personal representative to complete the administration and distribution of the estate as expeditiously as possible, but he shall not exercise any power made personal to the personal representative named in the will.

History.—s. 1, ch. 74-106; s. 78, ch. 75-220.

Note.—Created from former s. 734.10.

**733.615 Joint personal representatives; when joint action required.**—If two or more persons are appointed joint personal representatives, and unless the will provides otherwise, the concurrence of all is required on all acts connected with the administration and distribution of the estate. This restriction does not apply when any joint personal representative receives and receipts for property due the estate, when the concurrence of all cannot readily be obtained in the time reasonably available for emergency action necessary to preserve the estate, or when a joint personal representative has been delegated to act for the others.

History.—s. 1, ch. 74-106.

Note.—Created from former s. 732.50.

**733.616 Powers of surviving personal representatives.**—Unless the terms of the will otherwise provide, every power exercisable by joint personal representatives may be exercised by the one or more remaining after the appointment of one or more is terminated, and if one or more, but not all, nominated as joint personal representatives are not appointed, those appointed may exercise all the powers incident to the office.

History.—s. 1, ch. 74-106.

Note.—Created from former s. 732.52.

**733.617 Compensation of personal representatives and professionals.**—

(1) Personal representatives, attorneys, accountants, and appraisers and other agents employed by the personal representative shall be entitled to reasonable compensation. Reasonable compensation shall be based on one or more of the following:

(a) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the service properly.

(b) The likelihood that the acceptance of the particular employment will preclude other employment by the person.

(c) The fee customarily charged in the locality for similar services.

(d) The amount involved and the results obtained.

(e) The time limitations imposed by the circumstances.

(f) The nature and length of the professional relationship with the decedent.

(g) The experience, reputation, diligence, and ability of the person performing the services.

(2) If a will provides for compensation of the personal representative either directly or conditionally and there is no contract with the decedent regarding compensation, he may renounce the provisions and be entitled to reasonable compensation. A personal representative also may renounce his right to all or any part of the compensation. A renunciation may be filed with the court.

(3) If the personal representative is a member of The Florida Bar and has rendered legal services in connection with his official duties, he shall be allowed a fee therefor, determined as provided in subsection (1).

History.—s. 1, ch. 74-106; s. 80, ch. 75-220; s. 1, ch. 76-172.

Note.—Created from former s. 734.01.

**733.6175 Proceedings for review of employment of agents and compensation of personal representatives and employees of estate.**—After notice to all affected interested persons and upon petition of an interested person bearing all or part of the impact of the payment of compensation to the personal representative or any person employed by him, the propriety of such employment and the reasonableness of such compensation or payment may be reviewed by the court. The burden of proof of propriety of such employment and the reasonableness of the compensation shall be upon the personal representative and the person employed by him. Any person who is determined to have received excessive compensation from an estate for services rendered may be ordered to make appropriate refunds.

History.—s. 2, ch. 76-172.

**733.619 Individual liability of personal representative.**—

(1) Unless otherwise provided in the contract, a personal representative is not individually liable on a contract, except a contract for attorney's fee, properly entered into in his fiduciary capacity in the administration of the estate unless he fails to reveal his representative capacity and identify the estate in the contract.

(2) A personal representative is individually liable for obligations arising from ownership or control of the estate or for torts committed in the course of administration of the estate only if he is personally at fault.

(3) Claims based on contracts, except a contract for attorney's fee, entered into by a personal representative in his fiduciary capacity, on obligations arising from ownership or control of the estate, or on torts committed in the course of estate administration, may be asserted against the estate by proceeding against the personal representative in his fiduciary capacity, whether or not the personal representative is individually liable therefor.

(4) Issues of liability as between the estate and the personal representative individually may be determined in a proceeding for accounting, surcharge, or indemnification, or other appropriate proceeding.

**History.**—s. 82, ch. 75-220; s. 32, ch. 77-87; s. 228, ch. 77-104.

## PART VII

### CREDITORS' CLAIMS

733.701	Notifying creditors.
733.702	Limitations on presentation of claims.
733.703	Form and manner of presenting claim.
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733.708	Compromise.
733.709	Claims undisposed of after 1 year.
733.710	Limitations against unadministered estates.

**733.701 Notifying creditors.**—Unless the proceedings are under chapter 734 or chapter 735, every personal representative shall cause notice of administration to be published under section 733.212, notifying creditors of the decedent and others to present their claims within 3 months after the date of the first publication of such notice or be forever barred.

**History.**—s. 1, ch. 74-106; s. 83, ch. 75-220; s. 33, ch. 77-87.  
**Note.**—Created from former s. 733.15.

#### 733.702 Limitations on presentation of claims.—

(1) No claim or demand against the decedent's estate that arose before the death of the decedent, including claims of the state and any of its subdivisions, whether due or not, direct or contingent, liquidated or unliquidated, and no claim for personal property in the possession of the personal representative or for damages, including, but not limited to, actions founded on fraud or other wrongful act or omission of the decedent, shall be binding on the estate, on the personal representative, or on any beneficiary, unless presented:

(a) Within 3 months from the time of the first publication of the notice of administration, even though the personal representative has recognized the claim or demand by paying a part of it or interest on it or otherwise. The personal representative may settle in full any claim without the necessity of the claim being filed when the settlement has been approved by the beneficiaries adversely affected according to the priorities provided in this code and when the settlement is made within the statutory time for filing claims; or he may file a proof of claim of all claims he has paid or intends to pay.

(b) Within 3 years after the decedent's death, if notice of administration has not been published.

(2) No cause of action heretofore or hereafter accruing, including, but not limited to, actions founded upon fraud or other wrongful act or omission, shall survive the death of the person against whom the claim may be made, whether an action is pending at the death of the person or not, unless the claim is

filed in the manner provided in this part and within the time limited.

(3) Nothing in this section affects or prevents:

(a) A proceeding to enforce any mortgage, security interest, or other lien on property of the decedent.

(b) To the limits of casualty insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which he is protected by the casualty insurance.

**History.**—s. 1, ch. 74-106; s. 84, ch. 75-220.

**Note.**—Created from former s. 733.16.

**733.703 Form and manner of presenting claim.**—A creditor shall file with the clerk a written statement of the claim, indicating its basis, the name and address of the creditor or his agent or attorney, and the amount claimed. The claim is presented when filed. If a claim is not yet due, the date when it will become due shall be stated. If the claim is contingent or unliquidated, the nature of the uncertainty shall be stated. If the claim is secured, the security shall be described. Failure to describe correctly the security, the nature of any uncertainty, or the due date of a claim not yet due does not invalidate the presentation made. A creditor shall deliver a copy of the claim to the clerk who shall furnish the copy to the personal representative and note the fact on the original.

**History.**—s. 1, ch. 74-106; s. 84, ch. 75-220.

**Note.**—Created from former s. 733.16.

**733.704 Amendment of claims.**—If a bona fide attempt to file a claim is made by a creditor but the claim is defective as to form, the court may permit the amendment of the claim at any time.

**History.**—s. 1, ch. 74-106; s. 1, ch. 77-174.

**Note.**—Created from former s. 733.17.

#### 733.705 Payment of and objection to claims.—

(1) No personal representative shall be compelled to pay the debts of the decedent until after the expiration of 4 months from the first publication of notice of administration. If any person brings an action against a personal representative within the 4 months on any claim to which the personal representative has filed no objection, the plaintiff shall not receive any costs or attorneys' fees if he prevails, nor shall the judgment change the class of the claim for payment under this code.

(2) On or before the expiration of 4 months from the first publication of notice of administration, a personal representative or other interested person may file a written objection to any claim. An objection filed to an unmatured claim matures it for the purpose of bringing an action on it. If an objection is filed, the person filing it shall serve a copy of the objection by registered or certified mail to the address of the claimant as shown on the claim or delivery to the claimant to whose claim he objects or the claimant's attorney of record, if any, not later than 10 days after it has been filed, and also on the personal representative if the objection is filed by any interested person other than the personal representative. Failure to serve a copy of the objection constitutes an abandonment of the objection.

(3) The claimant shall be limited to 30 days from the date of service of an objection within which to



bring an independent action upon the claim. For good cause, the court may extend the time for filing an objection to any claim or the time for serving the objection, and may likewise extend the time for filing an action or proceeding after objection is filed. The extension of time shall be granted only after notice. No action or proceeding shall be brought against the personal representative after the time limited above. If an objection is filed to the claim of any creditor and an action is brought by the creditor to establish his claim, a judgment establishing the claim shall give it no priority over claims of the same class to which it belongs.

(4) No interest shall be paid by the personal representative or allowed by the court on a claim until the expiration of 5 calendar months from the first publication of the notice of administration, unless the claim is founded on a written obligation of the decedent providing for the payment of interest. Interest shall be paid by the personal representative on written obligations of the decedent providing for the payment of interest. On all other claims, interest shall be allowed and paid beginning 5 months from the first publication of the notice of administration.

(5) The court may determine all issues concerning claims or matters not requiring trial by jury.

**History.**—s. 1, ch. 74-106; s. 86, ch. 75-220; s. 34, ch. 77-87; s. 1, ch. 77-174.  
**Note.**—Created from former s. 733.18.

**733.706 Executions and levies.**—Except upon approval by the court, no execution or other process shall issue on or be levied against property of the estate. Claims on all judgments against a decedent shall be filed in the same manner as other claims against estates of decedents. This section shall not be construed to prevent the enforcement of mortgages, security interests, or liens encumbering specific property.

**History.**—s. 1, ch. 74-106; s. 86, ch. 75-220.  
**Note.**—Created from former s. 733.19.

**733.707 Order of payment of expenses and obligations.**—

(1) The personal representative shall pay the expenses of the administration and obligations of the estate in the following order:

(a) *Class 1.*—Costs, expenses of administration, and compensation of personal representatives and their attorneys' fees.

(b) *Class 2.*—Reasonable funeral, interment, and grave-marker expenses, whether paid by a guardian under subsection 744.501(21), the personal representative, or any other person, not to exceed the aggregate of \$1,500.

(c) *Class 3.*—Debts and taxes with preference under federal law.

(d) *Class 4.*—Reasonable and necessary medical and hospital expenses of the last 60 days of the last illness of the decedent, including compensation of persons attending him.

(e) *Class 5.*—Family allowance.

(f) *Class 6.*—Debts acquired after death by the continuation of the decedent's business, in accordance with subsection 733.612(22), but only to the extent of the assets of that business.

(g) *Class 7.*—All other claims, including those founded on judgments or decrees rendered against

the decedent during his lifetime, and any excess over the sums allowed in paragraphs (b) and (d).

(2) After paying any preceding class, if the estate is insufficient to pay all of the next succeeding class, the creditors of the latter class shall be paid ratably in proportion to their respective claims.

**History.**—s. 1, ch. 74-106; s. 86, ch. 75-220; s. 35, ch. 77-87.  
**Note.**—Created from former s. 733.20.

**733.708 Compromise.**—When a proposal is made to compromise any claim, whether in suit or not, by or against the estate of a decedent or to compromise any question concerning the distribution of a decedent's estate, the court may enter an order authorizing the compromise if satisfied that the compromise will be for the best interest of the beneficiaries. The order shall relieve the personal representative of liability or responsibility for the compromise. Claims against the estate may not be compromised until after the time for filing objections to claims has expired. Notice must be given to those who have filed objection to the claim proposed to be compromised.

**History.**—s. 1, ch. 74-106; s. 86, ch. 75-220.  
**Note.**—Created from former s. 733.21.

**733.709 Claims undisposed of after 1 year.**—When a person has filed a claim against an estate and the claim has not been paid, settled, or otherwise disposed of and no proceeding is pending for the enforcement or compulsory payment of it at the expiration of 1 year from the date the claim was filed, the claim shall be forever barred. No action shall thereafter be brought to enforce it. This section shall not affect the lien of any duly recorded mortgage or security interest or the lien of any person in possession of personal property or the right to foreclose and enforce the mortgage or lien.

**History.**—s. 1, ch. 74-106; s. 86, ch. 75-220.  
**Note.**—Created from former s. 733.211.

**733.710 Limitations against unadministered estates.**—Three years after the death of a person, his estate shall not be liable in any cause of action if no letters have been issued in Florida within the 3-year period. This section shall not affect the lien of any duly recorded mortgage or security interest or the lien of any person in possession of personal property or the right to foreclose and enforce the mortgage or lien.

**History.**—s. 1, ch. 74-106; s. 50, ch. 75-220; s. 36, ch. 77-87.  
**Note.**—Created from former s. 734.29(1).

## PART VIII

### SPECIAL PROVISIONS FOR DISTRIBUTION

- |         |   |
|---------|---|
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- 733.815 Private agreements among distributees.
- 733.816 Disposition of unclaimed funds held by personal representatives.
- 733.817 Apportionment of estate taxes.

**733.801 Delivery of devises and distributive shares.**—No personal representative shall be required to pay or deliver any devise or distributive share or to surrender possession of any land to any beneficiary until the expiration of 5 months from the granting of letters.

*History.*—s. 1, ch. 74-106; s. 86, ch. 75-220.

*Note.*—Created from former s. 734.02.

**733.802 Proceedings for compulsory payment of devises or distributive interest.**—

(1) Before final distribution, no personal representative shall be compelled:

- (a) To pay a devise in money before the final settlement of his accounts,
- (b) To deliver specific personal property devised that may have come into his hands, unless the personal property is exempt personal property,
- (c) To pay all or any part of a distributive share in the personal estate of a decedent, or
- (d) To surrender land to any beneficiary,

unless the beneficiary files a petition setting forth the facts that entitle him to relief and stating that the property will not be required for the payment of debts, family allowance, estate and inheritance taxes, claims, elective share of the surviving spouse, charges, or expenses of administration or for providing funds for contribution or enforcing equalization in case of advancements.

(2) An order directing the surrender of real property or the delivery of personal property shall describe the property to be surrendered or delivered. The order shall be conclusive in favor of bona fide purchasers for value from the beneficiary or distributee as against the personal representative and all other persons claiming by, through, under, or against the decedent or his estate.

(3) If the administration of the estate has not been completed before the entry of an order of partial distribution, the court may require the person entitled to distribution to give a bond with sureties as prescribed in s. 45.011, conditioned on the making of due contribution for the payment of devises, family allowance, estate and inheritance taxes, claims, elective share of the spouse, charges, expenses of administration, and equalization in case of advancements, plus any interest on them.

*History.*—s. 1, ch. 74-106; s. 86, ch. 75-220; s. 37, ch. 77-87; s. 1, ch. 77-174; s. 272, ch. 79-400.

*Note.*—Created from former s. 734.03.

**733.803 Encumbered property; liability for payment.**—The specific devisee of any encumbered property shall be entitled to have the encumbrance on devised property paid at the expense of the residue of the estate only when the will shows such an

intent. A general direction in the will to pay debts does not show such an intent.

*History.*—s. 1, ch. 74-106; s. 86, ch. 75-220.

*Note.*—Created from former s. 734.051.

**733.805 Order in which assets are appropriated.**—

(1) If a testator makes provision by his will, or designates the funds or property to be used, for the payment of debts, estate and inheritance taxes, family allowance, exempt property, elective share charges, expenses of administration, and devises, they shall be paid out of the funds or from the property or proceeds as provided by the will so far as sufficient. If no provision is made or any fund designated, or if it is insufficient, the property of the estate shall be used for such purposes, except as otherwise provided in s. 733.817 with respect to estate, inheritance, and other death taxes, and to raise the shares of a pretermitted spouse and children, in the following order:

- (a) Property not disposed of by the will.
- (b) Property devised to the residuary devisee or devisees.
- (c) Property not specifically or demonstratively devised.
- (d) Property specifically or demonstratively devised.

(2) Demonstrative devises shall be classed as general devises upon the failure or insufficiency of funds or property out of which payment should be made, to the extent of the insufficiency. Devises to the decedent's surviving spouse, given in satisfaction of, or instead of, the surviving spouse's statutory rights in the estate, shall not abate until other devises of the same class are exhausted. Devises given for a valuable consideration shall abate with other devises of the same class only to the extent of the excess over the amount of value of the consideration until all others of the same class are exhausted. Except as herein provided, devises shall abate equally and ratably and without preference or priority as between real and personal property. When property that has been specifically devised or charged with a devise is sold or taken by the personal representative, other devisees shall contribute according to their respective interests to the devisee whose devise has been sold or taken, and before distribution the court shall determine the amounts of the respective contributions, and they shall be paid or withheld before distribution is made.

*History.*—s. 1, ch. 74-106; s. 88, ch. 75-220; s. 1, ch. 77-174.

*Note.*—Created from former s. 734.05.

**733.806 Advancement.**—If a person dies intestate as to all his estate, property that he gave in his lifetime to an heir is treated as an advancement against the latter's share of the estate only if declared in a contemporaneous writing by the decedent or acknowledged in writing by the heir. The property advanced shall be valued at the time the heir came into possession or enjoyment of the property or at the time of the death of the decedent, whichever first occurs. If the recipient of the property does not survive the decedent, the property shall not be taken into account in computing the intestate share to be received by the recipient's descendants unless the

declaration or acknowledgment provides otherwise.

**History.**—s. 1, ch. 74-106.

**Note.**—Created from former s. 734.07.

### **733.808 Death benefits; disposition of proceeds.—**

(1) Death benefits of any kind, including, but not limited to, proceeds of:

- (a) An individual life insurance policy;
- (b) A group life insurance policy;
- (c) An employees' trust or under a contract purchased by an employees' trust forming part of a pension, stock-bonus, or profit-sharing plan;
- (d) An annuity or endowment contract; and
- (e) A health and accident policy,

may be made payable to the trustee under a trust agreement or declaration of trust in existence at the time of the death of the insured, employee, or annuitant. The death benefits shall be held and disposed of by the trustee in accordance with the terms of the trust as they appear in writing on the date of the death of the insured, employee, or annuitant. It shall not be necessary to the validity of the trust agreement or declaration of trust, whether revocable or irrevocable, that it have a trust corpus other than the right of the trustee to receive death benefits.

(2) Death benefits of any kind, including, but not limited to, proceeds of:

- (a) An individual life insurance policy;
- (b) A group life insurance policy;
- (c) An employees' trust, or under a contract purchased by an employees' trust, forming part of a pension, stock-bonus, or profit-sharing plan;
- (d) An annuity or endowment contract; and
- (e) A health and accident policy,

may be made payable to the trustee named, or to be named, in a written instrument that is admitted to probate as the last will of the insured, the owner of the policy, the employee covered by the plan or contract, or any other person, whether or not the will is in existence at the time of designation. Upon the admission of the will to probate, the death benefits shall be paid to the trustee, to be held, administered, and disposed of in accordance with the terms of the trust or trusts created by the will.

(3) In the event no trustee makes proper claim to the proceeds from the insurance company or other obligor within a period of 6 months after the date of the death of the insured, employee, or annuitant, or if satisfactory evidence is furnished to the insurance company or such obligor within that period that there is, or will be, no trustee to receive the proceeds, payment shall be made by the insurance company or obligor to the personal representative of the person making such designation, unless otherwise provided by agreement with the insurer or other obligor during the lifetime of the insured, employee, or annuitant.

(4) Death benefits payable as provided in subsections (1), (2) or (3), unless paid to a personal representative under the provisions of subsection (3), shall not be deemed to be part of the estate of the testator or an intestate estate, and shall not be subject to any obligation to pay transfer or estate taxes, debts, or other charges enforceable against the estate to any

greater extent than if such proceeds were payable directly to the beneficiaries named in the trust.

(5) The death benefits so held in trust may be commingled with any other assets that may properly come into the trust.

(6) Nothing in this section shall affect the validity of any designation of a beneficiary of proceeds heretofore made that designates as beneficiary the trustee of any trust established under a trust agreement or declaration of trust or by will.

**History.**—s. 1, ch. 74-106; s. 38, ch. 77-87.

**Note.**—Created from former s. 736.172.

**733.809 Right of retainer.**—The amount of a noncontingent indebtedness of a beneficiary to the estate, if due, or its present value, if not due, may be offset against the beneficiary's interest, but the beneficiary has the benefit of any defense that would be available to him in a direct proceeding for recovery of the debt.

**History.**—s. 1, ch. 74-106; s. 39, ch. 77-87.

### **733.810 Distribution in kind; valuation.—**

(1) Unless a general power of sale is conferred or a contrary intention is indicated by the will or unless assets are otherwise disposed of under the provisions of this code, the distributable assets of a decedent's estate shall be distributed in kind through application of the following provisions:

(a) Any family allowance or devise payable in money may be satisfied by value in kind if:

1. The person entitled to the payment has not demanded cash;

2. The property distributed in kind is valued at fair market value as of the date of its distribution; and

3. No residuary devisee has requested that the asset remain a part of the residue of the estate.

(b) When it is not practicable to distribute undivided interests in a residuary property, the property shall be converted into cash for distribution.

(2) When the personal representative, trustee, or other fiduciary under a will or trust instrument is required to, or has an option to, satisfy a devise or transfer in trust to, or for the benefit of, the surviving spouse with assets of the estate or trust in kind, at values as finally determined for federal estate tax purposes, the personal representative, trustee, or other fiduciary shall, unless the will or trust instrument otherwise provides, satisfy the devise or transfer in trust by distribution of assets, including cash, fairly representative of the appreciated or depreciated value of all property available for distribution in satisfaction of the devise or transfer in trust, taking into consideration any gains and losses realized from the sale, prior to distribution of the marital interest, of any property not specifically, generally, or demonstratively devised.

(3) With the consent of all beneficiaries affected, a personal representative or a trustee is authorized to distribute any distributable assets, non-pro rata among the beneficiaries entitled thereto.

**History.**—s. 1, ch. 74-106; s. 92, ch. 75-220; s. 40, ch. 77-87.

**Note.**—Created from former s. 734.031.



**733.811 Distribution; right or title of distributee.**—Proof that a distributee has received an instrument transferring assets in kind or payment in distribution or possession of specific property from a personal representative is conclusive evidence that the distributee has succeeded to the interest of the estate in the distributed assets, as against all persons interested in the estate, but the personal representative may recover the assets or their value if the distribution was improper.

History.—s. 1, ch. 74-106.

**733.812 Improper distribution; liability of distributee.**—Unless the distribution or payment no longer can be questioned because of adjudication, estoppel, or limitations, a distributee of property improperly distributed or paid or a claimant who was improperly paid, if he has the property, is liable to return the property improperly received and its income since distribution to the personal representative or to the beneficiaries entitled to it. If he does not have the property, then he is liable to return the value of the property improperly received at the date of disposition and its income and gain received by him.

History.—s. 1, ch. 74-106; s. 92, ch. 75-220.

**733.813 Purchasers from distributees protected.**—If property distributed in kind, or a security interest therein, is acquired by a purchaser or lender for value from a distributee who has received an instrument of distribution or possession from the personal representative, the purchaser or lender takes title free of any claims of the estate and incurs no personal liability to the estate, whether or not the distribution was proper. To be protected under this provision a purchaser or lender need not inquire whether a personal representative acted properly in making the distribution in kind.

History.—s. 1, ch. 74-106.

**733.814 Partition for purpose of distribution.**—When two or more heirs or devisees are entitled to distribution of undivided interests in any property, the personal representative or one or more of the beneficiaries may petition the court before closing the estate to make partition. After formal notice to the interested beneficiaries, the court shall partition the property in the same manner as provided by law for civil actions of partition. The court may direct the personal representative to sell any property that cannot be partitioned without prejudice to the owners and that cannot conveniently be allotted to any one party.

History.—s. 1, ch. 74-106.

**733.815 Private agreements among distributees.**—Subject to the rights of creditors and taxing authorities, competent interested persons may agree among themselves to alter the interests, shares, or amounts to which they are entitled under the will or under the laws of intestacy in a written contract executed by all who are affected. The personal representative shall abide by the terms of the agreement, subject to his obligation to administer the estate for the benefit of creditors, to pay all taxes and costs of administration, and to carry out the responsibilities

of his office for the benefit of any beneficiaries of the decedent who are not parties to the agreement. Personal representatives are not required to see to the performance of trusts if the trustee is another person who is willing to accept the trust. Trustees of a testamentary trust are beneficiaries for the purposes of this section. Nothing herein relieves trustees of any duties owed to beneficiaries of trusts.

History.—s. 1, ch. 74-106; s. 94, ch. 75-220.

**733.816 Disposition of unclaimed funds held by personal representatives.**—

(1) In all cases in which there are unclaimed funds in the hands of a personal representative that cannot be distributed or paid to the lawful owner because of inability to find him or because no lawful owner is known, the court shall order the personal representative to deposit the funds with the clerk and receive a receipt, and the clerk shall deposit the funds in the registry of the court to be disposed of as follows:

(a) If the value of the funds is \$50 or less, the clerk shall post a notice for 30 days at the courthouse door giving the amount involved, the name of the personal representative, and the other pertinent information that will put interested persons on notice.

(b) If the value of the funds is over \$50, the clerk shall publish the notice once a month for 2 consecutive months in a newspaper of general circulation in the county.

After the expiration of 6 months from the posting or first publication, the clerk shall deposit the funds with the State Treasurer after deducting his fees and the costs of publication.

(2) Upon receipt of the funds, the State Treasurer shall deposit them to the credit of the State School Fund, to become a part of the school fund. All interest and all income that may accrue from the money while so deposited shall belong to the fund. The funds so deposited shall constitute and be a permanent appropriation for payments by the State Treasurer in obedience to court orders entered as provided by subsection (3).

(3) Within 10 years from the date of deposit with the State Treasurer, on written petition to the court that directed the deposit of the funds and informal notice to the Department of Legal Affairs, and after proof of his right to them, any person entitled to the funds before or after payment to the State Treasurer and deposit as provided by subsection (1) may obtain an order of court directing the payment of the funds to him. All funds deposited with the State Treasurer and not claimed within 10 years from the date of deposit shall escheat to the state for the benefit of the State School Fund.

History.—s. 1, ch. 74-106; s. 95, ch. 75-220.

Note.—Created from former s. 734.221.  
cf.—s. 717.08 Property held by fiduciaries.

**733.817 Apportionment of estate taxes.**—

(1) Any estate, inheritance, or other death tax levied or assessed under the tax laws of this or any other state, political subdivision, or country or under any United States revenue act concerning any property included in the gross estate under the law shall be apportioned in the following manner:

(a) If a part of the estate passed under a will as a specific devise or general devise or in any other nonresiduary form, exclusive of property over which the decedent had a power of appointment as defined from time to time under the estate tax laws of the United States, the net amount of the tax attributable to it shall be charged to and paid from the residuary estate without requiring contribution from persons receiving the interests, except as otherwise directed by the will. In the event the residuary estate is insufficient to pay the tax attributable to the interests, any balance of the tax shall be equitably apportioned among the recipients of the interests in the proportions that the value of each interest included in the measure of the tax bears to the total of all interests so included, except as otherwise directed by the will.

(b) If a part of the estate passed under the will as a residuary interest, exclusive of property over which the decedent had power of appointment, the net amount of tax attributable to it shall be equitably apportioned among the residuary beneficiaries in the proportions that the value of the residuary interest of each included in the measure of the tax bears to the total of all residuary interests so included, except as otherwise directed by the will. When a residuary interest is an interest in income or an estate for years or for life or other temporary interest, the tax attributable to it shall be charged to corpus and not apportioned between temporary and remainder interests.

(c) If a part of the property concerning which the tax is levied or assessed is held under the terms of any trust created inter vivos or is subject to a power of appointment, the net amount of the tax attributable to it shall be charged to and paid from the part of the corpus of the trust property or the property subject to the power of appointment included in the measure of the tax, as the case may be, and shall not be apportioned between temporary and remainder interests, except as otherwise directed by the trust instrument concerning the fund established by it or by the will.

(d) Real property homesteads that are exempt from execution by law shall be exempt from apportionment of taxes. Persons taking an interest in the homesteads shall not be liable for apportionment of taxes on account of the homesteads. The net amount of the tax attributable to homestead property shall be paid from other assets of the probate or intestate estate in the order as directed by will or, if not so provided, in the following order:

1. Property not disposed of by the will.
2. Property devised to the residuary devisee.
3. Property not specifically or demonstratively devised.
4. Property specifically or demonstratively devised.

(e) The balance of the net amount of the tax, including, but not limited to, any tax imposed concerning gifts in contemplation of death, jointly held properties passing by survivorship, property passing by intestacy, or insurance, shall be equitably apportioned among, and paid by, the recipients and beneficiaries of the properties or interests, in the proportion that the value of the property or interest of each

included in the measure of the tax bears to the total value of all the properties and interests included in the measure of the tax, except as otherwise directed by the will. When a property or interest is an interest in income or an estate for years or for life or other temporary interest, the amount charged to such recipients or beneficiaries shall not be apportioned between temporary and remainder estates but shall be charged to and paid out of the corpus of the property or fund.

(f) Nothing herein contained shall be construed to require the personal representative to pay any estate, inheritance, or other death taxes levied or assessed by any foreign country, unless specific directions to that effect are contained in the will.

(2) As used in this section:

(a) The net amount of tax attributable to the interests encompassed by any one of paragraphs (1)(a) through (e) shall be the part of the net amount of the tax as finally determined, with interest on it, as the value of interests included in the measure of the tax and included in the paragraph bears to the amount of the net estate, except that, in the case of an inheritance or similar tax, the tax that is imposed on each beneficiary's interest, as determined under the law of the state, country, or political subdivision then under consideration, shall be deemed the tax attributable to the interest.

(b) The term "net estate" shall mean the gross estate, as defined by the estate, inheritance, or death tax laws of the particular state, country, or political subdivision whose tax is being apportioned, less the deductions, other than the specific exemption, allowed. All proportions based on net estate shall be determined without regard to any diminution in deductions resulting from the charge of any part of the tax to a deductible interest.

(c) The term "included in the measure of the tax" shall not include any property or interest, whether passing under the will or not, to the extent the property or interest is exempt or is initially deductible from the gross estate, without regard to any subsequent diminution of the deduction by reason of the charge of any part of the tax to the property or interest.

(d) The word "value" shall mean the pecuniary worth of the interest involved as finally determined for purposes of the estate, death, or inheritance tax then under consideration, without regard to any diminution of it by reason of the charge of any part of tax.

(e) Except when the will or other governing instrument otherwise provides, in the event a credit is given under the estate tax laws of the United States for any estate, inheritance, or death taxes paid to other countries or political subdivisions, the credit shall be apportioned among the recipients of interests finally charged with the payment of the foreign tax in reduction of any United States estate tax chargeable to the recipients or interests, whether or not the United States estate tax is attributable to the foreign interests. Any excess of the credit shall be applied in reduction of the part of United States estate tax chargeable to residue, and any excess of the credit over the United States estate tax chargeable to residue shall be apportioned ratably among

those persons or interests finally charged with the balance of the payment of United States estate tax.

(3) Unless otherwise directed by the will, the tax shall be paid by the personal representative out of the estate. In all cases in which any property required to be included in the gross estate does not come into the possession of the personal representative, he shall recover:

(a) From the fiduciary in possession of the corpus of the trust or of property subject to the power of appointment in cases in which property of a trust created inter vivos or property subject to a power of appointment is included in the gross estate; and

(b) In all other cases, from the recipient or beneficiaries of property or interests with respect to which the tax is levied or assessed,

the proportionate amount of the tax payable by the fiduciary or persons with which they are chargeable under the provisions of this act, unless relieved of the duty as provided in subsection (6). This subsection shall not authorize the recovery of any taxes from any company issuing insurance included in the gross estate, or from any bank, trust company, savings and loan association, or similar institution with respect to any account in the name of the decedent and any other person that passed by operation of law on the decedent's death. If the fiduciary brings an action to recover a share of tax apportioned to an interest not within his control, the judgment he obtains may include costs and reasonable attorney's fees.

(4) No personal representative or other fiduciary shall be required to transfer any property until the amount of any tax due from the transferee is paid or, if the apportionment of tax has not been determined, until adequate security is furnished for the payment. The fiduciary shall not be required to distribute assets that he reasonably anticipates may be necessary to pay any state or federal taxes.

(5) After the amount of all estate, inheritance, and death taxes is finally determined, the personal representative or other fiduciary shall petition for an order of apportionment and shall give formal notice of the petition and the hearing to all interested persons. The personal representative shall be entitled, and it shall be his duty, except as provided in subsection (6), to attempt to effect apportionment as determined by the order, and the apportionment shall be prima facie correct in proceedings in any court or jurisdiction. The personal representative shall not be required to seek collection of any portion of tax attributable to any interest not within his control until after entry of the order.

(6)(a) A personal representative or other fiduciary who has the duty under this section of collecting the apportioned tax from persons interested in the estate may be relieved of the duty to collect the tax by an order of the court finding:

1. That the estimated court costs and attorney fees in collecting the apportioned tax from a person interested in the estate will approximate the amount of the recovery.

2. That the person interested in the estate is a resident of a foreign country other than Canada and refuses to pay the apportioned tax on demand.

3. That it is impracticable to enforce contribution of the apportioned tax against any person interested in the estate in view of the improbability of obtaining a judgment or the improbability of collection under any judgment that might be obtained, or otherwise.

(b) The fiduciary shall not be liable for failure to attempt to enforce collection if the attempt would in fact have been economically impracticable. Nothing in this section shall limit the right of any person who is charged with more than the amount of the tax apportionable to him to obtain contribution from those who shall not have paid the full amount of the tax apportionable to them, and that right is hereby conferred.

(c) If a fiduciary obtains an order described above, the share of tax to which it refers shall be paid from assets of the estate in the order provided by s. 733.805. Any apportioned tax that is not collected shall also be paid from assets in the same order.

**History.**—s. 1, ch. 74-106; s. 95, ch. 75-220; s. 41, ch. 77-87; s. 273, ch. 79-400.  
**Note.**—Created from former s. 734.041.

## PART IX

### CLOSING ESTATES

733.901 Distribution; final discharge.

733.903 Subsequent administration.

#### 733.901 Distribution; final discharge.—

(1) When a personal representative has completed administration except for distribution, he shall file a final accounting and a petition for discharge that shall contain:

(a) A complete report of all receipts and disbursements since the date of the last annual accounting or, if none, from the commencement of administration.

(b) A statement that he has fully administered the estate by making payment, settlement, or other disposition of all claims and debts that were presented and the expenses of administration.

(c) The proposed distribution of the assets of the estate.

(d) Any prior distributions that have been made.

(e) A statement that objections to this report or proposed distribution of assets be filed within 30 days.

The final accounting and petition for discharge shall be filed and served on all interested persons within 12 months after issuance of letters, unless the time is extended by the court for cause shown after notice to interested persons. The petition shall state the status of the estate and the reasons for the extension.

(2) If no objection to the accounting or petition for discharge has been filed within 30 days from the date of service of copies on interested persons, or if service has been waived, the personal representative may distribute the estate according to the plan of distribution set forth in the petition without a court order. The assets shall be distributed free from the claims of any interested person and, upon receipt of evidence that the estate has been properly distributed and that claims of creditors have been paid or



otherwise disposed of, the court shall enter an order discharging the personal representative and releasing the surety on any bond.

(3) If an objection to the petition for discharge has been filed within the time allowed, the court shall determine the plan of distribution and, upon receipt of evidence that the estate has been properly distributed and that claims of creditors have been paid or otherwise disposed of, the court shall enter an order discharging the personal representative and releasing the surety on any bond.

(4) The 30-day period contained in subsection (2) may be waived upon written consent of all interested persons.

(5) The discharge of the personal representative shall release the personal representative of the es-

tate and shall bar any action against the personal representative, as such or individually, and his surety.

**History.**—s. 1, ch. 74-106; s. 96, ch. 75-220; s. 42, ch. 77-87; s. 1, ch. 77-174.

**Note.**—Created from former s. 734.22.

**733.903 Subsequent administration.**—The final settlement of an estate and the discharge of the personal representative shall not prevent a revocation of the order of discharge or the subsequent issuance of letters if other property of the estate is discovered or if it becomes necessary that further administration of the estate be had for any cause.

**History.**—s. 1, ch. 74-106; s. 96, ch. 75-220.

**Note.**—Created from former s. 734.26.

## CHAPTER 734

PROBATE CODE: FOREIGN PERSONAL REPRESENTATIVES;  
ANCILLARY ADMINISTRATION

## PART I GENERAL PROVISIONS (ss. 734.101-734.104)

PART II JURISDICTION OVER FOREIGN PERSONAL REPRESENTATIVES  
(ss. 734.201, 734.202)

## PART I

## GENERAL PROVISIONS

- 734.101 Foreign personal representative.  
 734.102 Ancillary administration.  
 734.104 Foreign wills; admission to record; effect on title.

**734.101 Foreign personal representative.—**

(1) Personal representatives who produce authenticated copies of probated wills or letters of administration duly obtained in any state or territory of the United States may maintain actions in the courts of this state.

(2) Personal representatives appointed in any state or country may be sued in this state concerning property in this state and may defend actions or proceedings brought in this state.

(3) Debtors who have not received a written demand for payment from a personal representative or curator appointed in this state within 60 days after appointment of a personal representative in any other state or country, and whose property in Florida is subject to a mortgage or other lien securing the debt held by the foreign personal representative, may pay the foreign personal representative after the expiration of 60 days from the date of his appointment. Thereafter, a satisfaction of the mortgage or lien executed by the foreign personal representative, with an authenticated copy of his letters or other evidence of authority attached, may be recorded in the public records. The satisfaction shall be an effective discharge of the mortgage or lien, irrespective of whether the debtor making payment had received a written demand before paying the debt.

(4) All persons indebted to the estate of a decedent, or having possession of personal property belonging to the estate, who have received no written demand from a personal representative or curator appointed in this state for payment of the debt or the delivery of the property are authorized to pay the debt or to deliver the personal property to the foreign personal representative after the expiration of 60 days from the date of his appointment.

**History.**—s. 1, ch. 74-106; s. 98, ch. 75-220.  
**Note.**—Created from former s. 734.30.

**734.102 Ancillary administration.—**

(1) If a nonresident of this state dies leaving assets in this state, credits due him from residents in this state, or liens on property in this state, a personal representative specifically designated in the decedent's will to administer the Florida property shall be entitled to have ancillary letters issued to him, if

qualified to act in Florida. Otherwise, the foreign personal representative of the decedent's estate shall be entitled to have letters issued to him, if qualified to act in Florida. If the foreign personal representative is not qualified to act in Florida and the will names an alternate or successor who is qualified to act in Florida, the alternate or successor shall be entitled to have letters issued to him. Otherwise, those entitled to a majority interest of the Florida property may have letters issued to a personal representative selected by them who is qualified to act in Florida. If the decedent dies intestate and the foreign domiciliary personal representative is not qualified to act in Florida, the order of preference for appointment of a personal representative as prescribed in this code shall apply. If ancillary letters are applied for by other than the domiciliary personal representative, prior notice shall be given to any domiciliary personal representative.

(2) To entitle the applicant to ancillary letters, an authenticated copy of so much of the domiciliary proceedings shall be filed as will show either:

- (a) The will, petition for probate, order admitting the will to probate, and letters, if there are such; or
- (b) The petition for letters and the letters.

(3) On filing the authenticated copy of a probated will, including any probated codicils, the court shall determine if the will and the codicils, if any, comply with subsections 732.502(1) or (2). If they comply, the court shall admit the will and any codicils to record.

(4) The ancillary personal representative shall give bond as do personal representatives generally. All proceedings for appointment and administration of the estate shall be as similar to those in original administrations as possible.

(5) After the payment of all expenses of administration and claims against the estate, the court may order the remaining property held by the ancillary personal representative transferred to the domiciliary personal representative or distributed to the heirs or devisees.

(6) Ancillary personal representatives shall have the same rights, powers, and authority as other personal representatives in Florida to manage and settle estates; to sell, lease, or mortgage local property; and to raise funds for the payment of debts, claims, and devises in the domiciliary jurisdiction. No property shall be sold, leased, or mortgaged to pay a debt or claim that is barred by any statute of limitation or of nonclaim of this state.

**History.**—s. 1, ch. 74-106; s. 98, ch. 75-220; s. 43, ch. 77-87; s. 1, ch. 77-174.  
**Note.**—Created from former s. 734.31.

**734.104 Foreign wills; admission to record; effect on title.—**

(1) An authenticated copy of the will of a nonresident that devises real property in this state, or any right, title, or interest in the property, may be admitted to record in any county of this state where the property is located at any time after 3 years from the death of the decedent or at any time after the domiciliary personal representative has been discharged if there has been no proceeding to administer the estate of the decedent in this state, provided:

(a) The will complies with s. 732.502 as to form and manner of execution; and

(b) The will has been admitted to probate in the proper court of any other state, territory, or country.

(2) A petition to admit a foreign will to record may be filed by any person and shall be accompanied by authenticated copies of the foreign will, the petition for probate, and the order admitting the will to probate. If no petition is required as a prerequisite to the probate of a will in the jurisdiction where the will of the nonresident was probated, upon proof by affidavit or certificate that no petition is required, an authenticated copy of the will may be admitted to record without an authenticated copy of a petition for probate, and the order admitting the will to record in this state shall recite that no petition was required in the jurisdiction of original probate.

(3) If the court finds that this section has been complied with, it shall enter an order admitting the foreign will to record.

(4) When admitted to record, the foreign will shall be as valid and effectual to pass title to real property and any right, title, or interest therein as if the will had been admitted to probate in this state.

**History.**—s. 3, ch. 74-106; s. 98, ch. 75-220; s. 45, ch. 77-87; s. 229, ch. 77-104; s. 15, ch. 79-221; s. 274, ch. 79-400.

**Note.**—Created from former s. 736.06.

**PART II****JURISDICTION OVER FOREIGN PERSONAL REPRESENTATIVES**

**734.201 Jurisdiction by act of foreign personal representative.**

**734.202 Jurisdiction by act of decedent.**

**734.201 Jurisdiction by act of foreign personal representative.**—A foreign personal representative submits personally to the jurisdiction of the courts of this state in any proceeding concerning the estate by:

(1) Filing authenticated copies of the domiciliary proceedings under s. 734.103.

(2) Receiving payment of money or taking delivery of personal property, under s. 734.101.

(3) Doing any act as a personal representative in this state that would have given the state jurisdiction over him as an individual.

**History.**—s. 1, ch. 74-106; s. 99, ch. 75-220.

**734.202 Jurisdiction by act of decedent.**—In addition to jurisdiction conferred by s. 734.201, a foreign personal representative is subject to the jurisdiction of the courts of this state to the same extent that his decedent was subject to jurisdiction immediately before death.

**History.**—s. 1, ch. 74-106.



## CHAPTER 735

## PROBATE CODE: FAMILY ADMINISTRATION AND SMALL ESTATES

## PART I FAMILY ADMINISTRATION (ss. 735.101-735.107)

## PART II SUMMARY ADMINISTRATION (ss. 735.201-735.209)

PART III DISPOSITION OF PERSONAL PROPERTY  
WITHOUT ADMINISTRATION (ss. 735.301, 735.302)

## PART I

## FAMILY ADMINISTRATION

- 735.101 Family administration; nature of proceedings.  
 735.103 Petition for family administration.  
 735.107 Family administration distribution.

**735.101 Family administration; nature of proceedings.**—Family administration may be had in the administration of a decedent's estate when it appears:

(1) In an intestate estate, that the heirs at law of the decedent consist solely of a surviving spouse, lineal descendants, and lineal ascendants, or any of them.

(2) In a testate estate, that the beneficiaries under the will consist of a surviving spouse, lineal descendants, and lineal ascendants, or any of them, and that any specific or general devise to others constitutes a minor part of the decedent's estate.

(3) In a testate estate, that the decedent's will does not direct administration as required by chapter 733.

(4) That the value of the gross estate, as of the date of death, for federal estate tax purposes is less than \$60,000.

(5) That the entire estate consists of personal property or, if real property forms part of the estate, that administration under chapter 733 has proceeded to the point that all claims of creditors have been processed or barred.

*History.*—s. 1, ch. 74-106; s. 101, ch. 75-220.

**735.103 Petition for family administration.**—A verified petition for family administration shall contain, in addition to the statements required by s. 733.202, the following:

(1) Facts showing that petitioners are entitled to family administration, as provided in s. 735.101.

(2) A complete list of the assets of the gross estate for federal estate tax purposes and their estimated value.

(3) An appropriate statement that the estate is not indebted or that provision for payment of debts has been made or the claims are barred.

(4) A proposed schedule of distribution of all assets to those entitled thereto as surviving spouse,

heirs, beneficiaries, or creditors.

The petition shall be signed and verified by all beneficiaries and the surviving spouse, if any. The petition may be signed on behalf of a minor or an incompetent by his legal guardian or, if none, by his natural guardian.

*History.*—s. 1, ch. 74-106; s. 102, ch. 75-220; s. 1, ch. 77-174.

**735.107 Family administration distribution.**—

(1) Upon filing the petition for family administration, the will, if any, shall be proved in accordance with chapter 733 and be admitted to probate.

(2) If the estate consists of personal property only, then, after such hearing as the court may require, an order of family administration may be entered allowing immediate distribution of the assets to the persons entitled to them.

(3) The order of family administration and the distribution so entered shall have the following effect:

(a) Those to whom specified parts of the decedent's estate are assigned by the order shall be entitled to receive and collect the parts and to have the parts transferred to them. They may maintain actions to enforce the right.

(b) Debtors of the decedent, those holding property of the decedent, and those with whom securities or other property of the decedent are registered are authorized and empowered to comply with the order by paying, delivering, or transferring to those specified in the order the parts of the decedent's estate assigned to them by the order, and the persons so paying, delivering, or transferring shall not be accountable to anyone else for the property.

(c) After the entry of the order, bona fide purchasers for value from those to whom property of the decedent may be assigned by the order shall take the property free of all claims of creditors of the decedent and all rights of the surviving spouse and all other heirs and devisees.

(d) Property of the decedent that is not exempt from claims of creditors and that remains in the hands of those to whom it may be assigned by the order shall continue to be liable for claims against the decedent until barred as provided in this law.

(e) The petitioners for the order of family administration shall be personally liable for all lawful claims against the estate of the decedent, but only to the extent of the value of the estate of the decedent actually received by each petitioner, exclusive of the property exempt from claims of creditors under the Constitution and statutes of Florida.

(f) After 3 years from the death of the decedent, neither his estate nor those to whom it may be assigned shall be liable for any claim against the decedent, unless proceedings have been taken for the enforcement of the claim.

(g) Any heir or devisee of the decedent who was lawfully entitled to share in the estate but was not included in the order of family administration and distribution may enforce his rights against those who procured the order in appropriate proceedings and, when successful, shall be awarded reasonable attorney's fees as an element of costs.

(4)(a) If the estate of the decedent includes real property and administration under chapter 733 has proceeded to the point that all claims of creditors have been processed or barred, or upon the satisfaction of all claims of creditors, if any, and after such hearing as the court may require, an order of family administration may be entered and the personal representative authorized to make distribution of the assets to the persons entitled to them. Upon evidence satisfactory to the court that distribution has been made, the court shall enter an order discharging the personal representative.

(b) Any heir or devisee of the decedent who was lawfully entitled to share in the estate but who was not included in the order of family administration and distribution may enforce his rights against those who procured the order in appropriate proceedings and, when successful, shall be awarded reasonable attorney's fees as an element of costs.

**History.**—s. 103, ch. 75-220; s. 46, ch. 77-87; s. 1, ch. 77-174.

## PART II

### SUMMARY ADMINISTRATION

- 735.201 Summary administration; nature of proceedings.
- 735.202 May be administered in the same manner as other estates.
- 735.203 Petition for summary administration.
- 735.2055 Filing of petition.
- 735.206 Summary administration distribution.
- 735.209 Joinder of heirs, etc., in summary administration.

**735.201 Summary administration; nature of proceedings.**—Summary administration may be had in the administration of a decedent's estate when it appears:

(1) In a testate estate, that the decedent's will does not direct administration as required by chapter 733.

(2) That the value of the entire estate subject to administration in this state, less the value of property exempt from the claims of creditors, does not exceed \$10,000 or that the decedent has been dead for more than 3 years.

**History.**—s. 1, ch. 74-106; s. 105, ch. 75-220.

**735.202 May be administered in the same manner as other estates.**—The estate may be administered in the same manner as the administra-

tion of any other estate, or it may be administered as provided in this part.

**History.**—s. 1, ch. 74-106.

**Note.**—Created from former s. 735.02.

### **735.203 Petition for summary administration.**—

(1) A petition for summary administration may be filed by any beneficiary, heir at law, or person nominated as personal representative in the decedent's will offered for probate and shall be signed and verified by:

(a) The surviving spouse, if any; the heirs at law or beneficiaries who are sui juris; and the guardians of any heirs at law or beneficiaries who are not sui juris; or

(b) The persons described by s. 735.209.

(2) A petition for summary administration shall contain, in addition to the statements required by paragraphs 733.202(2)(b) and (c), the following:

(a) Facts showing that petitioners are entitled to summary administration as provided in s. 735.201.

(b) A complete list of the assets of the estate and their estimated value, together with those assets claimed to be exempt.

(c) A statement that the estate is not indebted or that provision for payment of debts has been made.

(d) A proposed schedule of distribution of all assets to those entitled thereto as surviving spouse, beneficiaries, or creditors.

**History.**—s. 1, ch. 74-106; s. 107, ch. 75-220; s. 1, ch. 77-174.

**Note.**—Created from former s. 735.05.

**735.2055 Filing of petition.**—The petition for summary administration may be filed at any stage of the administration of an estate if it appears that at the time of filing the estate would qualify.

**History.**—s. 47, ch. 77-87.

### **735.206 Summary administration distribution.**—

(1) Upon the filing of the petition for summary administration, the will, if any, shall be proved in accordance with chapter 733 and be admitted to probate.

(2) After such hearing as the court may require, an order of summary administration may be entered allowing immediate distribution of the assets to the persons entitled to them.

(3) The order of summary administration and distribution so entered shall have the following effect:

(a) Those to whom specified parts of the decedent's estate, including exempt property, are assigned by the order shall be entitled to receive and collect the parts and to have the parts transferred to them. They may maintain actions to enforce the right.

(b) Debtors of the decedent, those holding property of the decedent, and those with whom securities or other property of the decedent are registered are authorized and empowered to comply with the order by paying, delivering, or transferring to those specified in the order the parts of the decedent's estate assigned to them by the order, and the persons so paying, delivering, or transferring shall not be accountable to anyone else for the property.

(c) After the entry of the order, bona fide purchasers for value from those to whom property of the decedent may be assigned by the order shall take the property free of all claims of creditors of the decedent and all rights of the surviving spouse and all other heirs and devisees.

(d) Property of the decedent that is not exempt from claims of creditors and that remains in the hands of those to whom it may be assigned by the order shall continue to be liable for claims against the decedent until barred as provided in this law.

(e) The petitioners for the order of summary administration shall be personally liable for all lawful claims against the estate of the decedent, but only to the extent of the value of the estate of the decedent actually received by each petitioner, exclusive of the property exempt from claims of creditors under the Constitution and statutes of Florida.

(f) After 3 years from the death of the decedent, neither his estate nor those to whom it may be assigned shall be liable for any claim against the decedent, unless proceedings have been taken for the enforcement of the claim.

(g) Any heir or devisee of the decedent who was lawfully entitled to share in the estate but who was not included in the order of summary administration and distribution may enforce his rights in appropriate proceedings against those who procured the order and, when successful, shall be awarded reasonable attorney's fees as an element of costs.

**History.**—s. 1, ch. 74-106; s. 108, ch. 75-220; s. 48, ch. 77-87; s. 1, ch. 77-174.

**Note.**—Created from former s. 735.07.

#### **735.209 Joinder of heirs, etc., in summary administration.—**

(1) When any heir, devisee, or surviving spouse is authorized or required under this part to join in any agreement or petition and any such person has died, become incompetent or is a minor, or has conveyed or transferred all of his or her interest in the property of the estate, then:

- (a) The heirs, devisees, and surviving spouse, if any, of a deceased person,
- (b) The personal representative, if any, of the estate of a deceased person,
- (c) The guardian of an incompetent or minor, or
- (d) The grantee or transferee of any of them

shall be authorized to join in such agreement or petition instead of the heir, devisee, or surviving spouse.

(2) The joinder in, or consent to, a petition for summary administration is not required of an heir or beneficiary who will receive his full distributive share under the proposed distribution. Any beneficiary not joining or consenting shall receive formal notice of the petition.

**History.**—s. 1, ch. 74-106; s. 109, ch. 75-220; s. 49, ch. 77-87; s. 1, ch. 77-174.

**Note.**—Created from former s. 735.14.

### **PART III**

#### **DISPOSITION OF PERSONAL PROPERTY WITHOUT ADMINISTRATION**

- 735.301 Disposition without administration.
- 735.302 Income tax refunds in certain cases.

#### **735.301 Disposition without administration.—**

(1) No administration shall be required or formal proceedings instituted upon the estate of a decedent leaving only personal property exempt under the provisions of s. 732.402, personal property exempt from the claims of creditors under the Constitution of Florida, and nonexempt personal property the value of which does not exceed the sum of the amount of preferred funeral expenses and reasonable and necessary medical and hospital expenses of the last 60 days of the last illness.

(2) Upon informal application by affidavit, letter, or otherwise by any interested party, and if the court is satisfied that subsection (1) is applicable, the court, by letter or other writing under the seal of the court, may authorize the payment, transfer, or disposition of the personal property, tangible or intangible, belonging to the decedent to those persons entitled.

(3) Any person, firm, or corporation paying, delivering, or transferring property under the authorization shall be forever discharged from any liability thereon.

**History.**—s. 1, ch. 74-106; s. 111, ch. 75-220; s. 50, ch. 77-87; s. 1, ch. 77-174; s. 275, ch. 79-400.

#### **735.302 Income tax refunds in certain cases.—**

(1) In any case when the United States Treasury Department determines that an overpayment of federal income tax exists and the person in whose favor the overpayment is determined is dead at the time the overpayment of tax is to be refunded, and irrespective of whether the decedent had filed a joint and several or separate income tax return, the amount of the overpayment, if not in excess of \$500, may be refunded as follows:

- (a) Directly to the surviving spouse on his or her verified application; or
- (b) If there is no surviving spouse, to one of decedent's children who is designated in a verified application purporting to be executed by all of the decedent's children over the age of 14 years.

In either event, the application must show that the decedent was not indebted, that provision has been made for the payment of the decedent's debts, or that the entire estate is exempt from the claims of creditors under the Constitution and statutes of the state, and that no administration of the estate, including summary administration, has been initiated and that none is planned, to the knowledge of the applicant.

(2) If a refund is made to the surviving spouse or designated child pursuant to the application, the refund shall operate as a complete discharge to the United States from liability from any action, claim, or demand by any beneficiary of the decedent or other person. Nothing in this section shall be construed as establishing the ownership or rights of any person in the refund so distributed.

**History.**—s. 1, ch. 74-106; s. 112, ch. 75-220; s. 51, ch. 77-87; s. 1, ch. 77-174.

**Note.**—Created from former s. 735.15.



## CHAPTER 737

## TRUST ADMINISTRATION

## PART I TRUST REGISTRATION (ss. 737.101, 737.105)

## PART II JURISDICTION OF COURTS (ss. 737.201-737.205)

PART III DUTIES AND LIABILITIES OF TRUSTEES  
(ss. 737.301-737.307)

## PART IV POWERS OF TRUSTEES (ss. 737.401-737.407)

## PART V CHARITABLE TRUSTS (ss. 737.501-737.512)

## PART I

## TRUST REGISTRATION

- 737.101 Principal place of administration of trust; duty to register trust.
- 737.105 Qualification of foreign trustee.

**737.101 Principal place of administration of trust; duty to register trust.—**

(1) Unless otherwise designated in the trust agreement, the principal place of administration of a trust is the trustee's usual place of business where the records pertaining to the trust are kept or, if he has no place of business, the trustee's residence.

(2) If not otherwise designated in the trust instrument in the case of cotrustees, the principal place of administration is:

- (a) The usual place of business of the corporate trustee, if there is but one corporate cotrustee;
- (b) The usual place of business or residence of the individual trustee who is a professional fiduciary, if there is but one such person and no corporate cotrustee; or otherwise,

(c) The usual place of business or residence of any of the cotrustees as agreed upon by them.

**History.**—s. 1, ch. 74-106; s. 1, ch. 75-221; s. 1, ch. 77-344.  
cf.—s. 731.201 General definitions.

**737.105 Qualification of foreign trustee.**—Unless otherwise doing business in this state, local qualification by a foreign trustee is not required in order for the trustee to receive distribution from a local estate. Nothing in this chapter shall affect the provisions of s. 660.10.

**History.**—s. 1, ch. 74-106; s. 1, ch. 75-221.

## PART II

## JURISDICTION OF COURTS

- 737.201 Court powers over trusts.
- 737.202 Trust proceedings; venue.
- 737.203 Trust proceedings; dismissal of matters relating to foreign trusts.
- 737.204 Proceedings for review of employment of agents and review of compensation of trustee and employees of trust.

## 737.205 Trust proceedings; commencement.

**737.201 Court powers over trusts.—**

(1) The proceedings that may be maintained under this section are those concerning the administration and distribution of trusts, the declaration of rights, and the determination of any other matters involving trustees and beneficiaries of trusts. These include, but are not limited to, proceedings to:

- (a) Appoint or remove a trustee.
- (b) Review trustees' fees and to review and settle interim or final accounts.
- (c) Ascertain beneficiaries; determine any question arising in the administration or distribution of any trust, including questions of construction of trust instruments; instruct trustees; and determine the existence or nonexistence of any immunity, power, privilege, duty, or right.

(2) A proceeding under this section does not result in continuing supervisory proceedings. The management and distribution of a trust estate, submission of accounts and reports to beneficiaries, payment of trustee's fees and other obligations of a trust, acceptance and change of trusteeship, and other aspects of the administration of a trust shall proceed expeditiously, consistent with the terms of the trust, free of judicial intervention and without order, approval, or other action of any court, subject to the jurisdiction of the court invoked by interested parties or otherwise exercised as provided by law.

**History.**—s. 1, ch. 74-106; s. 2, ch. 75-221; s. 3, ch. 77-344.

**737.202 Trust proceedings; venue.**—Venue for actions and proceedings concerning trusts, including those under s. 737.201, may be laid in:

- (1) Any county where the venue is proper under chapter 47.
- (2) Any county where the beneficiary suing or being sued resides or has its principal place of business.
- (3) The county where the trust has its principal place of administration.

**History.**—s. 1, ch. 74-106; s. 4, ch. 77-344.

**737.203 Trust proceedings; dismissal of matters relating to foreign trusts.**—Over the objection of a party, the court shall not entertain proceedings under s. 737.201 for a trust registered, or having its principal place of administration, in another state unless all interested parties could not be bound by

litigation in the courts of the state where the trust is registered or has its principal place of administration. The court may condition a stay or dismissal of a proceeding under this section on the consent of any party to jurisdiction of the state where the trust is registered or has its principal place of business, or the court may grant a continuance or enter any other appropriate order.

**History.**—s. 1, ch. 74-106.

**737.204 Proceedings for review of employment of agents and review of compensation of trustee and employees of trust.**—After notice to all interested persons, the court may review the propriety of employment by a trustee of any person, including any attorney, auditor, investment advisor, or other specialized agent or assistant, and the reasonableness of the compensation of any person so employed and of the compensation determined by the trustee for his own services. A person who has received excessive compensation from a trust may be ordered to make a refund of the excess.

**History.**—s. 1, ch. 74-106; s. 4, ch. 75-221.

**737.205 Trust proceedings; commencement.**—Proceedings concerning trusts shall be commenced by filing a complaint and shall be governed by the Rules of Civil Procedure.

**History.**—s. 1, ch. 74-106; s. 4, ch. 75-221.

### PART III

#### DUTIES AND LIABILITIES OF TRUSTEES

- 737.301 General duties not limited.
- 737.302 Trustee's standard of care and performance.
- 737.303 Duty to inform and account to beneficiaries.
- 737.304 Duty to provide bond.
- 737.305 Trustee's duty concerning location of trust.
- 737.3053 Trustee's duty to distribute trust income.
- 737.3055 Trustee's duty to ascertain marketable title of trust real property.
- 737.306 Personal liability of trustee to third parties.
- 737.307 Limitations on proceedings against trustees after beneficiary receives account.

**737.301 General duties not limited.**—Except as specifically provided, the general duty of the trustee to administer a trust diligently for the benefit of the beneficiaries is not altered by this part.

**History.**—s. 1, ch. 74-106.

**737.302 Trustee's standard of care and performance.**—Except as otherwise provided by the trust instrument, the trustee shall observe the standards in dealing with the trust assets that would be observed by a prudent trustee dealing with the property of another. If the trustee has special skills, or is named trustee on the basis of representations

of special skills or expertise, he is under a duty to use those skills.

**History.**—s. 1, ch. 74-106; s. 6, ch. 75-221.

**737.303 Duty to inform and account to beneficiaries.**—The trustee shall keep the beneficiaries of the trust reasonably informed of the trust and its administration. In addition:

(1) Within 30 days after his acceptance of the trust, the trustee shall inform the current income beneficiaries and vested remaindermen in writing of his acceptance of the trust and of his name and address.

(2) Upon reasonable request, the trustee shall provide a beneficiary as defined under ss. 731.201 and 731.303 with a copy of the trust instrument that describes or affects his interest.

(3) Upon reasonable request, the trustee shall provide any vested beneficiary with relevant information about the assets of the trust and the particulars relating to administration.

(4) A vested beneficiary is entitled to a statement of the accounts of the trust annually and upon termination of the trust or upon change of the trustee.

**History.**—s. 1, ch. 74-106; s. 6, ch. 75-221; s. 5, ch. 77-344.

**737.304 Duty to provide bond.**—A trustee need not provide bond to secure performance of his duties unless this is required by the trust instrument, reasonably requested by a beneficiary, or found by the court to be necessary to protect the interests of beneficiaries who are not able to protect themselves and whose interests otherwise are not adequately represented. On application of the trustee or other interested person, the court may excuse a requirement of bond, increase or reduce the amount of the bond, release the surety, or permit the substitution of another bond with the same or different sureties. If bond is required, it shall be filed in the clerk's office in the county where the trust has its principal place of business, in amounts and with surety as provided in s. 45.011 and conditioned on the faithful performance of the trust.

**History.**—s. 1, ch. 74-106; s. 6, ch. 75-221; s. 6, ch. 77-344.

**737.305 Trustee's duty concerning location of trust.**—A trustee is under a continuing duty to administer the trust at a place appropriate to the purposes of the trust and its sound, efficient management. If the principal place of administration becomes inappropriate for any reason, the court may enter an order for the purposes of furthering efficient administration and the interests of beneficiaries, including, if appropriate, removal of the trustee and appointment of a trustee in another state. Trust provisions relating to the place of administration and to changes in the place of administration or of trustee shall control, unless compliance would be contrary to efficient administration or the purposes of the trust. Views of adult beneficiaries shall be given weight in determining the suitability of the trustee and the place of administration.

**History.**—s. 1, ch. 74-106; s. 7, ch. 75-221; s. 7, ch. 77-344.

**737.3053 Trustee's duty to distribute trust income.**—If a will or trust instrument granting income to the grantor's or testator's spouse for life with a general power of appointment in the spouse is silent as to the time of distribution of income and the frequency thereof, the trustee shall distribute all net income to the income beneficiary, as defined in chapter 738, no less frequently than annually. This provision shall apply to any trust established before, on, or after the effective date hereof unless the trust instrument expressly directs or permits net income to be distributed less frequently than annually.

History.—s. 3, ch. 79-343.

**737.3055 Trustee's duty to ascertain marketable title of trust real property.**—A trustee holding title to real property received from a settlor or estate shall not be required to obtain title insurance or proof of marketable title until a marketable title is required for a sale or conveyance of the real property.

History.—s. 4, ch. 79-343.

**737.306 Personal liability of trustee to third parties.**—

(1) Unless otherwise provided in the contract, a trustee is not personally liable on contracts, except contracts for attorneys' fees, properly entered into in his fiduciary capacity in the course of administration of the trust estate unless he fails to reveal his representative capacity and identify the trust estate in the contract.

(2) A trustee is personally liable for obligations arising from ownership or control of property of the trust estate or for torts committed in the course of administration of the trust estate only if he is personally at fault.

(3) Claims based on contracts, except contracts for attorneys' fees, entered into by a trustee in his fiduciary capacity, on obligations arising from ownership or control of the trust estate, or on torts committed in the course of trust administration may be asserted against the trust estate by proceeding against the trustee in his fiduciary capacity, whether or not the trustee is personally liable.

(4) Issues of liability between the trust estate and the trustee individually may be determined in a proceeding for accounting, surcharge, or indemnification, or in any other appropriate proceeding.

History.—s. 1, ch. 74-106; s. 7, ch. 75-221; s. 8, ch. 77-344.

**737.307 Limitations on proceedings against trustees after beneficiary receives account.**—Unless previously barred by adjudication, consent, or limitations, an action against a trustee for breach of trust is barred for any beneficiary who has received a final, annual, or periodic account or other statement fully disclosing the matter unless a proceeding to assert the claim is commenced within 6 months after receipt of the final, annual, or periodic account or statement. In any event, and notwithstanding lack of full disclosure, all claims against a trustee who has issued a final account or statement received by the beneficiary and has informed the beneficiary of the location and availability of records for his examination are barred as provided in chapter 95. A beneficiary has received a final account or

statement if, being an adult, it is received by him or if, being a minor or disabled person, it is received by his representative as described in s. 731.303.

History.—s. 1, ch. 74-106; s. 7, ch. 75-221.

## PART IV

### POWERS OF TRUSTEES

- 737.401 Powers of trustee conferred by trust or by law.
- 737.402 Powers of trustees conferred by this part.
- 737.403 Power of court to permit deviation or to approve transactions involving conflict of interest.
- 737.404 Powers exercisable by joint trustees; liability.
- 737.405 Third persons protected.
- 737.406 Application of this part.
- 737.407 Final accounting under Trust Accounting Law required.

**737.401 Powers of trustee conferred by trust or by law.**—The trustee has all powers conferred upon him by this part, unless limited in the trust instrument.

History.—s. 1, ch. 74-106; s. 8, ch. 75-221; s. 9, ch. 77-344.

**737.402 Powers of trustees conferred by this part.**—

(1) From the time of creation of the trust until final distribution of the assets of the trust, a trustee has the power to perform every act that a prudent trustee would perform for the purposes of the trust, without court authorization, including, but not limited to, the powers specified in subsection (2).

(2) Unless otherwise provided in the trust instrument, a trustee has the power:

(a) To collect, hold, and retain trust assets received from a settlor until disposition of the assets should be made. The assets may be retained even though they include an asset in which the trustee is personally interested.

(b) To hold without liability, other than that involved in holding property legal for investment of trust funds, any and all property received from or through the settlor of the trust, whether or not permissible for investment of funds of that particular trust, and any property lawfully coming into the hands of the trustees instead of or in substitution therefor, including the power to exchange capital stock of any bank or trust company, including capital stock of the corporate trustee, for capital stock in any registered bank holding company if the bank holding company is subject to the provisions of Title 12, U.S.C., s. 1841 et seq., as amended, commonly known as the Bank Holding Company Act of 1956. This provision shall not be construed to cover reinvestments of cash made by the trustee except the purchase of fractional shares and the exercise of rights acquired in the exchange.

(c) To receive additions to the assets of the trust.

(d) To continue or participate in the operation of any business or other enterprise and to effect incorporation, dissolution, or other change in the form of the organization of the business or enterprise.

(e) To acquire an undivided interest in a trust



asset in which the trustee holds an undivided interest in any trust capacity.

(f) To invest and reinvest trust assets in accordance with the provisions of the trust or as provided by law.

(g) If a bank, to deposit trust funds in another department of the same entity or in a bank that is affiliated with the trustee bank.

(h) To acquire or dispose of an asset for cash or on credit at a public or private sale; to manage, develop, improve, exchange, partition, change the character of, or abandon a trust asset or any interest in it; and to encumber, mortgage, or pledge a trust asset for a term within or extending beyond the term of the trust in connection with the exercise of any power vested in the trustee.

(i) To make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, or to raze existing, or erect new, party walls or buildings.

(j) To subdivide, develop, or dedicate land to public use; to make, or obtain the vacation of, plats and adjust boundaries; to adjust differences in valuation on exchange or partition by giving or receiving consideration; or to dedicate easements to public use without consideration.

(k) To enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the trust.

(l) To enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement.

(m) To grant an option involving disposition of a trust asset or to take an option for the acquisition of any asset.

(n) To vote a security, in person or by general or limited proxy, or not to vote a security.

(o) To pay calls, assessments, and any other sums chargeable or accruing against, or on account of, securities.

(p) To sell or exercise stock subscription or conversion rights and consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise.

(q) To hold property in the name of a nominee or in other form without disclosure of the trust so that title to the property may pass by delivery, but the trustee is liable for any act of the nominee in connection with the property so held.

(r) To insure the assets of the trust against damage or loss and insure the trustee against liability with respect to third persons.

(s) To borrow money, to be repaid from trust assets or otherwise, and to advance money for the protection of the trust and for all expenses, losses, and liabilities sustained in the administration of the trust or because of the holding or ownership of any trust assets, for which advances, with any interest, the trustee has a lien on the trust assets as against the beneficiary.

(t) To pay or contest any claim; to settle a claim by or against the trust by compromise, arbitration, or otherwise; and to release any claim belonging to

the trust in whole or in part to the extent that the claim is uncollectible.

(u) To pay taxes, assessments, compensation of the trustee, and other expenses incurred in the collection, care, administration, and protection of the trust.

(v) To allocate items of income or expense to either trust income or principal, as provided by law.

(w) To pay any sum distributable to a beneficiary under legal disability to the beneficiary or by paying the sum for the use of the beneficiary either to a legal representative appointed by the court or, if none, to a relative; and, when income is directed to be paid to minors, apply and expend it for their benefit either with or without the intervention of a guardian.

(x) To effect distribution of property and money in divided or undivided interests and to adjust resulting differences in valuation.

(y) To employ persons, including attorneys, auditors, investment advisors, or agents, even if they are the trustee or associated with the trustee, to advise or assist the trustee in the performance of his administrative duties; to act without independent investigation upon their recommendations; and, instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary.

(z) To prosecute or defend actions, claims, or proceedings for the protection of trust assets and of the trustee in the performance of his duties.

(aa) To execute and deliver all instruments that will accomplish or facilitate the exercise of the powers vested in the trustee.

*History.*—s. 1, ch. 74-106; s. 8, ch. 75-221.

*Note.*—Created from former s. 691.03.

### **737.403 Power of court to permit deviation or to approve transactions involving conflict of interest.—**

(1) This part does not affect the power of the court to relieve a trustee for cause from any restrictions on his power that would otherwise be placed upon him by the trust or by this part.

(2) If the duty of the trustee and his individual interest or his interest as trustee of another trust conflict in the exercise of a trust power, the power may be exercised only by court authorization, except as provided in s. 737.402(2)(a), (e), (g), (s) and (y). Under this section, personal profit or advantage to an affiliated or subsidiary company or association is personal profit to any corporate trustee.

*History.*—s. 1, ch. 74-106; s. 8, ch. 75-221.

### **737.404 Powers exercisable by joint trustees; liability.—**

(1) Any power vested in three or more trustees may be exercised by a majority, but a trustee who has not joined in exercising a power is not liable to the beneficiaries or to others for the consequences of the exercise, and a dissenting trustee is not liable for the consequences of an act in which he joins at the direction of the majority of the trustees if he expressed his dissent in writing to any of his cotrustees at or before the time of the joinder.

(2) If two or more trustees are appointed to perform a trust and any of them is unable or refuses to

accept the appointment or, having accepted, ceases to be a trustee, the surviving or remaining trustees shall perform the trust and succeed to all the powers, duties, and discretionary authority given to the trustees jointly.

(3) This section does not excuse a cotrustee from liability for failure either to participate in the administration of the trust or to attempt to prevent a breach of trust.

**History.**—s. 1, ch. 74-106.

**Note.**—Created from former s. 691.04.

**737.405 Third persons protected.**—With respect to a third person dealing with a trustee or assisting a trustee in the conduct of a transaction, the existence of trust powers and their proper exercise by the trustee may be assumed without inquiry. The third person is not bound to inquire whether the trustee has power to act or is properly exercising the power. A third person without actual knowledge that the trustee is exceeding his powers or improperly exercising them is as fully protected in dealing with the trustee as if the trustee possessed and properly exercised the powers he purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the trustee.

**History.**—s. 1, ch. 74-106; s. 10, ch. 75-221; s. 10, ch. 77-344.

**737.406 Application of this part.**—Except as specifically provided in the trust, the provisions of this part apply to any trust established before or after the effective date of this part.

**History.**—s. 1, ch. 74-106.

**737.407 Final accounting under Trust Accounting Law required.**—For the purpose of concluding the accounting of trusts being administered under the Trust Accounting Law, all trustees shall submit a final accounting, to be approved by the court, within 1 year from January 1, 1976.

**History.**—s. 19, ch. 75-221; s. 1, ch. 77-174; s. 11, ch. 77-344.  
**Note.**—Former s. 738.151.

## PART V

### CHARITABLE TRUSTS

- 737.501 Definitions.
- 737.502 Application of this part.
- 737.503 Trustee of a private foundation trust or a split interest trust.
- 737.504 Powers and duties of trustee of a private foundation trust or a split interest trust.
- 737.505 Notice that this part does not apply.
- 737.506 Power to amend trust instrument.
- 737.507 Power of court to permit deviation.
- 737.508 Release; property and persons affected; manner of effecting.
- 737.509 Election to come under this part.
- 737.510 Supervision by public charitable organization.
- 737.511 Interpretation.

737.512 Inapplicability to certain trusts.

**737.501 Definitions.**—As used in this part:

(1) Unless otherwise indicated, section references relate to the Internal Revenue Code of 1954, in effect on January 1, 1971, and the references are to sections of Title 26 of the United States Code as in effect on that date.

(2) "Charitable organization" means an organization described in s. 501(c)(3) and exempt from tax under s. 501(a).

(3) "Private foundation trust" means a trust, including a trust described in s. 4947(a)(1), as defined in s. 509(a).

(4) "Split interest trust" means a trust for individual and charitable beneficiaries that is subject to the provisions of s. 4947(a)(2).

(5) "State attorney" means:

(a) The state attorney for the judicial circuit having original jurisdiction of the trust if the trust is registered.

(b) The state attorney for the judicial circuit where the trustee is domiciled or has his principal place of business if the trust is not registered.

(6) "Trust" means an express trust created by a trust instrument, including a will.

(7) "Trustee" means the trustee, trustees, person, or persons possessing a power or powers referred to in this part concerning a private foundation trust or a split interest trust.

**History.**—s. 1, ch. 74-106; s. 12, ch. 75-221.

**Note.**—Created from former s. 691.11.

**737.502 Application of this part.**—Except as otherwise provided in the trust, the provisions of this part apply to all private foundation trusts and split interest trusts, whether created or established before or after November 1, 1971, and to all trust assets acquired by the trustee before or after November 1, 1971.

**History.**—s. 1, ch. 74-106; s. 12, ch. 75-221.

**Note.**—Created from former s. 691.12.

**737.503 Trustee of a private foundation trust or a split interest trust.**—Except as provided in s. 737.505, F.S., the trustee of a private foundation trust or a split interest trust has the duties and powers conferred on him by this part.

**History.**—s. 1, ch. 74-106; s. 12, ch. 75-221.

**Note.**—Created from former s. 691.13.

**737.504 Powers and duties of trustee of a private foundation trust or a split interest trust.**—

(1) In the exercise of his powers, including the powers granted by this part, a trustee has a duty to act with due regard to his obligation as a fiduciary, including a duty not to exercise any power in such a way as to:

(a) Deprive the trust of an otherwise available tax exemption, deduction, or credit for tax purposes.

(b) Deprive a donor of a trust asset or tax deduction or credit.

(c) Operate to impose a tax upon a donor, trust,

or other person.

"Tax" includes, but is not limited to, any federal, state, or local excise, income, gift, estate, or inheritance tax.

(2) Except as provided in s. 737.505, F.S., a trustee of a private foundation trust shall make distributions at such time and in such manner as not to subject the trust to tax under s. 4942.

(3) Except as provided in subsection (4) and in s. 737.505, F.S., a trustee of a private foundation trust, or a split interest trust to the extent that the split interest trust is subject to the provisions of s. 4947(a)(2), in the exercise of his powers shall not:

(a) Engage in any act of self dealing as defined in s. 4941(d).

(b) Retain any excess business holdings as defined in s. 4943(c).

(c) Make any investments in a manner that subjects the foundation to tax under s. 4944.

(d) Make any taxable expenditures as defined in s. 4945(d).

(4) Paragraphs (3)(b) and (c) shall not apply to a split interest trust if:

(a) All the income interest, and none of the remainder interest, of the trust is devoted solely to one or more of the purposes described in s. 170(c)(2)(B), and all amounts in the trust for which a deduction was allowed under ss. 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 have an aggregate fair market value of not more than 60 percent of the aggregate fair market value of all amounts in the trust; or

(b) A deduction was allowed under ss. 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 for amounts payable under the terms of the trust to every remainder beneficiary, but not to any income beneficiary.

**History.**—s. 1, ch. 74-106; s. 12, ch. 75-221; s. 1, ch. 77-174.  
**Note.**—Created from former s. 691.14.

#### **737.505 Notice that this part does not apply.**

—In the case of a power to make distributions, if the trustee determines that the governing instrument contains provisions that are more restrictive than s. 737.504(2), F.S., or if the trust contains other powers, inconsistent with the provisions of s. 737.504(3), F.S., that specifically direct acts by the trustee, the trustee shall notify the state attorney within 6 months after November 1, 1971, or when the trust becomes subject to this part, whichever last occurs. Section 737.504, F.S., shall not apply to any trust for which notice has been given unless the trust is amended to comply with the terms of this part.

**History.**—s. 1, ch. 74-106; s. 12, ch. 75-221.  
**Note.**—Created from former s. 691.15.

#### **737.506 Power to amend trust instrument.—**

(1) In the case of a trust that is solely for a named charitable organization or organizations and for which the trustee does not possess any discretion concerning the distribution of income or principal among two or more such organizations, the trustee may amend the governing instrument to comply with the provisions of subsection 737.504(2), F.S., with the consent of the named charitable organization or organizations.

(2) In the case of a charitable trust that is not

subject to the provisions of subsection (1), the trustee may amend the governing instrument to comply with the provisions of subsection 737.504(2), F.S., with the consent of the state attorney.

**History.**—s. 1, ch. 74-106; s. 12, ch. 75-221.  
**Note.**—Created from former s. 691.16.

#### **737.507 Power of court to permit deviation.—**

This part does not affect the power of a court to relieve a trustee from any restrictions on his powers and duties that are placed upon him by the governing instrument or applicable law for cause shown and upon complaint of the trustee, state attorney, or an affected beneficiary and notice to the affected parties.

**History.**—s. 1, ch. 74-106; s. 12, ch. 75-221.  
**Note.**—Created from former s. 691.17.

#### **737.508 Release; property and persons affected; manner of effecting.—**

(1) The trustee of a trust, all of the unexpired interests in which are devoted to one or more charitable purposes, may release a power to select charitable donees unless the creating instrument provides otherwise.

(2) The release of a power to select charitable donees may apply to all or any part of the property subject to the power and may reduce or limit the charitable organizations, or classes of charitable organizations, in whose favor the power is exercisable.

(3) A release shall be effected by a duly acknowledged written instrument signed by the trustee and delivered as provided in subsection (4).

(4) Delivery of a release shall be accomplished as follows:

(a) If the release is accomplished by specifying a charitable organization or organizations as beneficiary or beneficiaries of the trust, by delivery of a copy of the release to each designated charitable organization.

(b) If the release is accomplished by reducing the class of permissible charitable organizations, by delivery of a copy of the release to the state attorney.

(5) If a release is accomplished by specifying a public charitable organization or organizations as beneficiary or beneficiaries of the trust, the trust at all times thereafter shall be operated exclusively for the benefit of, and be supervised by, the specified public charitable organization or organizations.

**History.**—s. 1, ch. 74-106; s. 12, ch. 75-221.  
**Note.**—Created from former s. 691.18.

#### **737.509 Election to come under this part.—**

With the consent of that organization or organizations, a trustee of a trust for the benefit of a public charitable organization or organizations may come under subsection 737.508(5), F.S., by filing with the state attorney an election, accompanied by the proof of required consent. Thereafter the trust shall be subject to subsection 737.508(5) and s. 737.510, F.S.

**History.**—s. 1, ch. 74-106; s. 12, ch. 75-221.  
**Note.**—Created from former s. 691.19.

#### **737.510 Supervision by public charitable organization.—**

(1) The trustee of a trust subject to the supervision by a specified public charitable organization or organizations, as provided in subsection 737.508(5),



F.S., shall file with each specified charitable organization:

(a) A true copy of the governing instrument with a verified written report setting forth complete information concerning the nature of the assets and liabilities at the delivery of the release pursuant to subsection 737.508(4), F.S., or the filing of the election under s. 737.509, F.S.

(b) An annual report within 4½ months following the close of each year setting forth a complete statement of receipts, disbursements, assets with cost and market value of each asset, and liabilities.

(c) Such other information as may be necessary to compel proper administration of the trust.

(2) By delivery of the release or execution of the election, as the case may be, the trustee and each specified public charitable organization, by accepting delivery of the release as provided in subsection 737.508(4), F.S., or by consenting to the election in s. 737.509, F.S., agree that the public charitable organization or organizations shall have:

(a) The power and duty to compel the proper administration of the trust.

(b) The power to inspect the books, records, memoranda, papers, documents of title, and evidence of assets, liabilities, receipts, or disbursements in the possession or control of the trustee or other person

having custody of the books and records.

(c) The power to require such other information as may be necessary to compel proper administration of the trust.

**History.**—s. 1, ch. 74-106; s. 12, ch. 75-221.

**Note.**—Created from former s. 691.20.

**737.511 Interpretation.**—This part shall be interpreted to effectuate the intent of the state to preserve, foster, and encourage gifts to, or for the benefit of, charitable organizations.

**History.**—s. 1, ch. 74-106; s. 12, ch. 75-221.

**Note.**—Created from former s. 691.21.

**737.512 Inapplicability to certain trusts.**—This part shall not apply to any trust to the extent that a court shall determine, in a proceeding initiated before November 1, 1971, that the application would be contrary to the terms of the instrument governing the trust and that it may not properly be changed to conform to the provisions of this part, but nothing herein shall be construed as creating or imposing on the trustee of any trust any obligation to initiate a proceeding to obtain any court determination with respect to the application of the provisions of this part.

**History.**—s. 1, ch. 74-106; s. 12, ch. 75-221.

**Note.**—Created from former s. 691.22.

## CHAPTER 738

## PRINCIPAL AND INCOME

- 738.01 Definitions.
- 738.02 Duty of trustee for receipts and expenditures.
- 738.03 Income; principal; charges.
- 738.04 When right to income arises; apportionment of income.
- 738.05 Income earned during administration of a decedent's estate.
- 738.06 Corporate distributions.
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- 738.09 Disposition of natural resources.
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- 738.11 Other property subject to depletion.
- 738.12 Underproductive property.
- 738.13 Charges against income and principal.
- 738.14 Expenses; nontrust estates.
- 738.15 Application of this chapter.

**738.01 Definitions.**—As used in this chapter:

(1) "Income beneficiary" means the person to whom income is presently payable or for whom it is accumulated for distribution as income.

(2) "Inventory value" means the cost of property purchased by the trustee and the market value of other property at the time it became subject to the trust.

(3) "Remainderman" means the person entitled to principal, including income that has been accumulated and added to principal.

*History.*—s. 1, ch. 74-106; s. 13, ch. 75-221; s. 2, ch. 77-254.

*Note.*—Created from former s. 690.02.

*cf.*—s. 731.201 General definitions.

**738.02 Duty of trustee for receipts and expenditures.**—

(1) A trust shall be administered with due regard to the respective interests of income beneficiaries and remaindermen. A trust is so administered with respect to the allocation of receipts and expenditures if a receipt is credited, or an expenditure is charged, to income or principal, or partly to each:

(a) In accordance with the terms of the trust instrument, notwithstanding contrary provisions of this chapter;

(b) In accordance with the provisions of this chapter, in the absence of any contrary terms of the trust instrument; or

(c) If neither of the preceding rules of administration is applicable, in accordance with what is reasonable and equitable in view of:

1. The interests of those entitled to income as well as of those entitled to principal, and

2. The manner in which men of ordinary prudence would act in the management of the property of another.

(2) If the trust instrument gives the trustee discretion in crediting a receipt or charging an expenditure to income or principal, or partly to each, no inference of imprudence or partiality arises from the

fact that the trustee has made an allocation contrary to a provision of this chapter.

*History.*—s. 1, ch. 74-106; s. 13, ch. 75-221.

**738.03 Income; principal; charges.**—

(1) "Income" is the return in money or property derived from the use of principal, including return received as:

(a) Rent of real or personal property, including sums received for cancellation or renewal of a lease.

(b) Interest on money lent, including sums received as consideration for the privilege of prepayment of principal, except as provided in s. 738.07(1) on bond premium and bond discount.

(c) Income earned during administration of a decedent's estate as provided in s. 738.05.

(d) Corporate distributions as provided in s. 738.06.

(e) Accrued increment on bonds or other obligations issued at discount as provided in s. 738.07(2).

(f) Receipts from business and farming operations, as provided in s. 738.08.

(g) Receipts from disposition of natural resources, as provided in ss. 738.09 and 738.10.

(h) Receipts from other principal subject to depletion, as provided in s. 738.11.

(i) Receipts from disposition of underproductive property as provided in s. 738.12.

(2) "Principal" is the property that has been set aside by the owner or the person legally empowered so that it is held in trust eventually to be delivered to a remainderman, while the return or use of the principal is in the meantime taken or received by, or held for accumulation for, an income beneficiary. "Principal" includes:

(a) Consideration received by the trustee on the sale or other transfer of principal, on repayment of a loan, or as a refund, replacement, or change in the form of principal.

(b) Proceeds of property taken in eminent domain proceedings.

(c) Proceeds of insurance upon property forming part of the principal, except proceeds of insurance upon a separate interest of an income beneficiary.

(d) Stock dividends, receipts on liquidation of a corporation, and other corporate distributions as provided in s. 738.06.

(e) Receipts from the disposition of corporate securities as provided in s. 738.07.

(f) Royalties and other receipts from disposition of natural resources as provided in ss. 738.09 and 738.10.

(g) Receipts from other principal subject to depletion, as provided in s. 738.11.

(h) Any profit resulting from any change in the form of principal, except as provided in s. 738.12 on underproductive property.

(i) Receipts from disposition of underproductive property, as provided in s. 738.12.

(j) Any allowances for depreciation established under s. 738.08 and paragraph 738.13(1)(b).

(3) After determining income and principal in accordance with the trust instrument or this chap-

ter, the trustee shall charge expenses and other charges to income or principal as provided in s. 738.13.

**History.**—s. 1, ch. 74-106; s. 14, ch. 75-221; s. 3, ch. 77-254.  
**Note.**—Created from former s. 690.04.

#### **738.04 When right to income arises; apportionment of income.—**

(1) An income beneficiary is entitled to income from the date specified in the trust instrument or, if none is specified, from the date an asset becomes subject to the trust. In the case of an asset becoming subject to a trust by reason of a will, it becomes subject to the trust at the date of the death of the testator even though there is an intervening period of administration of the testator's estate.

(2) In the administration of a decedent's estate or upon an asset becoming subject to a trust by reason of a will:

(a) Receipts due but not paid at the date of death of the testator are principal.

(b) Receipts in the form of periodic payments, including rent, interest, or annuities, except as provided in paragraph (c) and other than corporate distributions to stockholders, distributions from mutual funds, and dividends from savings banks and savings and loan associations, not due at the date of the death of the testator shall be treated as accruing from day to day. That part of the receipt accruing before the date of death is principal and the balance is income.

(c) Anything contained in this subsection to the contrary notwithstanding, proceeds from a qualified pension or profit-sharing plan, including, but not limited to, corporate plans, partnership and individual self-employment retirement plans, and individual retirement accounts, as those terms are used in the Internal Revenue Code of the United States as from time to time amended, which are received or paid in installments or annuity payments shall be principal, except to the extent of interest or other income earned on such proceeds after the death of the testator.

(3) In all other cases, any receipt from an income-producing asset is income even though the receipt was earned or accrued in whole or in part before the date when the asset became subject to the trust.

(4) On termination of an income interest, the income beneficiary whose interest is terminated, or his estate, is entitled to:

(a) Income undistributed on the date of termination.

(b) Income due but not paid to the trustee on the date of termination.

(c) Income in the form of periodic payments, including rent, interest, or annuities, other than corporate distributions to stockholders, distributions from mutual funds, and dividends from savings banks and savings and loan associations, not due on the date of termination, accrued from day to day.

(5) Corporate distributions to stockholders, distributions from mutual funds, and dividends from savings banks and savings and loan associations shall be treated as due on the day fixed by the corpo-

ration for determination of stockholders of record entitled to distribution or, if no date is fixed, on the date of declaration of the distribution by the corporation.

**History.**—s. 1, ch. 74-106; s. 14, ch. 75-221; s. 1, ch. 77-254; s. 276, ch. 79-400.  
**Note.**—Created from former s. 690.05.

#### **738.05 Income earned during administration of a decedent's estate.—**

(1) Unless the will otherwise provides, and subject to subsection (2), all expenses incurred in connection with the settlement of a decedent's estate, including debts, funeral expenses, estate and other death taxes, family allowances, fees of attorneys and personal representatives, and court costs shall be charged against the principal of the estate.

(2) Unless the will otherwise provides, income from the assets of a decedent's estate after the death of the testator and before distribution, including income from property used to discharge liabilities, shall be determined in accordance with the rules applicable to a trustee under this chapter and distributed as follows:

(a) To specific devisees, the income from the property bequeathed or devised to them respectively, including an appropriate portion of interest accrued since the death of the testator, and less taxes, the cost of ordinary repairs, other expenses of management and operation of the property, and taxes imposed on income, excluding taxes on capital gains, that accrue during the period of administration.

(b) To all other devisees, except devisees of pecuniary bequests not in trust, the balance of the income, including interest accrued since the death of the testator, and less the balance of taxes, the cost of ordinary repairs, other expenses of management and operation of all property from which the estate is entitled to income, and taxes imposed on income, excluding taxes on capital gains, that accrue during the period of administration, in proportion to their respective interests in the undistributed assets of the estate computed at times of distribution on the basis of inventory value.

(3) Income received by a trustee under paragraph (2)(b) shall be treated as income of the trust.

(4) Unless the will otherwise provides, interest and penalties attributable to estate and other death taxes may be charged against either the principal or income of the estate in the sole discretion of the personal representative.

**History.**—s. 1, ch. 74-106; s. 14, ch. 75-221; s. 1, ch. 79-343.

#### **738.06 Corporate distributions.—**

(1) Corporate distributions of shares of the distributing corporation, including distributions in the form of a stock split or stock dividend, are principal. A right to subscribe to shares or other securities issued by the distributing corporation accruing to stockholders on account of their stock ownership and the proceeds of any sale of the right are principal.

(2) Except to the extent that the corporation indicates that some part of a corporate distribution is a settlement of preferred or guaranteed dividends accrued since the trustee became a stockholder or is, instead, a settlement of an ordinary cash dividend, a corporate distribution is principal if the distribu-



tion is pursuant to:

(a) A call of shares.

(b) A merger, consolidation, reorganization, or other plan by which assets of the corporation are acquired by another corporation.

(c) A total or partial liquidation of the corporation, including any distribution which the corporation indicates is a distribution in total or partial liquidation.

(d) Any distribution of assets pursuant to a judgment or final administrative order by a governmental agency ordering distribution of the particular assets.

(3) Distributions made from ordinary income by a regulated investment company, or by a trust qualifying and electing to be taxed under federal law as a real estate investment trust, are income. All other distributions made by the company or trust, including distributions from capital gains, depreciation, or depletion, whether in the form of cash, an option to take new stock or cash, or an option to purchase additional shares, are principal.

(4) Except as provided in subsections (1), (2), and (3), all corporate distributions are income, including:

(a) Cash dividends.

(b) Distributions of, or rights to subscribe to, shares or securities or obligations of corporations other than the distributing corporation and the proceeds of the rights or property distributions.

(c) Constructive dividends of ordinary income from Subchapter S corporations, reduced by losses passing to the shareholder.

Except as provided in subsections (2) and (3), if the distributing corporation gives a stockholder an option to receive a distribution either in cash or in its own shares, the distribution chosen is income.

(5) The trustee may rely upon any statement of the distributing corporation about any fact relevant under any provision of this chapter concerning the source or character of dividends or distributions of corporate assets.

**History.**—s. 1, ch. 74-106; s. 14, ch. 75-221; s. 230, ch. 77-104; s. 4, ch. 77-254; s. 277, ch. 79-400.

**Note.**—Created from former s. 690.06.

#### **738.07 Bond premium and discount.—**

(1) Bonds or other obligations for the payment of money are principal at their inventory value. No provision shall be made for amortization of bond premiums or for accumulation for discount. The proceeds of sale, redemption, or other disposition of the bonds or obligations are principal.

(2) The increment in value of a bond or other obligation for the payment of money bearing no stated interest but payable at a future time in excess of the price at which it was issued or purchased, if purchased after issuance, is distributable as income. If the increment in value accrues and becomes payable pursuant to a fixed schedule of appreciation, it may be distributed to the beneficiary who was the income beneficiary at the time of increment from the first principal cash available or, if none is available, when the increment is realized by sale, redemp-

tion, or other disposition. When unrealized increment is distributed as income but out of principal, the principal shall be reimbursed for the increment when realized.

**History.**—s. 1, ch. 74-106; s. 14, ch. 75-221; s. 5, ch. 77-254; s. 278, ch. 79-400.

**Note.**—Created from former s. 690.07.

#### **738.08 Business and farming operations.—**

(1) If a trustee uses any part of the principal in the continuance of a business of which the settlor was a sole proprietor or a partner, the net profits of the business, computed in accordance with accounting principles for a comparable business, are income. If a loss results in any fiscal or calendar year, the loss falls on principal and shall not be carried into any other fiscal or calendar year for purposes of calculating net income.

(2) Generally accepted accounting principles shall be used to determine income from an agricultural or farming operation, including the raising of animals or the operation of a nursery.

**History.**—s. 1, ch. 74-106; s. 15, ch. 75-221.

**Note.**—Created from former ss. 690.08, 690.09.

#### **738.09 Disposition of natural resources.—**

(1) If any part of the principal consists of a right to receive royalties, overriding or limited royalties, working interests, production payments, net profit interests, or other interests in minerals or other natural resources in, on, or under land, the receipts from taking the natural resources from the land shall be allocated as follows:

(a) If received as rent on a lease or extension payments on a lease, the receipts are income.

(b) If received from a production payment, the receipts are income to the extent of any factor for interest or its equivalent provided in the governing instrument. The fraction of the balance of the receipts that the unrecovered cost of the production payment bears to the balance owed on the production payment, exclusive of any factor for interest or its equivalent, shall be allocated to principal. The receipts not allocated to principal are income.

(c) If received as a royalty, overriding or limited royalty, or bonus, or from a working, net profit, or any other interest in minerals or other natural resources, receipts not provided for in the preceding paragraphs shall be apportioned on a yearly basis in accordance with this paragraph, whether or not any natural resource was being taken from the land at the time the trust was established. There shall be added to principal as an allowance for depletion the part of the gross receipts that is allowed to the trust as a deduction for depletion in computing taxable income for federal income tax purposes. The balance of the gross receipts is income after payment of all direct and indirect expenses.

(2) If a trustee on January 1, 1976, held an asset of depletable property of a type specified in this section, he shall allocate receipts from the property in the manner used before January 1, 1976, but for all depletable property acquired after January 1, 1976, by an existing or new trust, the method of allocation provided herein shall be used.

(3) This section does not apply to timber, water, soil, sod, dirt, turf, or mosses.

History.—s. 1, ch. 74-106; s. 16, ch. 75-221.  
Note.—Created from former s. 690.10.

**738.10 Timber, etc.**—If any part of the principal consists of land from which merchantable timber, water, soil, sod, dirt, turf, or mosses may be removed, the receipts from taking the item from the land shall be allocated in accordance with paragraph 738.02(1)(c).

History.—s. 1, ch. 74-106; s. 16, ch. 75-221.

**738.11 Other property subject to depletion.**—Except as provided in ss. 738.09 and 738.10, if the principal consists of property subject to depletion, including leaseholds, patents, copyrights, royalty rights, and rights to receive payments on a contract for deferred compensation, receipts from the property not in excess of 5 percent per year of its inventory value are income and the balance is principal.

History.—s. 1, ch. 74-106; s. 16, ch. 75-221.  
Note.—Created from former s. 690.11.

**738.12 Underproductive property.**—

(1)(a) If the total principal of a trust does not in any year yield a net income of at least 3 percent of its market value (including as income the value of any beneficial use of the property by the income beneficiary), the trustee shall pay to the income beneficiary an amount equal to 3 percent of the value of the principal, based upon the market value at the calendar year end. This amount shall be paid to the income beneficiary using the first principal cash available.

(b) In the event of a termination or initiation of a trust, or the termination of a beneficial income interest of a trust, for a period of less than 12 months, the amount to be paid to the income beneficiary shall be prorated proportionately with the length of the time of his interest in the trust and in accordance with section 738.03.

(2) Upon the sale of the property the income beneficiary shall not be entitled to any portion of the proceeds of sale, except that any amount determined in subsection (1) that remains unpaid at the time of sale shall be paid therefrom.

(3) If by the terms of the trust any portion of the income is to be retained by the trustee or disposed of other than by payment to an income beneficiary, such portion of the amount determined in subsection (1) shall be retained or disposed of as provided by the terms of the trust.

History.—s. 1, ch. 74-106; s. 16, ch. 75-221; s. 6, ch. 77-254.  
Note.—Created from former s. 690.12.

**738.13 Charges against income and principal.**—

(1) The following charges shall be made against income:

(a) Ordinary expenses incurred in connection with the administration, management, or preservation of the trust property, including regularly recurring taxes assessed against any part of the principal; water rates; premiums on insurance taken upon the interests of the income beneficiary, remainderman, or trustee; interest paid by the trustee, except inter-

est or penalties on estate or other death taxes; and ordinary repairs.

(b) Only when specifically required by the instrument, a reasonable allowance for depreciation on property subject to depreciation under accounting principles, but no allowance shall be made for depreciation of that part of any real property used by a beneficiary as a residence or for depreciation of any property held by the trustee on January 1, 1976, for which the trustee is not then making an allowance for depreciation.

(c) One-half of court costs, attorney's fees, and fees on periodic judicial accounting, unless the court directs otherwise.

(d) Court costs, attorney's fees, and other fees on other accountings or judicial proceedings if the matter primarily concerns the income interest, unless the court directs otherwise.

(e) One-half of the trustee's regular compensation, whether based on a percentage of principal or income, and all expenses reasonably incurred for current management of principal and application of income.

(f) Any tax levied upon receipts defined as income under this chapter or the trust instrument and payable by the trustee.

(2) If charges against income are of unusual amount, the trustee may charge them over a reasonable period of time, by means of reserves or other reasonable means, and withhold from distribution sufficient sums to regularize distributions.

(3) The following charges shall be made against principal:

(a) Trustee's compensation not chargeable to income under paragraphs (1)(d) and (e), special compensation of trustees, expenses reasonably incurred in connection with principal, court costs and attorney's fees primarily concerning matters of principal, and trustee's compensation computed on principal as an acceptance, distribution, or termination fee.

(b) Charges not provided for in subsection (1), including the cost of investing and reinvesting principal; the payments on principal of an indebtedness, including a mortgage amortized by periodic payments of principal; expenses for preparation of property for rental or sale; and, unless the court directs otherwise, expenses incurred in maintaining or defending any action to construe the trust, protect it or the property, or assure the title of any trust property.

(c) Extraordinary repairs or expenses incurred in making a capital improvement to principal, including special assessments; but a trustee may establish an allowance for depreciation out of income to the extent permitted by paragraph (1)(b) and by s. 738.08.

(d) Any tax levied upon profit, gain, or other receipts allocated to principal, notwithstanding denomination of the tax as an income tax by the taxing authority.

(e) If an estate or inheritance tax is levied in respect of a trust in which both an income beneficiary and a remainderman have an interest, any amount apportioned to the trust, other than penalties and interest thereon, even though the income beneficiary also has rights in the principal. Unless

otherwise provided in the trust instrument, any interest or penalties attributable to such estate or inheritance taxes and paid by the trust shall be charged against either the income or principal of the trust in the sole discretion of the trustee.

(4) Regularly recurring charges payable from income shall be apportioned to the same extent and in the same manner that income is apportioned under s. 738.04.

**History.**—s. 1, ch. 74-106; s. 18, ch. 75-221; s. 2, ch. 79-343.  
**Note.**—Created from former s. 690.13.

#### **738.14 Expenses; nontrust estates.—**

(1) The provisions of s. 738.13, so far as applicable, and excepting those dealing with costs of, or assessments for, improvements to property, shall govern the apportionment of expenses between tenants and remaindermen when no trust has been created, subject to any agreement of the parties or specific direction of the taxing or other statutes, but when either tenant or remainderman has incurred an expense for the benefit of his own estate without the consent or agreement of the other, he shall pay such expense in full.

(2) Subject to the exceptions stated in subsection (1), the cost of, or special taxes or assessments for, an improvement representing an addition of value to property forming part of the principal shall be paid by the tenant when the improvement is not reasona-

bly expected to outlast the estate of the tenant. In all other cases a part only shall be paid by the tenant, while the remainder shall be paid by the remainderman. The part payable by the tenant shall be ascertained by taking that percentage of the total that is found by dividing the present value of the tenant's estate by the present value of an estate of the same form as that of the tenant except that it is limited for a period corresponding to the reasonably expected duration of the improvement. The computation of present values of the estates shall be made on the expectancy basis set forth in the official mortality tables, and no other evidence of duration or expectancy shall be considered.

**History.**—s. 1, ch. 74-106; s. 18, ch. 75-221; s. 1, ch. 77-174.  
**Note.**—Created from former s. 690.14.

**738.15 Application of this chapter.**—Except as provided in the trust instrument, the will or this chapter, this chapter shall apply to any receipt or expense received or incurred after January 1, 1976, by any trust or decedent's estate, whether established before or after January 1, 1976, and whether the asset involved was acquired by the trustee or personal representative before or after January 1, 1976.

**History.**—s. 1, ch. 74-106; s. 18, ch. 75-221.  
**Note.**—Created from former s. 690.03.



# TITLE XLIII

## DOMESTIC RELATIONS

### CHAPTER 741

#### HUSBAND AND WIFE

- 741.01 County court judge or clerk of the circuit court to issue marriage license; fee.  
741.02 Additional fee.  
741.03 County court judge or clerk of the circuit court not to send out marriage license signed in blank.  
741.04 Marriage license issued.  
741.0405 When marriage license may be issued to persons under 18 years.  
741.041 Marriage license application valid for 30 days.  
741.05 Penalty for violation of ss. 741.03, 741.04.  
741.051 Marriage licenses; conditions precedent to issuance; certificate of physician.  
741.052 Same; serological tests.  
741.053 Same; forms to be prescribed.  
741.054 Same; making of tests.  
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741.24 Civil action against parents; willful destruction or theft of property by minor.  
741.30 Petition for order to restrain abusive spouse.

**741.01 County court judge or clerk of the circuit court to issue marriage license; fee.—**

(1) Every marriage license shall be issued by a county court judge or clerk of the circuit court under his hand and seal. Said county court judge or clerk of the circuit court shall issue such license, upon application therefor, if there appears to be no impediment to the marriage. The county court judge or clerk of the circuit court shall collect and receive a fee of \$2 for receiving the application for the issuance of a marriage license.

ance of a marriage license.

(2) The fee charged for each marriage license issued in the state shall be increased by the sum of \$5. This fee shall be collected upon receipt of the application for the issuance of a marriage license. The Executive Office of the Governor shall establish a trust fund for the purpose of collecting and disbursing funds generated from the increase in marriage license fees. Such funds generated shall be directed to the Department of Health and Rehabilitative Services for the specific purpose of funding spouse abuse centers, and the funds shall be appropriated in a "Grants-in-Aids" category to the Department of Health and Rehabilitative Services, Aging and Adult Services, for the purpose of funding spouse abuse centers.

**History.**—s. 2, Nov. 2, 1829; s. 2, ch. 3720, 1887; s. 1, ch. 3890, 1889; RS 2055; GS 2574; RGS 3933; CGL 5848; s. 28, ch. 73-334; s. 1, ch. 74-3; s. 1, ch. 74-372; s. 8, ch. 78-281; s. 143, ch. 79-190; s. 7, ch. 79-402.

**741.02 Additional fee.**—Upon the receipt of each application for the issuance of a marriage license, the county court judge or clerk of the circuit court shall, in addition to the fee allowed by s. 741.01, collect and receive an additional fee of \$3, to be distributed as provided by s. 382.24.

**History.**—s. 1, ch. 11869, 1927; CGL 5851; s. 7, ch. 22000, 1943; s. 1, ch. 67-520; s. 28, ch. 73-334; s. 1, ch. 74-372.

**741.03 County court judge or clerk of the circuit court not to send out marriage license signed in blank.**—It is unlawful for any county court judge or clerk of the circuit court in the state to send out of his office any marriage license signed in blank to be issued upon application to persons not in the office of the county court judge or clerk of the circuit court.

**History.**—s. 1, ch. 7828, 1919; CGL 5849; s. 28, ch. 73-334; s. 1, ch. 74-372.

**741.04 Marriage license issued.—**

(1) No county court judge or clerk of the circuit court in this state shall issue a license for the marriage of any person unless there shall be first presented and filed with him an affidavit in writing, signed by both parties to the marriage, made and subscribed before some person authorized by law to administer an oath, reciting the true and correct ages of such parties; unless both such parties shall be over the age of 18 years, except as provided in s. 741.0405; and unless one party is a male and the other party is a female.

(2) No marriage license shall be issued by any

county court judge or clerk of the circuit court in this state after application therefor until after expiration of 3 days, including the day application is made to the county court judge or clerk of the circuit court by the parties seeking to be married for the issuance of a marriage license, and it shall be the duty of the county court judge or clerk of the circuit court in counties which have less than 50,000 residents pursuant to the last decennial census to post a true copy of said application at the front door of the courthouse in the county where said application was made for a period of 3 days prior to the issuance of said marriage license, which said 3 days shall include day of application therefor.

**History.**—s. 2, Nov. 2, 1829; s. 2, ch. 3720, 1887; s. 1, ch. 3890, 1889; RS 2055; GS 2574; s. 2, ch. 7828, 1919; RGS 3933; CGL 5850; s. 1, ch. 22643, 1945; s. 1, ch. 28103, 1953; s. 28, ch. 73-334; s. 1, ch. 74-372; s. 1, ch. 77-19; s. 64, ch. 77-121; s. 1, ch. 77-139; s. 1, ch. 78-266.  
cf.—s. 741.0405 When license may issue to minors.  
s. 741.08 Necessity of license.

**741.0405 When marriage license may be issued to persons under 18 years.—**

(1) If either of the parties shall be under the age of 18 years but at least 16 years of age, the county court judge or clerk of the circuit court shall issue a license for the marriage of such party only if there is first presented and filed with him the written consent of the parents or guardian of such minor to such marriage, acknowledged before some officer authorized by law to take acknowledgments and administer oaths. However, the license shall be issued without parental consent when both parents of such minor are deceased at the time of making application or when such minor has been married previously.

(2) The county court judge of any county in the state may, in the exercise of his discretion, issue a license to marry to any male or female under the age of 18 years, upon application of both parties sworn under oath that they are the parents of a child.

(3) When the fact of pregnancy is verified by the written statement of a licensed physician, the county court judge of any county in the state may, in his discretion, issue a license to marry:

(a) To any male or female under the age of 18 years upon application of both parties sworn under oath that they are the expectant parents of a child; or

(b) To any female under the age of 18 years and male over the age of 18 years upon the female's application sworn under oath that she is an expectant parent.

(4) No license to marry shall be granted to any person under the age of 16 years, with or without the consent of the parents, except as provided in subsections (2) and (3).

**History.**—s. 2, ch. 78-266.

**741.041 Marriage license application valid for 30 days.**—Marriage license applications shall be valid only for a period of 30 days after receipt by an applicant, and no clerk of the circuit court shall issue a license for the marriage of two people more than 30 days after the application was received by the applicant.

**History.**—s. 2, ch. 77-139; s. 279, ch. 79-400.

**741.05 Penalty for violation of ss. 741.03, 741.04.**—Any county court judge, clerk of the circuit court, or other person who shall violate any provision of ss. 741.03 and 741.04 shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 3, ch. 7828, 1919; CGL 7517; s. 692, ch. 71-136; s. 28, ch. 73-334; s. 1, ch. 74-372.

**741.051 Marriage licenses; conditions precedent to issuance; certificate of physician.**—Every person making application for license to marry shall file with the county court judge or clerk of the circuit court, as a condition precedent to the issuance of any such license, a certificate from a duly licensed physician, which certificate shall state that the applicant has been given an approved serological test for syphilis and found not to be infected with syphilis, or if so infected, not to be in a stage of infection which is or may become communicable to the marital partner. Said serological test shall be made not more than 60 days prior to the date of application for a license to marry.

**History.**—ss. 1, 15, ch. 22738, 1945; s. 28, ch. 73-334; s. 1, ch. 74-372; s. 3, ch. 78-266.

**741.052 Same; serological tests.**—The certificate of the duly licensed physicians, as aforesaid, shall be accompanied by a statement by the person making the standard serological test or from the person in charge of the laboratory making the test, setting forth the name of the test, the result of the test, the date it was made, the name and address of the physician who submitted the sample of blood for the test, and the name and address of the person whose blood was tested. In submitting the blood specimen the physician shall designate that this is a premarital test and the statement from the laboratory shall show that this was a premarital test.

**History.**—s. 2, ch. 22738, 1945.

**741.053 Same; forms to be prescribed.**—The certificate of a physician and the statement constituting the laboratory report on the serological test shall each be on a form to be provided by the Department of Health and Rehabilitative Services and distributed to the offices of all county court judges and clerks of the circuit courts and to all laboratories, hospitals or clinics in the state approved by the department.

**History.**—s. 3, ch. 22738, 1945; ss. 19, 35, ch. 69-106; s. 28, ch. 73-334; s. 1, ch. 74-372; s. 464, ch. 77-147.

**741.054 Same; making of tests.**—For the purpose of this law a standard serological test shall be a test for syphilis approved by the Department of Health and Rehabilitative Services, and an approved laboratory shall be the department laboratory, any of its branches, or any other laboratory licensed or operated in accordance with the laws of this state or of the state in which it is located; provided, however, that the serological test or tests shall be such as will exclude the possibility that the disease as shown by said test or tests is some other disease than syphilis.

**History.**—s. 4, ch. 22738, 1945; ss. 19, 35, ch. 69-106; s. 465, ch. 77-147.

**741.055 Same; affidavit of positive report.—**

In any case where such examinations and tests have been made and certificate or certificates have been refused because one or both of the applicants have been found to be infected with syphilis, the county court judge shall nevertheless be authorized and empowered on application of both parties to such marriage to issue the license without the certificate of a physician if the judge is satisfied by affidavit or other proof that the female is pregnant; providing that all other requirements of the marriage laws have been complied with and that the public health and welfare will not be injuriously affected thereby. In every such case, however, the county court judge shall transmit to the Department of Health and Rehabilitative Services a transcript of the court record and file a copy of the order of the court in lieu of the physician's certificate. The court when it is deemed necessary may, to the extent authorized by law or rules of court, order all the proceedings instituted under the provisions of this section to be confidential and private. There shall be no fee for the court proceedings authorized in this section.

**History.**—s. 5, ch. 22738, 1945; ss. 19, 35, ch. 69-106; s. 28, ch. 73-334; s. 466, ch. 77-147.

**741.056 Same; no charge for laboratory test.**

—All serological tests required by this law on blood specimens submitted to the laboratory of the Department of Health and Rehabilitative Services or to any of its authorized branches shall be made without charge. The fee of the physician for making the examinations and issuance of the certificate required by this law shall not exceed the sum usually charged for office visits.

**History.**—s. 6, ch. 22738, 1945; ss. 19, 35, ch. 69-106; s. 467, ch. 77-147.

**741.057 Same; filing of certificates.**—The physician's certificate and the laboratory report shall be filed with the transcripts of court proceedings in the office of the county court judge or clerk of the circuit court for a period of not less than 60 days, after which time they may be destroyed at the discretion of the county court judge or clerk of the circuit court.

**History.**—s. 7, ch. 22738, 1945; s. 1, ch. 61-17; s. 28, ch. 73-334; s. 1, ch. 74-372.

**741.058 Same; limitation on licenses.**—From and after the effective date of this law, marriage licenses shall be valid only for a period of 30 days after issuance, and no person shall perform any ceremony of marriage after the expiration date of such license. The county court judge or clerk of the circuit court shall recite on each marriage license the final date that such is so valid.

**History.**—s. 8, ch. 22738, 1945; s. 28, ch. 73-334; s. 1, ch. 74-372.

**741.059 Same; use of information by department.**—The Department of Health and Rehabilitative Services shall be authorized to use the information derived from premarital serological tests for such follow-up procedures as are required by law or deemed necessary by said department for the protection of the public health.

**History.**—s. 9, ch. 22738, 1945; ss. 19, 35, ch. 69-106; s. 468, ch. 77-147.

**741.0591 Penalties for violation of law.**—Any applicant for a marriage license, physician, or representative of a laboratory who shall misrepresent his identity or any of the facts called for by the certificate form or laboratory report form as provided for in s. 741.053. Any clerk of the circuit court or county court judge or his deputy who shall issue a marriage license without having received the physician's certificate, laboratory report or order from the court, or who shall have reason to believe that any of the facts have been misrepresented and shall nevertheless issue a marriage license, or any person who shall otherwise fail to comply with the provisions of this law, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 10, ch. 22738, 1945; s. 693, ch. 71-136; s. 28, ch. 73-334; s. 1, ch. 74-372.

**Note.**—Former s. 741.0510.

**741.0592 Same; reports confidential.**—Physicians' certificates, laboratory reports and court orders and all information therein contained shall be confidential and shall not be divulged to, or open to inspection by, any person outside the office of the county court judge or clerk of the circuit court other than the Department of Health and Rehabilitative Services or local health officers or their duly authorized representatives. Any person who shall divulge such information or open for inspection such certificates, laboratory reports or court orders, without authority, to any person not by law entitled to the same, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 11, ch. 22738, 1945; ss. 19, 35, ch. 69-106; s. 694, ch. 71-136; s. 28, ch. 73-334; s. 1, ch. 74-372; s. 469, ch. 77-147.

**Note.**—Former s. 741.0511.

**741.0593 Penalty for violation of ss. 741.051-741.0592.**—Any person who enters into the contract of marriage without having first complied with ss. 741.051-741.0592 shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 12, ch. 22738, 1945; s. 695, ch. 71-136; s. 178, ch. 73-333.

**Note.**—Former s. 741.0512.

**741.07 Persons authorized to solemnize matrimony.—**

(1) All regularly ordained ministers of the gospel or elders in communion with some church, or other ordained clergy, and all judicial officers, clerks of the circuit courts, and notaries public of this state may solemnize the rights of matrimonial contract, under the regulations prescribed by law. Nothing in this section shall make invalid a marriage which was solemnized by any member of the clergy, or as otherwise provided by law prior to July 1, 1978.

(2) Any marriage which may be had and solemnized among the people called "Quakers," or "Friends," in the manner and form used or practiced in their societies, according to their rites and ceremonies, shall be good and valid in law; and wherever the words "minister" and "elder" are used in this



chapter, they shall be held to include all of the persons connected with the Society of Friends, or Quakers, who perform or have charge of the marriage ceremony according to their rites and ceremonies.

**History.**—s. 1, Nov. 2, 1829; s. 2, ch. 1127, 1861; RS 2056; GS 2575; RGS 3934; CGL 5853; s. 1, ch. 28104, 1953; s. 1, ch. 74-372; s. 1, ch. 78-15.

**741.08 Marriage not to be solemnized without a license.**—Before any of the persons named in s. 741.07 shall solemnize any marriage, he shall require of the parties a marriage license issued according to the requirements of s. 741.01, and within 10 days after solemnizing the marriage he shall make a certificate thereof on the license, and shall transmit the same to the office of the county court judge or clerk of the circuit court from which it issued.

**History.**—ss. 2, 3, Nov. 2, 1829; s. 1, ch. 3890, 1889; RS 2057; GS 2576; RGS 3935; CGL 5854; s. 28, ch. 73-334; s. 1, ch. 74-372.

**741.09 Record of license and certificate.**—The county court judge and clerk of the circuit court shall keep in good and substantially bound books a correct record of all marriage licenses issued, with the names of the parties and the date of issuing, and upon the return of the license and certificate shall enter therein the name of the person solemnizing the marriage and the date of marriage and of the return.

**History.**—s. 3, Nov. 2, 1829; s. 1, ch. 3890, 1889; RS 2058; GS 2577; RGS 3936; CGL 5855; s. 28, ch. 73-334; s. 1, ch. 74-372.

**741.10 Proof of marriage where no certificate available.**—When any marriage is or has been solemnized by any of the persons named in s. 741.07, and such person has not made a certificate thereof on the marriage license as required by s. 741.08, or when the marriage license has been lost, or when by reason of death or other cause the proper certificate cannot be obtained, the marriage may be proved by affidavit before any officer authorized to administer oaths made by two competent witnesses who were present and saw the marriage ceremony performed, which affidavit may be filed and recorded in the office of the county court judge or clerk of the circuit court from which the marriage license issued, with the same force and effect as in cases in which the proper certificate has been made, returned and recorded.

**History.**—s. 1, ch. 3126, 1879; RS 2059; GS 2578; RGS 3937; CGL 5856; s. 28, ch. 73-334; s. 1, ch. 74-372.

**741.21 Incestuous marriages prohibited.**—A man may not marry any woman to whom he is related by lineal consanguinity, nor his sister, nor his aunt, nor his niece. A woman may not marry any man to whom she is related by lineal consanguinity, nor her brother, nor her uncle, nor her nephew.

**History.**—RS 2602; GS 3525; RGS 5415; CGL 7558.

**741.211 Common law marriages void.**—No common law marriage entered into after January 1, 1968, shall be valid, except that nothing contained in this section shall affect any marriage which, though otherwise defective, was entered into by the party asserting such marriage in good faith and in substantial compliance with this chapter.

**History.**—s. 1, ch. 67-571.

**741.23 Husband not liable for wife's torts.**—The common law rule whereby a husband is liable for the torts of his wife is hereby abrogated.

**History.**—s. 1, ch. 26829, 1951.

**741.24 Civil action against parents; willful destruction or theft of property by minor.**—

(1) Any municipal corporation, county, school district, or department of Florida; any person, partnership, corporation, or association; or any religious organization, whether incorporated or unincorporated, shall be entitled to recover damages in an appropriate action at law in an amount not to exceed \$2,500, in a court of competent jurisdiction, from the parents of any minor under the age of 18 years, living with the parents, who shall maliciously or willfully destroy or steal property, real, personal, or mixed, belonging to such municipal corporation, county, school district, department of the state, person, partnership, corporation, association, or religious organization.

(2) The recovery shall be limited to the actual damages in an amount not to exceed \$2,500, in addition to taxable court costs.

**History.**—ss. 1, 2, ch. 31400, 1956; s. 40, ch. 67-254; s. 1, ch. 67-404; s. 1, ch. 77-366; s. 280, ch. 79-400.

**Note.**—Former s. 45.20.

**741.30 Petition for order to restrain abusive spouse.**—Any person who has filed a complaint of spouse abuse with a law enforcement agency and who files a verified petition alleging spouse abuse with the clerk of the circuit court of the county wherein the person filing the verified petition resides shall be entitled to have the court issue a restraining order with such terms and conditions as the court deems advisable with respect to the facts alleged in the verified petition. The verified petition shall contain the date, time, and place of the alleged spouse abuse, the law enforcement agency which investigated the complaint, and the circumstances of the spouse abuse which occurred. The verified petition shall be in the following form:

#### PETITION FOR AN ORDER TO RESTRAIN AN ABUSIVE SPOUSE

Before me, the undersigned authority, personally appeared Petitioner .....(Name)....., who was sworn and says that the following statement is true.

The petitioner has filed a complaint with .....(law enforcement agency)..... alleging that petitioner was abused by respondent spouse at .....(place)..... on .....(date)..... at .....(time)..... in the following manner: .....(circumstances).....

Petitioner seeks an order restraining the respondent spouse from abusing the petitioner and providing for any other terms and conditions that the court deems advisable with respect to the facts alleged in the petition.

.....(Signature of Petitioner).....

Sworn to and subscribed on

....., 19.....

.....(Notary Public).....

My Commission Expires:

Notice that a restraining order has been issued shall be served upon the spouse complained against. When the court issues the restraining order without a hearing, the court, if requested by the spouse complained against, shall provide a hearing as soon as reasonably possible but not later than 20 days after the date of the issuance of the order. The issuance of

such an order shall not require that the party alleging spouse abuse be represented by an attorney, nor shall such a restraining order be conditioned upon any dissolution of marriage proceedings.

**History.**—s. 1, ch. 79-402.

**Note.**—The words "of the alleged spouse abuse" were inserted by the editors.

## CHAPTER 742

## DETERMINATION OF PATERNITY

- 742.011 Determination of paternity proceedings; Circuit Court jurisdiction.  
 742.021 Same; venue, process, complaint.  
 742.031 Same; hearings; court orders, support, hospital expenses, etc.  
 742.041 Same; monthly contributions.  
 742.06 Same; jurisdiction retained for future orders.  
 742.07 Effect of adoption.  
 742.08 Default of support payments.  
 742.09 Publishing names; penalty.  
 742.091 Marriage of parents.  
 742.10 Chapter in lieu of other proceedings.  
 742.11 Presumed legitimacy of child conceived by means of artificial insemination.

**742.011 Determination of paternity proceedings; Circuit Court jurisdiction.**—Any unmarried woman who shall be pregnant or delivered of a child may bring proceedings in the Circuit Court, in chancery, to determine the paternity of such child.

*History.*—s. 1, ch. 26949, 1951; s. 5, ch. 75-166.

**742.021 Same; venue, process, complaint.**—The proceedings shall be by verified complaint filed in the circuit court of the county in which the woman resides or of the county in which the alleged father resides. The complaint shall aver sufficient facts charging the paternity of the child. Process directed to the defendant shall issue forthwith requiring the defendant to file his written defenses to the complaint in the same manner as suits in chancery. Upon application and proof under oath, the court may issue a writ of ne exeat against the defendant on such terms and conditions and conditioned upon bond in such amount as the court may determine.

*History.*—s. 2, ch. 26949, 1951.

**742.031 Same; hearings; court orders, support, hospital expenses, etc.**—Hearings for the purpose of establishing or refuting the allegations of the complaint and answer shall be held in the chambers and may be restricted to such persons, in addition to the parties involved and their counsel, as the judge in his discretion may direct. The court shall determine the issues of paternity of the child, and the ability of the parents and each of them to support the child and if the court shall find the defendant to be the father of the child he shall so order and shall further order the defendant to pay the complainant, her guardian or such other person assuming responsibility for the child as the judge may direct, such sum or sums as shall be sufficient to pay reasonable attorney's fee, hospital or medical expenses, cost of confinement and any other expenses incident to the birth of such child. In addition the court shall order the defendant to pay periodically for the support of such child such sums as shall be fixed by the court in accordance with the provisions of this act, and also all taxable costs of the proceedings. Upon re-

quest of either party, the issue of the paternity of such child may be tried by jury and the chancellor shall transfer the cause for the determination of such issue.

*History.*—s. 3, ch. 26949, 1951; s. 1, ch. 59-45.

**742.041 Same; monthly contributions.**—

(1) The court shall order the defendant to pay monthly for the care and support of such child the following amounts:

(a) From date of birth to 6th birthday—\$40 per month.

(b) From 6th birthday to 12th birthday—\$60 per month.

(c) From 12th birthday to 15th birthday—\$90 per month.

(d) From 15th birthday to 18th birthday—\$110 per month.

(2) Such amounts may be increased or reduced by the judge in his discretion depending upon the circumstances and ability of the defendant.

*History.*—s. 4, ch. 26949, 1951.

**742.06 Same; jurisdiction retained for future orders.**—The court shall retain jurisdiction of the cause for the purpose of entering such other and further orders as changing circumstances of the parties may in justice and equity require.

*History.*—s. 5, ch. 26949, 1951.

**742.07 Effect of adoption.**—Upon the adoption of a child, for whom support has been ordered, by some person other than the father, the liability of the father for the support of the child shall be terminated.

*History.*—s. 6, ch. 26949, 1951.

**742.08 Default of support payments.**—Upon default in payment of any moneys ordered by the court to be paid, the court may enter a judgment for the amount in default which shall be a lien upon all property of the defendant both real and personal. Willful failure to comply with an order of the court shall be deemed a contempt of the court entering the order and shall be punished as such. The court may require bond of the defendant for the faithful performance of his obligation under the order of the court in such amount and upon such conditions as the court shall direct.

*History.*—s. 7, ch. 26949, 1951.

**742.09 Publishing names; penalty.**—It shall be unlawful for the owner, publisher, manager, or operator of any newspaper, magazine, radio station, or other publication of any kind whatsoever, or any other person responsible therefor, or any radio broadcaster, to publish the name of any of the parties to any court proceeding instituted or prosecuted under this act; and any person violating this provision shall be guilty of a misdemeanor of the first



degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 8, ch. 26949, 1951; s. 697, ch. 71-136.

**742.091 Marriage of parents.**—If the mother of any child born out of wedlock and the reputed father shall at any time after its birth intermarry, the child shall in all respects be deemed and held legitimate, and upon the payment of all costs and attorney fees as determined by the court, the cause shall be dismissed and the bond provided for in s. 742.021 shall be void. The record of the proceedings in such cases shall be sealed against public inspection in the interests of the child.

**History.**—s. 1, ch. 57-267; s. 6, ch. 75-166.

**742.10 Chapter in lieu of other proceedings.**

—This chapter shall be in lieu of any other proceedings provided by law for the determination of paternity and support of children born out of wedlock.

**History.**—s. 9, ch. 26949, 1951; s. 10, ch. 27991, 1953; s. 7, ch. 75-166.

**742.11 Presumed legitimacy of child conceived by means of artificial insemination.**—Any child born within wedlock who has been conceived by the means of artificial insemination is irrebuttably presumed to be legitimate, provided that both husband and wife have consented in writing to the artificial insemination.

**History.**—s. 1, ch. 73-104.

## CHAPTER 743

## DISABILITY OF NONAGE OF MINORS REMOVED

- 743.01 Removal of disabilities of married minors.
- 743.04 Removal of disabilities of persons entitled to benefits under the "Home, Farm and Business Loans Act."
- 743.05 Removal of disabilities of minors; borrowing money for educational purposes.
- 743.06 Removal of disabilities of minors; donation of blood without parental consent.
- 743.064 Emergency medical care or treatment to minors without parental consent.
- 743.065 Unwed pregnant minor or minor mother; consent to medical services for minor or minor's child valid.
- 743.07 Rights, privileges, and obligations of persons 18 years of age or older.

**743.01 Removal of disabilities of married minors.**—The disability of nonage of a minor who is married or has been married or subsequently becomes married, including one whose marriage is dissolved, or who is widowed, or widowed, is removed. The minor may assume the management of his estate, contract and be contracted with, sue and be sued, and perform all acts that he could do if not a minor.

**History.**—ss. 1, 2, ch. 7364, 1917; RGS 3962, 3963; s. 1, ch. 9286, 1923; CGL 5881, 5882, 5883; s. 1, ch. 22750, 1945; s. 1, ch. 71-147; s. 1, ch. 73-300.

**743.04 Removal of disabilities of persons entitled to benefits under the "Home, Farm and Business Loans Act."**—A minor authorized to participate in the rights, privileges, and benefits conferred by chapter 37 of Title 38 U. S. C., "Home, Farm and Business Loans Act," is authorized to make and execute all contracts necessary for the full utilization of the rights, privileges, and benefits conferred under said chapter if the person is otherwise competent to make and execute contracts. The contracts so made shall have the same effect as though they were the contracts of persons who were not minors.

**History.**—s. 1, ch. 23873, 1947; s. 24, ch. 69-353; s. 2, ch. 71-147.

**743.05 Removal of disabilities of minors; borrowing money for educational purposes.**—For the purpose of borrowing money for their own higher educational expenses, the disability of nonage of minors is removed for all persons who have reached 16 years of age. Such minors are authorized to make and execute promissory notes, contracts, or other instruments necessary for the borrowing of money for this purpose. The promissory notes, contracts, or other instruments so made shall have the same effect as though they were the obligations of persons who were not minors. No such obligation shall be valid if the interest rate on it exceeds 7 percent a year.

**History.**—s. 1, ch. 59-268; s. 1, ch. 69-105; s. 2, ch. 71-147.

**743.06 Removal of disabilities of minors; donation of blood without parental consent.**—Any minor who has reached the age of 17 years may give consent to the donation, without compensation

therefor, of his blood and to the penetration of tissue which is necessary to accomplish such donation. Such consent shall not be subject to disaffirmance because of minority, unless the parent or parents of such minor specifically object, in writing, to the donation or penetration of the skin.

**History.**—s. 1, ch. 70-430; s. 1, ch. 76-13.

**743.064 Emergency medical care or treatment to minors without parental consent.**—

(1) The absence of parental consent notwithstanding, a physician licensed under chapter 458 or an osteopathic physician licensed under chapter 459 may render emergency medical care or treatment to any minor who has been injured in an accident or who is suffering from an acute illness, disease, or condition if, within a reasonable degree of medical certainty, delay in initiation of emergency medical care or treatment would endanger the health of the minor, and provided such emergency medical care or treatment is administered in a hospital licensed by the state under chapter 395 or in a college health service.

(2) This section shall apply only when parental consent cannot be immediately obtained for one of the following reasons:

(a) The minor's condition has rendered him unable to reveal the identity of his parents, guardian, or legal custodian, and such information is unknown to any person who accompanied the minor to the hospital.

(b) The parents, guardian, or legal custodian cannot be immediately located by telephone at their place of residence or business.

(3) Notification shall be accomplished as soon as possible after the emergency medical care or treatment is administered. The hospital records shall reflect the reason such consent was not initially obtained and shall contain a statement by the attending physician that immediate emergency medical care or treatment was necessary for the patient's health. The hospital records shall be open for inspection by the person legally responsible for the minor.

(4) No physician, hospital, or college health service shall incur civil liability by reason of having rendered emergency medical care or treatment pursuant to this section, provided such treatment or care was rendered in accordance with acceptable standards of medical practice.

**History.**—s. 1, ch. 79-302.

**743.065 Unwed pregnant minor or minor mother; consent to medical services for minor or minor's child valid.**—

(1) An unwed pregnant minor may consent to the performance of medical or surgical care or services relating to her pregnancy by a hospital or clinic or by a physician licensed under chapter 458 or chapter 459, and such consent is valid and binding as if she had achieved her majority.

(2) An unwed minor mother may consent to the performance of medical or surgical care or services for her child by a hospital or clinic or by a physician

licensed under chapter 458 or chapter 459, and such consent is valid and binding as if she had achieved her majority.

(3) Nothing in this act shall affect the provisions of s. 390.001.

*History.*—s. 1, ch. 79-302.

**743.07 Rights, privileges, and obligations of persons 18 years of age or older.—**

(1) The disability of nonage is hereby removed for all persons in this state who are 18 years of age or older, and they shall enjoy and suffer the rights, privileges, and obligations of all persons 21 years of age or older except as otherwise excluded by the

State Constitution immediately preceding the effective date of this section.

(2) This section shall not prohibit any court of competent jurisdiction from requiring support for a dependent person beyond the age of 18 years; and any crippled child as defined in chapter 391 shall receive benefits under the provisions of said chapter until age 21, the provisions of this section to the contrary notwithstanding.

(3) This section shall operate prospectively and not retrospectively, and shall not affect the rights and obligations existing prior to July 1, 1973.

*History.*—ss. 2, 3, ch. 73-21.  
cf.—s. 1.01 Minor defined.



## CHAPTER 744

## GUARDIANSHIP

## PART I GENERAL PROVISIONS (ss. 744.101-744.108)

## PART II VENUE (ss. 744.201, 744.202)

## PART III TYPES OF GUARDIANSHIP (ss. 744.301-744.308)

## PART IV GUARDIANS (ss. 744.309-744.313)

## PART V APPOINTMENT (ss. 744.331-744.357)

## PART VI POWERS AND DUTIES (ss. 744.361-744.461)

## PART VII TERMINATION (ss. 744.464-744.531)

## PART I

## GENERAL PROVISIONS

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**744.101 Short title.**—This chapter may be cited as the "Florida Guardianship Law."

*History.*—s. 1, ch. 74-106.

*Note.*—Created from former s. 744.01.

**744.1011 Effective date; substantive rights; procedures.**—This act shall take effect January 1, 1976. The substantive rights of all persons that have vested prior to January 1, 1976 shall be determined as provided in former chapters 744-746, Florida Statutes, as they exist prior to January 1, 1976. The procedures for the enforcement of substantive rights which have vested prior to January 1, 1976, shall be as provided in this act.

*History.*—s. 27, ch. 75-222.

**744.102 Definitions.**—Unless the context requires otherwise, when used in this law:

(1) A "guardian" is one to whom the law has entrusted the custody and control of the person or property, or both, of an incompetent. "Guardian" may mean curator, conservator, or committee, if appointed in another state.

(2) A "guardian ad litem" is one appointed by a court in which particular litigation is pending to represent a ward in that litigation.

(3) A "foreign guardian" is one appointed in another state or country.

(4) A "testamentary guardian" is one appointed

for the person or property, or both, of a minor child by the will of its parent.

(5) An "incompetent" is a person who, because of minority, senility, lunacy, insanity, imbecility, idiocy, drunkenness, excessive use of drugs, or other physical or mental incapacity, is incapable of either managing his property or caring for himself, or both.

(6) A "minor" is a person under 18 years of age whose disabilities have not been removed by marriage or otherwise.

(7) "Property" means realty, personalty, and choses in action or any interest in them, legal or equitable, and also claims or rights of action arising in tort.

(8) A "ward" is an incompetent for whom a guardian has been appointed.

(9) "Limited guardian" means a person to whom the law has entrusted only the property of an incompetent that is received from sources other than the incompetent's wages or earnings.

(10) "Standby guardian" means a person empowered to assume the duties of guardianship or limited guardianship upon the death or adjudication of incompetency of the last surviving natural or adoptive parent of an incompetent.

(11) "Corporate guardian" means a corporation organized and existing under the laws of Florida and having trust powers.

(12) "Nonprofit corporate guardian" means a nonprofit corporation organized for religious or charitable purposes and existing under the laws of this state.

(13) "Estate" includes the property of a ward subject to administration.

(14) "Clerk" means the clerk or deputy clerk of the court.

(15) "Court" means the circuit court.

(16) "Next of kin" means those persons who would be heirs at law of the ward or alleged incompetent if such person were deceased and includes the lineal descendants of such ward or alleged incompetent person.

*History.*—s. 1, ch. 74-106; s. 2, ch. 75-222; s. 231, ch. 77-104; s. 1, ch. 79-221.

*Note.*—Created from former s. 744.03.  
cf.—s. 731.201 General definitions.

**744.1025 Additional definitions.**—The definitions contained in the Florida Probate Code shall be applicable to the Florida Guardianship Law, unless the context requires otherwise, insofar as such definitions do not conflict with definitions contained in this law.

**History.**—s. 2, ch. 79-221.

**744.103 Guardians of incompetent world war veterans.**—The provisions of this law shall extend to incompetent world war veterans, provided for in chapters 293 and 294 or any amendment or revision of them. The provisions of this law are cumulative to those chapters. Any conflict between chapters 293 and 294, or any amendment or revision of them, and this law shall be resolved by giving effect to those chapters.

**History.**—s. 1, ch. 74-106; s. 2, ch. 75-222; s. 1, ch. 77-174.

**Note.**—Created from former s. 744.05.

**744.104 Verification of documents.**—When verification of a document is required in this chapter or by rule, the document filed shall include an oath or affirmation or the following statement: "Under penalties of perjury, I declare that I have read the foregoing, and the facts alleged are true to the best of my knowledge and belief." Any person who shall willfully include a false statement in the document shall be guilty of perjury and upon conviction shall be punished accordingly.

**History.**—s. 1, ch. 74-106; s. 2, ch. 75-222.

**Note.**—Created from former s. 744.37.

**744.105 Costs.**—In all guardianship proceedings, costs may be awarded as in chancery actions. When the costs are to be paid out of the estate of the ward, the court may direct from what part of the estate the costs shall be paid.

**History.**—s. 1, ch. 74-106.

**Note.**—Created from former s. 744.47.

**744.106 Notice and virtual representation.**—The provisions for notice and virtual representation in ss. 731.301, 731.302 and 731.303 are applicable to this chapter.

**History.**—s. 4, ch. 75-222.

**744.107 Visitors.**—The court may appoint a visitor to interview the ward and report to the court the well-being of the ward. The court shall not appoint as a visitor a family member or any person with a personal interest in the proceedings. Unless otherwise prohibited by law, a visitor may be allowed a reasonable fee as determined by the court and paid from the assets of the ward. No full-time state, county, or city employee or officer shall be paid a fee for such visitation and report.

**History.**—ss. 18, 26, ch. 75-222.

**744.108 Guardians' fee.**—A guardian of the person or of the property shall receive a reasonable fee for his services to be fixed by the court after such notice as the court shall require.

**History.**—ss. 18, 26, ch. 75-222.

## PART II

### VENUE

- 744.201 Change of domicile of ward.  
744.202 Venue.

**744.201 Change of domicile of ward.**—The domicile of a resident ward is the county where the guardian of the person was lawfully appointed. For cause, the court may authorize a change of domicile of the ward.

**History.**—s. 1, ch. 74-106; s. 5, ch. 75-222.

**Note.**—Created from former s. 744.10.

### 744.202 Venue.—

(1) The venue in proceedings for the appointment of a guardian shall be:

(a) If the incompetent is a resident of this state, in the county where the incompetent resides.

(b) If the incompetent is not a resident of this state, in any county in Florida where property of the incompetent is located.

(c) If the incompetent is not a resident of this state and owns no property in this state, in the county where any debtor of the incompetent resides.

(2) When the domicile of an incompetent is changed to another county, the guardian of the person of the incompetent may have the venue of the guardianship changed to the county of the acquired domicile.

**History.**—s. 1, ch. 74-106; s. 5, ch. 75-222.

**Note.**—Created from former s. 744.11.

## PART III

### TYPES OF GUARDIANSHIP

- 744.301 Natural guardians.  
744.303 Limited guardianship.  
744.304 Standby guardianship.  
744.305 Nonprofit corporate guardianship.  
744.306 Foreign guardians.  
744.307 Foreign guardian may manage the property of nonresident ward.  
744.308 Resident guardian of the property of nonresident incompetent.

### 744.301 Natural guardians.—

(1) The mother and father jointly are natural guardians of their own children and of their adopted children, during minority. If one parent dies, the natural guardianship shall pass to the surviving parent, and the right shall continue even though the surviving parent remarries. If the marriage between the parents is dissolved, the natural guardianship shall belong to the parent to whom the custody of the child is awarded. If the parents are given joint custody, then both shall continue as natural guardians. If the marriage is dissolved and neither the father nor the mother is given custody of the child, neither shall act as natural guardian of the child. The mother of a child born out of wedlock is the natural guardian of the child.

(2) The natural guardian or guardians are authorized, on behalf of any of their minor children, to settle and consummate a settlement of any claim or

cause of action accruing to any of their minor children for damages to the person or property of any of said minor children and to collect, receive, manage, and dispose of the proceeds of any such settlement and of any other real or personal property distributed from an estate or trust or proceeds from a life insurance policy to, or otherwise accruing to the benefit of, the child during minority, when the amount involved in any instance does not exceed \$5,000, without appointment, authority, or bond.

(3) All instruments executed by a natural guardian under the powers provided for in subsection (2) shall be binding on the ward.

**History.**—s. 1, ch. 74-106; s. 8, ch. 75-166; s. 7, ch. 75-222; s. 1, ch. 77-190; s. 3, ch. 79-221.

**Note.**—Created from former s. 744.13.

#### **744.303 Limited guardianship.—**

(1) When it appears to the satisfaction of the court that an incompetent is over the age of 18 years and wholly or substantially self-supporting by means of compensation from employment, the court may appoint a limited guardian of the property for the person to receive, manage, disburse, and account for only the property of the incompetent that is received from other than the incompetent's wages or earnings.

(2) An incompetent for whom a limited guardian of the property has been appointed shall have the right to receive and expend the compensation from his employment. He shall also have the power to contract or otherwise legally bind himself for any sum of money not exceeding 1 month's wages and earnings from his employment or \$300, whichever is greater.

(3) A limited guardian shall have the same duties and responsibilities as are otherwise provided by law for guardians of property.

**History.**—s. 1, ch. 74-106; s. 7, ch. 75-222.

**Note.**—Created from former s. 744.71.

#### **744.304 Standby guardianship.—**

(1) Upon petition or consent of both parents, natural or adoptive, if living, or of the surviving parent, a standby guardian of the person or property of an incompetent may be appointed by the court. The court may also appoint an alternate to the guardian to act if the standby guardian shall renounce, die, or become incapacitated after the death of the last surviving parent of the incompetent person.

(2) The standby guardian or alternate shall be empowered to assume the duties of his office immediately on the death or adjudication of incompetency of the last surviving natural or adoptive parent of the incompetent, subject only to confirmation of his appointment by the court within 30 days following the assumption of guardianship duties. If the incompetent person is over the age of 18 years, the court shall conduct a hearing as provided in s. 744.331 before confirming the appointment of the standby guardian.

(3) After the appointment of a standby guardian, the court shall have jurisdiction over the incompetent person for whom the guardian has been appointed.

**History.**—s. 1, ch. 74-106; s. 7, ch. 75-222; s. 1, ch. 77-174.

**Note.**—Created from former s. 744.72.

#### **744.305 Nonprofit corporate guardianship.—**

(1) A nonprofit corporation organized for religious or charitable purposes and existing under the laws of this state may be appointed guardian of the person or property, or both, of an incompetent person.

(2) A nonprofit corporation as above defined may be appointed guardian of the property in a voluntary guardianship proceeding.

(3) A nonprofit corporation as above defined appointed as guardian of the person or property, or both, shall not be entitled to receive any compensation for serving in the capacity of guardian but may be allowed its costs and reasonable attorneys' fees, if any.

**History.**—s. 1, ch. 74-106; s. 7, ch. 75-222.

**Note.**—Created from former s. 744.73.

#### **744.306 Foreign guardians.—**

(1) Foreign guardians who produce authenticated orders appointing them guardians, curators, conservators, or committees, duly obtained in any state, territory, or country, shall be authorized to maintain actions in the courts of this state.

(2) Guardians appointed in any state, territory, or country may be sued in this state concerning the property or person of the ward in this state and may defend any action or proceeding in this state.

(3) Debtors who have received no written demand for payment from a guardian appointed in this state within 60 days after the appointment of a guardian, curator, conservator, or committee in any state, territory, or country other than this state, and whose property in Florida is subject to a mortgage or other lien securing the debt held by the foreign guardian, curator, conservator, or committee, may pay the debt to the foreign guardian, curator, conservator, or committee after the expiration of 60 days from the date of his appointment. A satisfaction of the mortgage or lien, executed after the 60 days have expired by the foreign guardian, curator, conservator, or committee, with an authenticated copy of the letters or other evidence of authority of the foreign guardian, curator, conservator, or committee attached, may be recorded in the public records of this state and shall constitute an effective discharge of the mortgage or lien, irrespective of whether the debtor had received written demand before paying the debt.

(4) All persons indebted to a ward, or having possession of personal property belonging to a ward, who have received no written demand for payment of the indebtedness or the delivery of the property from a guardian appointed in this state are authorized to pay the indebtedness or to deliver the personal property to the foreign guardian, curator, conservator, or committee after the expiration of the 60 days from the date of his appointment.

**History.**—s. 1, ch. 74-106; s. 7, ch. 75-222.

**Note.**—Created from former s. 744.15.

#### **744.307 Foreign guardian may manage the property of nonresident ward.—**

(1) A guardian of the property of a nonresident ward, duly appointed by a court of another state, territory, or country, who desires to manage any part or all of the property of the ward located in



Florida, may file a petition showing his appointment, describing the property, stating its estimated value, and showing the indebtedness, if any, existing against the ward in this state, to the best of his knowledge and belief.

(2) The guardian shall designate a resident agent as required by the Rules of Probate and Guardianship Procedure.

(3) The guardian shall file authenticated copies of his letters of guardianship or other authority and of his bond or other security. The court shall determine if the foreign bond or other security is sufficient to guarantee the faithful management of the ward's property in this state. The court may require a new guardian's bond in this state in the amount it deems necessary and conditioned for the proper management and application of the property of the ward coming into the custody of the guardian in this state.

(4) Thereafter, the guardianship shall be governed by the law concerning guardianships.

**History.**—s. 1, ch. 74-106; s. 7, ch. 75-222.

**Note.**—Created from former s. 744.16.

#### **744.308 Resident guardian of the property of nonresident incompetent.—**

(1) The court may appoint a resident of Florida as guardian of a nonresident incompetent's property upon the petition of a relative, next friend, or creditor of the incompetent, regardless of whether he has a foreign guardian or not. The foreign guardian, if there is one, may also petition for the appointment of the resident guardian.

(2) The petition for the appointment of a resident guardian for the property of a nonresident incompetent shall be in writing and shall be prepared in accordance with the requirements of s. 744.334.

(3) If it is alleged that the incompetency is due to mental or physical incapacity, the petition shall be accompanied by an authenticated copy of the adjudication of unsoundness of mind or of physical incapacity from the qualified authorities in the state, territory, or country where the incompetent is domiciled, and shall state whether the incompetent is in the custody of any person or institution and, if so, the name and post-office address of the custodian. The adjudication shall constitute prima facie proof of the incompetency.

(4) If the question about the mental or physical incapacity of a nonresident is presented while he is temporarily residing in Florida and he is not under an adjudication of incompetency made in some other state, territory, or country, the procedure for the appointment of a resident guardian of his property shall be the same as though he were a resident of Florida.

(5) When the ground for the appointment of the guardian is minority or incompetency previously adjudicated in another state, territory, or country, notice of the hearing shall be served personally or by registered mail on the incompetent and his legal custodian, if any, and also on one or more members of his family or relatives, if any are known to the petitioner, at least 20 days before the hearing.

(6) In the appointment of the guardian the court shall be governed by s. 744.312.

(7) The duties, powers, and liabilities for the cus-

tody, control, management, and disposition of his ward's property and removal, accounting, and discharge shall be governed by the law applicable to resident guardians of property of resident wards.

**History.**—s. 1, ch. 74-106; s. 7, ch. 75-222; s. 1, ch. 77-174.

**Note.**—Created from former ss. 744.18, 744.19, 744.21, 744.25, 744.26.

### **PART IV**

### **GUARDIANS**

744.309 Who may be appointed guardian of a resident incompetent.

744.312 Considerations in appointment of guardian.

744.313 Letters of guardianship.

#### **744.309 Who may be appointed guardian of a resident incompetent.—**

(1) **RESIDENT.**—

(a) Any resident of this state who is sui juris is qualified to act as guardian of the person or property of an incompetent.

(b) No judge shall act as guardian after this law becomes effective, except when he is related to the ward by blood, marriage, or adoption.

(2) **NONRESIDENT.**—A nonresident who is sui juris may be appointed guardian of the person or property of a resident incompetent if the nonresident is:

(a) Related by lineal consanguinity to the incompetent.

(b) A spouse or a brother, sister, uncle, aunt, nephew, or niece of the incompetent.

(c) A legally adopted child or adoptive parent of the incompetent.

(d) A spouse of a person qualified under this subsection.

(3) **GUARDIAN OF THE PERSON AND PROPERTY.**—The guardian of the person and the guardian of the property may be the same person.

(4) **DISQUALIFIED PERSONS.**—No person who has been convicted of a felony or who, from sickness, intemperance, or want of understanding, is incapable of discharging the duties of a guardian shall be appointed to act as guardian.

(5) **TRUST COMPANY OR NATIONAL BANK.**—A trust company incorporated under Florida law, or a national banking association authorized and qualified to exercise fiduciary powers in Florida, may act as guardian of the property of an incompetent.

(6) **CORPORATE.**—A corporation as prescribed in s. 744.305 may be appointed guardian of the person or property, or both, of an incompetent.

**History.**—s. 1, ch. 74-106; s. 8, ch. 75-222; s. 4, ch. 79-221.

**Note.**—Created from former s. 744.27.

#### **744.312 Considerations in appointment of guardian.—**

(1) The court may appoint any person who is qualified to act as guardian, whether related to the ward or not.

(2) The court shall give consideration to the appointment of:

(a) One of the next of kin of the incompetent who is a fit and proper person and qualified to act.

(b) Any person designated as guardian in any will in which the incompetent is a beneficiary.

(3) The court shall also:

(a) Consider the wishes expressed by the incompetent as to who shall be appointed guardian, and

(b) Give weight to the appointment of an individual, or corporation as described in s. 744.102(11), nominated by the incompetent prior to the filing of the petition for a finding of incompetency, if at the time of nomination:

1. The incompetent was 18 or more years of age and had sufficient mental capacity to make an intelligent choice, and

2. The nomination is contained in a writing signed by him in the presence of at least two attesting witnesses present at the same time.

(4) The provisions of subsections (1)-(3) notwithstanding, and subject to the provisions of s. 744.309, a surviving parent may name by will a guardian for the person or property of a minor child to serve during the child's minority or any part of it. Such person or persons named shall be appointed by the court unless the court determines that such appointment would be contrary to the best interests of the minor. The guardian so appointed shall be subject to the law in the same manner as other guardians.

**History.**—s. 1, ch. 74-106; s. 12, ch. 75-222; s. 1, ch. 77-174; s. 5, ch. 79-221.  
**Note.**—Created from former s. 744.35.

**744.313 Letters of guardianship.**—Letters of guardianship shall be issued to the guardian of the person or of the property, or both. Failure to issue letters shall not affect the validity of the order appointing the guardian.

**History.**—s. 1, ch. 74-106; s. 12, ch. 75-222.  
**Note.**—Created from former s. 744.40.

## PART V

### APPOINTMENT

- 744.331 Adjudication of persons mentally or physically incompetent; procedure.
- 744.334 Petition for appointment of guardian; contents.
- 744.337 Notice of hearing.
- 744.341 Voluntary guardianship.
- 744.344 Order of appointment.
- 744.347 Oath of guardian.
- 744.351 Bond of guardian.
- 744.354 Validity of bond.
- 744.357 Liability of surety.

**744.331 Adjudication of persons mentally or physically incompetent; procedure.**—No guardian of the person or of the property, or both, of a person alleged to be mentally or physically incompetent shall be appointed until after the person has been adjudicated to be incompetent in proceedings instituted for that purpose, in the following manner:

(1) When a person is believed to be incompetent because of mental illness, sickness, excessive use of alcohol or drugs, or other mental or physical condition, so that he is incapable of caring for himself or managing his property or is likely to dissipate or lose his property or inflict harm on himself or others, a verified petition may be filed where the alleged in-

competent resides or is found, for a judicial inquiry into the mental or physical condition, or both, of the alleged incompetent.

(2) The petition may be filed by:

(a) The mother, father, brother, sister, husband, wife, adult child, or next of kin of the alleged incompetent.

(b) Any three citizens of the state.

(c) Any person who requests the examination of himself, if he presents a certificate of a physician authorized to practice medicine in this state certifying the reason that he believes the petitioner to be incompetent.

(d) The medical director of any state correctional institution, concerning any person at the institution.

(3) Every petition shall allege the name, approximate age, address if known, and nature of the disability of the alleged incompetent, and the names and addresses of the next of kin of the alleged incompetent, if known to petitioner.

(4) When a petition is filed, the court shall set a date for a hearing. Notice shall be given in writing to the alleged incompetent and to one or more members of his family, if any other than the petitioner are known to be residing in the county, and to such persons as the court may direct, notifying them that application has been made for an inquiry into either the mental or physical condition, or both, of the alleged incompetent and that a hearing on the application will be held at the time and place specified in the notice. The hearings shall be conducted in as informal a manner as may be consistent with orderly procedure and in a physical setting not likely to have a harmful effect on the mental health of the alleged incompetent. An opportunity to be represented by counsel shall be afforded to every alleged incompetent, and if he cannot afford an attorney the court shall appoint one.

(5)(a) The judge shall appoint an examining committee consisting of one responsible citizen and two practicing physicians who shall not be associated with each other in the practice of medicine. The citizen appointed shall not be associated with, or employed by, either physician. The examining committee shall proceed to examine the person to ascertain his mental and physical condition within a reasonable time after notice of its appointment. No petitioner shall serve as a member of the examining committee.

(b) If the examining committee considers the person under examination to be incompetent, it shall determine his age, whether his condition is acute or chronic, and the apparent cause of the condition. The report shall cover the findings of the committee, be signed by each member of the examining committee, and be transmitted immediately to the court. If the report of the examiners is that the alleged incompetent is not mentally or physically incompetent, the court shall dismiss the petition.

(c) The committee and any attorney appointed under subsection (4) shall be entitled to reasonable fees to be determined by the court and paid from the general fund of the county where the alleged incompetent was domiciled at the time the petition was filed. The county shall have a right of a creditor's claim against the guardianship assets for any

amounts paid under this section. The county shall file its claim within 90 days of the adjudication of incompetency, and, if the county does not file its claim within such 90 days, the county is thereafter barred. Upon petition by the county for payment of the claim as provided in s. 744.387(5), the county shall be satisfied out of the assets of the estate. The board of county commissioners shall keep a record of such payments and may file its claim for reimbursement at any time after a guardian has been appointed.

(6) Except as otherwise specified, the procedure shall be governed by rules applicable in guardianships generally.

(7) If the court finds that the person under investigation is incompetent, mentally or physically, or both, the judgment shall state the nature and extent of the incompetency. If the court finds that the person is not incompetent, it shall dismiss the petition.

(8) After a judgment adjudicating a person to be mentally or physically incompetent is filed, the person shall, for the duration of the incompetency, be presumed to be incapable of managing his own affairs or of making any gift, contract, or instrument in writing that is binding on him or his estate. The filing of the judgment shall be notice of the incapacity.

(9) When a person is adjudicated mentally or physically incompetent, a guardian of the person shall be appointed, and a guardian of the property may be appointed.

**History.**—ss. 9, 26, ch. 75-222; s. 4, ch. 77-328; s. 1, ch. 78-342; s. 6, ch. 79-221.

**744.334 Petition for appointment of guardian; contents.**—Every petition for the appointment of a guardian shall be verified by the petitioner and shall contain statements, to the best of petitioner's knowledge and belief, showing the name, age, residence, and post-office address of the alleged incompetent; the nature of his incapacity; the type of guardianship desired; the approximate value and description of his property; the residence and post-office address of the petitioner; and the names and addresses of the next of kin of the incompetent, if known to the petitioner.

**History.**—ss. 11, 26, ch. 75-222; s. 7, ch. 79-221.

**744.337 Notice of hearing.**—

(1) When the petition for the appointment of a guardian alleges that the person has been adjudicated to be physically or mentally incompetent, or both, the court shall hear the petition without notice if it is filed and heard upon the conclusion of the hearing in which the person is so adjudicated. If it is heard on a later date, reasonable notice of the hearing shall be served on the incompetent, next of kin, and such other persons as the court may direct.

(2) When the petition alleges that the incapacity is minority and the petitioner is not the parent and the parents of the minor are living, reasonable notice of the hearing shall be given to them. When a parent applies for appointment as guardian of his minor child, no notice is necessary unless the other

parent is living and refuses to consent to the appointment.

**History.**—ss. 11, 26, ch. 75-222; s. 1, ch. 77-328; s. 8, ch. 79-221.

**744.341 Voluntary guardianship.**—

(1) Without adjudication of incompetency, the court shall appoint a guardian of the estate of a resident or nonresident person who, though mentally competent, is incapable of the care, custody, and management of his estate by reason of age or physical infirmity and who has voluntarily petitioned for the appointment. The petition shall be accompanied by a certificate of a licensed physician that he has examined the petitioner and that the petitioner is competent to understand the nature of the guardianship and his delegation of authority. Notice of hearing on any petition for appointment and for authority to act shall not be required, except that notice shall be given to the ward and to any person to whom the ward requests that notice be given. Such request may be made in the petition for appointment of guardian or in a subsequent written request for notice signed by the ward.

(2) Any guardian appointed under this section shall have the same duties and responsibilities as are provided by law as to guardians of property generally.

**History.**—ss. 11, 26, ch. 75-222; s. 9, ch. 79-221.

**744.344 Order of appointment.**—At the hearing on the petition for the appointment of a guardian, the court shall hear the evidence on the question of the competency of the person who is the subject of the hearing. An order previously adjudicating a person to be incompetent shall constitute conclusive proof of incompetency until the competency of the person has been restored. The court may hear testimony on the question of who is entitled to preference in the appointment of a guardian. Any person interested may intervene in the proceedings. If the court finds that the person who is the subject of the hearing is incompetent, it shall appoint a guardian of the person or of the property, or both, as it may deem necessary. The order shall state the specific nature of the incapacity found. The order shall specify the amount of the bond to be given by the guardian.

**History.**—s. 1, ch. 74-106; ss. 12, 26, ch. 75-222.

**Note.**—Created from former s. 744.34.

**744.347 Oath of guardian.**—Before exercising his authority as guardian, every guardian shall take an oath that he will faithfully perform his duties as guardian. This oath is not jurisdictional.

**History.**—s. 1, ch. 74-106; ss. 19, 26, ch. 75-222.

**Note.**—Created from former s. 744.36.

**744.351 Bond of guardian.**—

(1) Before entering on his duties, every person appointed a guardian of the property of a ward in Florida shall file a bond with surety as prescribed in s. 45.011 to be approved by the clerk. The bond shall be payable to the Governor of the state and his successors in office, conditioned on the faithful performance of all duties by the guardian. In form the bond shall be joint and several. When the petitioner requests a waiver of bond, the court may waive a bond.

(2) When the sureties on a bond are natural persons, the guardian shall be required to file with his



annual returns proof satisfactory to the court that the sureties are alive and solvent.

(3) The penal sum of a guardian's bond shall be fixed by the court, and it must be in an amount not less than the full amount of the cash on hand and on deposit belonging to the ward, plus the value of the notes and bonds owned by the ward that are payable to bearer.

(4) For good cause, the court may require, or increase or reduce the amount of, bond or change or release the surety.

(5) Banks and trust companies authorized by law to be guardians shall not be required to file bonds.

**History.**—s. 1, ch. 74-106; ss. 19, 26, ch. 75-222; s. 1, ch. 77-174; s. 2, ch. 78-342.  
**Note.**—Created from former s. 744.38.

**744.354 Validity of bond.**—No bond executed by any guardian shall be invalid because of an informality in it or because of an informality or illegality in the appointment of the guardian. The bond shall have the same force and effect as if the bond had been executed in proper form and the appointment had been legally made.

**History.**—s. 1, ch. 74-106; ss. 19, 26, ch. 75-222.  
**Note.**—Created from former s. 744.42.

**744.357 Liability of surety.**—No surety for a guardian shall be charged beyond the assets of the ward's property.

**History.**—s. 1, ch. 74-106; ss. 19, 26, ch. 75-222.  
**Note.**—Created from former s. 744.43.

## PART VI

### POWERS AND DUTIES

- 744.361 Duties and powers of guardian of the person.
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### 744.361 Duties and powers of guardian of the person.—

(1) It is the duty of the guardian of the person to take care of the person of the ward, to treat him humanely, and, if he is a minor, to see that he is properly educated and that he has the opportunity to learn a trade, occupation, or profession.

(2) The guardian of the person shall be entitled to the custody of the ward, but shall not have power to bind the ward or his property or to represent him in any legal proceedings pertaining to his property.

(3) In case of an adult ward, the guardian shall honor the ward's preferences as to place and standard of living, either as had been expressed or demonstrated by the ward prior to the determination of his incompetency, or as currently expressed by the ward, insofar as such a request is reasonable. Such preference should be compatible with the ward's present resources and place and standard of living prior to the determination of his incompetency and shall be subject to review by the court.

**History.**—s. 1, ch. 74-106; ss. 6, 26, ch. 75-222.  
**Note.**—Created from former ss. 744.48, 744.49.

### 744.364 Periodic examination of ward.—

(1) Unless the court enters an order declaring that it is not necessary, or unless the ward is maintained in an institution operated by the state, the guardian of the person of a person adjudged physically or mentally incompetent shall cause the person to be examined annually by a licensed physician concerning the mental and physical condition of the ward.

(2) The guardian of the property may expend up to \$150 from the ward's estate, without prior court approval, for the professional examinations under subsection (1). When the cost of the examination exceeds \$150, the guardian shall obtain prior court authorization for the expenditure. If the ward's estate has insufficient assets to pay the expense of the examinations, the guardian shall report the insufficiency and obtain an order permitting him to apply for financial relief from state or county funds, as provided by laws concerning the care of indigent persons.

**History.**—s. 1, ch. 74-106; ss. 6, 26, ch. 75-222.  
**Note.**—Created from former ss. 744.481, 744.483.

**744.367 Duty to file report.**—On or before April 1 of each year, the guardian of the person shall file reports with the court including:

(1) The name and address of all places where the ward was maintained during the preceding year.

(2) The length of stay of the ward at each place.

(3) A resume of any professional medical treatment given to the ward during the preceding year.

(4) A brief resume of the guardian's activity and visits to check on the progress and condition of the ward.

(5) An evaluation by the guardian of whether or not the ward is competent to such an extent that he should be restored.

(6) A written report and evaluation from the examining physician, including, among other things, recommendations for treatment, prognosis, and indications for restoration.

**History.**—s. 1, ch. 74-106; ss. 6, 26, ch. 75-222.  
**Note.**—Created from former s. 744.482.

**744.371 Relief to be granted.**—If it appears from the guardian's report and the medical report filed as required in s. 744.367 that:

- (1) The condition of the ward requires further examination;
- (2) Any change of care, maintenance, or treatment is needed;
- (3) The ward is qualified for restoration; or
- (4) His condition or maintenance requires the performance or doing of any other thing for the best interest of ward,

the guardian shall petition for the needed matters. The court shall enter such orders, with or without notice to interested persons, as may be proper.

**History.**—s. 1, ch. 74-106; ss. 6, 26, ch. 75-222.  
**Note.**—Created from former s. 744.484.

**744.374 Payments to guardian of the person.**—If the guardian of the person of the ward is other than the guardian of the property, either guardian may petition for an order directing the guardian of the property to pay to the guardian of the person periodic amounts for the support, care, maintenance, and education of the ward. The amount may be increased or decreased from time to time. If an order is made, the receipt of the guardian of the person for payments made shall be a sufficient discharge of the guardian of the property. He shall not be bound to see to the application of the payments.

**History.**—s. 1, ch. 74-106; ss. 6, 26, ch. 75-222.  
**Note.**—Created from former s. 744.50.

**744.377 Duties of guardian of the property.**—

- (1) It is the duty of the guardian of the property of the ward:
  - (a) To protect and preserve the property and to invest it prudently as defined in s. 737.302, apply it as provided in s. 744.397, and account for it faithfully.
  - (b) To perform all other duties required of him by law.
  - (c) At the termination of the guardianship, to deliver the assets of the ward to the person lawfully entitled to them.
- (2) The guardian shall observe the standards in dealing with the guardianship property that would be observed by a prudent man dealing with the property of another, and, if the guardian has special skills or is named guardian on the basis of representations of special skills or expertise, he is under a duty to use those skills.
- (3) The guardian shall take possession of all of the ward's property and of the rents, income, issues, and profits from it, whether accruing before or after his appointment, and of the proceeds arising from the sale, lease, or mortgage of the property or of any part. All of the property and the rents, income, issues, and profits from it shall be assets in the hands of the guardian for the payment of debts, taxes, claims, charges, and expenses of the guardianship

and for the care, support, maintenance, and education of the ward or his dependents, as authorized by law or approved by the court.

(4) Within 60 days after his appointment, the guardian shall file a complete inventory of the property that has come to his knowledge and of any cause of action on which his ward has a right to sue.

**History.**—s. 1, ch. 74-106; ss. 12, 26, ch. 75-222.  
**Note.**—Created from former ss. 744.51, 744.52, 744.53.

**744.381 Appraisals.**—When the court deems it necessary, appraisers may be appointed to appraise the property of the ward.

**History.**—s. 1, ch. 74-106.  
**Note.**—Created from former s. 744.54.

**744.384 Subsequently discovered or acquired property.**—If the guardian learns of any property that is not included in previous inventories, the property shall be inventoried within 30 days after the discovery or acquisition.

**History.**—s. 1, ch. 74-106; ss. 14, 26, ch. 75-222.  
**Note.**—Created from former s. 744.59.

**744.387 Settlement of claims.**—

(1) When a settlement of any claim by or against the guardian of the property of the ward, whether arising as a result of personal injury or otherwise, and whether arising before or after appointment of a guardian, is proposed, but before an action to enforce it is begun, on petition by the guardian stating the facts of the claim, question, or dispute and the proposed settlement, and on any evidence that is introduced, the court may enter an order authorizing the settlement if satisfied that the settlement will be for the best interest of the ward. The order shall relieve the guardian from any further responsibility in connection with the claim or dispute when the settlement has been made in accordance with the order. The order authorizing the settlement may also determine whether an additional bond is required and, if so, shall fix the amount of it.

(2) In the same manner as provided in subsection (1) or as authorized by s. 744.301, the natural guardians or guardian of a minor may settle any claim by or on behalf of a minor that does not exceed \$5,000 without bond. A legal guardianship of the property shall be required when the amount of the net settlement to the ward exceeds \$5,000.

(3)(a) No settlement after an action has been commenced by or on behalf of a minor or other incompetent shall be effective unless approved by the court having jurisdiction of the action.

(b) In the event of settlement or judgment in favor of the minor or other incompetent, the court may authorize the natural guardians or guardian, or a guardian appointed by a court of competent jurisdiction, to collect the amount of the settlement or judgment and to execute a release or satisfaction. When the amount of net settlement to the ward or judgment exceeds \$5,000 and no guardian has been appointed, the court shall require the appointment of a guardian of the property.

(4) In making a settlement under court order as provided in this section, the guardian is authorized to execute any instrument that may be necessary to effect the settlement. When executed the instru-

ment shall be a complete release of the person making the settlement.

(5) Upon the filing of a claim by the county for reimbursement for the payment of reasonable fees awarded to any person under s. 744.331(5), the court shall enter an order authorizing immediate payment out of the assets or income of the estate of all amounts that have been required to be advanced by the county.

**History.**—s. 1, ch. 74-106; ss. 14, 26, ch. 75-222; s. 3, ch. 78-342; s. 10, ch. 79-221.

**Note.**—Created from former s. 744.60.

**744.391 Actions by and against guardian or ward.**—If an action is brought by the guardian against the ward, or vice versa, or if the interest of the guardian is adverse to that of his ward, a guardian ad litem shall be appointed to represent the ward in that particular litigation. Judgments in favor of the ward shall become the property of the ward without the necessity for any assignment by the guardian or receipt by the ward upon termination of guardianship. The guardian may receive payment and satisfy any judgment in behalf of the ward without joinder by the ward.

**History.**—s. 1, ch. 74-106.

**Note.**—Created from former s. 744.61.

**744.394 Suspension of statutes of limitations in favor of guardian.**—If a person entitled to bring an action is declared incompetent before the expiration of the time limited for the commencement of it and the cause of the action survives, the action may be commenced by the guardian of the property after such expiration and within 1 year from the date of the order appointing him or the time otherwise limited by law, whichever is longer.

**History.**—s. 1, ch. 74-106; ss. 16, 26, ch. 75-222.

**Note.**—Created from former s. 744.62.

**744.397 Application of income of property of ward.**—

(1) The court may authorize the guardian of the property to apply the income from the ward's property, first to his care, support, education, and maintenance, and then for the care, support, education, maintenance, cost of final illness, and cost of funeral and burial or cremation of the parent, spouse, or dependents, if any, of the ward, to the extent necessary. If the income is not sufficient for these purposes, the court may authorize the expenditure of part of the principal for such purposes from time to time.

(2) The word "dependents," as used in subsection (1) means, in addition to those persons who are legal dependents of a ward under existing law, the person or persons whom the ward is morally or equitably obligated to aid, assist, maintain, or care for, including, but not limited to, such persons as the indigent husband of the ward, based upon the showing of an existing need and an ability of the estate of the ward to pay for, provide, or furnish the aid, assistance, maintenance, or care without unreasonably jeopardizing the care, support, and maintenance of the ward.

(3) If the ward is a minor and his parents are able to care for him and to support, maintain, and educate him, the guardian of the property of the minor

shall not so use his ward's property unless directed or authorized to do so by the court.

**History.**—s. 1, ch. 74-106; ss. 16, 26, ch. 75-222.

**Note.**—Created from former s. 744.64.

**744.421 Petition for support of ward's dependents.**—Any person dependent on the ward for support may petition for an order directing the guardian of the property to contribute to the support of the dependent person from the property of the ward. The court may enter an order for suitable support and education of the dependent person out of the ward's property. The grant or denial of an order for support shall not preclude a further petition for increase, decrease, modification, or termination of allowance for support by either the petitioner or the guardian. The order for support shall be valid for payments made pursuant to it, but no valid payments can be made after the termination of the guardianship. The receipt of the petitioner shall be a sufficient release of the guardian for payments made pursuant to the order. If the property of the ward is derived in whole or in part from payments of compensation, adjusted compensation, pension, insurance, or other benefits made directly to the guardian by the Veterans Administration, notice of the application for support shall be given by the applicant to the office of the Veterans Administration having jurisdiction over the area in which the court is located and the chief attorney for the Division of Veterans' Affairs of the Department of Community Affairs in this state at least 15 days before the hearing on the application.

**History.**—s. 1, ch. 74-106; ss. 16, 26, ch. 75-222; s. 1, ch. 77-174; s. 1, ch. 78-305.

**Note.**—Created from former s. 744.65.

**744.424 Attorney's fees and expenses.**—

(1) An attorney who has been employed by a guardian and rendered service to the ward, or to the guardian in the ward's behalf, may petition for attorney's fees. After notice to the guardian, the court shall make an order on the petition.

(2) In annual and final returns the guardian shall be entitled to credit for reasonable sums that he has paid to an attorney for expenses and services rendered to the ward or to the guardian on behalf of the ward and to credit for his own reasonable expenses in connection with the guardianship. Objections may be made to the allowance of the items in the manner specified in the Rules of Probate and Guardianship Procedure, unless the items have been previously allowed.

(3) If the guardian is a practicing attorney at law in this state and has rendered legal services in connection with his guardianship duties, he shall be allowed reasonable fees in addition to his expenses and compensation provided by law for him as guardian.

**History.**—s. 1, ch. 74-106; ss. 16, 26, ch. 75-222.

**Note.**—Created from former s. 745.33.

**744.427 Annual returns.**—

(1) The annual return shall be filed on or before April 1 of each year or 90 days after termination of the ward's fiscal year and, in his return, a guardian of the property shall render a full and correct account of the receipts and disbursements of all his ward's property of which he has control and shall



include a statement of the ward's assets.

(2) Substantiating papers shall not be filed with accountings, but pertinent substantiating papers and records shall be available at a trial of objections to accountings, and all substantiating papers and records shall be preserved by the guardian for 3 years after his discharge.

(3) Within 30 days after the return has been filed, a person interested as creditor or otherwise may file written objections to any item, specifying the grounds of objection. No item previously approved by the court on notice shall be subject to objection.

(4) If a guardian fails to file his annual return, any person interested may file a written demand for service of a copy of the return. The demand shall contain the post-office address of the person filing it. If any demand is on file at the time the return is filed, the guardian shall serve a copy of the return upon the person who filed the demand and shall file proof of service of it.

(5) If objections are filed, the guardian or the objecting person, after the expiration of the time for filing objections and on reasonable notice to the other, may apply to the court for a hearing. After the hearing, the court shall enter an order sustaining or overruling the objections.

(6) If no objection is filed to any return within the time for filing objections, the court shall examine the return and enter its order approving it or requiring proof of the items.

*History.*—s. 1, ch. 74-106; ss. 16, 26, ch. 75-222; s. 1, ch. 77-174.  
*Note.*—Created from former s. 745.25.

#### **744.431 Order requiring return; contempt.**—

When a guardian fails to file the annual return, the court shall order him to make the return within 15 days from the service of the order upon him or show cause why he should not be compelled to do so. A copy of the order shall be served on the guardian or on his resident agent. If the guardian fails to file his return within the time specified by the order without good cause, the court may cite him for contempt of court.

*History.*—s. 1, ch. 74-106; ss. 17, 26, ch. 75-222.  
*Note.*—Created from former s. 745.29.

**744.434 Production of assets.**—On the petition of a creditor or other interested person or on its own motion, the court may require a guardian of the property to produce satisfactory evidence that the assets of the ward are in his possession or under his control. If it deems it necessary or proper, the court may order the guardian to produce the assets for the inspection of the creditor, another interested person, or the court.

*History.*—s. 1, ch. 74-106; ss. 17, 26, ch. 75-222.  
*Note.*—Created from former s. 745.30.

#### **744.437 Annual appearance of the guardian.**—

The court may require every guardian to appear before the court at the time the guardian files his annual return or at such other time as the court determines, in order for the court to inquire as to any

matter relating to the physical and financial well-being of the ward.

*History.*—s. 1, ch. 74-106; ss. 17, 26, ch. 75-222; s. 11, ch. 79-221.

**744.441 Powers of guardian upon court approval.**—After obtaining approval of the court in accordance with s. 744.447, a guardian of the property may:

(1) Perform, compromise, or refuse performance of a ward's contracts that continue as obligations of the estate, as he may determine under the circumstances.

(2) Execute any power of appointment or other power that the ward might have lawfully exercised, consummated, or executed if competent, if the best interest of the ward requires such execution.

(3) Make ordinary or extraordinary repairs or alterations in buildings or other structures; demolish any improvements; or raze existing, or erect new, party walls or buildings.

(4) Subdivide, develop, or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; adjust differences in valuation on exchange or partition by giving or receiving consideration; or dedicate easements to public use without consideration.

(5) Enter into a lease as lessor or lessee for any purpose, with or without option to purchase or renew, for a term within, or extending beyond, the period of guardianship.

(6) Enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement.

(7) Abandon property when, in the opinion of the guardian, it is valueless or is so encumbered or in such condition that it is of no benefit to the estate.

(8) Pay calls, assessments, and other sums chargeable or accruing against, or on account of, securities.

(9) Borrow money, with or without security, to be repaid from the estate assets or otherwise and advance money for the protection of the estate.

(10) Effect a fair and reasonable compromise with any debtor or obligor or extend, renew, or in any manner modify the terms of any obligation owing to the estate.

(11) Prosecute or defend claims or proceedings in any jurisdiction for the protection of the estate and of the guardian in the performance of his duties.

(12) Sell, mortgage, or lease any real or personal property of the estate, including homestead property, or any interest therein for cash or credit, or for part cash and part credit, and with or without security for unpaid balances.

(13) Continue any unincorporated business or venture in which the ward was engaged.

(14) Purchase the entire fee simple title to real estate in Florida in which the guardian has no interest, but the purchase may be made only for a home for the ward, to protect the home of the ward or his interest, or as a home for his dependent family. If the ward is a married person adjudged incompetent and the home of the ward or of the dependent family of the ward is owned by the ward and spouse as an estate by the entirety and the home is sold pursuant to the authority of subsection (12), the court may

authorize the investment of any part or all of the proceeds from the sale toward the purchase of a fee simple title to real estate in Florida for a home for the ward or the dependent family of the ward as an estate by the entirety owned by the ward and spouse. If the guardian is authorized to acquire title to real estate for the ward or dependent family of the ward as an estate by the entirety in accordance with the preceding provisions, the conveyance shall be in the name of the ward and spouse and shall be effective to create an estate by the entirety in the ward and spouse.

(15) Exercise any option contained in any policy of insurance payable to, or insuring to the benefit of, the ward.

(16) Pay reasonable funeral, interment, and grave-marker expenses for the ward from the ward's estate, in an amount not to exceed \$1,500.

(17) Make gifts of the ward's property to members of the ward's family in estate and income tax planning procedures.

**History.**—s. 1, ch. 74-106; ss. 22, 26, ch. 75-222; s. 1, ch. 77-174; s. 2, ch. 77-328; s. 281, ch. 79-400.

**Note.**—Created from former ss. 745.03(2),(3), 745.20, 745.23.

**744.444 Power of guardian without court approval.**—Without obtaining court approval, a guardian of the property may:

(1) Retain assets owned by the ward.

(2) Receive assets from fiduciaries or other sources.

(3) Vote stocks or other securities in person or by general or limited proxy or not vote stocks or other securities.

(4) Insure the assets of the estate against damage, loss, and liability and insure himself against liability as to third persons.

(5) Execute and deliver in his name as guardian any instrument necessary or proper to carry out and give effect to this section.

(6) Pay taxes and assessments on the ward's property.

(7) Pay valid encumbrances against the ward's property in accordance with their terms, but no prepayment shall be made without prior court approval.

(8) Pay reasonable living expenses for the ward, taking into consideration the accustomed standard of living, age, health, and financial condition of the ward.

(9) Elect whether to dissent from a will under the provisions of s. 732.210(2) or assert any other right or choice available to a surviving spouse in the administration of a decedent's estate.

(10) Deposit or invest liquid assets of the estate, including moneys received from the sale of other assets, in federally insured interest-bearing accounts, readily marketable secured loan arrangements, or other prudent investments.

(11) Pay incidental expenses in the administration of the estate.

(12) Sell or exercise stock subscription or conversion rights and consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise.

(13) Employ persons, including attorneys, auditors, investment advisors, or agents, even if they are

associated with the guardian, where reasonably necessary, to advise or assist the guardian in the performance of his administrative duties.

(14) Execute and deliver in his name as guardian any instrument necessary or proper to carry out the orders of the court.

(15) Hold a security in the name of a nominee or in other form without disclosure of the interest of the ward, but the guardian is liable for any act of the nominee in connection with the security so held.

**History.**—s. 1, ch. 74-106; ss. 23, 26, ch. 75-222; s. 3, ch. 77-328; s. 282, ch. 79-400.

#### **744.447 Petition for authorization to act.**—

(1) Application for authorization to perform, or confirmation of, any acts under s. 744.441 shall be by petition stating the facts showing the expediency or necessity for the action, a description of any property involved, and the price and terms of a sale, mortgage, or other contract.

(2) No notice of a petition to authorize a sale of perishable personal property or of property rapidly deteriorating shall be required. Notice of a petition to perform any other acts under s. 744.441 shall be given to the guardian of the person and to those interested persons who have filed requests for notices and copies of pleadings, as provided in the Florida Rules of Probate and Guardianship Procedure.

**History.**—s. 1, ch. 74-106; ss. 24, 26, ch. 75-222; s. 12, ch. 79-221.

**Note.**—Created from former s. 745.06.

#### **744.451 Order.**—

(1) If a sale or mortgage is authorized, the order shall describe the property, and

(a) If the property is authorized for sale at private sale, the order shall fix the price and the terms of sale.

(b) If the sale is to be public, the order shall state that the sale shall be made to the highest bidder and the court reserves the right to reject all bids.

(2) An order for any other act permitted under s. 744.441 shall describe the permitted act and authorize the guardian to perform it.

**History.**—s. 1, ch. 74-106; ss. 24, 26, ch. 75-222.

**Note.**—Created from former s. 745.09.

**744.454 Guardian forbidden to borrow or purchase.**—No guardian shall purchase property or borrow money from his ward unless the property is sold at public sale and then only if the guardian is a spouse, parent, child, brother, or sister of the ward or a cotenant of the ward in the property to be sold.

**History.**—s. 1, ch. 74-106; ss. 24, 26, ch. 75-222; s. 1, ch. 77-174.

**Note.**—Created from former s. 745.14.

#### **744.457 Conveyance of various property rights.**—

(1)(a) All legal or equitable interests in real and personal property owned as an estate by the entirety by an incompetent for whom a guardian of the property has been appointed may be sold, transferred, conveyed, or mortgaged in accordance with s. 744.447, if the spouse who is not incompetent joins in the sale, transfer, conveyance, or mortgage of the property. When both spouses are incompetent, the sale, transfer, conveyance, or mortgage shall be by the guardians only. The sale, transfer, conveyance, or mortgage may be accomplished by one instrument

or by separate instruments.

(b) In ordering or approving the sale and conveyance of the real or personal property owned by the ward and his spouse as an estate by the entirety or as joint tenants with right of survivorship, the court may provide that one-half of the net proceeds of the sale shall go to the guardian of the property of the ward and the other one-half to the ward's spouse, or the court may provide for the proceeds of the sale to retain the same character as to survivorship as the original asset.

(c) The guardian of the property of the incompetent shall collect all payments coming due on intangible property, such as notes and mortgages and other securities, and shall retain one-half of all principal and interest payments so collected and shall pay the other one-half of the collections to the spouse who is not incompetent. If both spouses are incompetent, the guardian of either shall collect the payments, retain one-half of the principal and interest payments, and pay the other one-half to the guardian of the other spouse.

(d) The spouse of the incompetent shall collect all payments of rents on real estate held as an estate by the entirety and, after paying all charges against the property, such as taxes, insurance, maintenance, and repairs, shall retain one-half of the net rents so collected and pay the other one-half to the guardian of the property of the spouse who is incompetent. If both spouses are incompetent, the guardian of either may collect the rent, pay the charges, retain one-half of the net rent, and pay the other one-half to the guardian of the other spouse.

(2) In determining the value of life estates or remainder interests, the American Experience Mortality Tables may be used.

(3) Nothing in this section shall prohibit the court in its discretion from appointing a sole guardian to serve as guardian for both spouses.

**History.**—s. 1, ch. 74-106; ss. 24, 26, ch. 75-222; s. 13, ch. 79-221.

**Note.**—Created from former s. 745.15.

#### **744.461 Purchasers and lenders protected.—**

No person purchasing or leasing from, or taking a mortgage, pledge, or other lien from, a guardian shall be bound to see that the money or other things of value paid to the guardian are actually needed or properly applied. The person is not otherwise bound as to the proprieties or expedencies of the acts of the guardian.

**History.**—s. 1, ch. 74-106; ss. 24, 26, ch. 75-222.

**Note.**—Created from former s. 745.21.

### **PART VII**

#### **TERMINATION**

- 744.464 Restoration to mental or physical competency; procedure.
- 744.467 Resignation of guardian.
- 744.471 Appointment of successor.
- 744.474 Reasons for removal of guardian.
- 744.477 Proceedings for removal.
- 744.511 Accounting upon removal.
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- 744.517 Proceedings for commitment.
- 744.521 Termination of guardianship.

- 744.524 Termination of guardianship on change of domicile of resident ward.
- 744.527 Final returns and application for discharge; hearing.
- 744.531 Order of discharge.

#### **744.464 Restoration to mental or physical competency; procedure.—**

(1)(a) When a person has been declared incompetent and is hospitalized at a treatment facility and becomes capable of managing his own affairs, he may be issued a certificate of competency signed by three members of the medical staff at the treatment facility. The certificate shall be attested by the administrator of the treatment facility, shall be admissible in evidence in any hearing for the restoration to competency of the person, and shall be prima facie proof that the person is competent.

(b) A certificate of competency may also be issued at a designated receiving facility upon the recommendation of two members of the medical staff and a third responsible person. The certificate shall be attested by the administrator of the receiving facility, be admissible in evidence in any hearing for the restoration to competency of the person, and be prima facie proof that the person is competent.

(2) Upon issuance of a certificate of competency, it shall be sent to the court where the person was originally found incompetent. Upon receipt of the certificate, the court shall file it and notify the guardian of the incompetent person and the state attorney of the judicial circuit in the county of the person's residence. The state attorney shall represent the state and shall, within 20 days, file any objections he has to the restoration to competency of the person named in the certificate. The state attorney may file a waiver of objection before the expiration of the 20-day period. If no objections are filed within the time allowed or if a waiver of objection is filed, the person named in the certificate shall automatically be restored to competency on the basis of the certificate, and an order to that effect shall be entered. If an objection to restoration is made by the state attorney, a copy of the objection shall be served by registered or certified mail upon the person named in the certificate or his next of kin or legal guardian, with a notice that a petition for restoration of competency may be filed on behalf of the incompetent person.

(3) In case of indigency, the court may appoint an attorney to represent the incompetent. The attorney shall be entitled to a reasonable fee to be allowed by the court and paid by the governing body of the county from the general fund.

(4) Any relative, spouse, or friend of an incompetent person may petition in the county where the person was adjudged incompetent or where the person is living on the date of the petition to determine whether he is still incompetent and unable to manage his affairs.

(a) The petition shall be verified and shall allege facts upon which to base an order restoring the person to competency. The proceeding shall be ex parte, but a copy of the petition shall be served on the state attorney of the judicial circuit where the petition is filed, and he shall represent the state. If a guardian



has been appointed for the person or property of the incompetent person, service of a copy of the petition for restoration shall be made upon the guardian. Proof of service of copies of the notice, certificates, and petition shall be by affidavit and filed with the court.

(b) Upon filing of the petition and reasonable notice to the state attorney and guardian of the incompetent, the court shall hold a hearing to determine the person's competency.

(c) If the court finds that the person is of sound mind and capable of managing his own affairs an order shall be entered that:

1. The person is of sound mind and capable of managing his own affairs.

2. The person shall be immediately restored to his personal liberty.

(d) A certified copy of the order shall be sent to the county where the incompetency proceeding was held if different from the county where the restoration proceedings were held.

(5)(a) After a judgment of physical incompetency has been entered, if the person becomes able to care for his property, he or one or more of his family or next of kin may file a petition setting forth the recovery of the person and the reasons why he should be restored to his former status.

(b) The court shall set a time for a hearing, and reasonable notice of the hearing shall be given to the incompetent person, if he is not the petitioner, and to one or more members of his family.

(c) If the court finds that the person has regained ability to care for his property, an order to that effect shall be entered, and the person, insofar as his person and property are concerned, shall occupy the same status as though he had never been adjudicated physically incompetent.

**History.**—ss. 10, 26, ch. 75-222; s. 1, ch. 77-174.

**744.467 Resignation of guardian.**—A guardian may resign and be relieved of his guardianship after the notice that the court may require and notice to the surety on his bond. Before entering an order relieving the guardian, the court shall require him to file a true and correct account of his guardianship and to deliver to the successor guardian all property of the ward, all records concerning the property of the ward or of the guardianship, and all money due to the ward from him. Before entering the order, the court shall be satisfied that the interest of the ward will not be placed in jeopardy by the resignation. The acceptance of the resignation shall not exonerate the guardian or his surety from any liability previously incurred.

**History.**—s. 1, ch. 74-106; ss. 19, 26, ch. 75-222; s. 1, ch. 77-174.  
**Note.**—Created from former s. 746.01.

**744.471 Appointment of successor.**—A successor guardian must be appointed and duly qualified before a guardian shall be relieved of his duties and obligations as provided in the preceding section.

**History.**—s. 1, ch. 74-106.  
**Note.**—Created from former s. 746.02.

**744.474 Reasons for removal of guardian.**—A guardian may be removed for any of the following reasons, and the removal shall be in addition to any

other penalties prescribed by law:

- (1) Fraud in obtaining his appointment.
- (2) Failure to discharge his duties.
- (3) Abuse of his powers.
- (4) Insanity or other incompetency.
- (5) Habitual drunkenness or continued sickness rendering him incapable of the discharge of his duties.

- (6) Failure to comply with any order of the court.
- (7) Failure to return schedules of property sold or accounts of sales of property or to produce and exhibit the ward's assets when so required.

- (8) The wasting, embezzlement, or other mismanagement of the ward's property.

- (9) Failure to give bond or security for any purpose when required by the court or failure to file with his annual returns the evidence required by s. 744.351 that the sureties on his bond are alive and solvent.

- (10) Conviction of a felony.

- (11) Appointment of a receiver or liquidator for any corporate guardian.

**History.**—s. 1, ch. 74-106; ss. 21, 26, ch. 75-222.  
**Note.**—Created from former s. 746.03.

**744.477 Proceedings for removal.**—Proceedings for removal may be instituted by the court or by any surety or other interested person. Reasonable notice shall be given to the guardian. On the hearing, the court may enter an order that is proper under the pleadings and the evidence.

**History.**—s. 1, ch. 74-106; ss. 21, 26, ch. 75-222.  
**Note.**—Created from former s. 746.04.

**744.511 Accounting upon removal.**—A removed guardian shall file a true, complete, and final account of his guardianship within 20 days after his removal.

**History.**—s. 1, ch. 74-106; ss. 21, 26, ch. 75-222.  
**Note.**—Created from former s. 746.05.

**744.514 Surrender of assets upon removal.**—The successor guardian shall demand of the removed guardian or his heirs, personal representative, or surety all the property of the ward and all records with all money due the ward by him. The removed guardian or his heirs, personal representative, or surety shall turn over the items to his duly qualified successor.

**History.**—s. 1, ch. 74-106; ss. 21, 26, ch. 75-222.  
**Note.**—Created from former s. 746.06.

**744.517 Proceedings for commitment.**—If a removed guardian fails to file a true, complete, and final account of his guardianship, to turn over to his successor all the property of his ward and all records that are in his control and that concern the property of the ward, or to pay over to the successor guardian all money due the ward by him, the court shall commit the removed guardian until he complies with the requirements indicated. If cause is shown for the default, the court shall set a reasonable time within which to comply, and, on failure to comply with this or any subsequent order, the removed guardian may be committed until he does comply. Proceedings for the commitment of a defaulting guardian may be

instituted by the court, by any interested person, or by a successor guardian.

**History.**—s. 1, ch. 74-106; ss. 21, 26, ch. 75-222.  
**Note.**—Created from former ss. 746.07, 746.08.

**744.521 Termination of guardianship.**—

When a ward becomes sui juris, the property of a ward has been lawfully exhausted, or the ward dies or is restored to competency, the guardian of the property shall file a final return and receive his discharge. The court may require proof of the removal of incompetency or of the need of the continuance of the guardianship.

**History.**—s. 1, ch. 74-106; ss. 21, 26, ch. 75-222.  
**Note.**—Created from former s. 746.12.

**744.524 Termination of guardianship on change of domicile of resident ward.**—When the domicile of a resident ward has been changed in accordance with s. 744.201, and the foreign court having jurisdiction over the ward at his new domicile has appointed a guardian of the property of the ward and the guardian has qualified and posted a bond in an amount required by the foreign court, the Florida guardian of the property of the ward may file his final accountings and close the Florida guardianship. The Florida guardian shall cause a notice to be published once a week for 2 consecutive weeks, in a newspaper of general circulation published in the county, that he has filed his accounting and will apply for discharge on a day certain and that jurisdiction of the ward will be transferred to the state of foreign jurisdiction. If an objection is filed to the termination of the Florida guardianship, the court shall hear the objection and enter an order either sustaining or overruling the objection. Upon the disposition of all objections filed, or if no objection is filed, final settlement shall be made by the Florida guardian. On proof that the remaining assets in the guardianship have been received by the foreign

guardian, the Florida guardian shall be discharged. The entry of the order terminating the Florida guardianship shall not exonerate the guardian or his surety from any liability previously incurred.

**History.**—s. 1, ch. 74-106; ss. 21, 26, ch. 75-222.  
**Note.**—Created from former s. 746.121.

**744.527 Final returns and application for discharge; hearing.**—

(1) When the need for a guardianship terminates, the guardian shall promptly file his final returns. If no objections are filed and if it appears that the guardian has made full and complete distribution to the person entitled and has otherwise faithfully discharged his duties, the court shall approve the final returns. If objections are filed, the court shall conduct a hearing in the same manner as provided for a hearing on objections to annual returns.

(2) The guardian applying for discharge is authorized to retain from the funds in his possession a sufficient amount to pay the final costs of administration, including guardian and attorney's fees regardless of the death of the ward, accruing between the filing of his final returns and the order of discharge.

**History.**—s. 1, ch. 74-106; ss. 21, 26, ch. 75-222.  
**Note.**—Created from former s. 746.13.

**744.531 Order of discharge.**—If the court is satisfied that the guardian has faithfully discharged his duties, has rendered a complete and accurate final return, and has delivered the assets of the ward to the person entitled, the court shall enter an order of discharge. The discharge shall operate as a release from the duties of the guardianship and as a bar to any action against the guardian or his surety unless the action is commenced within 1 year from the date of the order.

**History.**—s. 1, ch. 74-106; ss. 21, 26, ch. 75-222.  
**Note.**—Created from former s. 746.14.

## CHAPTER 747

ABSENTEES, INCOMPETENTS, ETC., AND THE CONSERVATION  
OF THEIR PROPERTY

## PART I CONSERVATORS (ss. 747.01-747.052)

## PART II CURATORS (ss. 747.06-747.19)

## PART I

## CONSERVATORS

- 747.01 Who are absentees under this law.
- 747.011 Absentee incompetent for certain purposes.
- 747.02 Jurisdiction.
- 747.03 Petition.
- 747.031 Notice; hearing.
- 747.032 Order of appointment.
- 747.033 Oath.
- 747.034 Bond.
- 747.035 Rights, powers, and duties of conservator.
- 747.036 Resignation or removal of conservator.
- 747.04 Termination of conservatorship.
- 747.051 Summary procedure.
- 747.052 Procedure for order authorizing action by wife or next of kin.

**747.01 Who are absentees under this law.—**

(1) Any person serving in or with the Armed Forces of the United States, in or with the Red Cross, in or with the Merchant Marine or otherwise, during any period of time when a state of hostilities exists between the United States and any other power and for 1 year thereafter, who has been reported or listed as missing in action, interned in a neutral country, beleaguered, besieged or captured by the enemy, shall be an "absentee" within the meaning of this law; and,

(2) Any resident of this state, or any person owning property herein, who disappears under circumstances indicating that he may have died, either naturally, accidentally or at the hand of another, or may have disappeared as the result of mental derangement, amnesia or other mental cause, shall also be an "absentee" within the meaning of this law.

*History.*—s. 1, ch. 22888, 1945; s. 1, ch. 67-458.

**747.011 Absentee incompetent for certain purposes.**—An "absentee" as defined in s. 747.01 is considered incompetent for the purposes of s. 4, Art. X, State Constitution.

*History.*—s. 1, ch. 71-103.

**747.02 Jurisdiction.**—The circuit court has jurisdiction to appoint a conservator of the estate of an absentee as defined in s. 747.01 upon a showing that:

- (1)(a)1. The absentee has an interest in any form of property in this state; or
- 2. The absentee is a legal resident of this state; or
- 3. The wife or next of kin of the absentee is a legal resident of this state; and
- (b) The absentee has not provided an adequate

power of attorney authorizing another to act in his behalf with regard to such property or interest or the term of any such power of attorney has expired; and

(2) A necessity exists for providing care for the property or estate of the absentee or care for or judgments concerning his wife and children or, if he has no wife and children, his mother or his father.

*History.*—s. 2, ch. 22888, 1945; s. 2, ch. 71-103.

**747.03 Petition.—**

(1) The jurisdiction of the court shall be invoked by the filing of a petition by any person who would have an interest in the property or estate of the absentee were such absentee deceased or any person who is dependent on said absentee for his maintenance or support.

(2) The petition shall be sworn to by the petitioner and shall state:

(a) The names, addresses, and ages of the spouse, children, mother, father, brothers, and sisters, or, if none of these is living, the next of kin, of the absentee;

(b) The name, address, and age of any other person who would have an interest in the property or the estate of the absentee if he were deceased;

(c) The exact circumstances which cause the person missing to be an absentee under s. 747.01 including the date he was first known to be missing, interned, beleaguered, etc.;

(d) The necessity for establishing a conservatorship;

(e) Whether or not the person alleged to be an absentee has a will and the whereabouts of said will; and

(f) A statement of all property constituting an asset of the alleged absentee's estate or in which he has any interest and the approximate value of same.

*History.*—s. 3, ch. 22888, 1945; s. 5, ch. 71-103.

**747.031 Notice; hearing.—**

(1) Notice of the hearing on the petition to appoint a conservator shall be given to all persons named in the petition by registered mail or certified mail with return receipt requested.

(2) The judge shall hear evidence on the question of whether the person alleged to be missing, interned, beleaguered, etc., is an absentee as defined by s. 747.01 and on the question of who is entitled to appointment as conservator. Any person interested in such proceedings may intervene with leave of the court.

(3) The court may in its discretion appoint a



guardian ad litem to represent the alleged absentee at the hearing.

History.—s. 6, ch. 71-103.

#### 747.032 Order of appointment.—

(1) If, after hearing, the court is satisfied that the person alleged to be an absentee is an absentee as defined in s. 747.01 and that it is necessary that a conservatorship be established, he shall appoint a conservator of the estate and property of said absentee to take charge of the absentee's estate and property under the supervision, and subject to the further orders, of the court.

(2) In the appointment of a conservator, the court shall give due consideration to the appointment of one of the next of kin of the absentee if such next of kin is a fit and proper person and is qualified to act.

History.—s. 7, ch. 71-103.

**747.033 Oath.**—Every conservator, before exercising his authority as conservator, shall take oath that he will faithfully perform his duties as conservator and that he will render true accounts whenever required according to law, which oath may be administered by any officer authorized to administer oaths under the laws of this state. Such oath shall be filed with the court.

History.—s. 8, ch. 71-103.

**747.034 Bond.**—The court may require the conservator to post a bond as required for a guardian under ss. 744.38 and 744.39. All provisions of chapter 744 which are applicable to bonds are applicable to the bond of the conservator required under this chapter.

History.—s. 9, ch. 71-103.

#### 747.035 Rights, powers, and duties of conservator.—

(1) The conservator shall have all the rights, powers, and duties of a guardian of the property as established in chapters 744 and 745 and an absentee and an absentee's dependents shall be entitled to all benefits accruing to a ward or a ward's dependents under said chapters.

(2) The circuit court shall have the same responsibility as to a conservatorship as it has with respect to the guardianship of the property under said chapters.

History.—s. 10, ch. 71-103; s. 32, ch. 73-334.

**747.036 Resignation or removal of conservator.**—The provision for resignation and removal of a guardian of the property in chapter 746 shall apply in the circuit court to resignation and removal of a conservator.

History.—s. 11, ch. 71-103.

#### 747.04 Termination of conservatorship.—

(1) At any time upon petition signed by the absentee, or on petition of an attorney in fact acting under an adequate power of attorney granted by the absentee, the court shall direct the termination of the conservatorship and the transfer of all property held thereunder to the absentee or to the designated attorney in fact.

(2) Likewise, if at any time subsequent to the appointment of a conservator it shall appear that the absentee has died and an executor or administrator has been appointed for his estate, the court shall direct the termination of the conservatorship and the transfer of all property of the deceased absentee held thereunder to such executor or administrator.

(3) When the need for a conservatorship terminates, the conservator shall promptly file his final returns and his application for discharge with the court. If it appears to the court that the returns are correct and that the conservator has made full and complete transfer of the absentee's assets as directed, the court may approve the returns and discharge the conservator. If objections to the returns are filed, the circuit judge shall conduct a hearing under the same conditions for a hearing on objections to annual returns.

(4) Such discharge shall operate as a release from the duties of the conservatorship and as a bar to any suit against said conservator or his surety, unless such suit is commenced within 1 year from the date of discharge.

History.—s. 4, ch. 22888, 1945; s. 12, ch. 71-103.

#### 747.051 Summary procedure.—

(1) If the wife of any person defined as an absentee in s. 747.01(1), or his next of kin if said absentee has no wife, shall wish to sell or transfer any property of the absentee which has a gross value of less than \$5,000, or shall require the consent of the absentee in any matter regarding the absentee's children or in any other matter in which the gross value of the subject matter is less than \$5,000, she may apply to the circuit court for an order authorizing said sale, transfer, or consent without opening a full conservatorship proceeding as provided by this chapter. She may make the application without the assistance of an attorney. Said application shall be made by petition on the following form, which form shall be made readily available to the applicant by the clerk of the circuit court:

In the Circuit Court

In re: (Absentee), case number .....

**PETITION FOR SUMMARY RELIEF**

Petitioner, (Name), whose residence is (Street & number), (City or town), and (County), Florida, and who is the (Describe relationship to absentee) of the absentee, (Name), states that the absentee has been (Imprisoned or missing in action) since (Date) when (Describe details). Petitioner desires to sell/transfer (Describe property) of the value of (Value) because (Give reasons). The terms of sale/transfer are (Give reasons). Petitioner requires the consent of the absentee for the purpose of .....

(Petitioner)

State of Florida  
County of....

The above named, ....., being by me duly sworn, says the foregoing petition is true and correct to the best of his/her knowledge and belief.

(Notary Public or County Court Judge)

My commission expires .....

(2) The court shall, without hearing or notice,

enter an order on said petition if it deems the relief requested in said petition necessary to protect the best interests of the absentee or his dependents.

(3) Such order shall be prima facie evidence of the validity of the proceedings and the authority of the petitioner to make a conveyance or transfer of the property or to give the absentee's consent in any matter prescribed by subsection (1).

History.—s. 3, ch. 71-103; s. 32, ch. 73-334.

#### **747.052 Procedure for order authorizing action by wife or next of kin.—**

(1) If the spouse, or the next of kin if there is no spouse, of any person defined as an absentee under s. 747.01(1), shall wish to sell, lease, or mortgage specific property having a gross value of \$5,000 or more owned by the absentee or in which the absentee had an interest, or take specific action with respect to the absentee's interest having a gross value of \$5,000 or more, she may petition the circuit court for an order authorizing the action with respect to such property or interest.

(2) The petition shall be sworn to by the petitioner and shall state:

(a) The names, addresses, and ages of the spouse, children, mother, father, brothers, and sisters, or, if none of these is living, the next of kin, of the absentee;

(b) The name, address, and age of any other person who would have an interest in the property or the estate of the absentee if he were deceased;

(c) The exact circumstances which cause the person missing to be an absentee under s. 747.01, including the date he was first known to be missing, interned, beleaguered, etc.;

(d) The reasons for the action for which the petition seeks authorization;

(e) Whether or not the person alleged to be an absentee has a will and the whereabouts of said will and contents if known; and

(f) A statement of all property constituting an asset of the alleged absentee's estate or in which he has any interest and the approximate value of same.

(3) Notice of the hearing on the petition shall be given to all persons named in the petition by registered mail or certified mail with return receipt requested.

(4) The judge shall hear evidence on the question of whether the person alleged to be missing, interned, beleaguered, etc., is an absentee as defined by s. 747.01 and on the question of whether the action in question should be authorized. Any person interested in such proceedings may intervene with leave of the court.

(5) The court may in its discretion appoint a guardian ad litem to represent the alleged absentee at the hearing.

(6) If, after hearing, the court is satisfied that the person alleged to be an absentee is an absentee as defined in s. 747.01, that the action in question should be authorized, and that there is no necessity for a full conservatorship as provided by s. 747.03, the court shall enter an order appointing the petitioner as conservator for the purposes of the action which is the subject of the petition and authorizing the conservator to take the action requested in the petition. The court shall require the conservator to

account for the proceeds of the sale, lease, or other action, but the conservator shall not be required to subject the other property of the absentee to a conservatorship proceeding. The court may retain jurisdiction of the proceeding to make such further orders as it deems proper.

History.—s. 4, ch. 71-103.

## **PART II**

### **CURATORS**

- 747.06 Appointment of curator; petition.
- 747.07 Curator; hearing; notice and order.
- 747.08 Curator; hearings; testimony; decree.
- 747.09 Curator; appointment of guardian ad litem.
- 747.10 Curator; appointment of committee of inquiry.
- 747.11 Curator; effect of decree.
- 747.12 Bond of curator.
- 747.13 Court to direct allowance for ward.
- 747.14 Special curator.
- 747.15 Curator's account; procedure for confirmation.
- 747.16 Audit and examination of accounts.
- 747.17 Curator and guardian, if any, to be discharged upon recovery.
- 747.18 Curators, powers and duties.
- 747.19 Curatorship; review by court.

#### **747.06 Appointment of curator; petition.—**

The jurisdiction of the court shall be invoked by the filing of a petition in the circuit court of the county of his or her residence by the person for whose property a curator is sought; or by either the father, mother, brother, sister, husband, wife or child or next of kin of such person; and, if any such relative fails to act, then by the sheriff of the county of the domicile or residence of such person, which petition shall set forth the facts and reasons why it is proper, appropriate or reasonably necessary for the best interest of such person that such appointment be made. The petition shall state names and addresses of all members of the immediate family and the names and addresses of husband or wife and next of kin, as particularly as is known to the petitioner.

History.—s. 2, ch. 25376, 1949.

#### **747.07 Curator; hearing; notice and order.—**

(1) The appointment shall be made only after a hearing upon due notice to one or more members of his or her family; or, if not a member of a family, to one or more relatives, or after such personal or such published notice as may be required by an order of court.

(2) The court shall by order determine what members of the family or relatives shall be given notice of the hearing and may determine the manner of giving such notice.

History.—s. 3, ch. 25376, 1949.

#### **747.08 Curator; hearings; testimony; decree.—**

(1) The person against whom the petition is presented shall attend or be summoned to attend or be

given notice of the hearing of the petition before the court.

(2) At such hearing the court may take the testimony of all the parties in interest who shall appear and such witnesses as any member of his family whom he may see fit to call or summons.

(3) If the court on such hearing shall find that the petition is well-founded, then the court shall appoint a curator of the estate of such person, herein referred to as a ward. Any person interested may intervene in such proceedings with leave of court.

(4) The testimony adduced at the hearing shall be transcribed and filed unless the court shall find it to be unnecessary, and so order.

History.—s. 4, ch. 25376, 1949.

**747.09 Curator; appointment of guardian ad litem.**—The court may in its discretion appoint a guardian ad litem to represent at the hearing the person against whom the proceedings are taken.

History.—s. 5, ch. 25376, 1949.

**747.10 Curator; appointment of committee of inquiry.**—The court shall appoint a committee consisting of two practicing physicians to inquire into the report of its findings upon the question of the disability of such person.

History.—s. 6, ch. 25376, 1949.

**747.11 Curator; effect of decree.**—From and after the rendition of the decree appointing a curator, such person for whom appointed shall be a ward of the court appointing such curator, and the ward shall be wholly incapable of making any contract or gift whatever, or any instrument in writing, of legal force and effect, except after leave of court is granted upon a hearing after notice to the curator and such next of kin as the court shall order given notice of application.

History.—s. 7, ch. 25376, 1949.

**747.12 Bond of curator.**—

(1) The curator so appointed shall, before entering upon his duties, file with the clerk of the court a good and sufficient bond, approved by the clerk, with such surety or sureties as required of a guardian's bond, payable to the governor of the state and his successors in office, in such penal sum as the court shall determine by order and conditioned to faithfully perform his duties according to the requirements of law and orders of the court.

(2) The court may at any time require of the said curator such additional or larger bond as may seem to be proper or necessary to protect the interests of the ward.

History.—s. 8, ch. 25376, 1949.

**747.13 Court to direct allowance for ward.**—The court appointing such curator shall have full power over the estate of the ward and allowances to or for the said ward, and may allow and assess against the estate of the ward all reasonable costs incurred in procuring the appointment of said curator and during the curatorship; and shall have full power to enter a decree for the selling, mortgaging, or leasing of the real or personal property of the said ward, after the court shall have made an affirmative

finding that a mortgage, sale or lease for such purposes is reasonably necessary or expedient:

- (1) For the maintenance and support of the ward or to secure advances for the same; or
- (2) To discharge existing liens; or
- (3) To protect the ward's estate;

Such sale, mortgaging or leasing shall be upon such terms and rates as shall be approved by the court, but no property of the ward shall be mortgaged at a rate of interest greater than 6 percent per annum.

History.—s. 9, ch. 25376, 1949.

**747.14 Special curator.**—After a curator is appointed and qualified he may move the court for the appointment of a "special curator," to prosecute any causes of action, suits or claims or to recover any property or other assets of the ward or to establish any rights in respect to the ward's estate, and such appointee shall have such powers, duties and responsibilities in respect thereto as the court shall prescribe, to the same extent and with the same limitations as would the principal curator.

History.—s. 10, ch. 25376, 1949.

**747.15 Curator's account; procedure for confirmation.**—Every curator shall file annually, and as often as otherwise ordered, in the court making said appointment, a full accounting of the administration of said trust. The curator shall present his accounts to the court in debit and credit form and shall petition the court to have them examined, approved and confirmed finally. The court shall by order direct to whom and what notice, if any, shall be given of the hearing of the petition or motion for approval.

History.—s. 11, ch. 25376, 1949.

**747.16 Audit and examination of accounts.**—

(1) After filing proof of the service of the notice, the court may thereupon examine or audit the accounts, or may appoint an examiner or auditor to examine and audit such accounts and report thereon to the court.

(2) After the examination or audit of any accounting is completed, the court shall approve or disapprove the same, or any item thereof; and the court may at any time before the curator has been finally discharged, after notice, enter judgment against the curator and his sureties for failing to comply with or abide by the terms and conditions of his bond.

(3) The cost of the audit or examination shall be paid out of the estate, as the decree of the court shall otherwise direct.

(4) Upon the death or restoration to legal capacity of the ward, the curator shall file in the office of the clerk of the circuit court a full and complete account of such items and matters as were not included in any former account confirmed finally.

History.—ss. 12, 13, ch. 25376, 1949.

**747.17 Curator and guardian, if any, to be discharged upon recovery.**—If, at any time the ward shall become able to properly care for himself or his property, he may petition the court, setting forth such fact; and, after a hearing, of which due



notice shall be given to the curator and some one or more of the family or next of kin of the said person, as the court shall order, and after the appearance of the ward before the court, if the court shall find that the said person has regained the ability to properly care for his property, the court shall decree accordingly, and shall thereafter discharge the curator upon the rendition of a proper accounting and after same has been confirmed after notice and hearing.

**History.**—s. 14, ch. 25376, 1949.

**747.18 Curators, powers and duties.**—Except as herein otherwise provided, a curator shall have the powers and be subject to the same duties over and concerning the property of a ward as may be by law had and exercised by the guardians of the prop-

erty of infants, and the court shall have and exercise the same powers touching such curator and the property of such person as may be by law had and exercised touching the guardian of the property of infants.

**History.**—s. 15, ch. 25376, 1949.

**747.19 Curatorship; review by court.**—Any orders or decrees of the circuit court relating to a curatorship may be reviewed as are other orders and decrees in equity, and such an appeal may be taken by any person as next friend of the ward after obtaining leave of the chancellor or by the curator or by the petitioner.

**History.**—s. 16, ch. 25376, 1949.

# TITLE XLIV

## TORTS

### CHAPTER 767

#### DAMAGE BY DOGS

- 767.01 Owners responsible.
- 767.02 Sheep-killing dogs not to roam about.
- 767.03 Good defense for killing dog.
- 767.04 Liability of owners.
- 767.05 Owner's liability.
- 767.07 Interpretation.

**767.01 Owners responsible.**—Owners of dogs shall be liable for any damage done by their dogs to sheep or other domestic animals or livestock, or to persons.

*History.*—RS 2341; ch. 4979, 1901; GS 3142; RGS 4957; CGL 7044.

**767.02 Sheep-killing dogs not to roam about.**—It is unlawful for any dog known to have killed sheep to roam about over the country unattended by a keeper. Any such dog found roaming over the country unattended shall be deemed a run-about dog, and it is lawful to kill such dog.

*History.*—s. 1, ch. 4185, 1893; GS 3143; RGS 4958; CGL 7045.

**767.03 Good defense for killing dog.**—In any action for damages or of a criminal prosecution against any person for killing or injuring a dog, satisfactory proof that said dog had been or was killing cattle or sheep shall constitute a good defense to either of such actions.

*History.*—s. 1, ch. 4978, 1901; GS 3144; RGS 4959; CGL 7046; s. 1, ch. 79-315.

**767.04 Liability of owners.**—The owners of any dog which shall bite any person, while such person is on or in a public place, or lawfully on or in a private place, including the property of the owner of such dogs, shall be liable for such damages as may be suffered by persons bitten, regardless of the former viciousness of such dog or the owners' knowledge of such viciousness. A person is lawfully upon private property of such owner within the meaning of this

act when he is on such property in the performance of any duty imposed upon him by the laws of this state or by the laws or postal regulations of the United States, or when he is on such property upon invitation, expressed or implied, of the owner thereof; provided, however, no owner of any dog shall be liable for any damages to any person or his property when such person shall mischievously or carelessly provoke or aggravate the dog inflicting such damage; nor shall any such owner be so liable if at the time of any such injury he had displayed in a prominent place on his premises a sign easily readable including the words "Bad Dog."

*History.*—s. 1, ch. 25109, 1949.

**767.05 Owner's liability.**—An owner or keeper of any dog that kills, wounds, or harasses any dairy cattle shall be jointly and severally liable to the owner of such animal for all damages done by such dog, and it is not necessary to prove notice to or knowledge by any such owner or keeper of such dog that the dog was mischievous or disposed to kill or worry any dairy cattle.

*History.*—s. 2, ch. 79-315.

*Note.*—The words "and it is not necessary to prove" were substituted for "without proving" by the editors.

**767.07 Interpretation.**—Section 767.05 is supplemental to all other laws relating to dogs not expressly referred to therein and shall not be construed to modify, repeal, or in any way affect any part or provision of any such laws not expressly repealed therein or to prevent municipalities from prohibiting, licensing, or regulating the running at large of dogs within their respective limits by law or ordinance now or hereafter provided.

*History.*—s. 2, ch. 79-315.

## CHAPTER 768

## NEGLIGENCE

PART I NEGLIGENCE—GENERAL PROVISIONS  
(ss. 768.041-768.31)PART II MEDICAL MALPRACTICE AND RELATED MATTERS  
(ss. 768.40-768.54)

## PART I

NEGLIGENCE—  
GENERAL PROVISIONS

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**768.041 Release or covenant not to sue.—**

(1) A release or covenant not to sue as to one tortfeasor for property damage to, personal injury of, or the wrongful death of any person shall not operate to release or discharge the liability of any other tortfeasor who may be liable for the same tort or death.

(2) At trial, if any defendant shows the court that the plaintiff, or any person lawfully on his behalf, has delivered a release or covenant not to sue to any person, firm, or corporation in partial satisfaction of

the damages sued for, the court shall set off this amount from the amount of any judgment to which the plaintiff would be otherwise entitled at the time of rendering judgment and enter judgment accordingly.

(3) The fact of such a release or covenant not to sue, or that any defendant has been dismissed by order of the court shall not be made known to the jury.

**History.**—ss. 1-3, ch. 57-395; s. 45, ch. 67-254.

**Note.**—Former s. 54.28.

**768.042 Damages.—**

(1) In any action brought in the circuit court to recover damages for personal injury or wrongful death, the amount of general damages shall not be stated in the complaint, but the amount of special damages, if any, may be specifically pleaded and the requisite jurisdictional amount established for filing in any court of competent jurisdiction.

(2) The provisions of this section shall not apply to any complaint filed prior to May 20, 1975.

**History.**—ss. 8, 9, ch. 75-9.

**768.043 Remittitur and additur actions arising out of operation of motor vehicles.—**

(1) In any action for the recovery of damages based on personal injury or wrongful death arising out of the operation of a motor vehicle, whether in tort or in contract, wherein the trier of fact determines that liability exists on the part of the defendant and a verdict is rendered which awards money damages to the plaintiff, it shall be the responsibility of the court, upon proper motion, to review the amount of such award to determine if such amount is clearly excessive or inadequate in light of the facts and circumstances which were presented to the trier of fact. If the court finds that the amount awarded is clearly excessive or inadequate, it shall order a remittitur or additur, as the case may be. If the party adversely affected by such remittitur or additur does not agree, the court shall order a new trial in the cause on the issue of damages only.

(2) In determining whether an award is clearly excessive or inadequate in light of the facts and circumstances presented to the trier of fact and in determining the amount, if any, that such award exceeds a reasonable range of damages or is inadequate, the court shall consider the following criteria:

(a) Whether the amount awarded is indicative of prejudice, passion, or corruption on the part of the trier of fact.

(b) Whether it clearly appears that the trier of fact ignored the evidence in reaching the verdict or misconceived the merits of the case relating to the



amounts of damages recoverable.

(c) Whether the trier of fact took improper elements of damages into account or arrived at the amount of damages by speculation or conjecture.

(d) Whether the amount awarded bears a reasonable relation to the amount of damages proved and the injury suffered.

(e) Whether the amount awarded is supported by the evidence and is such that it could be adduced in a logical manner by reasonable persons.

(3) It is the intent of the Legislature to vest the trial courts of this state with the discretionary authority to review the amounts of damages awarded by a trier of fact, in light of a standard of excessiveness or inadequacy. The Legislature recognizes that the reasonable actions of a jury are a fundamental precept of American jurisprudence and that such actions should be disturbed or modified only with caution and discretion. However, it is further recognized that a review by the courts in accordance with the standards set forth in this section provides an additional element of soundness and logic to our judicial system and is in the best interests of the citizens of Florida.

**History.**—s. 41, ch. 77-468; s. 283, ch. 79-400.

#### **768.045 Nonjoinder of liability insurers.—**

(1) No liability insurer shall be joined as a party defendant in an action to determine the insured's liability; however, each insurer which does or may provide liability insurance coverage to pay all or a portion of a judgment which might be entered in the action shall file a statement of a corporate officer setting forth the following information regarding each known policy of insurance:

- (a) The name of the insurer.
- (b) The name of each insured.
- (c) The limits of liability coverage.

(d) A statement of any policy or coverage defense which said insurer reasonably believes is available to said insurer at the time of filing the statement.

(2) The statement required under subsection (1) shall be amended immediately upon discovery of facts calling for an amendment.

(3) If the statement or amendment indicates that a policy or coverage defense has been or will be asserted, then the insurer may be joined as a party.

(4) After the rendition of a verdict or, if the case is tried without a jury, a final judgment by the court, the insurer may be joined as a party, and judgment may be entered by the court based on the statement required by this section.

(5) The rules of discovery shall be available to discover the existence and policy provisions of liability insurance coverage.

**History.**—s. 39, ch. 77-468.

**768.07 Liability for injury to employees.—**If any person is injured by a railroad company by the running of the locomotives or cars, or other machinery of such company, he being at the time of such injury an employee of the company, and the damage was caused by negligence of another employee, and without fault or negligence on the part of the person injured, his employment by the company shall be no

bar to a recovery. No contract which restricts such liability shall be legal or binding.

**History.**—s. 3, ch. 4071, 1891; GS 3150; RGS 4966; CGL 7053. cf.—s. 769.06 Contracts limiting liability.

**768.08 Liability of corporations having relief department for injury to employees; contracts in violation of act void.—**Any person, association of persons, or corporation that has, or shall hereafter have, a relief department for the benefit of their or its employees, or which shall contribute any money or other thing of value to any relief society or association for the benefit of their or its employees, to which such employee may also contribute any money, or other thing of value, shall not be relieved of liability to such employee, or in case of his death to any person authorized by law to sue for such death, for the negligent injury or killing of such employee, because such employee may have been a member of or contributed to any such relief department, or received any benefits therefrom, but such employee, and in case of his death any person or persons authorized by law to sue for such death, shall be entitled to demand, sue for and recover any benefit that such employee may have been entitled to receive by reason of having been a member of or contributed to any such relief department, society or association, and such employee, and in case of his death any person authorized by law to sue for such death, shall be entitled to institute suit against any such person, association of persons or corporations, and to recover for any injury suffered by such employee and for the death of such employee, suffered through the negligence of such person, association of persons, or corporation, and any contract, stipulation or provision in violation of this section is declared to be null and void.

**History.**—s. 1, ch. 6520, 1913; RGS 4967; CGL 7054.

**768.10 Pits and holes not to be left open.—**It is not lawful for any company or individual to leave open any pit or other hole outside of an enclosure of a greater depth and breadth than 2 feet; provided, however, such pit or hole may be left open by enclosing the same with a fence or other enclosure that would be a safeguard against horses, cattle or other domestic animals falling into the same; provided further, that this section shall not apply to pits or holes made by any company or individual while bona fide engaged in actual mining operations, such pits and holes to be enclosed as herein provided when said mining operations shall cease or be discontinued.

**History.**—s. 1, ch. 4051, 1891; GS 3152; RGS 4969; CGL 7056.

**768.11 Pits and holes; measure of damages.—**Any company or individual who may leave open pits or other holes contrary to the provisions of s. 768.10 shall be liable in damages to any person injured thereby in an amount double the actual damages sustained, which may be recovered in any court of competent jurisdiction.

**History.**—s. 2, ch. 4051, 1891; GS 3153; RGS 4970; CGL 7057.

**768.12 Motor vehicle colliding with any animal at large on a public highway.—**Whenever a motor vehicle collides with any animal at large on a public highway of this state, and the operator of the

motor vehicle dies as a result of the collision, the owner of such animal shall have no cause of action against the personal representative of the estate of the said deceased operator on account of any injuries to, or the death of, such animal, resulting from the collision.

**History.**—s. 1, ch. 21018, 1941.  
cf.—s. 356.04 et seq. Railroad killing stock.

**768.13 Good Samaritan Act; immunity from civil liability.**—

(1) This act shall be known and cited as the "Good Samaritan Act."

(2) Any person, including those licensed to practice medicine, who gratuitously and in good faith renders emergency care or treatment at the scene of an emergency outside of a hospital, doctor's office, or other place having proper medical equipment, without objection of the injured victim or victims thereof, shall not be held liable for any civil damages as a result of such care or treatment or as a result of any act or failure to act in providing or arranging further medical treatment where the person acts as an ordinary reasonably prudent man would have acted under the same or similar circumstances.

(3) Any person, including those licensed to practice veterinary medicine, who gratuitously and in good faith renders emergency care or treatment to an injured animal at the scene of an emergency on or adjacent to a roadway shall not be held liable for any civil damages as a result of such care or treatment or as a result of any act or failure to act in providing or arranging further medical treatment where the person acts as an ordinary reasonably prudent man would have acted under the same or similar circumstances.

**History.**—ss. 1, 2, ch. 65-313; s. 1, ch. 78-334.

**768.14 Suit by state; waiver of sovereign immunity.**—Suit by the state or any of its agencies or subdivisions to recover damages in tort shall constitute a waiver of sovereign immunity from liability and suit for damages in tort to the extent of permitting the defendant to counterclaim for damages resulting from the same transaction or occurrence.

**History.**—s. 1, ch. 67-2204.

**768.151 Waiver of sovereign immunity; revival of certain causes.**—The waiver of sovereign immunity authorized by chapter 69-116, Laws of Florida (former s. 768.15), is revived as to causes of action arising during the period from July 1, 1969, to July 1, 1970, and the courts of this state shall have continuing jurisdiction over such actions until final judgment and satisfaction thereof. If any such action heretofore filed has been dismissed or otherwise disposed of on the grounds that chapter 69-116, Laws of Florida, was repealed by chapter 69-357, Laws of Florida, such action shall be reinstated by order of the court upon the filing of a petition by the plaintiff during the period between July 1, 1971, and July 1, 1972. Any person who has not heretofore filed suit but who claims a right of action pursuant to chapter 69-116, Laws of Florida, during its effective period

shall have the right to file same at any time after July 1, 1971, but before July 1, 1972. Any action prosecuted under this section shall be subject to all provisions of chapter 69-116, Laws of Florida.

**History.**—s. 1, ch. 71-165.

**768.16 Short title.**—Sections 768.16-768.27 may be cited as the "Florida Wrongful Death Act."

**History.**—s. 1, ch. 72-35.

**768.17 Legislative intent.**—It is the public policy of the state to shift the losses resulting when wrongful death occurs from the survivors of the decedent to the wrongdoer. Sections 768.16-768.27 are remedial and shall be liberally construed.

**History.**—s. 1, ch. 72-35.

**768.18 Definitions.**—As used in ss. 768.16-768.27:

(1) "Survivors" means the decedent's spouse, minor children, parents, and, when partly or wholly dependent on the decedent for support or services, any blood relatives and adoptive brothers and sisters. It includes the illegitimate child of a mother, but not the illegitimate child of the father unless the father has recognized a responsibility for the child's support.

(2) "Minor children" means dependent unmarried children under 21 years of age, notwithstanding the age of majority.

(3) "Support" includes contributions in kind as well as money.

(4) "Services" means tasks, usually of a household nature, regularly performed by the decedent that will be a necessary expense to the survivors of the decedent. These services may vary according to the identity of the decedent and survivor and shall be determined under the particular facts of each case.

(5) "Net accumulations" means the part of the decedent's expected net business or salary income, including pension benefits, that the decedent probably would have retained as savings and left as part of his estate if he had lived his normal life expectancy. "Net business or salary income" is the part of the decedent's probable gross income after taxes, excluding income from investments continuing beyond death, that remains after deducting the decedent's personal expenses and support of survivors, excluding contributions in kind.

**History.**—s. 1, ch. 72-35; s. 66, ch. 77-121; s. 40, ch. 77-468.

cf.—s. 1.01 Definition of minor.

s. 743.07 Rights, privileges and obligations of persons 18 years of age or older.

**768.19 Right of action.**—When the death of a person is caused by the wrongful act, negligence, default, or breach of contract or warranty of any person, including those occurring on navigable waters, and the event would have entitled the person injured to maintain an action and recover damages if death had not ensued, the person or watercraft that would have been liable in damages if death had not ensued shall be liable for damages as specified in this act notwithstanding the death of the person in-

jured, although death was caused under circumstances constituting a felony.

History.—s. 1, ch. 72-35.

**768.20 Parties.**—The action shall be brought by the decedent's personal representative, who shall recover for the benefit of the decedent's survivors and estate all damages, as specified in this act, caused by the injury resulting in death. When a personal injury to the decedent results in his death, no action for the personal injury shall survive, and any such action pending at the time of death shall abate. The wrongdoer's personal representative shall be the defendant if the wrongdoer dies before or pending the action. A defense that would bar or reduce a survivor's recovery if he were the plaintiff may be asserted against him, but shall not affect the recovery of any other survivor.

History.—s. 1, ch. 72-35.

**768.21 Damages.**—All potential beneficiaries of a recovery for wrongful death, including the decedent's estate, shall be identified in the complaint, and their relationships to the decedent shall be alleged. Damages may be awarded as follows:

(1) Each survivor may recover the value of lost support and services from the date of the decedent's injury to his death, with interest, and future loss of support and services from the date of death and reduced to present value. In evaluating loss of support and services, the survivor's relationship to the decedent, the amount of the decedent's probable net income available for distribution to the particular survivor, and the replacement value of the decedent's services to the survivor may be considered. In computing the duration of future losses, the joint life expectancies of the survivor and the decedent and the period of minority, in the case of healthy minor children, may be considered.

(2) The surviving spouse may also recover for loss of the decedent's companionship and protection and for mental pain and suffering from the date of injury.

(3) Minor children of the decedent may also recover for lost parental companionship, instruction, and guidance and for mental pain and suffering from the date of injury.

(4) Each parent of a deceased minor child may also recover for mental pain and suffering from the date of injury.

(5) Medical or funeral expenses due to the decedent's injury or death may be recovered by a survivor who has paid them.

(6) The decedent's personal representative may recover for the decedent's estate the following:

(a) Loss of earnings of the deceased from the date of injury to the date of death, less lost support of survivors excluding contributions in kind, with interest. If the decedent's survivors include a surviving spouse or lineal descendants, loss of net accumulations beyond death and reduced to present value may also be recovered.

(b) Medical or funeral expenses due to the decedent's injury or death that have become a charge against his estate or that were paid by or on behalf of decedent, excluding amounts recoverable under subsection (5).

(c) Evidence of remarriage of the decedent's spouse is admissible.

(7) All awards for the decedent's estate are subject to the claims of creditors who have complied with the requirements of probate law concerning claims.

History.—s. 1, ch. 72-35.

**768.22 Form of verdict.**—The amounts awarded to each survivor and to the estate shall be stated separately in the verdict.

History.—s. 1, ch. 72-35.

**768.23 Protection of minors and incompetents.**—The court shall provide protection for any amount awarded for the benefit of a minor child or an incompetent pursuant to the Florida Guardianship Law.

History.—s. 1, ch. 72-35.

**768.24 Death of a survivor before judgment.**—A survivor's death before final judgment shall limit the survivor's recovery to lost support and services to the date of his death. The personal representative shall pay the amount recovered to the personal representative of the deceased survivor.

History.—s. 1, ch. 72-35.

**768.25 Court approval of settlements.**—While an action under this act is pending, no settlement as to amount or apportionment among the beneficiaries which is objected to by any survivor or which affects a survivor who is a minor or an incompetent shall be effective unless approved by the court.

History.—s. 1, ch. 72-35.

**768.26 Litigation expenses.**—Attorneys' fees and other expenses of litigation shall be paid by the personal representative and deducted from the awards to the survivors and the estate in proportion to the amounts awarded to them, but expenses incurred for the benefit of a particular survivor or the estate shall be paid from their awards.

History.—s. 1, ch. 72-35.

**768.27 Effective date.**—Sections 768.16-768.27 shall take effect on July 1, 1972, and shall not apply to deaths occurring before that date.

History.—s. 1, ch. 72-35.

**768.28 Waiver of sovereign immunity in tort actions; recovery limits; limitation on attorney fees; statute of limitations; exclusions.**—

(1) In accordance with s. 13, Art. X, State Constitution, the state, for itself and for its agencies or subdivisions, hereby waives sovereign immunity for liability for torts, but only to the extent specified in this act. Actions at law against the state or any of its agencies or subdivisions to recover damages in tort for money damages against the state or its agencies or subdivisions for injury or loss of property, personal injury, or death caused by the negligent or wrongful act or omission of any employee of the agency or subdivision while acting within the scope of his office or employment under circumstances in which the state or such agency or subdivision, if a private person, would be liable to the claimant in accordance



with the general laws of this state, may be prosecuted subject to the limitations specified in this act.

(2) As used in this act, "state agencies or subdivisions" include the executive departments, the Legislature, the judicial branch, and the independent establishments of the state; counties and municipalities; and corporations primarily acting as instrumentalities or agencies of the state, counties, or municipalities.

(3) Except for a municipality, the affected agency or subdivision may, at its discretion, request the assistance of the Department of Insurance in the consideration, adjustment, and settlement of any claim under this act.

(4) Subject to the provisions of this section, any state agency or subdivision of the state shall have the right of appealing any award, compromise, settlement, or determination to the court of appropriate jurisdiction.

(5) The state and its agencies and subdivisions shall be liable for tort claims in the same manner and to the same extent as a private individual under like circumstances, but liability shall not include punitive damages or interest for the period prior to judgment. Neither the state nor its agencies or subdivisions shall be liable to pay a claim or a judgment by any one person which exceeds the sum of \$50,000 or any claim or judgment, or portions thereof, which, when totaled with all other claims or judgments paid by the state or its agencies or subdivisions arising out of the same incident or occurrence, exceeds the sum of \$100,000. However, a judgment or judgments may be claimed and rendered in excess of these amounts and may be settled and paid pursuant to this act up to \$50,000 or \$100,000, as the case may be, and that portion of the judgment that exceeds these amounts may be reported to the Legislature, but may be paid in part or in whole only by further act of the Legislature. The limitations of liability set forth in this subsection shall apply to the state and its agencies and subdivisions whether or not the state or its agencies or subdivisions possessed sovereign immunity prior to July 1, 1974.

(6) An action shall not be instituted on a claim against the state or one of its agencies or subdivisions unless the claimant presents the claim in writing to the appropriate agency, and also, except as to any claim against a municipality, presents such claim in writing to the Department of Insurance, within 3 years after such claim accrues and the Department of Insurance or the appropriate agency denies the claim in writing. The failure of the Department of Insurance or the appropriate agency to make final disposition of a claim within 6 months after it is filed shall be deemed a final denial of the claim for purposes of this section. The provisions of this subsection shall not apply to such claims as may be asserted by counterclaim pursuant to s. 768.14.

(7) In actions brought pursuant to this section, process shall be served upon the head of the agency concerned and also, except as to a defendant municipality, upon the Department of Insurance, and the department or the agency concerned shall have 30 days within which to plead thereto.

(8) No attorney may charge, demand, receive, or collect, for services rendered, fees in excess of 25

percent of any judgment or settlement.

(9) No officer, employee, or agent of the state or its subdivisions shall be held personally liable in tort for a final judgment which has been rendered against him for any injuries or damages suffered as a result of any act, event, or omission of action in the scope of his employment or function, unless such officer, employee, or agent acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

(10) Laws allowing the state or its agencies or subdivisions to buy insurance are still in force and effect and are not restricted in any way by the terms of this act.

(11) Every claim against the state or one of its agencies or subdivisions for damages for a negligent or wrongful act or omission pursuant to this section shall be forever barred unless the civil action is commenced by filing a complaint in the court of appropriate jurisdiction within 4 years after such claim accrues.

(12) No action may be brought against the state or any of its agencies or subdivisions by anyone who unlawfully participates in a riot, unlawful assembly, public demonstration, mob violence, or civil disobedience if the claim arises out of such riot, unlawful assembly, public demonstration, mob violence, or civil disobedience. Nothing in this act shall abridge traditional immunities pertaining to statements made in court.

(13) The state and its agencies and subdivisions are authorized to be self-insured, to enter into risk management programs, or to purchase liability insurance for whatever coverage they may choose, or to have any combination thereof, in anticipation of any claim, judgment, and claims bill which they may be liable to pay pursuant to this section. Agencies or subdivisions, and sheriffs for the purpose of police professional liability only, which are subject to homogeneous risks may purchase insurance jointly or may join together as self-insurers to provide other means of protection against tort claims, any charter provisions or laws to the contrary notwithstanding. Sheriffs may join together as self-insurers to provide coverage for police professional liability claims only.

**History.**—s. 1, ch. 73-313; s. 1, ch. 74-235; ss. 1-3, ch. 77-86; s. 9, ch. 79-139; s. 1, ch. 79-253; s. 284, ch. 79-400.

**768.30 Effectiveness.**—Section 768.28 shall take effect on July 1, 1974, for the executive departments of the state and on January 1, 1975, for all other agencies and subdivisions of the state, and shall apply only to incidents occurring on or after those dates.

**History.**—s. 4, ch. 73-313; s. 3, ch. 74-235.

#### **768.31 Contribution among tortfeasors.—**

(1) **SHORT TITLE.**—This act shall be cited as the "Uniform Contribution Among Tortfeasors Act."

(2) **RIGHT TO CONTRIBUTION.**—

(a) Except as otherwise provided in this act, when two or more persons become jointly or severally liable in tort for the same injury to person or property, or for the same wrongful death, there is a right of contribution among them even though judg-

ment has not been recovered against all or any of them.

(b) The right of contribution exists only in favor of a tortfeasor who has paid more than his pro rata share of the common liability, and his total recovery is limited to the amount paid by him in excess of his pro rata share. No tortfeasor is compelled to make contribution beyond his own pro rata share of the entire liability.

(c) There is no right of contribution in favor of any tortfeasor who has intentionally (willfully or wantonly) caused or contributed to the injury or wrongful death.

(d) A tortfeasor who enters into a settlement with a claimant is not entitled to recover contribution from another tortfeasor whose liability for the injury or wrongful death is not extinguished by the settlement or in respect to any amount paid in a settlement which is in excess of what was reasonable.

(e) A liability insurer who by payment has discharged in full or in part the liability of a tortfeasor and has thereby discharged in full its obligation as insurer is subrogated to the tortfeasor's right of contribution to the extent of the amount it has paid in excess of the tortfeasor's pro rata share of the common liability. This provision does not limit or impair any right of subrogation arising from any other relationship.

(f) This act does not impair any right of indemnity under existing law. When one tortfeasor is entitled to indemnity from another, the right of the indemnity obligee is for indemnity and not contribution, and the indemnity obligor is not entitled to contribution from the obligee for any portion of his indemnity obligation.

(g) This act shall not apply to breaches of trust or of other fiduciary obligation.

(3) **PRO RATA SHARES.**—In determining the pro rata shares of tortfeasors in the entire liability:

(a) Their relative degrees of fault shall be the basis for allocation of liability.

(b) If equity requires, the collective liability of some as a group shall constitute a single share.

(c) Principles of equity applicable to contribution generally shall apply.

(4) **ENFORCEMENT.**—

(a) Whether or not judgment has been entered in an action against two or more tortfeasors for the same injury or wrongful death, contribution may be enforced by separate action.

(b) When a judgment has been entered in an action against two or more tortfeasors for the same injury or wrongful death, contribution may be enforced in that action by judgment in favor of one against other judgment defendants, by motion upon notice to all parties to the action.

(c) If there is a judgment for the injury or wrongful death against the tortfeasor seeking contribution, any separate action by him to enforce contribution must be commenced within 1 year after the judgment has become final by lapse of time for appeal or after appellate review.

(d) If there is no judgment for the injury or wrongful death against the tortfeasor seeking contri-

bution, his right of contribution is barred unless he has either:

1. Discharged by payment the common liability within the statute of limitations period applicable to claimant's right of action against him and has commenced his action for contribution within 1 year after payment, or

2. Agreed, while action is pending against him, to discharge the common liability and has within 1 year after the agreement paid the liability and commenced his action for contribution.

(e) The recovery of a judgment for an injury or wrongful death against one tortfeasor does not of itself discharge the other tortfeasors from liability for the injury or wrongful death unless the judgment is satisfied. The satisfaction of the judgment does not impair any right of contribution.

(f) The judgment of the court in determining the liability of the several defendants to the claimant for an injury or wrongful death shall be binding as among such defendants in determining their right to contribution.

(5) **RELEASE OR COVENANT NOT TO SUE.**—When a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death:

(a) It does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide, but it reduces the claim against the others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater; and,

(b) It discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor.

(6) **UNIFORMITY OF INTERPRETATION.**—This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states that enact it.

(7) **PENDING CAUSES OF ACTION.**—This act shall apply to all causes of action pending on June 12, 1975, wherein the rights of contribution among joint tortfeasors is involved and to cases thereafter filed.

*History.*—ss. 1, 4, ch. 75-108; s. 1, ch. 76-186.

## PART II

### MEDICAL MALPRACTICE AND RELATED MATTERS

- 768.40 Medical review committee, immunity from liability.
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**768.40 Medical review committee, immunity from liability.—**

(1) As used in this section, the term "medical review committee" or "committee" shall mean a committee of a state or local professional society of health care providers or of a medical staff of a licensed hospital or nursing home, provided the medical staff operates pursuant to written bylaws that have been approved by the governing board of the hospital or nursing home, which committee is formed to evaluate and improve the quality of health care rendered by providers of health service or to determine that health services rendered were professionally indicated or were performed in compliance with the applicable standard of care or that the cost of health care rendered was considered reasonable by the providers of professional health services in the area. The term "health care providers" means physicians licensed under chapter 458, osteopaths licensed under chapter 459, podiatrists licensed under chapter 461, dentists licensed under chapter 466, chiropractors licensed under chapter 460, or pharmacists licensed under chapter 465.

(2) There shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any member of a duly appointed medical review committee for any act or proceeding undertaken or performed within the scope of the functions of any such committee if the committee member acts without malice or fraud. This immunity shall apply only to actions by providers of health services, and in no way shall this section render any medical review committee immune from any action in tort or contract brought by a patient or his successors or assigns. The provisions of this section do not affect the official immunity of an officer or employee of a public corporation.

(3) This section shall not be construed to confer immunity from liability on any professional society or hospital or upon any health professional while performing services other than as a member of a medical review committee. In any case in which, but for the enactment of the preceding provisions of this section, a cause of action would arise against a hospital, professional society, or an individual health professional, such cause of action shall exist as if the preceding provisions had not been enacted.

(4) The proceedings and records of committees as described in the preceding subsections, shall not be subject to discovery or introduction into evidence in any civil action against a provider of professional health services arising out of the matters which are the subject of evaluation and review by such committee, and no person who was in attendance at a meeting of such committee shall be permitted or required to testify in any such civil action as to any evidence or other matters produced or presented during the proceedings of such committee or as to any findings, recommendations, evaluations, opinions, or other actions of such committee or any members thereof. However, information, documents, or records other-

wise available from original sources are not to be construed as immune from discovery or use in any such civil action merely because they were presented during proceedings of such committee, nor should any person who testifies before such committee or who is a member of such committee be prevented from testifying as to matters within his knowledge, but the said witness cannot be asked about his testimony before such a committee or opinions formed by him as a result of said committee hearings.

**History.**—ss. 1, 2, ch. 72-62; s. 1, ch. 73-50; s. 1, ch. 77-461; s. 285, ch. 79-400.  
**Note.**—Former s. 768.131.

**768.41 Internal risk management program.—**

(1) Every hospital licensed pursuant to ch. 395, ambulatory surgical center as defined in this subsection, health maintenance organization certificated under part II of chapter 641, other facility providing in-house patient care, or other similar facility shall, as a part of its administrative functions, establish an internal risk management program which shall include the following components:

(a) The investigation and analysis of the frequency and causes of general categories and specific types of adverse incidents causing injury to patients;

(b) The development of appropriate measures to minimize the risk of injuries and adverse incidents to patients through the cooperative efforts of all personnel;

(c) The analysis of patient grievances which relate to patient care and the quality of medical services; and

(d) The development and implementation of an incident reporting system based upon the affirmative duty of all health care providers and all agents and employees of the health care facility to report injuries and adverse incidents to the hospital risk manager.

As used in this section, "ambulatory surgical center" means a facility the primary purpose of which is to provide elective surgical care and in which the patient is admitted to and discharged from said facility within the same working day, and which is not part of a hospital. However, an office maintained by a physician or dentist for the practice of medicine or dentistry shall not be construed to be an ambulatory surgical center.

(2) The risk management program shall be the responsibility of the governing board of the health care facility. When practical, two or more health care facilities may combine their risk management activities. Regardless of the method selected to carry out the program, one or more individuals shall be designated "risk manager" for the purposes of this part.

(3) In addition to the programs mandated by this act, other innovative approaches intended to reduce the frequency and severity of medical malpractice and patient injury claims shall be encouraged and their implementation and operation facilitated. Such additional approaches may include extending risk management programs to health care providers' offices and the assuming of provider liability by a health care facility for acts or omissions occurring within the facility.

(4) The Department of Health and Rehabilitative



Services shall, after consulting with the Department of Insurance, promulgate rules governing the establishment of such internal risk management programs to meet the needs of individual establishments. The Department of Insurance shall assist the Department of Health and Rehabilitative Services in preparing such rules. Each internal risk management program shall include the use of incident reports to be filed with an individual of responsibility who is competent in risk management techniques in the employ of each establishment, such as an insurance coordinator, or who is retained by said establishment as a consultant. Said individual shall have free access to all establishment medical records, and the rules promulgated by the Department of Health and Rehabilitative Services shall so provide. The incident reports shall be considered to be a part of the work papers of the attorney defending the establishment in litigation relating thereto and shall be subject to discovery, but not be admissible as evidence in court, nor shall any person filing an incident report be subject to civil suit for libel by virtue of such incident report. As a part of each internal risk management program, the incident reports shall be utilized to develop categories of incidents which identify problem areas. Once identified, procedures shall be adjusted to correct said problem areas. Any such hospital, ambulatory surgical center, health maintenance organization, or other similar facility may join with like entities for a combined risk management program.

**History.**—s. 3, ch. 75-9; s. 3, ch. 76-168; s. 2, ch. 76-260; s. 1, ch. 77-64; s. 1, ch. 77-457; s. 286, ch. 79-400.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the effect of laws affecting this section prior to that date.

**Note.**—Former s. 395.18.

#### **768.44 Medical liability mediation panels; membership; hearings.—**

(1)(a) Any person or his representative claiming damages by reason of injury, death, or monetary loss on account of alleged malpractice by any medical or osteopathic physician, podiatrist, hospital, or health maintenance organization against whom he believes there is a reasonable basis for a claim shall submit such claim to an appropriate medical liability mediation panel before that claim may be filed in any court of this state.

(b) Claims shall be made on forms provided by the circuit court and shall be filed initially with the clerk of that court, with copies mailed to the person against whom the claim is made and to the administrative board licensing such professional. Service of process shall be effected as provided by law. Constructive service of process may be effected as provided by law.

(c) All parties named as defendants in the claim shall file an answer to such claim within 20 days of the date of service. No other pleadings shall be allowed. If no answer is filed within such time limit, the jurisdiction of the mediation panel over the subject matter shall terminate, and the parties may proceed in accordance with law.

(2) The chief judge of each judicial circuit shall prepare a list of persons available to serve on medical liability mediation panels whose purpose shall be to hear, and facilitate the disposition of, all medical

malpractice actions arising within the jurisdiction of the circuit. The number of persons on the list shall be determined by the chief judge, but they shall be in sufficient numbers to efficiently carry out the intent of this section. Each hearing, as hereinafter provided for, shall be before a three-member panel, hereinafter referred to as the "panel," "mediation panel," or "hearing panel," composed as follows: A judicial referee, who shall be the presiding member of the hearing panel; a licensed physician; and an attorney. The judicial referee shall be a circuit judge. Such appointments of judicial referees shall be made by a "blind" system. The other panel members shall be selected in accordance with the following procedure:

(a) A list of physicians licensed to practice under chapter 458, chapter 459, or chapter 461 shall be prepared by the chief judge. In making the list, the chief judge may accept the recommendations of any recognized professional society representing practitioners licensed under any such chapter. The list shall, if possible, be divided into lists of physicians according to the particular specialty of each.

(b) A list of qualified attorneys shall be prepared by the chief judge. In making the list, the chief judge may accept the recommendations of recognized professional legal societies.

(c) Names of physicians and attorneys may be added to, or taken off, the panel list at any time by the chief judge at his discretion; however, all names added to the list shall be placed at the bottom of the list.

(d) A physician or attorney selected to be on the hearing panel for a particular case may disqualify himself or be challenged for cause.

(e) A filing fee not to exceed \$25 shall be established by the chief judge in each circuit and shall be paid to the clerk of the circuit court. The filing fee shall be used to meet such incidental expenses as the panel may incur.

(f) Within 30 days after service of process, the parties shall file with the clerk a document designating the type of medical specialist who should hear the claim. In the event the parties do not agree on the specialist, the judicial referee shall make the determination. In no event shall more than one medical practitioner serve on a mediation panel.

(g) If both parties agree upon a doctor and an attorney to serve on the hearing panel, they may so stipulate. In the event no agreement is reached within 10 days after determination of the specialty of medical practice involved, the clerk shall mail to the parties and the panel members hereinafter described the names, selected at random, of five attorneys who are members of the hearing panel list and the names, selected at random, of five physicians of the designated specialty who are members of the hearing panel list or, if it is impractical to designate the physicians by specialty, the names, selected at random, of five physicians without regard to specialty. Thereafter, the panel members so selected shall have 10 days within which to disqualify themselves, and the parties shall have the same time in which to challenge panel members for cause. A decision on challenges for cause shall be made by agreement or by the judicial referee. If there are disqualifications

or challenges for cause, the clerk shall appoint additional panel members as required. Thereafter, from the lists of five attorneys and five physicians, the parties shall agree on one attorney and one physician to serve on the hearing panel. If the parties are unable to agree, each side shall then strike names alternately from the attorneys' list and from the physicians' list separately, with the claimant striking first, until each side has stricken two names from each list. The remaining attorney and physician shall serve on the hearing panel.

(h) After selection of the panelists, the judicial referee and either party may question the physician and attorney to determine if either of them has a state of mind regarding the subject matter at issue, the case at hand, or any parties directly or indirectly involved in said case, that will prevent him from acting with impartiality. Upon a determination by the judicial referee that either panelist cannot act with complete impartiality, the judicial referee shall remove said panelist.

(i) Each of the non-judicial panelists shall be paid \$100 per day for expenses for each day or portion of a day spent upon the hearing panel. The court shall assess both parties equally for the payment of such expenses to the panelists.

(3) The clerk shall, with the advice and cooperation of the parties and their counsel, fix a date, time, and place for a hearing on the claim before the hearing panel. The hearing shall be held within 120 days of the date the claim was filed with the clerk unless, for good cause shown upon order of the judicial referee, such time is extended. Such extension shall not exceed 6 months from the date the claim is filed. If no hearing on the merits is held within 10 months of the date the claim is filed, the jurisdiction of the mediation panel on the subject matter shall terminate, and the parties may proceed in accordance with law.

(4) The filing of the claim shall toll any applicable statute of limitations, and such statute of limitations shall remain tolled until the hearing panel issues its written decision or the jurisdiction of the panel is otherwise terminated. In any event, a party shall have 60 days from the date the decision of the hearing panel is mailed to the parties or the date on which the jurisdiction of the panel is otherwise terminated in which to file a complaint in circuit court.

(5) All parties shall be allowed to utilize any discovery procedure provided by the Florida Rules of Civil Procedure. Any motion for relief arising out of the use of such discovery procedure shall be decided by the judicial referee. The judicial referee may in his discretion make reasonable limitations on the extent of discovery.

(6) The claim shall be submitted to the hearing panel under such procedural rules as may be established by the Supreme Court; however, strict adherence to the rules of procedure and evidence applicable in civil cases shall not be required. Witnesses may be called; all testimony shall be under oath; testimony may be taken either orally before the panel or by deposition; copies of records, x-rays, and other documents may be produced and considered by the panel; and the right to subpoena witnesses and evidence shall obtain as in all other proceedings in

the circuit court. The right of cross-examination shall obtain as to all witnesses who testify in person. Both parties shall be entitled, individually and through counsel, to make opening and closing statements. No transcript or record of the proceedings shall be required, but any party may have the proceedings transcribed or recorded. The judge presiding at the hearing shall not preside at any trial arising out of the claim or hear any application in the case not connected with the hearing itself. No other hearing panel member shall participate in a trial arising out of the claim, either as counsel or witness.

(7) Within 30 days after the completion of any hearing, the hearing panel shall file a written decision with the clerk of the court who shall thereupon mail copies to all parties concerned and their counsel. The panel shall decide the issue of liability and shall state its conclusion in substantially the following language:

(a) "We find the defendant was actionably negligent in his care or treatment of the patient and we, therefore, find for the plaintiff"; or

(b) "We find the defendant was not actionably negligent in his care or treatment of the patient and we, therefore, find for the defendant."

The decision shall be signed by all members of the hearing panel; however, any member of the panel may file a written concurring or dissenting opinion.

(8) After a finding of liability, if the adverse parties agree, the panel may continue mediation for the purpose of assisting the parties in reaching a settlement. In such event, the panel shall also make a recommendation as to a reasonable range of damages, if any, which should be awarded in the case. The recommendation as to damages shall include, in simple, concise terms, some breakdown as to the portion of the recommended damages attributable to:

(a) Past and estimated future health or custodial care expenses attributable to the alleged malpractice, or

(b) Any of the other elements of damage:

1. Enumerated in s. 768.21 for wrongful death, or
2. Recognized by the Florida Standard Jury Instructions as elements of damages in injuries due to negligence.

However, the panel shall not have the right to determine punitive damages. Any findings of damages shall not be admissible in evidence in a subsequent trial.

(9) No member of the hearing panel shall be liable in damages for libel, slander, or defamation of character of any party to the mediation proceedings for any action taken or recommendation made by such member acting within his official capacity as a member of the hearing panel.

(10) The provisions of subsections (1) through (9) shall not be applicable to any case in which formal suit has been instituted prior to the effective date of those subsections, which shall be July 1, 1975.

**History.**—ss. 5, 6, ch. 75-9; s. 7, ch. 76-260; s. 6, ch. 77-64; s. 1, ch. 77-174; s. 1, ch. 78-113.

Note.—Former s. 768.133.

#### 768.45 Medical negligence; standards of recovery, etc.—

(1) In any action for recovery of damages based on the death or personal injury of any person in which it is alleged that such death or injury resulted from the negligence of a health care provider as defined in s. 768.50(2)(b), the claimant shall have the burden of proving by the greater weight of evidence that the alleged actions of the health care provider represented a breach of the accepted standard of care for that health care provider. The accepted standard of care for a given health care provider shall be that level of care, skill, and treatment which is recognized by a reasonably prudent similar health care provider as being acceptable under similar conditions and circumstances.

(2)(a) If the health care provider whose negligence is claimed to have created the cause of action is not certified by the appropriate American board as being a specialist, is not trained and experienced in a medical specialty, or does not hold himself out as a specialist, a "similar health care provider" is one who:

1. Is licensed by the appropriate regulatory agency of this state;
2. Is trained and experienced in the same discipline or school of practice; and
3. Practices in the same or similar medical community.

(b) If the health care provider whose negligence is claimed to have created the cause of action is certified by the appropriate American board as a specialist, is trained and experienced in a medical specialty, or holds himself out as a specialist, a "similar health care provider" is one who:

1. Is trained and experienced in the same specialty; and
2. Is certified by the appropriate American board in the same specialty.

(c) The purpose of this subsection is to establish a relative standard of care for various categories and classifications of health care providers. Any health care provider may testify as an expert in any action if he:

1. Is a "similar health care provider" pursuant to paragraph (a) or (b); or,
2. Is not a similar health care provider pursuant to paragraph (a) or (b) but, to the satisfaction of the court, possesses sufficient training, experience, and knowledge to provide such expert testimony as to the acceptable standard of care in a given cause.

(3)(a) If the injury is claimed to have resulted from the negligent affirmative medical intervention of the health care provider, the claimant must, in order to prove a breach of an accepted standard of care, show that the injury was not within the necessary or reasonably foreseeable results of the surgical, medicinal, or diagnostic procedure constituting the medical intervention, if the intervention from which the injury is alleged to have resulted was carried out in accordance with an acceptable standard of care by a reasonably prudent similar health care provider.

(b) The provisions of this subsection shall apply only when the medical intervention was undertaken

with the informed consent of the patient in compliance with the provisions of s. 768.46.

(4) The existence of a medical injury shall not create any inference or presumption of negligence against a health care provider, and the claimant must maintain the burden of proving that an injury was proximately caused by a breach of the accepted standard of care by the health care provider. However, the discovery of the presence of a foreign body, such as a sponge, clamp, forceps, surgical needle, or other paraphernalia commonly used in surgical, examination, or diagnostic procedures, shall be prima facie evidence of negligence on the part of the health care provider.

History.—s. 12, ch. 76-260; s. 8, ch. 77-64; s. 1, ch. 77-174.

#### 768.46 Florida Medical Consent Law.—

(1) This section shall be known and cited as the "Florida Medical Consent Law."

(2) In any medical treatment activity not covered by s. 768.13, entitled the "Good Samaritan Act," this act shall govern.

(3) No recovery shall be allowed in any court in this state against any physician licensed under chapter 458, osteopath licensed under chapter 459, chiropractor licensed under chapter 460, podiatrist licensed under chapter 461, or dentist licensed under chapter 466 in an action brought for treating, examining, or operating on a patient without his informed consent when:

(a)1. The action of the physician, osteopath, chiropractor, podiatrist, or dentist in obtaining the consent of the patient or another person authorized to give consent for the patient was in accordance with an accepted standard of medical practice among members of the medical profession with similar training and experience in the same or similar medical community; and

2. A reasonable individual, from the information provided by the physician, osteopath, chiropractor, podiatrist, or dentist, under the circumstances, would have a general understanding of the procedure, the medically acceptable alternative procedures or treatments, and the substantial risks and hazards inherent in the proposed treatment or procedures, which are recognized among other physicians, osteopaths, chiropractors, podiatrists, or dentists in the same or similar community who perform similar treatments or procedures; or

(b) The patient would reasonably, under all the surrounding circumstances, have undergone such treatment or procedure had he been advised by the physician, osteopath, chiropractor, podiatrist, or dentist in accordance with the provisions of paragraph (a).

(4)(a) A consent which is evidenced in writing and meets the requirements of subsection (3) shall, if validly signed by the patient or another authorized person, be conclusively presumed to be a valid consent. This presumption may be rebutted if there was a fraudulent misrepresentation of a material fact in obtaining the signature.

(b) A valid signature is one which is given by a person who under all the surrounding circumstances



is mentally and physically competent to give consent.

**History.**—s. 11, ch. 75-9.  
**Note.**—Former s. 768.132.

**768.47 Civil medical malpractice actions; procedures; admissibility of evidence.—**

(1) In the event any party rejects the decision of the Medical Liability Mediation Panel, the claimant may institute litigation based upon the claim in the appropriate court. Furthermore, in any civil medical malpractice action, the trial on the merits shall be conducted without any reference to insurance, insurance coverage, or joinder of the insurer as a codefendant in the suit.

(2) The conclusion of the hearing panel on the issue of liability may be admitted into evidence in any subsequent trial. However, no specific findings of fact shall be admitted into evidence at trial. Parties may, in the opening statement or argument to the court or jury, comment on the panel's conclusion in the same manner as any other evidence introduced at trial. If there is a dissenting opinion, the numerical vote of the panel shall also be admissible. Panel members may not be called to testify as to the merits of the case. The jury shall be instructed that the conclusion of the hearing panel shall not be binding, but shall be accorded such weight as they choose to ascribe to it.

(3) The provisions of this section shall not be applicable to any case in which formal suit has been instituted prior to the effective date of this section, which shall be July 1, 1975.

**History.**—s. 5, ch. 75-9; s. 232, ch. 77-104.  
**Note.**—Former s. 768.134.

**768.48 Itemized verdict.—**

(1) In any action by a patient against a health care provider, as defined in s. 768.50(2)(b), in a tort or contract claim for malpractice in which the trier of fact determines that liability exists on the part of the defendant, the trier of fact shall, as a part of the verdict, itemize the amounts to be awarded to the claimant into the following categories of damages:

(a) Amounts intended to compensate the claimant for reasonable expenses which have been incurred, or which will be incurred, for necessary medical, surgical, x-ray, dental, or rehabilitative services, including prosthetic devices; necessary ambulance, hospital, and nursing services; drugs; and therapy;

(b) Amounts intended to compensate the claimant for lost wages or loss of earning capacity and other economic losses and for the inconvenience of the claimant, which have been incurred or will be incurred; and

(c) Amounts intended to compensate the claimant for pain and suffering, loss of companionship, embarrassment, and other items of general damages, which have been incurred or will be incurred in the future.

(2) Each category of damages shall be further itemized into amounts intended to compensate for losses which have been incurred prior to the verdict and amounts intended to compensate for losses to be incurred in the future. Future damages itemized under paragraphs (1)(a) and (1)(b) shall be computed

before and after reduction to present value. Future damages itemized under paragraph (1)(c) shall not be reduced to present value. In itemizing amounts intended to compensate for future losses, the trier of fact shall set forth the period of years over which such amounts are intended to provide compensation.

**History.**—s. 13, ch. 76-260; s. 9, ch. 77-64; s. 1, ch. 77-174.

**768.49 Remittitur and additur.—**

(1) In any action for the recovery of damages based on personal injury or wrongful death arising out of medical malpractice, whether in tort or in contract, wherein the trier of fact determines that liability exists on the part of the defendant and a verdict is rendered which awards money damages to the plaintiff, it shall be the responsibility of the court, upon proper motion, to review the amount of such award to determine if such amount is clearly excessive or inadequate in light of the facts and circumstances which were presented to the trier of fact. If the court finds that the amount awarded is clearly excessive or inadequate, it shall order a remittitur or additur as the case may be. If the party adversely affected by such remittitur or additur does not agree, the court shall order a new trial in the cause on the issue of damages only.

(2) In determining whether an award is clearly excessive or inadequate in light of the facts and circumstances presented to the trier of fact and in determining the amount, if any, that such award exceeds a reasonable range of damages or is inadequate, the court shall consider the following criteria:

(a) Whether the amount awarded is indicative of prejudice, passion, or corruption on the part of the trier of fact;

(b) Whether it clearly appears that the trier of fact ignored the evidence in reaching a verdict or misconceived the merits of the case relating to the amounts of damages recoverable;

(c) Whether the trier of fact took improper elements of damages into account or arrived at the amount of damages by speculation and conjecture;

(d) Whether the amount awarded bears a reasonable relation to the amount of damages proved and the injury suffered; and

(e) Whether the amount awarded is supported by the evidence and is such that it could be adduced in a logical manner by reasonable persons.

(3) It is the intent of the Legislature to vest the trial courts of this state with the discretionary authority to review the amounts of damages awarded by a trier of fact in light of a standard of excessiveness or inadequacy. The Legislature recognizes that the reasonable actions of a jury are a fundamental precept of American jurisprudence and that such actions should be disturbed or modified with caution and discretion. However, it is further recognized that a review by the courts in accordance with the standards set forth in this section provides an additional element of soundness and logic to our judicial system and is in the best interests of the citizens of Florida.

**History.**—s. 15, ch. 76-260; s. 11, ch. 77-64; s. 1, ch. 77-174.

**768.50 Collateral sources of indemnity.—**

(1) In any action for damages for personal injury or wrongful death, whether in tort or in contract, arising out of the rendition of professional services by a health care provider in which liability is admitted or is determined by the trier of fact and damages are awarded to compensate the claimant for losses sustained, the court shall reduce the amount of such award by the total of all amounts paid to the claimant from all collateral sources which are available to him; however, there shall be no reduction for collateral sources for which a subrogation right exists. Upon a finding of liability and an awarding of damages by the trier of fact, the court shall receive evidence from the claimant and other appropriate persons concerning the total amounts of collateral sources which have been paid for the benefit of the claimant or are otherwise available to him. The court shall also take testimony of any amount which has been paid, contributed, or forfeited by, or on behalf of, the claimant or members of his immediate family to secure his right to any collateral source benefit which he is receiving as a result of his injury, and shall offset any restriction in the award by such amounts.

(2) For purposes of this section:

(a) "Collateral sources" means any payments made to the claimant, or on his behalf, by or pursuant to:

1. The United States Social Security Act; any federal, state, or local income disability act; or any other public programs providing medical expenses, disability payments, or other similar benefits.

2. Any health, sickness, or income disability insurance; automobile accident insurance that provides health benefits or income disability coverage; and any other similar insurance benefits, except life insurance benefits available to the claimant, whether purchased by him or provided by others.

3. Any contract or agreement of any group, organization, partnership, or corporation to provide, pay for, or reimburse the costs of hospital, medical, dental, or other health care services.

4. Any contractual or voluntary wage continuation plan provided by employers or any other system intended to provide wages during a period of disability.

(b) "Health care provider" means hospitals licensed under chapter 395; physicians licensed under chapter 458; osteopaths licensed under chapter 459; podiatrists licensed under chapter 461; dentists licensed under chapter 466; chiropractors licensed under chapter 460; naturopaths licensed under chapter 462; nurses licensed under chapter 464; clinical laboratories registered under chapter 483; physicians' assistants certified under chapter 458; physical therapists and physical therapist assistants licensed under chapter 486; health maintenance organizations certificated under part II of chapter 641; ambulatory surgical centers as defined in paragraph (c); blood banks, plasma centers, industrial clinics, and renal dialysis facilities; or professional associations, partnerships, corporations, joint ventures, or other associations for professional activity by health care providers.

(c) "Ambulatory surgical center" means a facility

the primary purpose of which is to provide elective surgical care or diagnostic or medical care or treatment and in which the patient is admitted to and discharged from said facility within the same working day, and which is not part of a hospital. However, a facility existing for the primary purpose of performing terminations of pregnancy or an office maintained by a physician or dentist for the practice of medicine or dentistry shall not be construed to be an ambulatory surgical center.

(3) In the event that the fees for legal services provided to the claimant are based on a percentage of the amount of money awarded to the claimant, such percentage shall be based on the net amount of the award as reduced by the amounts of collateral sources and as increased by insurance premiums paid.

(4) Unless otherwise expressly provided by law, no insurer or any other party providing collateral source benefits as defined in subsection (2) shall be entitled to recover the amounts of any such benefits from the defendant or any other person or entity, and no right of subrogation or assignment of rights of recovery shall exist. All policies of insurance providing benefits described in this section shall be construed in accordance with this section after the effective date of this act.

**History.**—s. 11, ch. 76-260; s. 7, ch. 77-64; s. 287, ch. 79-400.

**768.51 Alternative methods of payment of damage awards.—**

(1) In any action by a patient against a health care provider, as defined in s. 768.50(2)(b), in a tort or contract claim for malpractice in which the trier of fact determines that the amount necessary to compensate the claimant for future losses exceeds \$200,000, payment of amounts intended to compensate the claimant for losses to be incurred in the future shall be made by one of the following means:

(a) The defendant may make a lump sum payment for all damages so assessed, with future economic losses and expenses reduced to present value; or

(b) The court may, at the request of either party, enter a judgment ordering the damages for future losses to be paid in whole or in part by periodic payments rather than by a lump sum payment.

1. In entering a judgment ordering the payment of future damages by periodic payments, the court shall make a specific finding as to the dollar amount of periodic payments which will compensate the judgment creditor for such future damages. The total of such periodic payments shall be equal to the amount of all future damages before any reduction to present value. The period of time over which such periodic payments shall be made shall be the period of years determined by the trier of fact in arriving at its itemized verdict. The court may order that the amounts of the payments be equal or vary in amount, depending upon the probable need of the claimant. The judgment shall provide that all economic losses and expenses incurred during any given period be paid by the defendant even though they exceed the specified payment. However, there shall be no requirement to pay more than the original lump sum judgment before any reduction to present value, and, if any periodic payments exceed the

amount specified by the judgment, successive payments shall be reduced accordingly until the entire judgment is paid.

2. As a condition to authorizing periodic payments of future damages, the court shall require the judgment debtor to post security adequate to assure full payment of such damages awarded by the judgment. If the judgment debtor is unable to post the required security, the court shall order that all damages, both past and future, be paid to claimant in a lump sum, and periodic payments shall not be authorized in such a case. Upon termination of periodic payments of future damages, the court shall order the return of such security, or so much as remains, to the judgment debtor.

3. In the event that the court finds that the judgment debtor has exhibited a continuing pattern of failing to make the required periodic payments, the court shall find the judgment debtor in contempt and, in addition to the required periodic payments, shall order the judgment debtor to pay the claimant all damages caused by the failure to make such periodic payments, including court costs and attorney's fees. If insolvency of the judgment debtor is proven to the court to be probable, the court may order that the balance of payments due be placed in trust for the benefit of the claimant.

4. The judgment ordering the payment of future damages by periodic payments shall specify the recipient or recipients of the payments, the dollar amounts of the payments, the interval between payments, and the number of payments or the period of time over which payments shall be made. Such payments shall only be subject to modification as specified in this section.

5. If the claimant has been awarded damages to be discharged by periodic payments and the claimant dies prior to the termination of the period of years during which such payments are to be made, the liability of the defendant for amounts set forth in paragraphs 768.48(1)(a) and (c) shall cease and the estate of the claimant shall have no claim for such amounts. In such event, the remaining balance of all amounts to be paid pursuant to paragraph 768.48(1)(b) shall be paid into the estate of the claimant in a lump sum. If the claimant lives longer than the period of time in which such payments are to be made, such payments shall continue for the remainder of the claimant's life at the same rate as the payments being made at the time they would otherwise have terminated.

6. Claimant's attorney's fee, if payable from the judgment, shall be based upon the total judgment, adding all amounts awarded for past and future damages. The attorney's fee shall be paid from past and future damages in the same proportion, and the periodic payments shall be reduced by the amount of attorney's fees paid from future damages payable. The attorney's fee may be paid in a lump sum upon entry of judgment or, at the attorney's option, periodically in conjunction with the claimant's payment. If paid periodically, the attorney's fee shall be paid as long as payments are made to the claimant, with the remaining balance due paid in a lump sum if the claimant dies prior to all payments having been made.

(2) Nothing in this section shall preclude any other method of payment of awards, if such method is consented to by the parties.

History.—s. 14, ch. 76-260; s. 10, ch. 77-64.

#### **'768.54 Limitation of liability and patient's compensation fund.—**

(1) DEFINITIONS.—The following definitions apply in the interpretation and enforcement of this section:

(a) "Fund" means the Florida Patient's Compensation Fund.

(b) "Health care provider" means any:

1. Hospital licensed under chapter 395.
2. Physician licensed, or physician's assistant certified, under chapter 458.
3. Osteopath licensed under chapter 459.
4. Podiatrist licensed under chapter 461.
5. Health maintenance organization certificated under part II of chapter 641.
6. Ambulatory surgical center licensed under chapter 395.
7. "Other medical facility" as defined in paragraph (c).

8. Professional association, partnership, corporation, joint venture, or other association by the individuals set forth in subparagraphs 2., 3., and 4. for professional activity.

(c) "Other medical facility" means a facility the primary purpose of which is to provide human medical diagnostic services or a facility providing nonsurgical human medical treatment and in which the patient is admitted to and discharged from said facility within the same working day, and which is not part of a hospital. However, a facility existing for the primary purpose of performing terminations of pregnancy, or an office maintained by a physician or dentist for the practice of medicine, shall not be construed to be an "other medical facility."

(d) "Hospital" means a hospital licensed under chapter 395.

(e) "Health maintenance organization" means any health maintenance organization certificated under part II of chapter 641.

(f) "Occurrence" means an accident or incident, including continuous or repeated exposure to conditions, which results in patient injuries not intended from the standpoint of the insured.

(g) "Per claim" means all claims per patient arising out of an occurrence.

(h) "Committee" means a committee or board of trustees of a health care provider or group of health care providers established to make recommendations, policy, or decisions regarding patient institutional utilization, patient treatment, or institutional staff privileges or to perform other administrative or professional purposes or functions.

(i) "House physician" means any physician, osteopath, podiatrist, or dentist except: A physician, osteopath, podiatrist, or dentist with staff privileges at a hospital; a physician, osteopath, podiatrist, or dentist providing emergency room services; an anesthesiologist, pathologist, or radiologist; or a physician, osteopath, podiatrist, or dentist who performs a service for a fee.

#### **(2) LIMITATION OF LIABILITY.—**

(a) All hospitals shall, unless exempted under



paragraph (c), and all health care providers other than hospitals may pay the yearly fee and assessment or, in cases in which such hospital or health care provider joined the fund after the fiscal year had begun, a prorated assessment into the fund pursuant to subsection (3).

<sup>2</sup>(b) A health care provider shall not be liable for an amount in excess of \$100,000 per claim or \$500,000 per occurrence for claims covered under subsection (3) if the health care provider had paid the fees required pursuant to subsection (3) for the year in which the incident occurred for which the claim is filed, and an adequate defense for the fund is provided, and pays at least the initial \$100,000 or the maximum limit of the underlying coverage maintained by the health care provider on the date when the incident occurred for which the claim is filed, whichever is greater, of any settlement or judgment against the health care provider for the claim in accordance with paragraph (3)(e). A health care provider may have the necessary funds available for payment when due, or an adequate defense for the fund may be provided by the use of:

1. A bond in the amount of \$100,000 per claim and three times the per-claim limit in the aggregate per year, plus an additional amount as determined by the Department of Health and Rehabilitative Services which is sufficient to meet claims defense and expenses; however a total escrow account for all years equal to reserved loss and expense amounts for known cases plus \$345,000 shall be the maximum escrow amount required;

2. An adequate escrow account in the amount of \$100,000 per claim and three times the per-claim limit in the aggregate per year, plus an additional amount as determined by the Department of Health and Rehabilitative Services which is sufficient to meet claims defense and expenses; however a total escrow account for all years equal to reserved loss and expense amounts for known cases plus \$345,000 shall be the maximum escrow amount required;

3. Medical malpractice insurance in the amount of \$100,000 or more per claim from private insurers or the Joint Underwriting Association established under s. 627.351(7); or

4. Self-insurance as provided in s. 627.357, providing coverage in an amount of \$100,000 or more per claim and three times the per-claim limit in the aggregate per year, plus an additional amount as determined by the Department of Health and Rehabilitative Services which is sufficient to meet claims defense and expenses.

(c) Any hospital that can meet one of the following provisions demonstrating financial responsibility to pay claims and costs ancillary thereto arising out of the rendering of or the failure to render medical care or services and for bodily injury or property damage to the person or property of any patient arising out of the insured's activities in this state shall not be required to participate in the fund:

1. Post bond in an amount equivalent to \$10,000 per claim for each hospital bed in said hospital, not to exceed a \$2,500,000 annual aggregate.

2. Establish an escrow account in an amount equivalent to \$10,000 per claim for each hospital bed in said hospital, not to exceed a \$2,500,000 annual

aggregate, to the satisfaction of the Department of Health and Rehabilitative Services.

3. Obtain professional liability coverage in an amount equivalent to \$10,000 or more per claim for each bed in said hospital from a private insurer, from the Joint Underwriting Association established under s. 627.351(7), or through a plan of self-insurance as provided in s. 627.357. However, no hospital shall be required to obtain such coverage in an amount exceeding a \$2,500,000 annual aggregate.

(d)1. Any health care provider who does not participate in the fund, or participates and does not meet the provisions of paragraph (b), shall be subject to liability under law without regard to the provisions of this section.

2. Annually, the Department of Health and Rehabilitative Services shall require documentation by each hospital that said hospital is in compliance, and shall remain in compliance, with the provisions of this section. The department shall review the documentation and then deliver the documentation to the board of governors. At least 60 days prior to the time a license will be issued or renewed, the department shall request from the board of governors a certification that each hospital is in compliance with the provisions of this section. The board of governors shall not be liable under the law for any erroneous certification. The department shall not issue or renew the license of any hospital which has not been certified by the board of governors. The license of any hospital which fails to remain in compliance or fails to provide such documentation shall be revoked or suspended by the department.

<sup>2</sup>(e) The limitation of liability afforded by the fund for a participating hospital or ambulatory surgical center shall apply to the officers, trustees, volunteer workers, trainees, committee members (including physicians, osteopaths, podiatrists, and dentists), and employees of the hospital or ambulatory surgical center, other than employed physicians licensed under chapter 458, physician's assistants licensed under chapter 458, osteopaths licensed under chapter 459, dentists licensed under chapter 466, and podiatrists licensed under chapter 461. However, the limitation of liability afforded by the fund for a participating hospital shall apply to house physicians, interns, employed physicians in a resident training program, or physicians performing purely administrative duties for the participating hospitals other than the treatment of patients. This limitation of liability shall apply to the hospital or ambulatory surgical center and those included in this subsection as one health care provider.

### <sup>2</sup>(3) PATIENT'S COMPENSATION FUND.—

(a) *The fund.*—There is created a "Florida Patient's Compensation Fund" for the purpose of paying that portion of any claim arising out of the rendering of or failure to render medical care or services, or arising out of activities of committees, for health care providers or any claim for bodily injury or property damage to the person or property of any patient, including all patient injuries and deaths, arising out of the insureds' activities for those health care providers set forth in subparagraphs (1)(b)1., 5., 6., and 7. which is in excess of the limits as set forth in paragraph (2)(b). The fund shall be liable only for

payment of claims against health care providers who are in compliance with the provisions of paragraph (2)(b), of reasonable and necessary expenses incurred in the payment of claims, and of fund administrative expenses.

(b) *Fund administration and operation.*—The fund shall operate subject to the supervision and approval of a board of governors consisting of a representative of the insurance industry appointed by the Insurance Commissioner, an attorney appointed by The Florida Bar, a representative of physicians appointed by the Florida Medical Association, a representative of physicians' insurance appointed by the Insurance Commissioner, a representative of physicians' self-insurance appointed by the Insurance Commissioner, two representatives of hospitals appointed by the Florida Hospital Association, a representative of hospital insurance appointed by the Insurance Commissioner, a representative of hospital self-insurance appointed by the Insurance Commissioner, a representative of the osteopathic physicians' or podiatrists' insurance or self-insurance appointed by the Insurance Commissioner, and a representative of the general public appointed by the Insurance Commissioner. The board of governors shall, during the first meeting after June 30 of each year, choose one of its members to serve as chairman of the board and another member to serve as vice chairman of the board.

(c) *Fees and assessments.*—Annually, each health care provider, as set forth in subsection (2), electing to comply with paragraph (2)(b) shall pay the fees established under this act, for deposit into the fund, which shall be remitted for deposit in a manner prescribed by the Insurance Commissioner. The limitation of liability provided by the fund shall begin July 1, 1975, and run thereafter on a fiscal-year basis. For the first year of membership, each participating health care provider shall pay a base fee for deposit into the fund in the amount of \$1,000 for any individual, or \$300 per bed for any hospital. Those entering the fund after the fiscal year has begun shall pay a prorated share of the yearly fees for a prorated membership. The base fee charged after the first year of participation shall be \$500 for any individual, or \$300 per bed for any hospital. The base fees to be paid by those health care providers defined in subparagraphs (1)(b)5., 6., 7., and 8. shall be established by the fund on an actuarially sound basis. In addition, after the first year of operation, additional fees may be charged but shall be appropriately prorated for the portion of the year for which the health care provider participated in the fund, based on the following considerations:

1. Past and prospective loss and expense experience in different types of practice and in different geographical areas within the state;
2. The prior claims experience of the members covered under the fund; and
3. Risk factors for persons who are retired, semiretired, or part-time professionals.

Such base fees may be adjusted downward for any fiscal year in which a lesser amount would be adequate and in which the additional fee would not be necessary to maintain the solvency of the fund. Such

additional fee shall be based on not more than two geographical areas with three categories of practice and with categories which contemplate separate risk ratings for hospitals, for health maintenance organizations, for ambulatory surgical facilities, and for other medical facilities. Each fiscal year of the fund shall operate independently of preceding fiscal years. Participants shall only be liable for assessments for claims from years during which they were members of the fund; in cases in which a participant is a member of the fund for less than the total fiscal year, a member shall be subject to assessments for that year on a prorata basis determined by the percentage of participation for the year. The fund shall be maintained at not more than \$15,000,000 per fiscal year. Additional fees, assessments, or refunds shall be set by the Insurance Commissioner after consultation with the board of governors of the fund. Nothing contained herein shall be construed as imposing liability for payment of any part of a fund deficit on the Joint Underwriting Association authorized by s. 627.351(7) or its member insurers. If the fund determines that the amount of money in an account for a given fiscal year is in excess of or not sufficient to satisfy the claims made against the account, the fund shall certify the amount of the projected excess or insufficiency to the Insurance Commissioner and request the Insurance Commissioner to levy an assessment against or refund to all participants in the fund for that fiscal year, prorated, based on the number of days of participation during the year in question. The Insurance Commissioner shall order such refund to, or levy such assessment against, such participants in amounts that fairly reflect the classifications prescribed above and are sufficient to obtain the money necessary to meet all claims for said fiscal year. In no case shall any assessment for a particular year against any health care provider, other than those health care providers defined in subparagraphs (1)(b)1., 5., 6., and 7., exceed an amount equal to the fees originally paid by such health care provider for participation in the fund for the year giving rise to such assessment. If any assessments are levied in accordance with this subsection as a result of claims in excess of the limitation of a provider's liability of \$500,000 per occurrence as specified in paragraph (2)(b), and such assessments are a result of the liability of certain individuals and entities specified in paragraph (2)(e), only hospitals shall be subject to such assessments.

(d) *Fund accounting and audit.*—

1. Moneys shall be withdrawn from the fund only upon vouchers as authorized by the board of governors.

2. All books, records, and audits of the fund shall be open for reasonable inspection to the general public, except that a claim file in possession of the fund shall not be available for review during processing of that claim. Any book, record, document, audit, or asset acquired by, prepared for, or paid for by the fund is subject to the authority of the board of governors, which shall be responsible therefor.

3. Persons authorized to receive deposits, issue vouchers, or withdraw or otherwise disburse any fund moneys shall post a blanket fidelity bond in an amount reasonably sufficient to protect fund assets.

The cost of such bond shall be paid from the fund.

4. Annually, the fund shall furnish, upon request, audited financial reports to any fund participant and to the Department of Insurance and the Joint Legislative Auditing Committee. The reports shall be prepared in accordance with accepted accounting procedures and shall include income and such other information as may be required by the Department of Insurance or the Joint Legislative Auditing Committee.

5. Moneys held in the fund shall be invested in interest-bearing investments by the board of governors of the fund as administrator. However, in no case shall such moneys be invested in the stock of any insurer participating in the Joint Underwriting Association authorized by s. 627.351(7) or in the parent company or company owning a controlling interest of said insurer. All income derived from such investments shall be credited to the fund.

6. Any health care provider participating in the fund may withdraw from such participation only at the end of a fiscal year; however, such health care provider shall remain subject to any assessment or any refund pertaining to any year in which such member participated in the fund.

(e) *Claims procedures.*—

1. Any person may file an action against a participating health care provider for damages covered under the fund, except that the person filing the claim shall not recover against the fund unless the fund was named as a defendant in the suit. The fund is not required to actively defend a claim until the provisions of s. 768.44 are completed or waived, suit is instituted, and the fund is named therein. If, after the facts upon which the claim is based are reviewed, it appears that the claim will exceed \$100,000 or, if greater, the amount of the health care provider's basic coverage, the fund shall appear and actively defend itself when named as a defendant in the suit. In so defending, the fund shall retain counsel and pay out of the account for the appropriate year attorneys' fees and expenses, including court costs incurred in defending the fund. In any claim, the attorney or law firm retained to defend the fund shall not be retained to defend the Joint Underwriting Association authorized by s. 627.351(7). The fund is authorized to negotiate with any claimants having a judgment exceeding \$100,000 cost to the fund to reach an agreement as to the manner in which that portion of the judgment exceeding that \$100,000 cost is to be paid. Any judgment affecting the fund may be appealed under the Florida Appellate Rules of Procedure, as with any defendant.

2. It shall be the responsibility of the insurer or self-insurer providing insurance or self-insurance for a health care provider who is also covered by the

fund to provide an adequate defense on any claim filed which potentially affects the fund, with respect to such insurance contract or self-insurance contract. The insurer or self-insurer shall act in a fiduciary relationship toward the fund with respect to any claim affecting the fund. No settlement exceeding \$100,000, or any other amount which could require payment by the fund, shall be agreed to unless approved by the fund.

3. A person who has recovered a final judgment or a settlement approved by the fund against a health care provider who is covered by the fund may file a claim with the fund to recover that portion of such judgment or settlement which is in excess of \$100,000 or the amount of the health care provider's basic coverage, if greater, as set forth in paragraph (2)(b). In the event an account for a given year incurs liability exceeding \$100,000 to all persons under a single occurrence, the persons recovering shall be paid from the account at a rate not more than \$100,000 per person per year until the claim has been paid in full, except that court costs and reasonable attorney's fees shall be paid in one lump sum within 90 days after the settlement or judgment is rendered. Such fees shall not reduce the amount of the annual award.

4. Settlements or judgments against the fund shall be paid in the order received within 90 days after the date of settlement or judgment, unless appealed by the fund. If the account for a given year does not have enough money to pay all of the settlements or judgments, those claims received after the funds are exhausted shall be immediately payable from the assessments of participants for that year, in the order in which they are received.

5. If a health care provider participating in the fund has coverage in excess of \$100,000 per claim or \$500,000 per occurrence, such health care provider shall be liable for losses up to the amount of his coverage, and such health care provider shall receive an appropriate reduction of the fees and assessments for participation in the fund. Such reduction shall be granted only after that health care provider has proved to the satisfaction of the fund that such health care provider had such coverage during the period of membership of the fiscal year.

6. The manager of the fund or his assistant is the agent for service of process for the plan.

**History.**—s. 15, ch. 75-9; s. 3, ch. 76-168; s. 6, ch. 76-260; s. 4, ch. 77-64; s. 1, ch. 77-174; s. 1, ch. 77-457; s. 2, ch. 78-47; ss. 1, 2, ch. 79-178.

**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

**Note.**—Section 2, ch. 79-178, provides that, if s. 768.54 is repealed in accordance with the intent expressed in the Regulatory Reform Act of 1976, as amended by ch. 77-457, or as subsequently amended, it is the intent of the Legislature that ch. 79-178 shall also be repealed on the same date as is therein provided.

**Note.**—Former s. 627.353.



## CHAPTER 769

## HAZARDOUS OCCUPATIONS

- 769.01 Employers affected by fellow servant act.
- 769.02 Liability of certain persons and corporations for injuries from negligence of fellow servants.
- 769.03 Recovery for injuries where employee and employer both at fault; damages; negligence of fellow servant.
- 769.04 Doctrine of "assumption of risk" abrogated.
- 769.05 Proceeds of recovery for injuries exempt from garnishment and execution.
- 769.06 Contracts limiting liability invalid.

**769.01 Employers affected by fellow servant act.**—This chapter shall apply to persons engaged in the following hazardous occupations in this state; namely, railroading, operating street railways, generating and selling electricity, telegraph and telephone business, express business, blasting and dynamiting, operating automobiles for public use, boating, when boat is propelled by steam, gas or electricity.

**History.**—s. 1, ch. 6521, 1913; RGS 4971; CGL 7058.  
cf.—Ch. 440 Workers' Compensation Law.

**769.02 Liability of certain persons and corporations for injuries from negligence of fellow servants.**—The persons mentioned in s. 769.01 shall be liable in damages for injuries inflicted upon their agents and employees, and for the death of their agents and employees caused by the negligence of such persons, their agents and servants, unless such persons shall make it appear that they, their agents and servants have exercised all ordinary and reasonable care and diligence, the presumption in all cases being against such persons.

**History.**—s. 2, ch. 6521, 1913; RGS 4972; CGL 7059.

**769.03 Recovery for injuries where employee and employer both at fault; damages; negligence of fellow servant.**—The persons mentioned in s. 769.01 shall not be liable in damages for injuries to their agents and employees, or for the death of such

agents and employees, where same is done by their consent, or is caused by their own negligence. If the employees or agents injured or killed, and the persons mentioned in s. 769.01, or their agents and employees are both at fault, there may be a recovery, but the amount of the recovery shall be such a proportion of the entire damages sustained, as the defendant's negligence bears to the combined negligence of both the plaintiff and the defendant; provided, that damages shall not be recovered for injuries to an employee injured in part through his own negligence and in part through the negligence of another employee, when both of such employees are fellow servants, where the former and latter are jointly engaged in performing the act causing the injury and the employer is guilty of no negligence contributing to such injury.

**History.**—s. 3, ch. 6521, 1913; RGS 4973; CGL 7060.

**769.04 Doctrine of "assumption of risk" abrogated.**—The doctrine of "assumption of risk" shall not obtain in any case arising under the provisions of this chapter, where the injury or death was attributable to the negligence of the employer, his agents or servants.

**History.**—s. 4, ch. 6521, 1913; RGS 4974; CGL 7061.

**769.05 Proceeds of recovery for injuries exempt from garnishment and execution.**—Writs of garnishment, execution or other processes, shall not issue out of any court to reach any money due or likely to become due as damages under the provisions of this chapter.

**History.**—s. 5, ch. 6521, 1913; RGS 4975; CGL 7062.

**769.06 Contracts limiting liability invalid.**—Any contract, contrivance or device whatever, having the effect to relieve or exempt the persons mentioned in s. 769.01 from the liability prescribed by this chapter shall be illegal and void.

**History.**—s. 6, ch. 6521, 1913; RGS 4976; CGL 7063.

## CHAPTER 770

## CIVIL ACTIONS FOR LIBEL

- 770.01 Notice condition precedent to action or prosecution for libel or slander.
- 770.02 Correction, apology, or retraction by newspaper or broadcast station.
- 770.03 Civil liability of broadcasting stations, etc.
- 770.04 Civil liability of radio or television broadcasting stations; care to prevent publication or utterance required.
- 770.05 Limitation of choice of venue.
- 770.06 Adverse judgment in any jurisdiction a bar to additional action.
- 770.07 Cause of action, time of accrual.
- 770.08 Limitation on recovery of damages.

**770.01 Notice condition precedent to action or prosecution for libel or slander.**—Before any civil action is brought for publication or broadcast, in a newspaper, periodical, or other medium, of a libel or slander, the plaintiff shall, at least 5 days before instituting such action, serve notice in writing on the defendant, specifying the article or broadcast and the statements therein which he alleges to be false and defamatory.

**History.**—s. 1, ch. 16070, 1933; CGL 1936 Supp. 7064(1); s. 1, ch. 76-123. cf.—s. 836.07 Criminal prosecution for libel.

**770.02 Correction, apology, or retraction by newspaper or broadcast station.**—If it appears upon the trial that said article or broadcast was published in good faith, that its falsity was due to an honest mistake of the facts, that there were reasonable grounds for believing that the statements in said article or broadcast were true, and that, within 10 days after the service of said notice, a full and fair correction, apology or retraction was, in the case of newspapers and periodicals, published in the same editions or corresponding issues of the newspaper or periodical in which said article appeared and in as conspicuous place and type as was said original article or, in the case of broadcast, the correction, apology, or retraction was broadcast at a comparable time, then the plaintiff in such case shall recover only actual damages.

**History.**—s. 2, ch. 16070, 1933; CGL 1936 Supp. 7064(2); s. 1, ch. 76-123; s. 233, ch. 77-104. cf.—s. 836.08 Criminal provision.

**770.03 Civil liability of broadcasting stations, etc.**—The owner, lessee, licensee, or operator of a broadcasting station shall have the right, except when prohibited by federal law or regulation, but shall not be compelled, to require the submission of a written copy of any statement intended to be broadcast over such station 24 hours before the time of the intended broadcast thereof. When such owner, lessee, licensee, or operator has so required the submission of such copy, such owner, lessee, licensee, or operator shall not be liable in damages for any libelous or slanderous utterance made by or for the person or party submitting a copy of such proposed broadcast which is not contained in such copy. This

section shall not be construed to relieve the person or party or the agents or servants of such person or party making any such libelous or slanderous utterance from liability therefor.

**History.**—ss. 1-3, ch. 19616, 1939; CGL 1940 Supp. 7064(4); s. 1, ch. 20869; s. 1, ch. 76-123.

**770.04 Civil liability of radio or television broadcasting stations; care to prevent publication or utterance required.**—The owner, licensee, or operator of a radio or television broadcasting station, and the agents or employees of any such owner, licensee or operator, shall not be liable for any damages for any defamatory statement published or uttered in or as a part of a radio or television broadcast, by one other than such owner, licensee or operator, or general agent or employees thereof, unless it shall be alleged and proved by the complaining party, that such owner, licensee, operator, general agent or employee, has failed to exercise due care to prevent the publication or utterance of such statement in such broadcasts, provided, however, the exercise of due care shall be construed to include the bona fide compliance with any federal law or the regulation of any federal regulatory agency.

**History.**—s. 1, ch. 23802, 1947; s. 1, ch. 25278, 1949.

**770.05 Limitation of choice of venue.**—No person shall have more than one choice of venue for damages for libel or slander, invasion of privacy, or any other tort founded upon any single publication, exhibition, or utterance, such as any one edition of a newspaper, book, or magazine, any one presentation to an audience, any one broadcast over radio or television, or any one exhibition of a motion picture. Recovery in any action shall include all damages for any such tort suffered by the plaintiff in all jurisdictions.

**History.**—s. 1, ch. 67-52.

**770.06 Adverse judgment in any jurisdiction a bar to additional action.**—A judgment in any jurisdiction for or against the plaintiff upon the substantive merits of any action for damages founded upon a single publication or exhibition or utterance as described in s. 770.05 shall bar any other action for damages by the same plaintiff against the same defendant founded upon the same publication or exhibition or utterance.

**History.**—s. 2, ch. 67-52.

**770.07 Cause of action, time of accrual.**—The cause of action for damages founded upon a single publication or exhibition or utterance, as described in s. 770.05, shall be deemed to have accrued at the time of the first publication or exhibition or utterance thereof in this state.

**History.**—s. 3, ch. 67-52.

**770.08 Limitation on recovery of damages.**—No person shall have more than one choice of venue for damages for libel founded upon a single publication or exhibition or utterance, as described in s.

770.05, and upon his election in any one of his choices of venue, then he shall be bound to recover there all damages allowed him.

History.—s. 4, ch. 67-52.



## CHAPTER 771

## ACTIONS FOR ALIENATION OF AFFECTIONS, ETC.

- 771.01 Certain tort actions abolished.
- 771.04 No act done in state to give cause of action.
- 771.05 Unlawful to file certain causes of action.
- 771.06 Validity of certain contracts.
- 771.07 Penalties.
- 771.08 Construction of law.

**771.01 Certain tort actions abolished.**—The rights of action heretofore existing to recover sums of money as damage for the alienation of affections, criminal conversation, seduction or breach of contract to marry are hereby abolished.

*History.*—s. 1, ch. 23138, 1945.

**771.04 No act done in state to give cause of action.**—No act hereafter done within this state shall operate to give rise, either within or without this state, to any of the rights of action abolished by this law. No contract to marry hereafter made or entered into in this state shall operate to give rise, either within or without this state, to any cause or right of action for the breach thereof.

*History.*—s. 4, ch. 23138, 1945.

**771.05 Unlawful to file certain causes of action.**—It shall hereafter be unlawful for any person, either as a party or attorney, or an agent or other person in behalf of either, to file or serve, cause to be filed or served, threaten to file or serve, or threaten to cause to be filed or served, any process or pleading, in any court of the state, setting forth or seeking to recover a sum of money upon any cause of action abolished or barred by this law, whether such cause of action arose within or without the state.

*History.*—s. 5, ch. 23138, 1945; s. 234, ch. 77-104.

**771.06 Validity of certain contracts.**—All contracts and instruments of every kind, name, nature or description, which may hereafter be executed within this state in payment, satisfaction, settlement or compromise of any claim or cause of action abolished or barred by this law, whether such claim or cause of action arose within or without this state, are hereby declared to be contrary to the public poli-

cy of this state and absolutely void. It shall be unlawful to cause, induce or procure any person to execute such a contract or instrument; or cause, induce or procure any person to give, pay, transfer or deliver any money or thing of value in payment, satisfaction, settlement or compromise of any such claim or cause of action; or to receive, take, or accept any such money or thing of value as such payment, satisfaction, settlement, or compromise. It shall be unlawful to commence or cause to be commenced, either as party or attorney, or as agent or otherwise in behalf of either, in any court of this state, any proceeding or action seeking to enforce or recover upon any such contract or instrument, knowing it to be such, whether the same shall have been executed within or without this state; provided, however, that this section shall not apply to the payment, satisfaction, settlement, or compromise of any causes of action which are not abolished or barred by this law, or any contracts or instruments heretofore executed, or to the bona fide holder in due course of any negotiable instrument which may be hereafter executed.

*History.*—s. 6, ch. 23138, 1945.

**771.07 Penalties.**—Any person who violates any of the provisions of this chapter shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

*History.*—s. 7, ch. 23138, 1945; s. 698, ch. 71-136.

**771.08 Construction of law.**—This law shall be liberally construed to effectuate the objects and purposes thereof and the public policy of the state as hereby declared. This law shall supersede all laws and parts of laws, inconsistent with this law, to the extent of such inconsistency, but in all other respects shall be deemed supplemental to such laws and parts of laws. Nothing contained in this law shall be construed as a repeal of any of the provisions of the penal law or the code of criminal procedure or of any other law of this state relating to criminal or quasi-criminal actions or proceedings.

*History.*—ss. 8, 9, ch. 23138, 1945.

# TITLE XLV

## CRIMES

### CHAPTER 775

#### DEFINITIONS; GENERAL PENALTIES; REGISTRATION OF CRIMINALS

- 775.01 Common Law of England.
- 775.011 Short title; applicability to antecedent offenses.
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- 775.14 Limitation on withheld sentences.
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**775.01 Common Law of England.**—The Common Law of England in relation to crimes, except so far as the same relates to the modes and degrees of punishment, shall be of full force in this state where there is no existing provision by statute on the subject.

**History.**—s. 1, Nov. 6, 1829; s. 1, Feb. 10, 1832; RS 2369; GS 3194; RGS 5024; CGL 7126.

cf.—s. 2.01 Common law in force.  
s. 817.29 Punishment for common law fraud or cheat.

**775.011 Short title; applicability to antecedent offenses.**—

(1) This act shall be known and may be cited as the "Florida Criminal Code."

(2) Except as provided in subsection (3), the code does not apply to offenses committed prior to July 1, 1975, and prosecutions for such offenses shall be governed by the prior law. For the purposes of this section, an offense was committed prior to July 1, 1975, if any of the material elements of the offense occurred prior thereto.

(3) In any case pending on or after October 1,

1975, involving an offense committed prior to such date, the provisions of the code involving any quasi-procedural matter shall govern, insofar as they are justly applicable, and the provisions of the code according a defense or mitigation or establishing a penalty shall apply only with the consent of the defendant.

**History.**—s. 1, ch. 74-383; s. 43, ch. 75-298.

**775.012 General purposes.**—The general purposes of the provisions of the code are:

(1) To proscribe conduct that improperly causes or threatens substantial harm to individual or public interest.

(2) To give fair warning to the people of the state in understandable language of the nature of the conduct proscribed and of the sentences authorized upon conviction.

(3) To define clearly the material elements constituting an offense and the accompanying state of mind or criminal intent required for that offense.

(4) To differentiate on reasonable grounds between serious and minor offenses and to establish appropriate disposition for each.

(5) To safeguard conduct that is without fault or legitimate state interest from being condemned as criminal.

(6) To insure the public safety by deterring the commission of offenses and providing for the opportunity for rehabilitation of those convicted and for their confinement when required in the interests of public protection.

**History.**—s. 2, ch. 74-383; s. 1, ch. 77-174.

**775.02 Punishment of common law offenses.**

—When there exists no such provision by statute, the court shall proceed to punish such offense by fine or imprisonment, but the fine shall not exceed \$500, nor the imprisonment 12 months.

**History.**—s. 1, Nov. 6, 1829; RS 2370; GS 3195; RGS 5025; CGL 7127.

**775.021 Rules of construction.**—

(1) The provisions of this code and offenses defined by other statutes shall be strictly construed; when the language is susceptible of differing constructions, it shall be construed most favorably to the accused.

(2) The provisions of this chapter are applicable to offenses defined by other statutes, unless the code otherwise provides.

(3) This section does not affect the power of a

court to punish for contempt or to employ any sanction authorized by law for the enforcement of an order or a civil judgment or decree.

(4) Whoever, in the course of one criminal transaction or episode, commits an act or acts constituting a violation of two or more criminal statutes, upon conviction and adjudication of guilt, shall be sentenced separately for each criminal offense, excluding lesser included offenses, committed during said criminal episode, and the sentencing judge may order the sentences to be served concurrently or consecutively.

**History.**—s. 3, ch. 74-383; s. 1, ch. 76-66; s. 1, ch. 77-174.

**775.03 Benefit of clergy.**—The doctrine of benefit of clergy shall have no operation in this state.

**History.**—s. 75, Feb. 10, 1832; RS 2371; GS 3196; RGS 5026; CGL 7128.

**775.04 What penal acts or omissions not public offenses.**—Acts or omissions to which a pecuniary penalty is attached, recoverable by action by a person for his own use or for the use, in whole or in part, of the state or of a county or a public body, or of a corporation, are not public offenses within the meaning of these statutes.

**History.**—RS 2349; GS 3173; RGS 5002; CGL 7101.

**775.08 Classes and definitions of offenses.**—When used in the laws of this state:

(1) The term "felony" shall mean any criminal offense that is punishable under the laws of this state, or that would be punishable if committed in this state, by death or imprisonment in a state penitentiary. "State penitentiary" shall include state correctional facilities. A person shall be imprisoned in the state penitentiary for each sentence which, except an extended term, exceeds 1 year.

(2) The term "misdemeanor" shall mean any criminal offense that is punishable under the laws of this state, or that would be punishable if committed in this state, by a term of imprisonment in a county correctional facility, except an extended term, not in excess of 1 year. The term "misdemeanor" shall not mean a conviction for any violation of any provision of chapter 316 or any municipal or county ordinance.

(3) The term "noncriminal violation" shall mean any offense that is punishable under the laws of this state, or that would be punishable if committed in this state, by no other penalty than a fine, forfeiture, or other civil penalty. A noncriminal violation does not constitute a crime, and conviction for a noncriminal violation shall not give rise to any legal disability based on a criminal offense. The term "noncriminal violation" shall not mean any conviction for any violation of any municipal or county ordinance. Nothing contained in this code shall repeal or change the penalty for a violation of any municipal or county ordinance.

(4) The term "crime" shall mean a felony or misdemeanor.

**History.**—s. 1(11), ch. 1637, 1868; RS 2352; GS 3176; RGS 5006; CGL 7105; s. 1, ch. 71-136; s. 4, ch. 74-383; s. 1, ch. 75-298.

**775.081 Classifications of felonies and misdemeanors.**—

(1) Felonies are classified, for the purpose of sentence and for any other purpose specifically provided

by statute, into the following categories:

- (a) Capital felony;
- (b) Life felony;
- (c) Felony of the first degree;
- (d) Felony of the second degree; and
- (e) Felony of the third degree.

A capital felony and a life felony must be so designated by statute. Other felonies are of the particular degree designated by statute. Any crime declared by statute to be a felony without specification of degree is of the third degree, except that this provision shall not affect felonies punishable by life imprisonment for the first offense.

(2) Misdemeanors are classified, for the purpose of sentence and for any other purpose specifically provided by statute, into the following categories:

- (a) Misdemeanor of the first degree; and
- (b) Misdemeanor of the second degree.

A misdemeanor is of the particular degree designated by statute. Any crime declared by statute to be a misdemeanor without specification of degree is of the second degree.

(3) This section is supplemental to, and is not to be construed to alter, the law of this state establishing and governing criminal offenses that are divided into degrees by virtue of distinctive elements comprising such offenses, regardless of whether such law is established by constitutional provision, statute, court rule, or court decision.

**History.**—s. 2, ch. 71-136; s. 1, ch. 72-724.

**775.082 Penalties.**—

(1) A person who has been convicted of a capital felony shall be punished by life imprisonment and shall be required to serve no less than 25 years before becoming eligible for parole unless the proceeding held to determine sentence according to the procedure set forth in s. 921.141 results in findings by the court that such person shall be punished by death, and in the latter event such person shall be punished by death.

(2) In the event the death penalty in a capital felony is held to be unconstitutional by the Florida Supreme Court or the United States Supreme Court, the court having jurisdiction over a person previously sentenced to death for a capital felony shall cause such person to be brought before the court, and the court shall sentence such person to life imprisonment as provided in subsection (1).

(3) A person who has been convicted of any other designated felony may be punished as follows:

- (a) For a life felony, by a term of imprisonment for life or for a term of years not less than 30;
- (b) For a felony of the first degree, by a term of imprisonment not exceeding 30 years or, when specifically provided by statute, by imprisonment for a term of years not exceeding life imprisonment;
- (c) For a felony of the second degree, by a term of imprisonment not exceeding 15 years;
- (d) For a felony of the third degree, by a term of imprisonment not exceeding 5 years.

(4) A person who has been convicted of a designated misdemeanor may be sentenced as follows:

- (a) For a misdemeanor of the first degree, by a



definite term of imprisonment not exceeding 1 year;

(b) For a misdemeanor of the second degree, by a definite term of imprisonment not exceeding 60 days.

(5) Any person who has been convicted of a noncriminal violation may not be sentenced to a term of imprisonment nor to any other punishment more severe than a fine, forfeiture, or other civil penalty, except as provided in chapter 316 or by ordinance of any city or county.

(6) Nothing in this section shall be construed to alter the operation of any statute of this state authorizing a trial court, in its discretion, to impose a sentence of imprisonment for an indeterminate period within minimum and maximum limits as provided by law, except as provided in subsection (1).

(7) This section does not deprive the court of any authority conferred by law to decree a forfeiture of property, suspend or cancel a license, remove a person from office, or impose any other civil penalty. Such a judgment or order may be included in the sentence.

**History.**—s. 3, ch. 71-136; ss. 1, 2, ch. 72-118; s. 2, ch. 72-724; s. 5, ch. 74-383; s. 1, ch. 77-174.

#### **775.083 Fines.—**

(1) A person who has been convicted of an offense other than a capital felony may be sentenced to pay a fine in addition to any punishment described in s. 775.082; when specifically authorized by statute, he may be sentenced to pay a fine in lieu of any punishment described in s. 775.082. A person who has been convicted of a noncriminal violation may be sentenced to pay a fine. Fines for designated crimes and for noncriminal violations shall not exceed:

(a) \$15,000, when the conviction is of a life felony.

(b) \$10,000, when the conviction is of a felony of the first or second degree.

(c) \$5,000, when the conviction is of a felony of the third degree.

(d) \$1,000, when the conviction is of a misdemeanor of the first degree.

(e) \$500, when the conviction is of a misdemeanor of the second degree or a noncriminal violation.

(f) Any higher amount equal to double the pecuniary gain derived from the offense by the offender or double the pecuniary loss suffered by the victim.

(g) Any higher amount specifically authorized by statute.

(2) If a defendant is unable to pay a fine, the court may defer payment of the fine to a date certain.

**History.**—s. 4, ch. 71-136; s. 6, ch. 74-383; s. 1, ch. 77-97; s. 1, ch. 77-174.

#### **775.0835 Fines; surcharges; Crimes Compensation Trust Fund.—**

(1) When any person pleads guilty or nolo contendere to, or is convicted of, any felony or misdemeanor under the laws of this state which resulted in the injury or death of another person, the court may, if it finds that the defendant has the present ability to pay the fine and finds that the impact of the fine upon the defendant's dependents will not cause such dependents to be dependent on public welfare, in addition to any other penalty, order the defendant to pay a fine, commensurate with the of-

fense committed and with the probable impact upon the victim, but not to exceed \$10,000. The fine shall be deposited in the Crimes Compensation Trust Fund.

(2) In addition to any fine, civil penalty, or other penalty provided by statute, ordinance, or other law, there shall be imposed, levied, and collected by the courts of this state the 5 percent surcharge on all fines, civil penalties, and forfeitures, as established and created in s. 960.25, which surcharge shall be deposited in the Crimes Compensation Trust Fund created by s. 960.21.

**History.**—ss. 2, 3, ch. 77-452.

#### **775.084 Habitual felony offenders and habitual misdemeanants; extended terms; definitions; procedure; penalties.—**

(1) As used in this act:

(a) "Habitual felony offender" means a defendant for whom the court may impose an extended term of imprisonment, as provided in this section, if it finds that:

1. The defendant has:

a. Previously been convicted of a felony in this state;

b. Twice previously been convicted of a misdemeanor of the first degree in this state or of another qualified offense for which the defendant was convicted after the defendant's 18th birthday;

2. The felony for which the defendant is to be sentenced was committed within 5 years of the date of the conviction of the last prior felony, misdemeanor, or other qualified offense of which he was convicted, or within 5 years of the defendant's release, on parole or otherwise, from a prison sentence or other commitment imposed as a result of a prior conviction for a felony or other qualified offense, whichever is later;

3. The defendant has not received a pardon for any felony or other qualified offense that is necessary for the operation of this section; and

4. A conviction of a felony, misdemeanor, or other qualified offense necessary to the operation of this section has not been set aside in any post-conviction proceeding.

(b) "Habitual misdemeanor" means a defendant for whom the court may impose an extended term of imprisonment, as provided in this section, if it finds that:

1. The defendant has at least twice previously been convicted of the same crime committed at different times after the defendant's 18th birthday;

2. The misdemeanor for which the defendant is to be sentenced was committed within 2 years of the date of the commission of the last prior crime or within 2 years of the defendant's release, on parole or otherwise, from a prison sentence or other commitment imposed as a result of a prior conviction for a crime, whichever is later;

3. The defendant has not received a pardon on the ground of innocence for any crime that is necessary for the operation of this section; and

4. A conviction of a crime necessary to the operation of this section has not been set aside in any post-conviction proceeding.

(c) "Qualified offense" means any offense in violation of a law of another state or of the United

States that was punishable under the law of such state or the United States at the time of its commission by the defendant by death or imprisonment exceeding 1 year or that was equivalent in penalty to a misdemeanor of the first degree.

(2) For the purposes of this section, the placing of a person on probation without an adjudication of guilt shall be treated as a prior conviction if the subsequent offense for which he is to be sentenced was committed during such probationary period.

(3) In a separate proceeding, the court shall determine if it is necessary for the protection of the public to sentence the defendant to an extended term as provided in subsection (4) and if the defendant is an habitual felony offender or an habitual misdemeanor. The procedure shall be as follows:

(a) The court shall obtain and consider a presentence investigation prior to the imposition of a sentence as an habitual felony offender or an habitual misdemeanor.

(b) Written notice shall be served on the defendant and his attorney a sufficient time prior to the entry of a plea or prior to the imposition of sentence so as to allow the preparation of a submission on behalf of the defendant.

(c) Except as provided in paragraph (a), all evidence presented shall be presented in open court with full rights of confrontation, cross-examination, and representation by counsel.

(d) Each of the findings required as the basis for such sentence shall be found to exist by a preponderance of the evidence and shall be appealable to the extent normally applicable to similar findings.

(e) For the purpose of identification of an habitual felony offender or an habitual misdemeanor, the court shall fingerprint the defendant pursuant to s. 921.241.

(4)(a) The court, in conformity with the procedure established in subsection (3) and upon a finding that the imposition of sentence under this section is necessary for the protection of the public from further criminal activity by the defendant, shall sentence the habitual felony offender as follows:

1. In the case of a felony of the first degree, for life.

2. In the case of a felony of the second degree, for a term of years not exceeding 30.

3. In the case of a felony of the third degree, for a term of years not exceeding 10.

(b) The court, in conformity with the procedure established in subsection (3) and upon a finding that the imposition of sentence under this section is necessary for the protection of the public from further criminal activity by the defendant, may sentence the habitual misdemeanor as follows:

1. In the case of a misdemeanor of the first degree, for a term of years not exceeding 3.

2. In the case of a misdemeanor of the second degree, for a term of imprisonment not in excess of 1 year.

(c) If the court decides that imposition of sentence under this section is not necessary for the protection of the public, sentence shall be imposed without regard to this section. At any time when it appears to the court that the defendant is an habitual felony offender or an habitual misdemeanor, the

court shall make that determination as provided in subsection (3).

(d) A sentence imposed under this section shall not be increased after such imposition.

**History.**—s. 5, ch. 71-136; s. 7, ch. 74-383; s. 1, ch. 75-116; s. 2, ch. 75-298; s. 1, ch. 77-174.

#### **775.087 Possession or use of weapon; aggravated battery; felony reclassification; minimum sentence.—**

(1) Unless otherwise provided by law, whenever a person is charged with a felony, except a felony in which the use of a weapon or firearm is an essential element, and during the commission of such felony the defendant carries, displays, uses, threatens, or attempts to use any weapon or firearm, or during the commission of such felony the defendant commits an aggravated battery, the felony for which the person is charged shall be reclassified as follows:

(a) In the case of a felony of the first degree, to a life felony.

(b) In the case of a felony of the second degree, to a felony of the first degree.

(c) In the case of a felony of the third degree, to a felony of the second degree.

(2) Any person who is convicted of:

(a) Any murder, sexual battery, robbery, burglary, arson, aggravated assault, aggravated battery, kidnapping, escape, breaking and entering with intent to commit a felony, or aircraft piracy, or any attempt to commit the aforementioned crimes; or

(b) Any battery upon a law enforcement officer or firefighter while the officer or firefighter is engaged in the lawful performance of his duties

and who had in his possession a "firearm," as defined in s. 790.001(6), or "destructive device," as defined in s. 790.001(4), shall be sentenced to a minimum term of imprisonment of 3 calendar years. Notwithstanding the provisions of s. 948.01, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, nor shall the defendant be eligible for parole or statutory gain-time under s. 944.27 or s. 944.29, prior to serving such minimum sentence.

**History.**—s. 9, ch. 74-383; s. 1, ch. 75-7; s. 3, ch. 75-298; s. 2, ch. 76-75.

#### **775.089 Restitution.—**

(1) In addition to any punishment, the court may order the defendant to make restitution to the aggrieved party for damage or loss caused by the defendant's offense, if the defendant is able or will be able to make such restitution. Restitution may be monetary or nonmonetary restitution. The court may make the payment of restitution a condition to probation in accordance with s. 948.03.

(2) In determining the amount and method of payment of restitution, the court shall consider the financial resources of the defendant and the burden the payment of restitution will impose on the defendant.

(3) Any defendant ordered to make restitution may petition the court which ordered him to make such restitution for remission from any payment of restitution or from any unpaid portion thereof. If the court finds that the payment of restitution due will impose an undue hardship on the defendant or his

family, the court may grant remission from any payment of restitution or modify the method of payment.

(4) When a corporation or unincorporated association is ordered to make restitution, the person authorized to make disbursements from the assets of such corporation or association shall pay restitution from such assets, and such person may be held in contempt for failure to make such restitution.

(5) If a defendant who is required to make restitution defaults in any payment of restitution or installment thereof, the court may hold him in contempt unless such defendant has made a good faith effort to make restitution. If the defendant has made a good faith effort to make restitution, the court may, upon motion of the defendant, modify the order requiring restitution by:

(a) Providing for additional time to make any payment in restitution.

(b) Reducing the amount of any payment in restitution or installment thereof.

(c) Granting a remission from any payment of restitution or part thereof.

(6) Any default in payment of restitution may be collected by any means authorized by law for enforcement of a judgment.

(7) The court may order the clerk of the court to collect and disburse restitution payments in any case.

*History.*—s. 1, ch. 77-150; s. 288, ch. 79-400.

**775.091 Public service.**—In addition to any punishment, the court may order the defendant to perform a specified public service.

*History.*—s. 2, ch. 77-150.

**775.13 Registration of convicted felons, exemptions; penalties.**—

(1) Any person who has been convicted of a felony in any court of this state shall, within 48 hours after entering any county in this state, register with the sheriff of said county, be fingerprinted and photographed, and list the crime for which convicted, place of conviction, sentence imposed, if any, name, aliases, if any, address, and occupation.

(2) Any person who has been convicted of a crime in any federal court or in any court of a state other than Florida, or of any foreign state or country, which crime if committed in Florida would be a felony, shall forthwith within 48 hours after entering any county in this state register with the sheriff of said county in the same manner as provided for in subsection (1).

(3) Any person who is presently within any county of the state as of the effective date of this section shall likewise be required to register with the sheriff of such county within 30 days after the effective date of this section, if such person would be required to register under the terms of subsections (1) or (2), if he or she were entering such county.

(4) In lieu of registering with the sheriffs of the several counties of the state as required by this section, such registration may be made with the Department of Law Enforcement, and shall be subject to the same terms and conditions as required for registration with the several sheriffs of the state. Any person so registering with the Department of Law

Enforcement shall not be required to make further registration in any county in the state.

(5) The provisions of this law shall not apply to any person who:

(a) Has had his civil rights restored;

(b) Has received a full pardon for the offense for which convicted;

(c) Whose conviction of a felony was more than 10 years prior to the time provided for registration under the provisions of this law and who has been lawfully released from incarceration under a felony conviction and sentence for more than 5 years prior to such time for registration unless such person is a fugitive from justice on a felony charge;

(d) Is a parolee or probationer under the supervision of the Department of Corrections who is a probationer under the supervision of any county probation officer of the state, or who has been lawfully discharged from such parole or probation; or

(e) Is a parolee or probationer under the supervision of the United States Parole Commission which parole commission knows of and consents to the presence of such person in Florida, or is a probationer under the supervision of any federal probation officer in the state, or who has been lawfully discharged from such parole or probation.

(6) Failure of any such convicted felon to comply with this section shall constitute a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(7) All laws and parts of laws in conflict herewith are hereby repealed, provided that nothing in this section shall be construed to affect any law of this state relating to registration of criminals where the penalties are in excess of those imposed by this section.

*History.*—ss. 1-7, ch. 57-19; s. 1, ch. 57-371; s. 1, ch. 63-191; s. 1, ch. 65-453; s. 3, ch. 67-2207; ss. 20, 33, 35, ch. 69-106; s. 699, ch. 71-136; s. 11, ch. 77-120; s. 1, ch. 77-174; s. 18, ch. 79-3; s. 21, ch. 79-8.

**775.14 Limitation on withheld sentences.**—

Any person receiving a withheld sentence upon conviction for a criminal offense, and such withheld sentence has not been altered for a period of 5 years, shall not thereafter be sentenced for the conviction of the same crime for which sentence was originally withheld.

*History.*—s. 1, ch. 57-284.

**775.15 Time limitations.**—

(1) A prosecution for a capital or life felony may be commenced at any time. In the event the death penalty is held to be unconstitutional by the Florida Supreme Court or the United States Supreme Court, all crimes designated as capital felonies shall be considered life felonies for the purposes of this section, and prosecution for such crimes may be commenced at any time.

(2) Except as otherwise provided in this section, prosecutions for other offenses are subject to the following periods of limitation:

(a) A prosecution for a felony of the first degree must be commenced within 4 years after it is committed.

(b) A prosecution for any other felony must be commenced within 3 years after it is committed.

(c) A prosecution for a misdemeanor of the first



degree must be commenced within 2 years after it is committed.

(d) A prosecution for a misdemeanor of the second degree or a noncriminal violation must be commenced within 1 year after it is committed.

(e) A prosecution for a violation of part I of chapter 517 must be commenced within 5 years after the violation is committed.

(3) If the period prescribed in subsection (2) has expired, a prosecution may nevertheless be commenced for:

(a) Any offense, a material element of which is either fraud or a breach of fiduciary obligation, within 1 year after discovery of the offense by an aggrieved party or by a person who has a legal duty to represent an aggrieved party and who is himself not a party to the offense, but in no case shall this provision extend the period of limitation otherwise applicable by more than 3 years.

(b) Any offense based upon misconduct in office by a public officer or employee at any time when the defendant is in public office or employment, within 2 years from the time he leaves public office or employment, or during any time permitted by any other part of this section, whichever time is greater.

(4) An offense is committed either when every element has occurred or, if a legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the

defendant's complicity therein is terminated. Time starts to run on the day after the offense is committed.

(5) A prosecution is commenced when either an indictment or information is filed, provided the capias, summons, or other process issued on such indictment or information is executed without unreasonable delay. In determining what is reasonable, inability to locate the defendant after diligent search or the defendant's absence from the state shall be considered. If, however, an indictment or information has been filed within the time period prescribed in this section and the indictment or information is dismissed or set aside because of a defect in its content or form after the time period has elapsed, the period for commencing prosecution shall be extended 3 months from the time the indictment or information is dismissed or set aside.

(6) The period of limitation does not run during any time when the defendant is continuously absent from the state or has no reasonably ascertainable place of abode or work within the state, but in no case shall this provision extend the period of limitation otherwise applicable by more than 3 years.

**History.**—s. 78, Feb. 10, 1832; s. 1, ch. 4915, 1901; RS 2357; GS 3181, 3182; RGS 5011, 5012; CGL 7113, 7114; s. 1, ch. 16962, 1935; s. 10, ch. 26484, 1951; s. 109, ch. 70-339; s. 10, ch. 74-383; s. 1, ch. 76-275; s. 1, ch. 77-174; s. 12, ch. 78-435.

**Note.**—See former ss. 932.05, 932.06, 915.03, 932.465.

## CHAPTER 776

## JUSTIFIABLE USE OF FORCE

- 776.012 Use of force in defense of person.
- 776.031 Use of force in defense of others.
- 776.041 Use of force by aggressor.
- 776.05 Law enforcement officers; use of force in making an arrest.
- 776.051 Use of force in resisting or making an arrest; prohibition.
- 776.06 Deadly force.
- 776.07 Use of force to prevent escape.
- 776.08 Forcible felony.

**776.012 Use of force in defense of person.**—A person is justified in the use of force, except deadly force, against another when and to the extent that he reasonably believes that such conduct is necessary to defend himself or another against such other's imminent use of unlawful force. However, he is justified in the use of deadly force only if he reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or another or to prevent the imminent commission of a forcible felony.

*History.*—s. 13, ch. 74-383.

**776.031 Use of force in defense of others.**—A person is justified in the use of force, except deadly force, against another when and to the extent that he reasonably believes that such conduct is necessary to prevent or terminate such other's trespass on, or other tortious or criminal interference with, either real property other than a dwelling or personal property, lawfully in his possession or in the possession of another who is a member of his immediate family or household or of a person whose property he has a legal duty to protect. However, he is justified in the use of deadly force only if he reasonably believes that such force is necessary to prevent the imminent commission of a forcible felony.

*History.*—s. 13, ch. 74-383.

**776.041 Use of force by aggressor.**—The justification described in the preceding sections of this chapter is not available to a person who:

- (1) Is attempting to commit, committing, or escaping after the commission of, a forcible felony; or
- (2) Initially provokes the use of force against himself, unless:

(a) Such force is so great that he reasonably believes that he is in imminent danger of death or great bodily harm and that he has exhausted every reasonable means to escape such danger other than the use of force which is likely to cause death or great bodily harm to the assailant; or

(b) In good faith, he withdraws from physical contact with the assailant and indicates clearly to the assailant that he desires to withdraw and terminate the use of force, but the assailant continues or resumes the use of force.

*History.*—s. 13, ch. 74-383.

**776.05 Law enforcement officers; use of force in making an arrest.**—A law enforcement officer, or any person whom he has summoned or directed to assist him, need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. He is justified in the use of any force which he reasonably believes to be necessary to defend himself or another from bodily harm while making the arrest or when necessarily committed in retaking felons who have escaped or when necessarily committed in arresting felons fleeing from justice.

*History.*—s. 13, ch. 74-383; s. 1, ch. 75-64.

**776.051 Use of force in resisting or making an arrest; prohibition.**—

(1) A person is not justified in the use of force to resist an arrest by a law enforcement officer who is known, or reasonably appears, to be a law enforcement officer.

(2) A law enforcement officer, or any person whom he has summoned or directed to assist him, is not justified in the use of force if the arrest is unlawful and known by him to be unlawful.

*History.*—s. 13, ch. 74-383.

**776.06 Deadly force.**—"Deadly force" means force which is likely to cause death or great bodily harm and includes, but is not limited to:

(1) The firing of a firearm in the direction of the person to be arrested, even though no intent exists to kill or inflict great bodily harm; and

(2) The firing of a firearm at a vehicle in which the person to be arrested is riding.

*History.*—s. 13, ch. 74-383.

**776.07 Use of force to prevent escape.**—

(1) A law enforcement officer or other person who has an arrested person in his custody is justified in the use of any force which he reasonably believes to be necessary to prevent the escape of the arrested person from custody.

(2) A guard or other law enforcement officer is justified in the use of force, including deadly force, which he reasonably believes to be necessary to prevent the escape from a penal institution of a person whom the officer reasonably believes to be lawfully detained in such institution under sentence for an offense or awaiting trial or commitment for an offense.

*History.*—s. 13, ch. 74-383.

**776.08 Forcible felony.**—"Forcible felony" means treason; murder; manslaughter; sexual battery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.

*History.*—s. 13, ch. 74-383; s. 4, ch. 75-298; s. 289, ch. 79-400.

## CHAPTER 777

## PRINCIPALS AND ACCESSORIES; ATTEMPTS

777.011 Principal in first degree.

777.03 Accessory after the fact.

777.04 Attempts, solicitation, conspiracy, generally.

**777.011 Principal in first degree.**—Whoever commits any criminal offense against the state, whether felony or misdemeanor, or aids, abets, counsels, hires, or otherwise procures such offense to be committed, and such offense is committed or is attempted to be committed, is a principal in the first degree and may be charged, convicted, and punished as such, whether he is or is not actually or constructively present at the commission of such offense.

**History.**—s. 1, ch. 57-310; s. 11, ch. 74-383.

**Note.**—Former s. 776.011.

**777.03 Accessory after the fact.**—Whoever, not standing in the relation of husband or wife, parent or grandparent, child or grandchild, brother or sister, by consanguinity or affinity to the offender, maintains or assists the principal or accessory before the fact, or gives the offender any other aid, knowing that he had committed a felony or been accessory thereto before the fact, with intent that he shall avoid or escape detection, arrest, trial or punishment, shall be deemed an accessory after the fact, and shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 6, sub-ch. 11, ch. 1637, 1868; RS 2356; GS 3180; RGS 5010; CGL 7112; s. 700, ch. 71-136; s. 65, ch. 74-383.

**Note.**—Former s. 776.03.

cf.—s. 806.10 Obstructing extinguishment of fire.

s. 910.13 Jurisdiction and venue; accessory after the fact.

**777.04 Attempts, solicitation, conspiracy, generally.**—

(1) Whoever attempts to commit an offense prohibited by law and in such attempt does any act toward the commission of such an offense, but fails in the perpetration or is intercepted or prevented in the execution of the same, commits the offense of criminal attempt and shall, when no express provision is made by law for the punishment of such attempt, be punished as provided in subsection (4).

(2) Whoever solicits another to commit an offense prohibited by law and in the course of such solicitation commands, encourages, hires, or requests another person to engage in specific conduct which would constitute such offense or an attempt to commit such offense commits the offense of criminal solicitation and shall, when no express provision is

made by law for the punishment of such solicitation, be punished as provided in subsection (4).

(3) Whoever shall agree, conspire, combine, or confederate with another person or persons to commit any offense commits the offense of criminal conspiracy and shall, when no express provision is made by law for the punishment of such conspiracy, be punished as provided in subsection (4).

(4) Whoever commits the offense of criminal attempt, criminal solicitation, or criminal conspiracy shall be punished as follows:

(a) If the offense attempted, solicited, or conspired to is a capital felony, the person convicted shall be guilty of a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) If the offense attempted, solicited, or conspired to is a life felony or a felony of the first degree, the person convicted shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) If the offense attempted, solicited, or conspired to is a felony of the second degree or any burglary, the person convicted shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) If the offense attempted, solicited, or conspired to is a felony of the third degree, the person convicted shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(e) If the offense attempted, solicited, or conspired to is a misdemeanor of the first or second degree, the person convicted shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) It is a defense under this section that, under circumstances manifesting a complete and voluntary renunciation of his criminal purpose, the defendant:

(a) Abandoned his attempt to commit the offense or otherwise prevented its commission;

(b) After soliciting another person to commit an offense, persuaded such other person not to do so or otherwise prevented commission of the offense; or

(c) After conspiring with one or more persons to commit an offense, persuaded such persons not to do so or otherwise prevented commission of the offense.

**History.**—s. 8, sub-ch. 11, ch. 1637, 1868; RS 2594; GS 3517; RGS 5403; CGL 7544; s. 701, ch. 71-136; s. 1, ch. 72-245; s. 1, ch. 73-142; s. 12, ch. 74-383; s. 5, ch. 75-298.

**Note.**—Former s. 776.04.

cf.—s. 806.01 Arson.



## CHAPTER 782

## HOMICIDE

- 782.02 Justifiable use of deadly force.
- 782.03 Excusable homicide.
- 782.04 Murder.
- 782.07 Manslaughter.
- 782.071 Vehicular homicide.
- 782.08 Assisting self-murder.
- 782.09 Killing of unborn child by injury to mother.
- 782.11 Unnecessary killing to prevent unlawful act.

**782.02 Justifiable use of deadly force.**—The use of deadly force is justifiable when a person is resisting any attempt to murder such person or to commit any felony upon him or upon or in any dwelling house in which such person shall be.

**History.**—ss. 4, 5, ch. 1637, 1868; RS 2378; ch. 4967, 1901; s. 1, ch. 4964, 1901; GS 3203; RGS 5033; CGL 7135; s. 66, ch. 74-383; s. 1, ch. 75-24; s. 45, ch. 75-298.

**782.03 Excusable homicide.**—Homicide is excusable when committed by accident and misfortune in doing any lawful act by lawful means with usual ordinary caution, and without any unlawful intent, or by accident and misfortune in the heat of passion, upon any sudden and sufficient provocation, or upon a sudden combat, without any dangerous weapon being used and not done in a cruel or unusual manner.

**History.**—s. 6, ch. 1637, 1868; RS 2379; GS 3204; RGS 5034; CGL 7136; s. 1, ch. 75-13.

**782.04 Murder.**—

(1)(a) The unlawful killing of a human being, when perpetrated from a premeditated design to effect the death of the person killed or any human being, or when committed by a person engaged in the perpetration of, or in the attempt to perpetrate, any arson, sexual battery, robbery, burglary, kidnapping, aircraft piracy, or unlawful throwing, placing, or discharging of a destructive device or bomb, or which resulted from the unlawful distribution of opium or any synthetic or natural salt, compound, derivative, or preparation of opium by a person 18 years of age or older, when such drug is proven to be the proximate cause of the death of the user, shall be murder in the first degree and shall constitute a capital felony, punishable as provided in s. 775.082.

(b) In all cases under this section, the procedure set forth in s. 921.141 shall be followed in order to determine sentence of death or life imprisonment.

(2) The unlawful killing of a human being, when perpetrated by any act imminently dangerous to another and evincing a depraved mind regardless of human life, although without any premeditated design to effect the death of any particular individual, shall be murder in the second degree and shall constitute a felony of the first degree, punishable by imprisonment for a term of years not exceeding life or as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) When a person is killed in the perpetration of, or in the attempt to perpetrate, any arson, sexual battery, robbery, burglary, kidnapping, aircraft piracy, or unlawful throwing, placing, or discharging

of a destructive device or bomb by a person other than the person engaged in the perpetration of or in the attempt to perpetrate such felony, the person perpetrating or attempting to perpetrate such felony shall be guilty of murder in the second degree, which constitutes a felony of the first degree, punishable by imprisonment for a term of years not exceeding life or as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) The unlawful killing of a human being, when perpetrated without any design to effect death, by a person engaged in the perpetration of, or in the attempt to perpetrate, any felony other than any arson, sexual battery, robbery, burglary, kidnapping, aircraft piracy, or unlawful throwing, placing, or discharging of a destructive device or bomb, shall be murder in the third degree and shall constitute a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 2, ch. 1637, 1868; RS 2380; GS 3205; RGS 5035; s. 1, ch. 8470, 1921; CGL 7137; s. 1, ch. 28023, 1953; s. 712, ch. 71-136; s. 3, ch. 72-724; s. 14, ch. 74-383; s. 6, ch. 75-298; s. 1, ch. 76-141; s. 290, ch. 79-400.

**782.07 Manslaughter.**—The killing of a human being by the act, procurement, or culpable negligence of another, without lawful justification according to the provisions of chapter 776 and in cases in which such killing shall not be excusable homicide or murder, according to the provisions of this chapter, shall be deemed manslaughter and shall constitute a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—RS 2384; GS 3209; RGS 5039; CGL 7141; s. 715, ch. 71-136; s. 180, ch. 73-333; s. 15, ch. 74-383; s. 6, ch. 75-298.

cf.—s. 860.01 Death caused by operation of motor vehicle while intoxicated.

**782.071 Vehicular homicide.**—“Vehicular homicide” is the killing of a human being by the operation of a motor vehicle by another in a reckless manner likely to cause the death of, or great bodily harm to, another. Vehicular homicide is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 16, ch. 74-383; s. 6, ch. 75-298.

cf.—s. 860.01 Death caused by operation of motor vehicle while intoxicated.

**782.08 Assisting self-murder.**—Every person deliberately assisting another in the commission of self-murder shall be guilty of manslaughter, a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 9, ch. 1637, 1868; RS 2385; GS 3210; RGS 5040; CGL 7142; s. 716, ch. 71-136.

**782.09 Killing of unborn child by injury to mother.**—The willful killing of an unborn quick child, by any injury to the mother of such child which would be murder if it resulted in the death of such mother, shall be deemed manslaughter, a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 10, ch. 1637, 1868; RS 2386; GS 3211; RGS 5041; CGL 7143; s. 717, ch. 71-136.

**782.11 Unnecessary killing to prevent unlawful act.**—Whoever shall unnecessarily kill another, either while resisting an attempt by such other person to commit any felony, or to do any other unlawful act, or after such attempt shall have failed,

shall be deemed guilty of manslaughter, a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 13, ch. 1637, 1868; RS 2388; GS 3213; RGS 5043; CGL 7145; s. 719, ch. 71-136.

## CHAPTER 784

## ASSAULT; BATTERY; CULPABLE NEGLIGENCE

- 784.011 Assault.  
 784.021 Aggravated assault.  
 784.03 Battery.  
 784.045 Aggravated battery.  
 784.05 Culpable negligence.  
 784.07 Assault or battery of law enforcement officers or firefighters; reclassification of offenses.

**784.011 Assault.—**

(1) An "assault" is an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent.

(2) Whoever commits an assault shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 5, Feb. 10, 1832; RS 2400; GS 3226; RGS 5059; CGL 7161; s. 1, ch. 70-88; s. 729, ch. 71-136; s. 17, ch. 74-383; s. 7, ch. 75-298.

**Note.**—Former s. 784.02.  
 cf.—s. 231.06 Assault upon school teacher.

**784.021 Aggravated assault.—**

(1) An "aggravated assault" is an assault:

(a) With a deadly weapon without intent to kill;  
 or

(b) With an intent to commit a felony.

(2) Whoever commits an aggravated assault shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 2, ch. 3275, 1881; RS 2402; GS 3228; RGS 5061; CGL 7163; s. 1, ch. 29709, 1955; s. 1, ch. 57-345; s. 731, ch. 71-136; s. 18, ch. 74-383; s. 8, ch. 75-298.

**Note.**—Former s. 784.04.

**784.03 Battery.—**

(1) A person commits battery if he:

(a) Actually and intentionally touches or strikes another person against the will of the other; or

(b) Intentionally causes bodily harm to an individual.

(2) Whoever commits battery shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 5, Feb. 10, 1832; RS 2401; s. 1, ch. 5135, 1903; GS 3227; RGS 5060; CGL 7162; s. 2, ch. 70-88; s. 730, ch. 71-136; s. 19, ch. 74-383; s. 9, ch. 75-298.

**784.045 Aggravated battery.—**

(1) A person commits aggravated battery who, in committing battery:

(a) Intentionally or knowingly causes great bodi-

ly harm, permanent disability, or permanent disfigurement; or

(b) Uses a deadly weapon.

(2) Whoever commits aggravated battery shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 1, ch. 70-63; s. 732, ch. 71-136; s. 20, ch. 74-383; s. 10, ch. 75-298.

**784.05 Culpable negligence.—**

(1) Whoever, through culpable negligence, exposes another person to personal injury shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) Whoever through culpable negligence inflicts actual personal injury on another shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 1, ch. 5212, 1903; GS 3229; RGS 5062; CGL 7164; s. 733, ch. 71-136; s. 21, ch. 74-383; s. 11, ch. 75-298.

**784.07 Assault or battery of law enforcement officers or firefighters; reclassification of offenses.—**

(1)(a) As used in this section, the term "law enforcement officer" includes, but shall not be limited to, any sheriff, deputy sheriff, municipal police officer, highway patrol officer, beverage enforcement agent, county probation officer, officer of the Parole and Probation Commission, and law enforcement personnel of the Game and Fresh Water Fish Commission and the Departments of Natural Resources and Law Enforcement.

(b) "Firefighter" as used in this section shall mean any person employed by any public employer of this state whose duty it is to extinguish fires, to protect life or property, or to enforce municipal, county, and state fire prevention codes, as well as any law pertaining to the prevention and control of fires.

(2) Whenever any person is charged with knowingly committing an assault or battery upon a law enforcement officer or firefighter while the officer or firefighter is engaged in the lawful performance of his duties, the offense for which the person is charged shall be reclassified as follows:

(a) In the case of assault, from a misdemeanor of the second degree to a misdemeanor of the first degree.

(b) In the case of battery, from a misdemeanor of the first degree to a felony of the third degree.

**History.**—s. 1, ch. 76-75; s. 1, ch. 77-174; s. 22, ch. 79-8.



## CHAPTER 787

## KIDNAPPING; FALSE IMPRISONMENT; CUSTODY OFFENSES

- 787.01 Kidnapping.  
 787.02 False imprisonment.  
 787.03 Interference with custody.  
 787.04 Felony to remove children from state contrary to court order.

**787.01 Kidnapping.—**

(1)(a) "Kidnapping" means forcibly, secretly, or by threat confining, abducting, or imprisoning another person against his will and without lawful authority, with intent to:

1. Hold for ransom or reward or as a shield or hostage.
2. Commit or facilitate commission of any felony.
3. Inflict bodily harm upon or to terrorize the victim or another person.
4. Interfere with the performance of any governmental or political function.

(b) Confinement of a child under the age of 13 is against his will within the meaning of subsection (1) if such confinement is without the consent of his parent or legal guardian.

(2) Whoever kidnaps a person is guilty of a felony of the first degree, punishable by imprisonment for a term of years not exceeding life or as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 1, ch. 5907, 1909; RGS 5058; CGL 7160; s. 1, ch. 16063, 1933; s. 784, ch. 71-136; s. 8, ch. 72-724; s. 22, ch. 74-383; s. 12, ch. 75-298; s. 1, ch. 77-174.  
**Note.**—Former s. 805.02.

**787.02 False imprisonment.—**

(1)(a) "False imprisonment" means forcibly, by threat, or secretly confining, abducting, imprisoning, or restraining another person without lawful authority and against his will with any purpose other than those referred to in s. 787.01.

(b) Confinement of a child under the age of 13 is against his will within the meaning of this section if such confinement is without the consent of his parent or legal guardian.

(2) Whoever commits the offense of false imprisonment shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 43, sub-ch. 3, ch. 1637, 1868; RS 2399; GS 3225; RGS 5057; CGL 7159; s. 783, ch. 71-136; s. 23, ch. 74-383; s. 13, ch. 75-298.

**Note.**—Former s. 805.01.  
 cf.—s. 910.14 Venue of prosecution for kidnapping.

**787.03 Interference with custody.—**

(1) Whoever, without lawful authority, knowing-

ly or recklessly takes or entices any child 17 years of age or under or any incompetent person from the custody of his parent, guardian, or other lawful custodian commits the offense of interference with custody and shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) It is a defense that:

(a) The defendant reasonably believes that his action was necessary to preserve the child or the incompetent person from danger to his welfare.

(b) The child or incompetent person was taken away at his own instigation without enticement and without purpose to commit a criminal offense with or against the child or incompetent person.

(3) Proof that a child was 17 years of age or under creates the presumption that the defendant knew the child's age or acted in reckless disregard thereof.

**History.**—s. 24, ch. 74-383; s. 14, ch. 75-298; s. 1, ch. 77-174.

**787.04 Felony to remove children from state contrary to court order.—**

(1) It is unlawful for any person, in violation of a court order, to lead, take, entice or remove a child beyond the limits of this state with personal knowledge of the order.

(2) It is unlawful for any person, with criminal intent, to lead, take, entice or remove a child beyond the limits of this state during the pendency of any action or proceedings affecting custody of a child after having received notice as required by law of the pendency of the action or proceeding, without the permission of the court in which the action or proceeding is pending.

(3) It is unlawful for any person, who has carried beyond the limits of this state any child whose custody is involved in any action or proceeding pending in this state, pursuant to the order of the court in which the action or proceeding is pending, or pursuant to the permission of the court, thereafter, to fail to produce the child in the court or deliver the child to the person designated by the court.

(4) Any person convicted of a violation of this law shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 1, ch. 29654, 1955; s. 1, ch. 57-337; s. 47, ch. 67-254; s. 785, ch. 71-136; s. 25, ch. 74-383; s. 15, ch. 75-298.

**Note.**—Former ss. 65.141, 805.03.

## CHAPTER 790

## WEAPONS AND FIREARMS

- 790.001 Definitions.
- 790.01 Carrying concealed weapons.
- 790.02 Officer to arrest without warrant and upon probable cause.
- 790.05 Penalty for carrying pistol, electric weapon or device, or repeating rifle without first obtaining license.
- 790.051 Exemption from licensing requirements; law enforcement officers.
- 790.052 Carrying concealed firearms; off-duty law enforcement officers.
- 790.06 How license procured.
- 790.07 Persons engaged in criminal offense, having weapons.
- 790.08 Taking possession of weapons and arms; reports; disposition; custody.
- 790.09 Manufacturing or selling slungshot.
- 790.10 Improper exhibition of dangerous weapons or firearms.
- 790.11 Carrying firearms in national forests prohibited.
- 790.12 Permit may be granted by county commissioners.
- 790.14 Penalty for violation of ss. 790.11 and 790.12.
- 790.15 Discharging firearm in public.
- 790.16 Discharging machine guns; penalty.
- 790.161 Making, possessing, throwing, placing, or discharging any destructive device or attempt so to do, felony; penalties.
- 790.162 Threat to throw, place, or discharge any destructive device, felony; penalty.
- 790.163 False reports of bombing, etc., felony; penalty.
- 790.164 False reports of bombing state-owned property, etc., felony; penalty; reward.
- 790.17 Furnishing weapons to minors under 18 years of age, etc.
- 790.18 Selling arms to minors by dealers.
- 790.19 Shooting into or throwing deadly missiles into dwellings, public or private buildings, occupied or not occupied; vessels, aircraft, buses, railroad cars, streetcars, or other vehicles.
- 790.21 Duty of sheriff in such cases.
- 790.22 Use of BB guns, air or gas-operated guns, electric weapons or devices, or firearms by child under 16; limitation.
- 790.221 Possession of short-barreled rifle, short-barreled shotgun, or machine gun; penalty.
- 790.23 Felons; possession of firearms or electric weapons or devices unlawful; exception; penalty.
- 790.24 Report of medical treatment of gunshot wounds; penalty for violation.
- 790.25 Lawful ownership, possession, and use of firearms and other weapons.
- 790.26 Assembly of handguns.
- 790.27 Alteration or removal of firearm serial number or possession, sale, or delivery of firearm with serial number altered or removed prohibited; penalties.
- 790.28 Purchase of rifles and shotguns in contiguous states.
- 790.001 Definitions.**—The following words and phrases, when used in this chapter, shall, for the purposes of this chapter, have the meanings respectively ascribed to them in this chapter, except where the context otherwise requires:
- (1) "Antique firearm" means any firearm manufactured in or before 1918 (including any matchlock, flintlock, percussion cap, or similar early type of ignition system) or replica thereof, whether actually manufactured before or after the year 1918, and also any firearm using fixed ammunition manufactured in or before 1918, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.
- (2) "Concealed firearm" means any firearm, as defined in subsection (6), when the same is carried on or about a person in such a manner as to conceal said firearm from the ordinary sight of another person.
- (3)(a) "Concealed weapon" means any dirk, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or any other deadly weapon carried on or about a person in such a manner as to conceal said weapon from the ordinary sight of another person.
- (b) "Tear gas gun," "chemical weapon," or "device" shall apply to all weapons of such nature except those designed to be carried in a woman's handbag or a man's pants or coat pocket or designed as a pocket pencil or pen and containing not more than one-half ounce of chemical.
- (4) "Destructive device" means any explosive, incendiary, or poison gas bomb, grenade, mine, rocket, missile, or similar device; and includes any type of weapon which will, or is designed to, or may readily be converted to, expel a projectile by the action of any explosive and has a barrel with a bore of one-half inch or more in diameter and ammunition for such destructive devices, but not including shotgun shells or any other ammunition designed for use in a firearm other than a destructive device. "Destructive device" shall not include:
- (a) A device which is not designed, redesigned, used, or intended for use as a weapon;
- (b) Any device, although originally designed as a weapon, which is redesigned so that it may be used solely as a signaling, line-throwing, safety, or similar device;
- (c) Any shotgun other than a short-barreled shotgun; or
- (d) Any nonautomatic rifle (other than a short-barreled rifle) generally recognized or particularly suitable for use for the hunting of big game.
- (5) "Explosive" means any chemical compound or mixture that has the property of yielding readily to combustion or oxidation upon application of heat, flame, or shock, including but not limited to dynamite, nitroglycerin, trinitrotoluene, or ammonium

nitrate when combined with other ingredients to form an explosive mixture, blasting caps, and detonators; but not including:

(a) Shotgun shells, cartridges or ammunition for firearms;

(b) Fireworks as defined in s. 791.01;

(c) Smokeless propellant powder or small arms ammunition primers, if possessed, purchased, sold, transported, or used in compliance with s. 552.241;

(d) Black powder in quantities not to exceed that authorized by chapter 552, or by any rules or regulations promulgated thereunder by the Department of Insurance, when used for, or intended to be used for, the manufacture of target and sporting ammunition or for use in muzzle-loading flint or percussion weapons.

The exclusions contained in paragraphs (a)-(d) shall not apply to the term "explosive" as used in the definition of "firearm" in subsection (6).

(6) "Firearm" means any weapon (including a starter gun) which will, or is designed to, or may readily be converted to, expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. The term "firearm" shall not include an antique firearm.

(7) "Indictment" means an indictment or an information in any court under which a crime punishable by imprisonment for a term exceeding 1 year may be prosecuted.

(8) "Law enforcement officer" means:

(a) All officers or employees of the United States or the State of Florida, or any agency, commission, department, board, division, municipality, or subdivision thereof, who have authority to make arrests;

(b) Officers or employees of the United States or the State of Florida, or any agency, commission, department, board, division, municipality, or subdivision thereof, duly authorized to carry a concealed weapon;

(c) Members of the Armed Forces of the United States, the organized reserves, state militia, or Florida National Guard, when on duty, when preparing themselves for, or going to or from, military duty, or under orders;

(d) An employee of the state prisons or correctional systems who has been so designated by the Department of Corrections or by a superintendent of an institution;

(e) All peace officers;

(f) All State Attorneys and United States Attorneys and their respective assistants and investigators.

(9) "Machine gun" means any firearm, as defined herein, which shoots, or is designed to shoot, automatically or semiautomatically, more than one shot, without manually reloading, by a single function of the trigger.

(10) "Short-barreled shotgun" means a shotgun having one or more barrels less than 18 inches in length and any weapon made from a shotgun (whether by alteration, modification, or otherwise) if such weapon as modified has an overall length of less than 26 inches.

(11) "Short-barreled rifle" means a rifle having

one or more barrels less than 16 inches in length and any weapon made from a rifle (whether by alteration, modification, or otherwise) if such weapon as modified has an overall length of less than 26 inches.

(12) "Slungshot" means a small mass of metal, stone, sand, or similar material fixed on a flexible handle, strap, or the like, used as a weapon.

(13) "Weapon" means any dirk, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or any other deadly weapon except a firearm or a common pocketknife.

(14) "Electric weapon or device" means any device which, through the application or use of electrical current, is designed, redesigned, used, or intended to be used for offensive or defensive purposes, the destruction of life, or the infliction of injury.

**History.**—s. 1, ch. 69-306; ss. 13, 19, 35, ch. 69-106; ss. 1, 2, ch. 70-441; s. 32, ch. 73-334; s. 1, ch. 76-165; s. 12, ch. 77-120; s. 1, ch. 78-200; s. 19, ch. 79-3; s. 1, ch. 79-58.

#### **790.01 Carrying concealed weapons.—**

(1) Whoever shall carry a concealed weapon or electric weapon or device on or about his person shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Whoever shall carry a concealed firearm on or about his person shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) Nothing in this section shall relate to persons licensed and regulated as defined in chapter 493 when acting in the performance of duties as provided in said chapter.

(4) Nothing in this section shall relate to persons licensed as set forth in ss. 790.05 and 790.06.

**History.**—s. 1, ch. 4929, 1901; GS 3262; RGS 5095; CGL 7197; s. 1, ch. 67-165; s. 2, ch. 69-306; s. 739, ch. 71-136; s. 2, ch. 76-165.

#### **790.02 Officer to arrest without warrant and upon probable cause.—**

The carrying of a concealed weapon is declared a breach of peace, and any officer authorized to make arrests under the laws of this state may make arrests without warrant of persons violating the provisions of s. 790.01 when said officer has reasonable grounds or probable cause to believe that the offense of carrying a concealed weapon is being committed.

**History.**—s. 1, ch. 4929, 1901; GS 3263; RGS 5096; CGL 7198; s. 3, ch. 69-306; cf.—s. 901.15 When arrest by officer without warrant lawful.

#### **790.05 Penalty for carrying pistol, electric weapon or device, or repeating rifle without first obtaining license.—**

Whoever shall carry around with him, or have in his manual possession, in any county in this state, any pistol, electric weapon or device, or Winchester rifle or other repeating rifle without having a license from the county commissioners of the respective counties of this state shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084; provided, this section shall not apply to sheriffs, deputy sheriffs, city or town marshals, policemen, or United States marshals or their deputies as to the carrying of concealed weapons.

**History.**—s. 1, ch. 4147, 1893; s. 1, ch. 4928, 1901; GS 3267; RGS 5100; CGL 7202; s. 740, ch. 71-136; s. 32, ch. 73-334; s. 2, ch. 76-165.



**790.051 Exemption from licensing requirements; law enforcement officers.**—Law enforcement officers are exempt from the licensing and penal provisions of this chapter when acting at any time within the scope or course of their official duties or when acting at any time in the line of or performance of duty.

*History.*—s. 11, ch. 69-306.

**790.052 Carrying concealed firearms; off-duty law enforcement officers.**—

(1) All full-time police officers, Florida highway patrolmen, agents of the Department of Law Enforcement, and sheriffs' deputies shall have the right to carry, on or about their persons, concealed firearms, during off-duty hours, at the discretion of their superior officers, and may perform those law enforcement functions that they normally perform during duty hours, utilizing their weapons in a manner which is reasonably expected of on-duty officers in similar situations.

(2) The superior officer of any police department or sheriff's office or the Florida Highway Patrol, if he elects to direct the officers under his supervision to carry concealed firearms while off duty, shall file a statement with the governing body of such department of his instructions and requirements relating to the carrying of said firearms.

(3) No police officer, while off duty, shall carry a concealed firearm hereunder unless his bond shall cover his actions while off duty.

*History.*—ss. 1-3, ch. 72-84; s. 235, ch. 77-104; s. 23, ch. 79-8.

**790.06 How license procured.**—The county commissioners of the respective counties of this state may, at any regular or special meeting, adopt by ordinance a uniform policy and procedure for the issuance of licenses to carry concealed pistols on the person. Such licenses shall in any event be issued only to persons who are 18 years of age or older and of good moral character, for a period of 2 years, upon such person giving a bond payable to the Governor of the state in the sum of \$100, conditioned for the proper and legitimate use of said weapons, with sureties to be approved by the county commissioners. Pursuant to the express delegation of powers contained in chapter 125, the establishment of said uniform policy shall be based upon, but not limited to, the following criteria:

(1) The applicant is not an unlawful user of, or addicted to, any controlled substance defined in chapter 893.

(2) The applicant has not been convicted of a violation of s. 790.07 or an equivalent offense under federal or state law, unless 2 years have elapsed since the person has been restored to his civil rights.

(3) The applicant has not been adjudicated a mental incompetent or has not been committed to a mental institution as being dangerous to himself or others, unless he possesses a certificate of a medical doctor licensed in this state that he no longer suffers from disability.

The commissioners shall keep a record of the name of each person taking out such a license, the name

of the maker of the firearm so licensed to be carried, and the caliber and number of the same.

*History.*—s. 2, ch. 4147, 1893; s. 1, ch. 5139, 1903; GS 3268; RGS 5101; CGL 7203; s. 2, ch. 76-165; s. 67, ch. 77-121; s. 1, ch. 77-302; s. 176, ch. 79-164.

**790.07 Persons engaged in criminal offense, having weapons.**—

(1) Whoever, while committing or attempting to commit any felony or while under indictment, displays, uses, threatens, or attempts to use any weapon or electric weapon or device or carries a concealed weapon is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) Whoever, while committing or attempting to commit any felony or while under indictment, displays, uses, threatens, or attempts to use any firearm or carries a concealed firearm is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, and s. 775.084.

(3) The following crimes are excluded from application of this section: Antitrust violations, unfair trade practices, restraints of trade, nonsupport of dependents, bigamy, or other similar offenses.

(4) Whoever, having previously been convicted of a violation of subsection (1) or subsection (2) and, subsequent to such conviction, displays, uses, threatens, or attempts to use any weapon, firearm, or electric weapon or device, carries a concealed weapon, or carries a concealed firearm while committing or attempting to commit any felony or while under indictment is guilty of a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Sentence shall not be suspended or deferred under the provisions of this subsection.

*History.*—s. 10, ch. 1637, 1868; RS 2423; s. 2, ch. 4124, 1893; GS 3269; RGS 5102; CGL 7204; s. 4, ch. 69-306; s. 741, ch. 71-136; s. 2, ch. 76-165.

**790.08 Taking possession of weapons and arms; reports; disposition; custody.**—

(1) Every officer making an arrest under the preceding section, or under any other law or municipal ordinance within the state, shall take possession of any weapons, electric weapons or devices, or arms mentioned in the preceding section found upon the person arrested and deliver them to the sheriff of the county, or the chief of police of the municipality wherein the arrest is made, who shall retain the same until after the trial of the person arrested.

(2) If the person arrested as aforesaid be convicted of violating s. 790.07, or of a similar offense under any municipal ordinance, or any other offense involving the use or attempted use of such weapons, electric weapons or devices, or arms, such weapons, electric weapons or devices, or arms shall become forfeited to the state, without any order of forfeiture being necessary, although the making of such an order shall be deemed proper, and such weapons, electric weapons or devices, or arms shall be forthwith delivered to the sheriff by the chief of police or other person having custody thereof, and the sheriff is hereby made the custodian of such weapons, electric weapons or devices, and arms for the state.

(3) If the person arrested as aforesaid be acquitted of the offenses mentioned in subsection (2), the said weapons, electric weapons or devices, or arms taken from him as aforesaid shall be returned to

him; however, if he fails to call for or receive the same within 60 days from and after his acquittal or the dismissal of the charges against him, the same shall be delivered to the sheriff as aforesaid to be held by him as hereinafter provided. This subsection shall likewise apply to persons and their weapons, electric weapons or devices, or arms who have heretofore been acquitted or the charges against them dismissed.

(4) All such weapons, electric weapons or devices, and arms now in, or hereafter coming into, the hands of any of the peace officers of this state or any of its political subdivisions, which have been found abandoned or otherwise discarded, or left in their hands and not reclaimed by the owners shall, within 60 days, be delivered by such peace officers to the sheriff of the county aforesaid.

(5) Weapons, electric weapons or devices, and arms coming into the hands of the sheriff pursuant to subsections (3) and (4) aforesaid shall, unless reclaimed by the owner thereof within 6 months from the date the same come into the hands of the said sheriff, become forfeited to the state, and no action or proceeding for their recovery shall thereafter be maintained in this state.

(6) Weapons, electric weapons or devices, and arms coming into the hands of the sheriff as aforesaid shall be listed, kept, and held by him as custodian for the state. Any or all such weapons, electric weapons or devices, and arms suitable for use by the sheriff may be so used. All such weapons, electric weapons or devices, and arms not needed by the said sheriff may be loaned to any other department of the state or to any county or municipality having use for such weapons, electric weapons or devices, and arms. The sheriff shall take the receipt of such other department, county, or municipality for such weapons, electric weapons or devices, and arms loaned to them. All weapons, electric weapons or devices, and arms which are not needed or which are useless or unfit for use shall be destroyed or otherwise disposed of by the sheriff as provided in chapter 705. All sums received from the sale or other disposition of the said weapon, electric weapons or devices, or arms disposed of by the sheriff under chapter 705 as aforesaid shall be paid into the State Treasury for the benefit of the State School Fund and shall become a part thereof.

(7) All weapons, electric weapons or devices, and arms confiscated, loaned, or otherwise disposed of by the sheriff shall be reported by the sheriffs to the Department of Law Enforcement or its successor. Such a report, giving serial number and other complete description, shall be filed by the 10th of each month, on a form prescribed and furnished by the department.

(8) This section shall not apply to any municipality in any county having home rule under the State Constitution.

**History.**—s. 3, ch. 3620, 1885; RS 2424; GS 3270; RGS 5103; CGL 7205; s. 1, ch. 22049, 1943; s. 1, ch. 65-189; ss. 1-8, ch. 67-523; s. 3, ch. 67-2207; ss. 20, 35, ch. 69-106; s. 2, ch. 76-165; s. 24, ch. 79-8.

**790.09 Manufacturing or selling slungshot.**—Whoever manufactures or causes to be manufactured, or sells or exposes for sale any instrument or weapon of the kind usually known as slungshot, or

metallic knuckles, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 11, ch. 1637, 1868; RS 2425; s. 3, ch. 4124, 1893; GS 3271; RGS 5104; CGL 7206; s. 742, ch. 71-136.

**790.10 Improper exhibition of dangerous weapons or firearms.**—If any person having or carrying any dirk, sword, sword cane, firearm, electric weapon or device, or other weapon shall, in the presence of one or more persons, exhibit the same in a rude, careless, angry, or threatening manner, not in necessary self-defense, the person so offending shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 1, ch. 4532, 1897; GS 3272; RGS 5105; CGL 7207; s. 5, ch. 69-306; s. 743, ch. 71-136; s. 2, ch. 76-165.

**790.11 Carrying firearms in national forests prohibited.**—Except during the hunting season as established by law, no person shall carry, on or about his person, or in any vehicle in which such person may be riding, or on any animal which such person may be using, within the limits of a national forest area within the state, any gun or firearm of any description whatever, without first having obtained a permit as hereinafter prescribed except on state roads when securely locked within a vehicle.

**History.**—s. 1, ch. 17911, 1937; CGL 1940 Supp. 7203(5); s. 1, ch. 65-188.

**790.12 Permit may be granted by county commissioners.**—The board of county commissioners of the county, or counties, where such national forest area is located, may grant special permit for the carrying of firearms to be specifically described in such permit, when the granting of such permit shall have been recommended in writing by the officer or employee of the United States Government in charge of such national forest area; and, where such area lies in more than one county, such permit must be granted by the board of county commissioners of each of the several counties involved before the same shall be valid.

**History.**—s. 2, ch. 17911, 1937; CGL 1940 Supp. 7203(6).

**790.14 Penalty for violation of ss. 790.11 and 790.12.**—Any person violating the provisions of ss. 790.11 and 790.12 shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 4, ch. 17911, 1937; CGL 1940 Supp. 7203(8); s. 7, ch. 22858, 1945; s. 744, ch. 71-136.

**790.15 Discharging firearm in public.**—Any person who knowingly discharges a firearm in any public place or on the right-of-way of any paved public road, highway, or street or whosoever knowingly discharges any firearm over the right-of-way of any paved public road, highway, or street or over any occupied premises is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. This section does not apply to a person lawfully defending life or property or performing official duties requiring the discharge of a firearm or

to a person discharging a firearm on public roads or properties expressly approved for hunting by the Game and Fresh Water Fish Commission or Division of Forestry.

**History.**—s. 1, ch. 3289, 1881; RS 2683; GS 3626; RGS 5557; CGL 7743; s. 1, ch. 61-334; s. 745, ch. 71-136; s. 1, ch. 78-17.  
cf.—Ch. 16249, 1933 Discharging firearms upon Tamiami Trail.

#### **790.16 Discharging machine guns; penalty.—**

(1) It is unlawful for any person to shoot or discharge any machine gun upon, across, or along any road, street, or highway in the state; upon or across any public park in the state; or in, upon, or across any public place where people are accustomed to assemble in the state. The discharge of such machine gun in, upon, or across such public street; in, upon, or across such public park; or in, upon, or across such public place, whether indoors or outdoors, including all theaters and athletic stadiums, with intent to do bodily harm to any person or with intent to do damage to property not resulting in the death of another person shall be a felony of the first degree, punishable as provided in s. 775.082. A sentence not exceeding life imprisonment is specifically authorized when great bodily harm to another or serious disruption of governmental operations results.

(2) This section shall not apply to the use of such machine guns by any United States or state militia or by any law enforcement officer while in the discharge of his lawful duty in suppressing riots and disorderly conduct and in preserving and protecting the public peace or in the preservation of public property, or when said use is authorized by law.

**History.**—s. 1, ch. 16111, 1933; CGL 1936 Supp. 7748(1); s. 746, ch. 71-136; s. 5, ch. 72-724; s. 1, ch. 76-38.

**790.161 Making, possessing, throwing, placing, or discharging any destructive device or attempt so to do, felony; penalties.—**A person who makes, possesses, throws, places, discharges, or attempts to discharge any destructive device, with intent to do bodily harm to any person or with intent to do damage to property:

(1) Shall be guilty of a felony of the second degree, punishable as provided in s. 775.082 or s. 775.084.

(2) If the act results in a disruption of governmental operations, commerce, or the private affairs of another person, shall be guilty of a felony of the second degree, punishable as provided in s. 775.082 or s. 775.084, and the person shall be required to serve a term of imprisonment of not less than 5 calendar years before becoming eligible for parole.

(3) If the act results in bodily harm to another person or in property damage, shall be guilty of a felony of the first degree, punishable as provided in s. 775.082 or s. 775.084, and the person shall be required to serve a term of imprisonment of not less than 10 calendar years before becoming eligible for parole.

(4) If the act results in the death of another person, shall be guilty of a capital felony, punishable by death. In the event the death penalty in a capital felony is held to be unconstitutional by the Florida Supreme Court or the United States Supreme Court, the court having jurisdiction over a person previously sentenced to death for a capital felony shall cause such person to be brought before the court, and the

court shall sentence such person to life imprisonment, and such person shall be required to serve a term of imprisonment of not less than 25 calendar years before becoming eligible for parole.

**History.**—s. 1, ch. 59-29; s. 6, ch. 69-306; s. 1, ch. 70-85; s. 747, ch. 71-136; s. 6, ch. 72-724; s. 2, ch. 76-38.

**790.162 Threat to throw, place, or discharge any destructive device, felony; penalty.—**It is unlawful for any person to threaten to throw, place, or discharge any destructive device with intent to do bodily harm to any person or with intent to do damage to any property of any person, and any person convicted thereof shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 2, ch. 59-29; s. 7, ch. 69-306; s. 748, ch. 71-136.

**790.163 False reports of bombing, etc., felony; penalty.—**It shall be unlawful for any person to make a false report, with intent to deceive, mislead, or otherwise misinform any person, concerning the placing or planting of any bomb, dynamite, or other deadly explosive and any person convicted thereof shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 3, ch. 59-29; s. 749, ch. 71-136.

**790.164 False reports of bombing state-owned property, etc., felony; penalty; reward.—**

(1) It shall be unlawful for any person to make a false report, with intent to deceive, mislead, or otherwise misinform any person, concerning the placing or planting of any bomb, dynamite, or other deadly explosive, or concerning any act of arson or other violence to property owned by the state or any political subdivision. Any person violating the provisions of this subsection shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2)(a) There shall be a \$5,000 reward for the giving of information to any law enforcement agency in the state, which information leads to the arrest and conviction of any person violating the provisions of this section. Any person claiming such reward shall apply to the law enforcement agency developing the case and be paid by the Department of Law Enforcement from the deficiency fund.

(b) There shall be only one reward given for each case, regardless of how many persons are arrested and convicted in connection with the case and regardless of how many persons submit claims for the reward.

(c) The Department of Law Enforcement shall establish procedures to be used by all reward applicants, and the circuit judge in whose jurisdiction the action occurs shall review all such applications and make final determination as to those applicants entitled to receive an award.

**History.**—ss. 2, 2A, ch. 71-306; s. 1, ch. 76-146; s. 236, ch. 77-104; s. 25, ch. 79-8.

**790.17 Furnishing weapons to minors under 18 years of age, etc.—**Whoever sells, hires, barter, lends, or gives any minor under 18 years of age any pistol, dirk, electric weapon or device, or other arm or weapon, other than an ordinary pocketknife,



without permission of the parent of such minor, or the person having charge of such minor, or sells, hires, barters, lends, or gives to any person of unsound mind an electric weapon or device or any dangerous weapon, other than an ordinary pocketknife, is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—ss. 1, 2, ch. 3285, 1881; RS 2684; GS 3627; RGS 5558; CGL 7744; s. 1, ch. 65-187; s. 750, ch. 71-136; s. 2, ch. 76-165.

**790.18 Selling arms to minors by dealers.**—It is unlawful for any dealer in arms to sell to minors any pistol, Springfield rifle or other repeating rifle, bowie knife or dirk knife, brass knuckles, slungshot, or electric weapon or device, and every person violating this section shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 11, ch. 6421, 1913; RGS 5559; CGL 7745; s. 751, ch. 71-136; s. 2, ch. 76-165.

**790.19 Shooting into or throwing deadly missiles into dwellings, public or private buildings, occupied or not occupied; vessels, aircraft, buses, railroad cars, streetcars, or other vehicles.**—Whoever, wantonly or maliciously, shoots at, within, or into, or throws any missile or hurls or projects a stone or other hard substance which would produce death or great bodily harm, at, within, or in any public or private building, occupied or unoccupied, or public or private bus or any train, locomotive, railway car, caboose, cable railway car, street railway car, monorail car, or vehicle of any kind which is being used or occupied by any person, or any boat, vessel, ship, or barge lying in or plying the waters of this state, or aircraft flying through the airspace of this state shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 2, ch. 3281, 1881; RS 2696; ss. 1, 2, ch. 4987, 1901; ss. 1, 2, ch. 4988, 1901; GS 3628; RGS 5560; CGL 7746; s. 1, ch. 59-458; s. 752, ch. 71-136; s. 1, ch. 74-67.

**790.21 Duty of sheriff in such cases.**—Any sheriff or deputy sheriff of any county where a river or water is the dividing line between two counties, or of such county in which the violation occurred, may board any passenger boat, with or without warrant, if he has reason to believe that any person on board said passenger boat has violated any of the provisions of the preceding section, and take into his custody any and all persons violating or who have violated any of the provisions thereof. Said sheriff or deputy sheriff shall, as soon as practical thereafter, appear before the proper court and cause a formal charge to be made. The trial of any persons violating the provisions of said section may be had in the county wherein the arrest was made.

**History.**—s. 4, ch. 5169, 1903; GS 3630; RGS 5562; CGL 7748; s. 32, ch. 73-334.

**790.22 Use of BB guns, air or gas-operated guns, electric weapons or devices, or firearms by child under 16; limitation.**—

(1) The use for any purpose whatsoever of BB guns, air or gas-operated guns, electric weapons or devices, or firearms as defined in s. 790.001 by any child under the age of 16 years is prohibited unless

such use is under the supervision and in the presence of an adult.

(2) Any adult responsible for the welfare of any child under the age of 16 years who knowingly permits such child to use or have in his possession any BB gun, air or gas-operated gun, electric weapon or device, or firearm in violation of the provisions of subsection (1) of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—ss. 1, 2, ch. 26946, 1951; s. 8, ch. 69-306; s. 753, ch. 71-136; s. 2, ch. 76-165.

**790.221 Possession of short-barreled rifle, short-barreled shotgun, or machine gun; penalty.**—

(1) It is unlawful for any person to own or to have in his care, custody, possession, or control any short-barreled rifle, short-barreled shotgun, or machine gun which is, or may readily be made, operable; but this section shall not apply to antique firearms.

(2) Any person convicted of violating this section is guilty of a felony and upon conviction thereof shall be punished by imprisonment in the state penitentiary not to exceed 5 years.

(3) Firearms in violation hereof which are lawfully owned and possessed under provisions of federal law are excepted.

**History.**—s. 10, ch. 69-306.

**790.23 Felons; possession of firearms or electric weapons or devices unlawful; exception; penalty.**—

(1) It is unlawful for any person who has been convicted of a felony in the courts of this state or of a crime against the United States which is designated as a felony or convicted of an offense in any other state, territory, or country punishable by imprisonment for a term exceeding 1 year to own or to have in his care, custody, possession, or control any firearm or electric weapon or device or to carry a concealed weapon, including all tear gas guns and chemical weapons or devices.

(2) This section shall not apply to a person convicted of a felony whose civil rights have been restored.

(3) Any person convicted of violating this section is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—ss. 1-3, ch. 29766, 1955; s. 1, ch. 63-31; s. 9, ch. 69-306; s. 754, ch. 71-136; s. 1, ch. 71-318; s. 169, ch. 71-355; s. 2, ch. 76-165.

**790.24 Report of medical treatment of gunshot wounds; penalty for violation.**—Any physician, nurse, or employee thereof and any employee of a hospital, sanitarium, clinic, or nursing home knowingly treating any person suffering from a gunshot wound or other wound indicating violence, or receiving a request for such treatment shall report the same immediately to the sheriff's department of the county in which said treatment is administered or request therefor received. Any such person willfully failing to report such treatment or request therefor shall be guilty of a misdemeanor of the first

degree, punishable as provided in s. 775.082 or s. 775.083.

*History.*—s. 1, ch. 59-35; s. 755, ch. 71-136.

**790.25 Lawful ownership, possession, and use of firearms and other weapons.—**

(1) **DECLARATION OF POLICY.**—The Legislature finds as a matter of public policy and fact that it is necessary to promote firearms safety and to curb and prevent the use of firearms and other weapons in crime and by incompetent persons without prohibiting the lawful use in defense of life, home, and property, and the use by United States or state military organizations, and as otherwise now authorized by law, including the right to use and own firearms for target practice and marksmanship on target practice ranges or other lawful places, and lawful hunting and other lawful purposes.

(2) **LAWFUL USES.**—This section shall not authorize carrying a concealed weapon without a permit, as prohibited by s. 790.01 and s. 790.02. The protections of this section shall not apply to the following:

(a) A person who has been adjudged mentally incompetent, who is addicted to the use of narcotics or any similar drug, or is a habitual or chronic alcoholic, or any person using weapons or firearms in violation of ss. 790.07-790.12, 790.14-790.19, 790.21-790.24;

(b) Vagrants and other undesirable persons as defined in s. 856.02;

(c) A person in or about a place of nuisance as defined in s. 823.05, unless such person shall be there for law enforcement or some other lawful purpose.

(3) **EXCEPTIONS.**—The provisions of ss. 790.05 and 790.06 shall not apply in the following instances and, despite said sections, it shall be lawful for the following persons to own, possess, and lawfully use firearms and other weapons, ammunition, and supplies for lawful purposes:

(a) Members of the Militia, National Guard, Florida State Guard, Army, Navy, Air Force, Marine Corps, Coast Guard, the organized reserves, and other armed forces of the state and of the United States, when on duty, or when training or preparing themselves for military duty, or while subject to recall or mobilization;

(b) Citizens of Florida subject to duty in the Armed Forces under s. 2, Art. X of the State Constitution, chapters 250 and 251, and under federal laws, when on duty or when training or preparing themselves for military duty;

(c) Persons carrying out or training for civil defense duties under chapter 252;

(d) Sheriffs, marshals, prison or jail wardens, policemen, Florida highway patrolmen, game wardens, revenue officers, forest officials, special officers appointed under the provisions of chapter 354, and other peace and law enforcement officers, their deputies and assistants, full-time paid peace officers of other states and of the Federal Government who are carrying out official duties while in Florida;

(e) Officers or employees of the state or United States duly authorized to carry a concealed weapon;

(f) Guards or messengers of common carriers, express companies, armored car carriers, mail carriers, banks, and other financial institutions, while

actually employed in and about the shipment, transportation, or delivery of any money, treasure, bullion, bonds, or other thing of value within this state;

(g) Regularly enrolled members of any organization duly authorized to purchase or receive weapons from the United States or from this state, or regularly enrolled members of clubs organized for target, skeet, or trapshooting, while at, or going to or from shooting practice; or regularly enrolled members of clubs organized for modern or antique firearms collecting, while such members are at or going to or from their collectors' gun shows, conventions, or exhibits;

(h) A person while engaged in fishing, camping, or lawful hunting, or while going to or returning from a fishing, camping, or lawful hunting expedition;

(i) A person engaged in the business of manufacturing, repairing, or dealing in firearms, or the agent or representative of any such person while engaged in the lawful course of such business;

(j) A person firing weapons for testing or target practice under safe conditions and in a safe place not prohibited by law, or while going to or from said place;

(k) A person firing weapons in a safe and secure indoor range for testing and target practice;

(l) Any person traveling by private conveyance when the weapon is securely encased, or in a public conveyance when the weapon is securely encased and not in person's manual possession;

(m) Any person while carrying a pistol unloaded and in a secure wrapper, concealed or otherwise, from the place of purchase to his home or place of business or to a place of repair or back to his home or place of business;

(n) A person possessing arms at his home or place of business;

(o) Investigators employed by the several public defenders of the state, while actually carrying out official duties within the judicial circuits in which they are employed, provided said investigators:

1. Are employed on a full-time basis;

2. Meet the official training standards for firearms as established by the Police Standards and Training Commission as provided in s. 943.12(1) and the requirements of ss. 493.21(2)(a) and 943.13(1)-(4); and

3. Are individually designated by an affidavit of consent signed by the employing public defender and filed with the clerk of the circuit court in the county in which the employing public defender resides.

(4) **CONSTRUCTION.**—This act shall be liberally construed to carry out the declaration of policy herein and in favor of the constitutional right to keep and bear arms for lawful purposes. This act shall be supplemental and additional to existing rights to bear arms now guaranteed by law and decisions of the courts of Florida, and nothing herein shall impair or diminish any of such rights. This act shall supersede any law, ordinance, or regulation in conflict herewith.

*History.*—s. 1, ch. 65-410; s. 32, ch. 69-216; s. 32, ch. 73-334; s. 2, ch. 77-302.

**790.26 Assembly of handguns.—**

(1) It is unlawful for any person in this state to assemble any pistol, revolver, or other handgun from parts manufactured or originating from outside the United States. This provision shall not apply to the importation of parts intended and used solely for the repair of such weapons.

(2) Any person who violates the provision of this act is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. The assembly of each weapon in violation of this act shall constitute a separate and distinct offense.

*History.—*s. 1, ch. 72-357.

**790.27 Alteration or removal of firearm serial number or possession, sale, or delivery of firearm with serial number altered or removed prohibited; penalties.—**

(1)(a) It is unlawful for any person to knowingly alter or remove the manufacturer's or importer's serial number from a firearm with intent to disguise the true identity thereof.

(b) Any person violating paragraph (a) is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2)(a) It is unlawful for any person to knowingly sell, deliver, or possess any firearm on which the manufacturer's or importer's serial number has been unlawfully altered or removed.

(b) Any person violating paragraph (a) is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) This section shall not apply to antique firearms.

*History.—*s. 2, ch. 79-58.

**790.28 Purchase of rifles and shotguns in contiguous states.—**A resident of this state may purchase a rifle or shotgun in any state contiguous to this state if he conforms to applicable laws and regulations of the United States, of the state where the purchase is made, and of this state.

*History.—*s. 1, ch. 79-44.



## CHAPTER 791

## SALE OF FIREWORKS

- 791.01 "Fireworks" defined.
- 791.02 Sale of fireworks regulated; rules and regulations.
- 791.03 Bond of licensees.
- 791.04 Sale at wholesale, etc., exempted.
- 791.05 Seizure of illegal fireworks.
- 791.06 Penalties.
- 791.07 Agricultural and fish hatchery use.

**791.01 "Fireworks" defined.—**

(1) The term "fireworks" shall mean and include any combustible or explosive composition, or any substance or combination of substances, or, except as hereinafter provided, any article prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration or detonation, and shall include blank cartridges and toy cannons in which explosives are used, the type of balloons which require fire underneath to propel the same, firecrackers, torpedoes, skyrockets, roman candles, daygo bombs, and any fireworks containing any explosives or flammable compound or any tablets or other device containing any explosive substance.

(2) The term "fireworks" shall not include sparklers, toy pistols, toy canes, toy guns, or other devices in which paper caps containing twenty-five hundredths grains or less of explosive compound are used, providing they are so constructed that the hand cannot come in contact with the cap when in place for the explosion, and toy pistol paper caps which contain less than twenty hundredths grains of explosive mixture, the sale and use of which shall be permitted at all times.

*History.—s. 1, ch. 20445, 1941; s. 1, ch. 57-338.*

**791.02 Sale of fireworks regulated; rules and regulations.—**Except as hereinafter provided it shall be unlawful for any person, firm, copartnership or corporation to offer for sale, expose for sale, sell at retail, or use or explode any fireworks; provided that the board of county commissioners shall have power to adopt reasonable rules and regulations for the granting of permits for supervised public display of fireworks by fair associations, amusement parks, and other organizations or groups of individuals when such public display is to take place outside of any municipality; provided, further, that the governing body of any municipality shall have power to adopt reasonable rules and regulations for the granting of permits for supervised public display of fireworks within the boundaries of any municipality. Every such display shall be handled by a competent operator to be approved by the chiefs of the police and fire departments of the municipality in which the display is to be held, and shall be of such a character, and so located, discharged or fired as in the opinion of the chief of the fire department, after proper inspection, shall not be hazardous to property or endanger any person. Application for permits shall be made in writing at least 15 days in advance of the date of the display. After such privilege shall have been granted, sales, possession, use and distribution of fireworks for such display shall be lawful

for that purpose only. No permit granted hereunder shall be transferable.

*History.—s. 2, ch. 20445, 1941; s. 1, ch. 61-312.*

**791.03 Bond of licensees.—**The board of county commissioners shall require a bond deemed adequate by the board of county commissioners from the licensee in a sum not less than \$500 conditioned for the payment of all damages which may be caused either to a person or to property by reason of the licensee's display, and arising from any acts of the licensee, his agents, employees or subcontractors.

*History.—s. 3, ch. 20445, 1941; s. 1, ch. 61-312.*

**791.04 Sale at wholesale, etc., exempted.—**Nothing in this chapter shall be construed to prohibit any resident wholesaler, dealer, or jobber to sell at wholesale such fireworks as are not herein prohibited; or the sale of any kind of fireworks provided the same are to be shipped directly out of state; or are to be used by a person holding a permit from any board of county commissioners at the display covered by such permit, or the use of fireworks by railroads or other transportation agencies for signal purposes or illumination or when used in quarrying or for blasting or other industrial use, or the sale or use of blank cartridges for a show or theater, or for signal or ceremonial purposes in athletics or sports, or for use by military organizations, or organizations composed of the Armed Forces of the United States; provided, nothing in this chapter shall be construed as barring the operations of manufacturers, duly licensed, from manufacturing, experimenting, exploding and storing such fireworks in their compounds or proving grounds.

*History.—s. 4, ch. 20445, 1941; s. 1, ch. 61-312.*

**791.05 Seizure of illegal fireworks.—**Each sheriff, or his appointee, or any other police officer, shall seize, take, remove or cause to be removed at the expense of the owner, all stocks of fireworks or combustibles offered or exposed for sale, stored, or held in violation of this chapter.

*History.—s. 5, ch. 20445, 1941.*

**791.06 Penalties.—**Any firm, copartnership, or corporation violating the provisions of this chapter shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.083 or, in the case of individuals, the members of a partnership and the responsible officers and agents of an association or corporation, punishable as provided in s. 775.082 or s. 775.083.

*History.—s. 6, ch. 20445, 1941; s. 756, ch. 71-136.*

**791.07 Agricultural and fish hatchery use.—**Nothing in this chapter shall prohibit the importation, purchase, sale or use of firecrackers used or to be used solely and exclusively in frightening birds from agricultural works and fish hatcheries and such use shall be governed entirely by the rules and regulations prescribed by the Department of Agriculture and Consumer Services.

*History.—s. 1, ch. 29780, 1955; s. 1, ch. 57-336; ss. 14, 35, ch. 69-106.*

## CHAPTER 794

## SEXUAL BATTERY

- 794.011 Sexual battery.
- 794.02 Common law presumption relating to age abolished.
- 794.021 Ignorance or belief as to victim's age no defense.
- 794.022 Rules of evidence.
- 794.03 Unlawful to publish or broadcast information identifying sexual offense victim.
- 794.05 Carnal intercourse with unmarried person under 18 years.

**794.011 Sexual battery.—****(1) Definitions:**

(a) "Offender" means a person accused of a sexual offense.

(b) "Mentally defective" means that a person suffers from a mental disease or defect which renders that person temporarily or permanently incapable of appraising the nature of his or her conduct.

(c) "Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered to that person without his or her consent or due to any other act committed upon that person without his or her consent.

(d) "Physically helpless" means that a person is unconscious, asleep, or for any other reason is physically unable to communicate unwillingness to an act.

(e) "Serious personal injury" means great bodily harm or pain, permanent disability, or permanent disfigurement.

(f) "Sexual battery" means oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual battery shall not include acts done for bona fide medical purposes.

(g) "Victim" means the person alleging to have been the object of a sexual offense.

(h) "Consent" means intelligent, knowing, and voluntary consent and shall not be construed to include coerced submission.

(2) A person 18 years of age or older who commits sexual battery upon, or injures the sexual organs of, a person 11 years of age or younger in an attempt to commit sexual battery upon said person commits a capital felony punishable as provided in ss. 775.082 and 921.141. If the offender is under the age of 18, that person shall be guilty of a life felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) A person who commits sexual battery upon a person over the age of 11 years, without that person's consent, and in the process thereof uses or threatens to use a deadly weapon or uses actual physical force likely to cause serious personal injury shall be guilty of a life felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) A person who commits sexual battery upon a person over the age of 11 years, without that person's consent, under any of the following circumstances shall be guilty of a felony of the first degree,

punishable as provided in s. 775.082, s. 775.083, or s. 775.084:

(a) When the victim is physically helpless to resist.

(b) When the offender coerces the victim to submit by threatening to use force or violence likely to cause serious personal injury on the victim, and the victim reasonably believes that the offender has the present ability to execute these threats.

(c) When the offender coerces the victim to submit by threatening to retaliate against the victim, or any other person, and the victim reasonably believes that the offender has the ability to execute these threats in the future. "Retaliation," as used in this section, includes, but is not limited to, threats of future physical punishment, kidnapping, false imprisonment or forcible confinement, or extortion.

(d) When the offender, without the prior knowledge or consent of the victim, administers or has knowledge of someone else administering to the victim any narcotic, anesthetic, or other intoxicating substance which mentally or physically incapacitates the victim.

(e) When the victim is older than 11 but less than 18 years of age and the offender is in a position of familial, custodial, or official authority over the victim and uses this authority to coerce the victim to submit.

(f) When the victim is mentally defective and the offender has reason to believe this or has actual knowledge of this fact.

(5) A person who commits sexual battery upon a person over the age of 11 years, without that person's consent, and in the process thereof uses physical force and violence not likely to cause serious personal injury shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

*History.—s. 2, ch. 74-121; s. 17, ch. 75-298.*

**794.02 Common law presumption relating to age abolished.**—The common law rule "that a boy under 14 years of age is conclusively presumed to be incapable of committing the crime of rape" shall not be in force in this state.

*History.—s. 1, ch. 4964, 1901; GS 3222; RGS 5052; CGL 7154; s. 2, ch. 74-121.*

**794.021 Ignorance or belief as to victim's age no defense.**—When, in this chapter, the criminality of conduct depends upon the victim's being below a certain specified age, ignorance of the age is no defense. Neither shall misrepresentation of age by such person nor a bona fide belief that such person is over the specified age be a defense.

*History.—s. 2, ch. 74-121.*

**794.022 Rules of evidence.—**

(1) The testimony of the victim need not be corroborated in prosecutions under s. 794.011, however, the court may instruct the jury with respect to the weight and quality of the evidence.

(2) Specific instances of prior consensual sexual activity between the victim and any person other

than the offender shall not be admitted into evidence in prosecutions under s. 794.011; however, when consent by the victim is at issue, such evidence may be admitted if it is first established to the court outside the presence of the jury that such activity shows such a relation to the conduct involved in the case that it tends to establish a pattern of conduct or behavior on the part of the victim which is relevant to the issue of consent.

**History.**—s. 2, ch. 74-121; s. 237, ch. 77-104.

**794.03 Unlawful to publish or broadcast information identifying sexual offense victim.—**

No person shall print, publish, or broadcast, or cause or allow to be printed, published, or broadcast, in any instrument of mass communication the name, address, or other identifying fact or information of the victim of any sexual offense within this chapter. An offense under this section shall constitute a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 1, ch. 6226, 1911; RGS 5053; CGL 7155; s. 2, ch. 74-121; s. 16, ch. 75-298.

**794.05 Carnal intercourse with unmarried person under 18 years.—**

(1) Any person who has unlawful carnal intercourse with any unmarried person, of previous chaste character, who at the time of such intercourse is under the age of 18 years, shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) It shall not be a defense to a prosecution under this section that the prosecuting witness was not of previous chaste character at the time of the act when the lack of previous chaste character in the prosecuting witness was caused solely by previous intercourse between the defendant and the prosecuting witness.

**History.**—RS 2598; s. 1, ch. 4965, 1901; GS 3521; s. 1, ch. 6974, 1915; s. 1, ch. 7732, 1918; RGS 5409; s. 1, ch. 8596, 1921; CGL 7552; s. 1, ch. 61-109; s. 759, ch. 71-136.



## CHAPTER 796

## PROSTITUTION

- 796.01 Keeping house of ill fame.  
 796.02 Lease of house to expire on conviction.  
 796.03 Procuring person under age of 16 for prostitution.  
 796.04 Prostitute; forcing, etc., one to become, unlawful.  
 796.05 Prostitute; living on earnings.  
 796.06 Prostitution, etc.; renting space.  
 796.07 Prohibiting prostitution, etc.; evidence; penalties; definitions.

**796.01 Keeping house of ill fame.**—Whoever keeps a house of ill fame, resorted to for the purpose of prostitution or lewdness, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 13, ch. 1637, 1868; RS 2615; GS 3535; RGS 5433; CGL 7576; s. 764, ch. 71-136.  
 cf.—s. 60.05 Abatement of nuisances.

**796.02 Lease of house to expire on conviction.**—When the lessee of a dwelling house is convicted of the offense mentioned in the preceding section, the lease or contract for letting the house shall, at the option of the lessor, become void, and the lessor shall have the like remedy to recover the possession as against a tenant holding over after the expiration of his term.

**History.**—s. 14, ch. 1637, 1868; RS 2616; GS 3536; RGS 5434; CGL 7577.

**796.03 Procuring person under age of 16 for prostitution.**—Whoever procures for prostitution, or causes to be prostituted, any person who is under the age of 16 years shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—RS 2617; GS 3537; RGS 5435; CGL 7578; s. 765, ch. 71-136; s. 1, ch. 78-45.

**796.04 Prostitute; forcing, etc., one to become, unlawful.**—

(1) After May 1, 1943, it shall be unlawful for anyone to force, compel, or coerce another to become a prostitute.

(2) Anyone violating this section shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—ss. 1, 2, ch. 21661, 1943; s. 766, ch. 71-136.  
 cf.—ss. 384.06-384.19 Venereal diseases.

**796.05 Prostitute; living on earnings.**—

(1) After May 1, 1943, it shall be unlawful for anyone to live off the earnings of any other person with the knowledge or reasonable cause to believe that such earnings are derived from prostitution.

(2) Anyone violating this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—ss. 1, 2, ch. 21662, 1943; s. 767, ch. 71-136.

**796.06 Prostitution, etc.; renting space.**—

(1) After May 1, 1943, it shall be unlawful to let or rent any place, structure, or part thereof, trailer or other conveyance, with the knowledge that such

place, structure, trailer, or conveyance will be used for the purpose of lewdness, assignation, or prostitution.

(2) Anyone violating this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—ss. 1, 2, ch. 21663, 1943; ss. 1, 2, ch. 22025, 1943; s. 768, ch. 71-136.

**796.07 Prohibiting prostitution, etc.; evidence; penalties; definitions.**—

(1) As used in this section, unless the context clearly requires otherwise:

(a) The term "prostitution" shall be construed to include the giving or receiving of the body for sexual intercourse for hire, and shall also be construed to include the giving or receiving of the body for licentious sexual intercourse without hire.

(b) The term "lewdness" shall be construed to include any indecent or obscene act.

(c) The term "assignation" shall be construed to include the making of any appointment or engagement for prostitution or lewdness or any act in furtherance of such appointment or engagement.

(d) The term "prostitution" as used in paragraph (a) shall be construed so as to exclude sexual intercourse between a husband and his wife.

(2) After May 1, 1943, it shall be unlawful in the state:

(a) To keep, set up, maintain, or operate any place, structure, building, or conveyance for the purpose of lewdness, assignation, or prostitution.

(b) To offer, or to offer or agree to secure, another for the purpose of prostitution, or for any other lewd or indecent act.

(c) To receive, or to offer or agree to receive, any person into any place, structure, building, or conveyance for the purpose of prostitution, lewdness, or assignation, or to permit any person to remain there for such purpose.

(d) To direct, take or transport, or to offer or agree to take or transport, any person to any place, structure, or building, or to any other person, with knowledge or reasonable cause to believe that the purpose of such directing, taking, or transporting is prostitution, lewdness, or assignation.

(3) It shall further be unlawful in the state:

(a) To offer to commit, or to commit, or to engage in, prostitution, lewdness, or assignation.

(b) To solicit, induce, entice, or procure another to commit prostitution, lewdness, or assignation with himself or herself.

(c) To reside in, enter, or remain in, any place, structure, or building, or to enter or remain in any conveyance, for the purpose of prostitution, lewdness, or assignation.

(d) To aid, abet, or participate in the doing of any of the acts or things enumerated in subsections (2) and (3) of this section.

(4) In the trial of any persons charged with the violation of any of the provisions of this section, testimony concerning the reputation of any place, structure, building, or conveyance involved in said charge, and of the person or persons who reside in,

operate, or frequent the same, and of the defendant, shall be admissible in evidence in support of the charge.

(5) Any person who shall violate any provision of

this section shall be deemed guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

*History.*—ss. 1-5, ch. 21664, 1943; s. 769, ch. 71-136.

## CHAPTER 797

## ABORTION

797.02 Advertising drugs, etc., for abortion.

771, ch. 71-136.

797.03 Prohibited acts; penalties.

**797.02 Advertising drugs, etc., for abortion.**

—Whoever knowingly advertises, prints, publishes, distributes or circulates, or knowingly causes to be advertised, printed, published, distributed or circulated, any pamphlet, printed paper, book, newspaper notice, advertisement, or reference containing words or language giving or conveying any notice, hint, or reference to any person, or the name of any person, real or fictitious, from whom, or to any place, house, shop, or office where any poison, drug, mixture, preparation, medicine, or noxious thing, or any instrument or means whatever, or any advice, direction, information, or knowledge may be obtained for the purpose of causing or procuring the miscarriage of any woman pregnant with child, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 10, ch. 1637, 1868; RS 2619; GS 3539; RGS 5437; CGL 7580; s.

**797.03 Prohibited acts; penalties.—**

(1) It is unlawful for any person to perform or assist in performing an abortion on a person, except in an emergency care situation, other than in a validly licensed hospital or abortion clinic or in a physician's office.

(2) It is unlawful for any person or public body to establish, conduct, manage, or operate an abortion clinic without a valid current license.

(3) It is unlawful for any person to perform or assist in performing an abortion on a person in the third trimester other than in a hospital.

(4) Any person who willfully violates any provision of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 10, ch. 78-382.  
cf.—s. 390.011 Definitions.



## CHAPTER 798

## ADULTERY AND FORNICATION

- 798.01 Living in open adultery.  
798.02 Lewd and lascivious behavior.  
798.03 Fornication.

**798.01 Living in open adultery.**—Whoever lives in an open state of adultery shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Where either of the parties living in an open state of adultery is married, both parties so living shall be deemed to be guilty of the offense provided for in this section.

**History.**—s. 1, ch. 1986, 1874; RS 2595; GS 3518; RGS 5406; CGL 7549; s. 772, ch. 71-136.

**798.02 Lewd and lascivious behavior.**—If any man and woman, not being married to each other,

lewdly and lasciviously associate and cohabit together, or if any man or woman, married or unmarried, engages in open and gross lewdness and lascivious behavior, they shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 6, ch. 1637, 1868; RS 2596; GS 3519; RGS 5407; CGL 7550; s. 773, ch. 71-136.

**798.03 Fornication.**—If any man commits fornication with a woman, each of them shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 8, ch. 1637, 1868; RS 2597; GS 3520; RGS 5408; CGL 7551; s. 774, ch. 71-136.

## CHAPTER 800

## CRIME AGAINST NATURE; INDECENT EXPOSURE

- 800.02 Unnatural and lascivious act.  
800.03 Exposure of sexual organs.  
800.04 Lewd, lascivious or indecent assault or act upon or in presence of child.

**800.02 Unnatural and lascivious act.**—Whoever commits any unnatural and lascivious act with another person shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 1, ch. 7361, 1917; RGS 5425; CGL 7568; s. 778, ch. 71-136.

**800.03 Exposure of sexual organs.**—It shall be unlawful for any person to expose or exhibit his sexual organs in any public place or on the private premises of another, or so near thereto as to be seen from such private premises, in a vulgar or indecent manner, or so to expose or exhibit his person in such place, or to go or be naked in such place. Provided, however, this section shall not be construed to pro-

hibit the exposure of such organs or the person in any place provided or set apart for that purpose. Any person convicted of a violation hereof shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 1, ch. 7360, 1917; RGS 5445; CGL 7588; s. 1, ch. 61-51; s. 779, ch. 71-136.

**800.04 Lewd, lascivious or indecent assault or act upon or in presence of child.**—Any person who shall handle, fondle or make an assault upon any child under the age of 14 years in a lewd, lascivious or indecent manner, or who shall knowingly commit any lewd or lascivious act in the presence of such child, without the intent to commit sexual battery shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083 or s. 775.084.

**History.**—s. 1, ch. 21974, 1943; s. 1, ch. 26580, 1951; s. 780, ch. 71-136; s. 66, ch. 74-383; s. 1, ch. 75-24; s. 40, ch. 75-298; s. 291, ch. 79-400.

## CHAPTER 806

## ARSON AND CRIMINAL MISCHIEF

- 806.01 Arson.  
 806.10 Preventing or obstructing extinguishment of fire.  
 806.101 False alarms of fires.  
 806.111 Fire bombs.  
 806.13 Criminal mischief.

**806.01 Arson.—**

(1) Any person who willfully and unlawfully, by fire or explosion, damages or causes to be damaged:

(a) Any dwelling, whether occupied or not, or its contents;

(b) Any structure, or contents thereof, where persons are normally present, such as: Jails, prisons, or detention centers; hospitals, nursing homes, or other health care facilities; department stores, office buildings, business establishments, churches, or educational institutions during normal hours of occupancy; or other similar structures; or

(c) Any other structure that he knew or had reasonable grounds to believe was occupied by a human being,

is guilty of arson in the first degree, which constitutes a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) Any person who willfully and unlawfully, by fire or explosion, damages or causes to be damaged any structure, whether the property of himself or another, under any circumstances not referred to in subsection (1), is guilty of arson in the second degree, which constitutes a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) As used in this chapter, "structure" means any building of any kind, any enclosed area with a roof over it, any real property and appurtenances thereto, any tent or other portable building, and any vehicle, vessel, watercraft, or aircraft.

**History.**—ss. 1, 2, ch. 15603, 1931; CGL 1936 Supp. 7208(8), (9); ss. 786, 787, ch. 71-136; s. 26, ch. 74-383; s. 18, ch. 75-298; s. 1, ch. 79-108.

**806.10 Preventing or obstructing extinguishment of fire.—**

(1) Any person who willfully and maliciously injures, destroys, removes, or in any manner interferes with the use of, any vehicles, tools, equipment, water supplies, hydrants, towers, buildings, communication facilities, or other instruments or facilities used in the detection, reporting, suppression, or extinguishment of fire shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) Any person who willfully or unreasonably interferes with, hinders, or assaults, or attempts to interfere with or hinder, any firefighter in the performance of his duty shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 9, sub-ch. 4, ch. 1637, 1868; RS 2433; GS 3280; RGS 5113; CGL 7214; s. 1, ch. 69-232; s. 795, ch. 71-136; s. 28, ch. 74-383; s. 19, ch. 75-298. cf.—s. 777.03 Accessory after the fact.

s. 910.13 Accessory after the fact.

**806.101 False alarms of fires.—**Whoever, without reasonable cause, by outcry or the ringing of bells, or otherwise, makes or circulates, or causes to be made or circulated, a false alarm of fire, shall for the first conviction be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. A second or subsequent conviction under this section shall constitute a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 13, ch. 1637, 1868; RS 2706; GS 3682; RGS 5626; CGL 7819; s. 934, ch. 71-136; s. 1A, ch. 71-306; s. 65, ch. 74-383.

**Note.**—Former s. 823.03.

**806.111 Fire bombs.—**

(1) Any person who possesses, manufactures, transports, or disposes of a fire bomb with intent that such fire bomb be willfully and unlawfully used to damage by fire or explosion any structure or property is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) For the purposes of this section:

(a) "Disposes of" means to give, give away, loan, offer, offer for sale, sell, or transfer.

(b) "Fire bomb" means a container containing flammable or combustible liquid with a flash point of 200° Fahrenheit or less, having a wick or similar device capable of being ignited or other means capable of causing ignition; but no device commercially manufactured primarily for the purpose of illumination, heating, or cooking shall be deemed to be such a fire bomb.

(3) Subsection (1) shall not prohibit the authorized use or possession of any material, substance, or device described therein by a member of the Armed Forces of the United States or by firemen, police officers, peace officers, or law enforcement officers so authorized by duly constituted authorities.

**History.**—s. 3, ch. 67-211; s. 797, ch. 71-136; s. 29, ch. 74-383; s. 19, ch. 75-298; s. 238, ch. 77-104; s. 2, ch. 79-108.

**806.13 Criminal mischief.—**

(1) A person commits the offense of criminal mischief if he willfully and maliciously injures or damages by any means any real or personal property belonging to another.

(2)(a) If the damage to such property is \$200 or less, it is a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) If the damage to such property is greater than \$200 but less than \$1,000, it is a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) If the damage is \$1,000 or greater, or if there is interruption or impairment of a business operation or public communication, transportation, supply of water, gas or power, or other public service which costs \$1,000 or more in labor and supplies to restore, it is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 27, ch. 74-383; s. 20, ch. 75-298.



## CHAPTER 810

## BURGLARY AND TRESPASS

- 810.011 Definitions.
- 810.02 Burglary.
- 810.06 Possession of burglary tools.
- 810.07 Prima facie evidence of intent.
- 810.08 Trespass in structure or conveyance.
- 810.09 Trespass on property other than structure or conveyance.
- 810.10 Posted land; removing notices unlawful; penalty.
- 810.11 Placing signs adjacent to highways; penalty.
- 810.115 Breaking or injuring fences.
- 810.12 Unauthorized entry on land; prima facie evidence of trespass.

**810.011 Definitions.**—As used in this chapter:

(1) "Structure" means any building of any kind, either temporary or permanent, which has a roof over it, together with the curtilage thereof.

(2) "Conveyance" means any motor vehicle, ship, vessel, railroad car, trailer, aircraft, or sleeping car; and "to enter a conveyance" includes taking apart any portion of the conveyance.

(3) An act is committed "in the course of committing" if it occurs in an attempt to commit the offense or in flight after the attempt or commission.

(4)(a) "Posted land" is that land upon which signs are placed not more than 500 feet apart along, and at each corner of, the boundaries of the land, upon which signs there appears prominently, in letters of not less than 2 inches in height, the words "no trespassing" and in addition thereto the name of the owner, lessee, or occupant of said land. Said signs shall be placed along the boundary line of posted land in a manner and in such position as to be clearly noticeable from outside of the boundary line.

(b) It shall not be necessary to give notice by posting on any enclosed land or place not exceeding 5 acres in area on which there is a dwelling house in order to obtain the benefits of ss. 810.09 and 810.12 pertaining to trespass on enclosed lands.

(5) "Cultivated land" is that land which has been cleared of its natural vegetation and is presently planted with a crop, orchard, grove, pasture, or trees or is fallow land as part of a crop rotation.

(6) "Fenced land" is that land which has been enclosed by a fence of substantial construction, whether with rails, logs, post and railing, iron, steel, barbed wire, other wire, or other material, which stands at least 3 feet in height. For the purpose of this chapter, it shall not be necessary to fence any boundary or part of a boundary of any land which is formed by water.

(7) Where lands are posted, cultivated, or fenced as described herein, then said lands, for the purpose of this chapter, shall be considered as enclosed and posted.

**History.**—s. 30, ch. 74-383; s. 1, ch. 76-46.

**810.02 Burglary.**—

(1) "Burglary" means entering or remaining in a structure or a conveyance with the intent to commit an offense therein, unless the premises are at the

time open to the public or the defendant is licensed or invited to enter or remain.

(2) Burglary is a felony of the first degree, punishable by imprisonment for a term of years not exceeding life imprisonment or as provided in s. 775.082, s. 775.083, or s. 775.084, if, in the course of committing the offense, the offender:

(a) Makes an assault upon any person.

(b) Is armed, or arms himself within such structure, with explosives or a dangerous weapon.

(3) If the offender does not make an assault or is not armed, or does not arm himself, with a dangerous weapon or explosive as aforesaid during the course of committing the offense and the structure entered is a dwelling or there is a human being in the structure or conveyance at the time the offender entered or remained in the structure or conveyance, the burglary is a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Otherwise, burglary is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—RS 2435; s. 2, ch. 4405, 1895; s. 2, ch. 5411, 1905; GS 3282; RGS 5116; CGL 7217; s. 799, ch. 71-136; s. 31, ch. 74-383; s. 21, ch. 75-298.

**810.06 Possession of burglary tools.**—Whoever has in his possession any tool, machine, or implement with intent to use the same, or allow the same to be used, to commit any burglary or trespass shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 30, sub-ch. 4, ch. 1637, 1868; RS 2439; GS 3286; RGS 5120; CGL 7221; s. 804, ch. 71-136; s. 32, ch. 74-383; s. 22, ch. 75-298.

**810.07 Prima facie evidence of intent.**—In a trial on the charge of burglary, proof of the entering of such structure or conveyance at any time stealthily and without consent of the owner or occupant thereof shall be prima facie evidence of entering with intent to commit an offense.

**History.**—s. 5, ch. 4405, 1895; GS 3287; RGS 5121; CGL 7222; s. 1, ch. 70-29; s. 33, ch. 74-383.

**810.08 Trespass in structure or conveyance.**—

(1) Whoever, without being authorized, licensed, or invited, willfully enters or remains in any structure or conveyance, or, having been authorized, licensed, or invited, is warned by the owner or lessee of the premises, or by a person authorized by the owner or lessee, to depart and refuses to do so, commits the offense of trespass in a structure or conveyance.

(2)(a) Except as otherwise provided in this subsection, trespass in a structure or conveyance is a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) If there is a human being in the structure or conveyance at the time the offender trespassed, attempted to trespass, or was in the structure or conveyance, the trespass in a structure or conveyance is a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) If the offender is armed with a firearm or

other dangerous weapon, or arms himself with such while in the structure or conveyance, the trespass in a structure or conveyance is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 34, ch. 74-383; s. 22, ch. 75-298; s. 2, ch. 76-46; s. 1, ch. 77-132.

#### **810.09 Trespass on property other than structure or conveyance.—**

(1) Whoever, without being authorized, licensed, or invited, willfully enters upon or remains in any property other than a structure or conveyance as to which notice against entering or remaining is given, either by actual communication to the offender or by posting, fencing, or cultivation as described in s. 810.011, commits the offense of trespass on property other than a structure or conveyance.

(2)(a) Except as provided in this subsection, trespass on property other than a structure or conveyance is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) If the offender defies an order to leave, personally communicated to him by the owner of the premises or by an authorized person, or if the offender willfully opens any door, fence, or gate or does any act which exposes animals, crops, or other property to waste, destruction, or freedom, or trespasses on property other than a structure or conveyance, he is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) If the offender is armed with a firearm or other dangerous weapon during the commission of the offense of trespass on property other than a structure or conveyance, he is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 35, ch. 74-383; s. 22, ch. 75-298; s. 3, ch. 76-46.

#### **810.10 Posted land; removing notices unlawful; penalty.—**

(1) It is unlawful for any person to willfully remove, destroy, mutilate, or commit any act designed to remove, mutilate, or reduce the legibility or effectiveness of any posted notice placed by the owner, tenant, lessee, or occupant of legally enclosed or legally posted land pursuant to any law of this state for the purpose of legally enclosing the same.

(2) Any person violating the provisions of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—ss. 1, 2, ch. 25246, 1949; s. 893, ch. 71-136; s. 36, ch. 74-383; s. 23, ch. 75-298.

**Note.**—Former s. 821.071.

#### **810.11 Placing signs adjacent to highways; penalty.—**

(1) All persons are prohibited from placing, posting, or erecting signs upon land or upon trees upon land adjacent to or adjoining all public highways of the state, without the written consent of the owner of such land, or the written consent of the attorney or agent of such owner.

(2) Every person convicted of a violation of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—ss. 1, 2, ch. 13801, 1929; CGL 1936 Supp. 7433(1); s. 892, ch. 71-136; s. 37, ch. 74-383; s. 24, ch. 75-298.

**Note.**—Former s. 821.02.

**810.115 Breaking or injuring fences.—**Whoever willfully and maliciously breaks down, mars, injures, or cuts any fence, or any part thereof, belonging to or enclosing land not his own, or whoever causes to be broken down, marred, injured, or cut any fence belonging to or enclosing land not his own, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 1, ch. 78-256.

#### **810.12 Unauthorized entry on land; prima facie evidence of trespass.—**

(1) The unauthorized entry by any person into or upon any enclosed and posted land shall be prima facie evidence of the intention of such person to commit an act of trespass.

(2) The act of entry upon enclosed and posted land without permission of the owner of said land by any workman, servant, employee, or agent while actually engaged in the performance of his work or his duties incident to such employment and while under the supervision or direction, or through the procurement, of any other person acting as supervisor, foreman, employer, or principal, or in any other capacity, shall be prima facie evidence of the causing, and of the procurement, of such act by the supervisor, foreman, employer, principal, or other person.

(3) The act committed by any person or persons of taking, transporting, operating, or driving, or the act of permitting or consenting to the taking or transporting of, any machine, tool, motor vehicle, or draft animal into or upon any enclosed and posted land without the permission of the owner of said land by any person who is not the owner of such machine, tool, vehicle, or animal, but with the knowledge or consent of the owner of such machine, tool, vehicle, or animal, or of the person then having the right to possession thereof, shall be prima facie evidence of the intent of such owner of such machine, tool, vehicle, or animal, or of the person then entitled to the possession thereof, to cause or procure an act of trespass.

(4) As used herein, the term "owner of said land" shall include the beneficial owner, lessee, occupant, or other person having any interest in said land under and by virtue of which that person is entitled to possession thereof, and shall also include the agents or authorized employees of such owner.

(5) However, this section shall not apply to any official or employee of the state or a county, municipality, or other governmental agency now authorized by law to enter upon lands or to registered engineers and surveyors authorized to enter lands pursuant to s. 472.14. The provisions of this section shall not apply to the trimming or cutting of trees or timber by municipal or private public utilities, or their employees, contractors, or subcontractors, when such trimming is required for the establishment or maintenance of the service furnished by any such utility.

**History.**—s. 4, ch. 76-46.

## CHAPTER 812

## THEFT, ROBBERY, AND RELATED CRIMES

- 812.005 Short title.
- 812.012 Definitions.
- 812.014 Theft.
- 812.015 Retail theft; mandatory fine; alternative punishment; detention and arrest; exemption from liability for false arrest; resisting arrest; penalties.
- 812.016 Possession of altered property.
- 812.019 Dealing in stolen property.
- 812.022 Evidence of theft or dealing in stolen property.
- 812.025 Charging theft and dealing in stolen property.
- 812.028 Defenses precluded.
- 812.032 Supplemental fine.
- 812.035 Civil remedies; limitation on civil and criminal actions.
- 812.037 Construction of ss. 812.012-812.037.
- 812.041 Unauthorized temporary use of motor vehicle, aircraft, boat, or boat motor.
- 812.049 Definitions.
- 812.051 Record of purchases and sales required of junk dealers, scrap-metal processors, persons dealing in secondhand goods and foundries.
- 812.052 Certain purchases prohibited.
- 812.055 Physical inspection of junkyards, scrap metal processing plants, salvage yards, licensed motor vehicle dealers, repair shops, parking lots, public garages.
- 812.061 Larceny; return of property to owner; procedure.
- 812.081 Trade secrets; theft, embezzlement; unlawful copying; definitions; penalty.
- 812.13 Robbery.
- 812.14 Trespass and larceny with relation to utility or cable television fixtures.

**812.005 Short title.**—Sections 812.012-812.037 shall be known as the Florida Anti-Fencing Act.

**History.**—s. 2, ch. 77-342.

**812.012 Definitions.**—As used in ss. 812.012-812.037:

- (1) "Dealer in property" means any person in the business of buying and selling property.
- (2) "Obtains or uses" means any manner of:
  - (a) Taking or exercising control over property.
  - (b) Making any unauthorized use, disposition, or transfer of property.
  - (c) Obtaining property by fraud.
  - (d)1. Conduct previously known as stealing; larceny; purloining; abstracting; embezzlement; misapplication; misappropriation; conversion; or obtaining money or property by false pretenses, fraud, or deception; or
  - 2. Other conduct similar in nature.
- (3) "Property" means anything of value, and includes:
  - (a) Real property, including things growing on, affixed to, and found in land.
  - (b) Tangible or intangible personal property, in-

cluding rights, privileges, interests, and claims.

(c) Services.

(4) "Property of another" means property in which a person has an interest upon which another person is not privileged to infringe without consent, whether or not the other person also has an interest in the property.

(5) "Services" means anything of value resulting from a person's physical or mental labor or skill, or from the use, possession, or presence of property, and includes:

- (a) Repairs or improvements to property.
- (b) Professional services.
- (c) Private, public, or government communication, transportation, power, water, or sanitation services.
- (d) Lodging accommodations.
- (e) Admissions to places of exhibition or entertainment.

(6) "Stolen property" means property that has been the subject of any criminally wrongful taking.

(7) "Traffic" means:

(a) To sell, transfer, distribute, dispense, or otherwise dispose of property.

(b) To buy, receive, possess, obtain control of, or use property with the intent to sell, transfer, distribute, dispense, or otherwise dispose of such property.

(8) "Enterprise" means any individual, sole proprietorship, partnership, corporation, business trust, union chartered under the laws of this state, or other legal entity, or any unchartered union, association, or group of individuals associated in fact although not a legal entity.

(9) "Value" means value determined according to any of the following:

(a)1. Value means the market value of the property at the time and place of the offense or, if such cannot be satisfactorily ascertained, the cost of replacement of the property within a reasonable time after the offense.

2. The value of a written instrument that does not have a readily ascertainable market value, in the case of an instrument such as a check, draft, or promissory note, is the amount due or collectible or is, in the case of any other instrument which creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation, the greatest amount of economic loss that the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

3. The value of a trade secret that does not have a readily ascertainable market value is any reasonable value representing the damage to the owner, suffered by reason of losing an advantage over those who do not know of or use the trade secret.

(b) If the value of property cannot be ascertained, the trier of fact may find the value to be not less than a certain amount; if no such minimum value can be ascertained, the value is an amount less than \$100.

(c) Amounts of value of separate properties involved in thefts committed pursuant to one scheme or course of conduct, whether the thefts are from the



same person or from several persons, may be aggregated in determining the grade of the offense.

**History.**—s. 3, ch. 77-342; s. 292, ch. 79-400.

#### 812.014 Theft.—

(1) A person is guilty of theft if he knowingly obtains or uses, or endeavors to obtain or to use, the property of another with intent:

(a) To deprive the other person of a right to the property or a benefit therefrom.

(b) To appropriate the property to his own use or to the use of any person not entitled thereto.

(2)(a) If the property stolen is of the value of \$20,000 or more, the offender shall be guilty of grand theft in the first degree, punishable as a felony of the second degree, as provided in ss. 775.082, 775.083, and 775.084.

(b) It is grand theft of the second degree and a felony of the third degree, punishable as provided in ss. 775.082, 775.083, and 775.084, if the property stolen is:

1. Valued at \$100 or more, but less than \$20,000.
2. A will, codicil, or other testamentary instrument.
3. A firearm.
4. A motor vehicle.
5. Any member of the genus *Bos* (cattle) or the genus *Equus* (horse), or any hybrid of the specified genera.
6. Any fire extinguisher.
7. Any amount of citrus fruit consisting of 2,000 or more individual pieces of fruit.

(c) Theft of any property not specified in paragraph (a) or paragraph (b) is petit theft and a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Upon a second conviction for petit theft, the offender shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Upon a third or subsequent conviction for petit theft, the offender shall be guilty of a felony of the third degree, punishable as provided in ss. 775.082, 775.083, and 775.084.

(d)1. Every judgment of guilty or not guilty of a petit theft shall be in writing, signed by the judge, and recorded by the clerk of the circuit court. The judge shall cause to be affixed to every such written judgment of guilty of petit theft, in open court and in the presence of such judge, the fingerprints of the defendant against whom such judgment is rendered. Such fingerprints shall be affixed beneath the judge's signature to such judgment. Beneath such fingerprints shall be appended a certificate to the following effect:

"I hereby certify that the above and foregoing fingerprints on this judgment are the fingerprints of the defendant, ....., and that they were placed thereon by said defendant in my presence, in open court, this the ..... day of ....., 19....."

Such certificate shall be signed by the judge, whose signature thereto shall be followed by the word "Judge."

2. Any such written judgment of guilty of a petit theft, or a certified copy thereof, shall be admissible in evidence in the several courts of this state as prima facie evidence that the fingerprints appearing thereon and certified by the judge as aforesaid are

the fingerprints of the defendant against whom such judgment of guilty of a petit theft was rendered.

**History.**—s. 4, ch. 77-342; s. 1, ch. 78-348; s. 1, ch. 79-124.

#### 812.015 Retail theft; mandatory fine; alternative punishment; detention and arrest; exemption from liability for false arrest; resisting arrest; penalties.—

(1) As used in this section:

(a) "Merchandise" means any personal property, capable of manual delivery, displayed, held, or offered for retail sale by a merchant.

(b) "Merchant" means an owner or operator, or the agent, consignee, employee, lessee, or officer of an owner or operator, of any premises or apparatus used for retail purchase or sale of any merchandise.

(c) "Value of merchandise" means the sale price of the merchandise at the time it was stolen or otherwise removed, depriving the owner of his lawful right to ownership and sale of said item.

(d) "Retail theft" means the taking possession of or carrying away of merchandise, altering or removing a label or price tag, transferring merchandise from one container to another, or removing a shopping cart, with intent to deprive the merchant of possession, use, benefit, or full retail value.

(2) Upon a second or subsequent conviction for petit theft involving merchandise taken from a merchant, the offender shall be punished as provided in s. 812.014(2)(c), except that the court shall impose a fine of not less than \$50 nor more than \$1,000. However, in lieu of such fine, the court may require the offender to perform public services designated by the court. In no event shall any such offender be required to perform less than the number of hours of public service necessary to satisfy the fine assessed by the court, as provided by this subsection, at the minimum wage prevailing in the state at the time of sentencing.

(3) A peace officer, a merchant, or a merchant's employee who has probable cause to believe that merchandise has been unlawfully taken by a person and that he can recover it by taking the person into custody may, for the purpose of attempting to effect such recovery and for prosecution, take the person into custody and detain him in a reasonable manner for a reasonable length of time. Such taking into custody and detention by a peace officer, merchant, or merchant's employee, if done in compliance with all the requirements of this subsection, shall not render such police officer, merchant, or merchant's employee criminally or civilly liable for false arrest, false imprisonment, or unlawful detention. In the event a merchant or a merchant's employee takes the person into custody, a peace officer shall be called to the scene immediately after the person has been taken into custody.

(4) Any peace officer may arrest, either on or off the premises and without warrant, any person he has probable cause to believe has committed theft of merchandise in retail or wholesale establishments.

(5) A merchant or a merchant's employee who takes a person into custody, as provided in subsection (3), or who causes an arrest, as provided in subsection (4), of a person for theft of merchandise shall not be criminally or civilly liable for false arrest or false imprisonment when the merchant or mer-

chant's employee has probable cause to believe that the person committed theft of merchandise.

(6) An individual who resists the reasonable effort of a peace officer, merchant, or merchant's employee to recover merchandise which the peace officer, merchant, or merchant's employee had probable cause to believe the individual had concealed or removed from its place of display or elsewhere and is subsequently found to be guilty of theft of the subject merchandise shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, unless the individual did not know, or have reason to know, that the person seeking to recover the merchandise was a peace officer, merchant, or merchant's employee.

History.—s. 2, ch. 78-348; s. 177, ch. 79-164.

**812.016 Possession of altered property.**—Any dealer in property who knew or should have known that the identifying features, such as serial numbers and permanently affixed labels, of property in his possession had been removed or altered without the consent of the manufacturer, shall be guilty of a misdemeanor of the first degree, punishable as defined in ss. 775.082 and 775.083.

History.—s. 6, ch. 77-342.

**812.019 Dealing in stolen property.**—

(1) Any person who traffics in, or endeavors to traffic in, property that he knows or should know was stolen shall be guilty of a felony of the second degree, punishable as provided in ss. 775.082, 775.083, and 775.084.

(2) Any person who initiates, organizes, plans, finances, directs, manages, or supervises the theft of property and traffics in such stolen property shall be guilty of a felony of the first degree, punishable as provided in ss. 775.082, 775.083, and 775.084.

History.—s. 7, ch. 77-342.

**812.022 Evidence of theft or dealing in stolen property.**—

(1) Proof that a person presented false identification, or identification not current with respect to name, address, place of employment, or other material aspects, in connection with the leasing of personal property, or failed to return leased property within 72 hours of the termination of the leasing agreement, unless satisfactorily explained, gives rise to an inference that such property was obtained or is now used with intent to commit theft.

(2) Proof of possession of property recently stolen, unless satisfactorily explained, gives rise to an inference that the person in possession of the property knew or should have known that the property had been stolen.

(3) Proof of the purchase or sale of stolen property at a price substantially below the fair market value, unless satisfactorily explained, gives rise to an inference that the person buying or selling the property knew or should have known that the property had been stolen.

(4) Proof of the purchase or sale of stolen property by a dealer in property, out of the regular course of business or without the usual indicia of ownership other than mere possession, unless satisfactorily explained, gives rise to an inference that the person

buying or selling the property knew or should have known that it had been stolen.

History.—s. 8, ch. 77-342.

**812.025 Charging theft and dealing in stolen property.**—Notwithstanding any other provision of law, a single indictment or information may, under proper circumstances, charge theft and dealing in stolen property in connection with one scheme or course of conduct in separate counts that may be consolidated for trial, but the trier of fact may return a guilty verdict on one or the other, but not both, of the counts.

History.—s. 9, ch. 77-342.

**812.028 Defenses precluded.**—It shall not constitute a defense to a prosecution for any violation of the provisions of ss. 812.012-812.037 that:

(1) Any stratagem or deception, including the use of an undercover operative or law enforcement officer, was employed.

(2) A facility or an opportunity to engage in conduct in violation of any provision of this act was provided.

(3) Property that was not stolen was offered for sale as stolen property.

(4) A law enforcement officer solicited a person predisposed to engage in conduct in violation of any provision of ss. 812.012-812.037 in order to gain evidence against that person, provided such solicitation would not induce an ordinary law-abiding person to violate any provision of ss. 812.012-812.037.

History.—s. 10, ch. 77-342.

**812.032 Supplemental fine.**—In addition to any other fine authorized by law, a person found guilty of violating any provision of ss. 812.012-812.037, who has thereby derived anything of value, or who has caused personal injury, property damage, or other loss, may, upon motion of the State Attorney, be sentenced to pay a fine that does not exceed twice the gross value gained or twice the gross loss caused, whichever is greater, plus the cost of investigation and prosecution. The court shall hold a hearing to determine the amount of the fine to be imposed under this section.

History.—s. 11, ch. 77-342.

**812.035 Civil remedies; limitation on civil and criminal actions.**—

(1) Any circuit court may, after making due provisions for the rights of innocent persons, enjoin violations of the provisions of ss. 812.012-812.037 by issuing appropriate orders and judgments, including, but not limited to:

(a) Ordering any defendant to divest himself of any interest in any enterprise, including real estate.

(b) Imposing reasonable restrictions upon the future activities or investments of any defendant, including, but not limited to, prohibiting any defendant from engaging in the same type of endeavor as the enterprise in which he was engaged in violation of the provisions of ss. 812.012-812.037.

(c) Ordering the dissolution or reorganization of any enterprise.

(d) Ordering the suspension or revocation of any license, permit, or prior approval granted to any en-

terprise by any department or agency of the state.

(e) Ordering the forfeiture of the charter of a corporation organized under the laws of the state or the revocation of a certificate authorizing a foreign corporation to conduct business within the state, upon finding that the board of directors or a managerial agent acting on behalf of the corporation, in conducting the affairs of the corporation, has authorized or engaged in conduct in violation of ss. 812.012-812.037 and that, for the prevention of future criminal activity, the public interest requires the charter of the corporation forfeited and the corporation dissolved or the certificate revoked.

(2) All property, real or personal, including money, used in the course of, intended for use in the course of, derived from, or realized through, conduct in violation of a provision of ss. 812.012-812.037 is subject to civil forfeiture to the state. The state shall dispose of all forfeited property as soon as commercially feasible. If property is not exercisable or transferable for value by the state, it shall expire. All forfeitures or dispositions under this section shall be made with due provision for the rights of innocent persons.

(3) Property subject to forfeiture under this section may be seized by a law enforcement officer upon court process. Seizure without process may be made if:

(a) The seizure is incident to a lawful arrest or search or an inspection under an administrative inspection warrant.

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a forfeiture proceeding based upon this section.

(c) The law enforcement officer has probable cause to believe that the property is directly or indirectly dangerous to the public health or safety.

(d) The law enforcement officer has probable cause to believe that the property is otherwise subject to forfeiture under this section.

(4) In the event of a seizure under subsection (3), a forfeiture proceeding shall be instituted promptly. When property is seized under this section, pending forfeiture and final disposition, the law enforcement officer may:

(a) Place the property under seal.

(b) Remove the property to a place designated by the court.

(c) Require another agency authorized by law to take custody of the property and remove it to an appropriate location.

(5) The Department of Legal Affairs, any State Attorney, or any state agency having jurisdiction over conduct in violation of a provision of ss. 812.012-812.037 may institute civil proceedings under this section. In any action brought under this section, the circuit court shall proceed as soon as practicable to the hearing and determination. Pending final determination, the circuit court may at any time enter such injunctions, prohibitions, or restraining orders, or take such actions, including the acceptance of satisfactory performance bonds, as the court may deem proper.

(6) Any aggrieved person may institute a proceeding under subsection (1). In such proceeding, relief shall be granted in conformity with the principles

that govern the granting of injunctive relief from threatened loss or damage in other civil cases, except that no showing of special or irreparable damage to the person shall have to be made. Upon the execution of proper bond against damages for an injunction improvidently granted and a showing of immediate danger of significant loss or damage, a temporary restraining order and a preliminary injunction may be issued in any such action before a final determination on the merits.

(7) Any person who is injured in any fashion by reason of any violation of the provisions of ss. 812.012-812.037 shall have a cause of action for three-fold the actual damages sustained and, when appropriate, punitive damages. Such person shall also recover attorneys' fees in the trial and appellate courts and costs of investigation and litigation.

(8) A final judgment or decree rendered in favor of the state in any criminal proceeding under ss. 812.012-812.037 shall estop the defendant in any subsequent civil action or proceeding as to all matters as to which such judgment or decree would be an estoppel as between the parties.

(9) The Department of Legal Affairs may, upon timely application, intervene in any civil action or proceeding brought under subsection (6) or subsection (7) if he certifies that, in his opinion, the action or proceeding is of general public importance. In such action or proceeding, the state shall be entitled to the same relief as if the Department of Legal Affairs had instituted this action or proceeding.

(10) Notwithstanding any other provision of law, a criminal or civil action or proceeding under ss. 812.012-812.037 may be commenced at any time within 5 years after the cause of action accrues. If a criminal prosecution or civil action or other proceeding is brought, or intervened in, to punish, prevent, or restrain any violation of the provisions of ss. 812.012-812.037, the running of the period of limitations prescribed by this section with respect to any cause of action arising under subsection (6) or subsection (7) which is based in whole or in part upon any matter complained of in any such prosecution, action, or proceeding shall be suspended during the pendency of such prosecution, action, or proceeding and for 2 years following its termination.

(11) The application of one civil remedy under any provision of ss. 812.012-812.037 shall not preclude the application of any other remedy, civil or criminal, under ss. 812.012-812.037 or any other section of the Florida Statutes.

**History.**—s. 12, ch. 77-342; s. 293, ch. 79-400.

**812.037 Construction of ss. 812.012-812.037.**—Notwithstanding s. 775.021, ss. 812.012-812.037 shall not be construed strictly or liberally, but shall be construed in light of their purposes to achieve their remedial goals.

**History.**—s. 13, ch. 77-342; s. 294, ch. 79-400.

**812.041 Unauthorized temporary use of motor vehicle, aircraft, boat, or boat motor.**—

(1) Any person who temporarily uses any motor vehicle, aircraft, boat, or boat motor without the authority of the owner or his representative, or who shall knowingly be a party to such unauthorized use, shall, upon conviction, be guilty of a misdemeanor of



the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) Nothing in this section shall be construed to apply to any case in which the taking of the property of another is with intent to steal the same or in which the taking is under a claim of right or with the presumed consent of the owner or other person having the legal control, care, or custody of the same.

**History.**—s. 1, ch. 70-19; s. 841, ch. 71-136; s. 3A, ch. 71-342; s. 42, ch. 74-383; s. 27, ch. 75-298.

**Note.**—Former s. 814.04.

**812.049 Definitions.**—As used in ss. 812.051 and 812.052:

(1) "Junk" means old or scrap metals.

(2) "Junk dealer" means any person who engages in the business of storing, keeping, buying, or selling junk.

(3) "Metals" means copper wire which is or can be used for transmission or distribution in a utility or communications system and railroad track and accessories. This act shall have no application except to these specific items.

(4) "Person dealing in secondhand goods" means every person who engages in the business of buying or selling metals of any kind.

(5) "Scrap-metal processor" means a person maintaining and operating machinery and equipment used to process scrap metals to specifications prescribed by, and for sale to, mills and foundries.

(6) "Foundry" means a person who uses, casts, or consumes metals of any kind.

**History.**—s. 1, ch. 75-118.

**812.051 Record of purchases and sales required of junk dealers, scrap-metal processors, persons dealing in secondhand goods and foundries.**—

(1) Every junk dealer, scrap-metal processor, person dealing in secondhand goods, or foundry shall keep a record of purchases of all metals as defined in subsection 812.049(3), which record shall contain:

(a) The name and address of each person from whom the metals are purchased, including the signature of the person selling the same, together with said person's driver's license number or other identifying number.

(b) A general description of the type of utility copper wire purchased.

(c) The estimated quantity of metals purchased.

(d) The date of the purchase.

(2) The records shall at all times be subject to inspection by all law enforcement officers and shall be preserved for a period of 3 years after purchase.

(3) The records of purchases of utility copper wire or railroad track and accessories shall be submitted to the sheriff of the county in which the business is operated within 24 hours after purchase.

(4) The provisions of subsection (3) shall not apply to scrap-metal processors purchasing metals from governmental entities, public utility companies, or railroad companies or from dealers certifying in writing that a report for the metals being purchased has previously been filed as required by this act. Violation of this provision shall be a misde-

meanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—ss. 2, 3, ch. 70-91; s. 819, ch. 71-136; ss. 43, 65, ch. 74-383; s. 2, ch. 75-118; s. 28, ch. 75-298.

**Note.**—Former s. 811.165.

**812.052 Certain purchases prohibited.**—It shall be unlawful for any person to purchase any object used to commemorate a deceased person or placed in memory of a deceased person, or any part of such object, unless the same is sold by an authorized representative of the deceased person or of the cemetery in which such object was placed. Violation of this provision shall be a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 3, ch. 75-118.

**812.055 Physical inspection of junkyards, scrap metal processing plants, salvage yards, licensed motor vehicle dealers, repair shops, parking lots, public garages.**—

(1) Any law enforcement officer shall have the right to inspect any junkyard, scrap metal processing plant, motor vehicle salvage yard, licensed motor vehicle dealer's lot, motor vehicle repair shop, parking lot, public garage, or other establishment dealing with salvaged motor vehicle parts.

(2) Such physical inspection shall be conducted during normal business hours and shall be for the purpose of locating stolen vehicles, investigating the titling and registration of vehicles, inspecting vehicles wrecked or dismantled, or inspecting records required in s. 319.30.

**History.**—s. 7, ch. 78-412.

**812.061 Larceny; return of property to owner; procedure.**—In every instance in which any money or motor vehicle shall have been taken from its rightful owner under circumstances constituting larceny of such money or motor vehicle and such money or motor vehicle is being held by state, county or municipal officials as evidence, the rightful owner of such money or motor vehicle may obtain the return and possession thereof in the following manner:

(1) The rightful owner shall file a petition in the court having criminal jurisdiction describing the money or motor vehicle, the time and manner in which the same was taken from the rightful owner, the value thereof if the same is money or motor vehicle, and that the petitioner is the true and lawful owner thereof. Such petition shall be under oath, sworn to by the petitioner or, if the petitioner is a corporation, by a duly authorized officer or agent thereof, or by such person other than the petitioner who shall have actual knowledge of the facts alleged in such petition.

(2) Notice of the filing of such petition and a copy thereof shall be served upon any person charged with the larceny of the money or motor vehicle involved in the same manner and for the same fee as the service of a summons.

(3) If no person has been charged by indictment or information with larceny of the money or motor vehicle involved, or if a person has been so charged and cannot be found within the jurisdiction of the court out of which *capias* has issued and that fact has

been noted on the return of such *capias*, then the petitioner shall publish in a newspaper of general circulation within the county in which the alleged larceny occurred once a week for 2 consecutive weeks, two publications being sufficient, notice of the filing of such petition. Such notice shall describe the money or motor vehicle involved and the time and particular place of its taking.

(4) Copies of the mentioned petition shall be furnished the officer having custody of the money or motor vehicle involved and also the prosecuting officer of the court having criminal jurisdiction and such officers shall be notified of any hearings and proceedings had upon such petition.

(5) Within 5 days after receipt of service of the notice hereinabove provided or within 10 days after the last publication of the mentioned notice, any person other than the petitioner claiming title or right of possession to the money or motor vehicle involved shall file his objections to the granting of such petition. Such objections shall be under oath of the person making them and shall set forth facts showing that the petitioner is not the rightful owner or not entitled to possession. If the person interposing objections to the petition desires that the question of ownership or right to possession be resolved by a jury, he shall make and file a demand for a jury trial at the time of filing his objections. If the objector fails to demand a jury trial at such time he shall be deemed to have waived such right.

(6) If objections are filed, as herein provided, the court having criminal jurisdiction may order the pleadings transferred to the court having civil jurisdiction of the cause where the same shall be adjudicated upon the pleadings, or he may defer hearing the matter until the criminal case has been adjudicated.

(7) If no objections are filed within the time herein provided, the court having criminal jurisdiction shall hear the matter and may, if satisfied that the petitioner is the rightful owner of the money or motor vehicle involved, order such money or motor vehicle returned to the petitioner. The court may, in its discretion, require the petitioner to post a bond in such amount as the court shall deem proper, conditioned that the petitioner will return the motor vehicle or the value of the money to the court within such time as shall be fixed by the court in the event it should be subsequently determined in judicial proceedings that the petitioner is not the rightful owner of such money or motor vehicle.

(8) When money or motor vehicle is returned to the rightful owner, as hereinabove provided, the court shall direct the clerk to make a detailed inventory description of such money or motor vehicle. The clerk in compliance with such direction shall make such inventory and description, including photographs of the motor vehicle involved where practicable and certify the same as being a true and correct inventory and description. The certified inventory and description shall then be filed by the clerk among the records of his office.

(9) In any trial involving the larceny of money or motor vehicle which has been returned to the rightful owner, as hereinabove provided, and it shall be necessary therein to adduce testimony concerning

such money or motor vehicle, secondary evidence, including the certified inventory and description thereof shall be admissible in the same manner and to the same effect as would the admission of the said money or motor vehicle, had the same not been returned.

(10) The fact that any person charged with the larceny of money or motor vehicle has failed to object to the return of such money or motor vehicle to the alleged rightful owner thereof, or the fact that such money or motor vehicle has been returned to the alleged rightful owner thereof under the provisions of this law, shall not be offered, received or considered as evidence either for or against the defendant in such criminal action.

**History.**—ss. 1, 2, ch. 29677, 1955; s. 65, ch. 74-383.

**Note.**—Former s. 811.201.

#### **812.081 Trade secrets; theft, embezzlement; unlawful copying; definitions; penalty.—**

(1) As used in this section:

(a) "Article" means any object, device, machine, material, substance, or composition of matter, or any mixture or copy thereof, whether in whole or in part, including any complete or partial writing, record, recording, drawing, sample, specimen, prototype model, photograph, microorganism, blueprint, map, or copy thereof.

(b) "Representing" means completely or partially describing, depicting, embodying, containing, constituting, reflecting, or recording.

(c) "Trade secret" means the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. "Trade secret" includes any scientific, technical, or commercial information, including any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

1. Secret;
2. Of value;
3. For use or in use by the business; and
4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it

when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

(d) "Copy" means any facsimile, replica, photograph, or other reproduction in whole or in part of an article and any note, drawing, or sketch made of or from an article or part or portion thereof.

(2) Any person who, with intent to deprive or withhold from the owner thereof the control of a trade secret, or with an intent to appropriate a trade secret to his own use or to the use of another, steals or embezzles an article representing a trade secret or without authority makes or causes to be made a copy

of an article representing a trade secret is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) In a prosecution for a violation of the provisions of this section, it is no defense that the person so charged returned or intended to return the article so stolen, embezzled, or copied.

**History.**—ss. 1, 2, 3, ch. 74-136.

### 812.13 Robbery.—

(1) "Robbery" means the taking of money or other property which may be the subject of larceny from the person or custody of another by force, violence, assault, or putting in fear.

(2)(a) If in the course of committing the robbery the offender carried a firearm or other deadly weapon, then the robbery is a felony of the first degree, punishable by imprisonment for a term of years not exceeding life imprisonment or as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) If in the course of committing the robbery the offender carried a weapon, then the robbery is a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) If in the course of committing the robbery the offender carried no firearm, deadly weapon, or other weapon, then the robbery is a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) An act shall be deemed "in the course of committing the robbery" if it occurs in an attempt to commit robbery or in flight after the attempt or commission.

**History.**—s. 1, ch. 28217, 1953; s. 1, ch. 29930, 1955; s. 839, ch. 71-136; s. 38, ch. 74-383; s. 29, ch. 75-298.

**Note.**—Former s. 813.011.

### 812.14 Trespass and larceny with relation to utility or cable television fixtures.—

(1) As used in this section, "utility" includes any person, firm, corporation, or association, whether private, municipal, or cooperative, which is engaged in the sale, generation, provision, or delivery of gas, electricity, heat, water, oil, sewer service, telephone service, telegraph service, radio service, or communication service.

(2) It is unlawful to:

(a) Willfully alter, tamper with, injure, or knowingly suffer to be injured any meter, meter seal, pipe, conduit, wire, line, cable, transformer, amplifier, or other apparatus or device belonging to a utility or a cable television service or community antenna line service in such a manner as to cause loss or damage or to prevent any meter installed for registering electricity, gas, or water from registering the quantity which otherwise would pass through the same; or to alter the index or break the seal of any such meter; or in any way to hinder or interfere with the proper action or just registration of any such meter or device; or knowingly to use, waste, or suffer the waste of cable television service or communication antenna line service, by any means, or electricity or gas or water passing through any such meter, wire, pipe, or fitting, or other appliance or appurtenance connected with or belonging to any such utility or cable television service or community antenna line

service, after such meter, wire, pipe or fitting, or other appliance or appurtenance has been tampered with, injured, or altered.

(b) Make or cause to be made any connection with any wire, main, service pipe or other pipes, appliance, or appurtenance in such manner as to use, without the consent of the utility or cable television service or community antenna line service, any service or any electricity, gas, or water, or to cause to be supplied any service or electricity, gas, or water from a utility or a cable television service or community antenna line service to any person, firm, or corporation or any lamp, burner, orifice, faucet, or other outlet whatsoever, without such service being reported for payment or such electricity, gas, or water passing through a meter provided by the utility and used for measuring and registering the quantity of electricity, gas, or water passing through the same.

(c) Use or receive the direct benefit from the use of a utility, cable television service, or community antenna line service knowing, or under such circumstances as would induce a reasonable person to believe, that such direct benefits have resulted from any tampering with, altering of, or injury to any connection, wire, conductor, meter, pipe, conduit, line, cable, transformer, amplifier, or other apparatus or device owned, operated, or controlled by such utility or cable television service or community antenna line service, for the purpose of avoiding payment.

(3) The presence on property in the actual possession of a person of any device or alteration which effects the diversion or use of the services of a utility, cable television service, or community antenna line service so as to avoid the registration of such use by or on a meter installed by the utility or so as to otherwise avoid the reporting of use of such service for payment shall be prima facie evidence of the violation of this section by such person; however, this presumption shall not apply unless:

(a) The presence of such a device or alteration can be attributed only to a deliberate act in furtherance of an intent to avoid payment for utility services;

(b) The person charged has received the direct benefit of the reduction of the cost of such utility services; and

(c) The customer or recipient of the utility services has received the direct benefit of such utility service for at least one full billing cycle.

(4) Any person who willfully violates this section shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) Whoever is found in a civil action to have violated the provisions hereof shall be liable to the utility involved in an amount equal to three times the amount of services unlawfully obtained or \$1,000, whichever is greater.

(6) Nothing in this act shall be construed to apply to licensed and certified electrical contractors while performing usual and ordinary service in accordance with recognized standards.

**History.**—s. 1, ch. 76-64; s. 1, ch. 78-262; s. 7, ch. 79-163; s. 1, ch. 79-294.



## CHAPTER 815

## COMPUTER-RELATED CRIMES

- 815.01 Short title.
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- 815.04 Offenses against intellectual property.
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- 815.06 Offenses against computer users.
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**815.01 Short title.**—The provisions of this act shall be known and may be cited as the "Florida Computer Crimes Act."

History.—s. 1, ch. 78-92.

**815.02 Legislative intent.**—The Legislature finds and declares that:

(1) Computer-related crime is a growing problem in government as well as in the private sector.

(2) Computer-related crime occurs at great cost to the public since losses for each incident of computer crime tend to be far greater than the losses associated with each incident of other white collar crime.

(3) The opportunities for computer-related crimes in financial institutions, government programs, government records, and other business enterprises through the introduction of fraudulent records into a computer system, the unauthorized use of computer facilities, the alteration or destruction of computerized information or files, and the stealing of financial instruments, data, and other assets are great.

(4) While various forms of computer crime might possibly be the subject of criminal charges based on other provisions of law, it is appropriate and desirable that a supplemental and additional statute be provided which proscribes various forms of computer abuse.

History.—s. 1, ch. 78-92.

**815.03 Definitions.**—As used in this chapter, unless the context clearly indicates otherwise:

(1) "Intellectual property" means data, including programs.

(2) "Computer program" means an ordered set of data representing coded instructions or statements that when executed by a computer cause the computer to process data.

(3) "Computer" means an internally programmed, automatic device that performs data processing.

(4) "Computer software" means a set of computer programs, procedures, and associated documentation concerned with the operation of a computer system.

(5) "Computer system" means a set of related, connected or unconnected, computer equipment, devices, or computer software.

(6) "Computer network" means a set of related, remotely connected devices and communication facilities including more than one computer system with capability to transmit data among them through communication facilities.

(7) "Computer system services" means providing

a computer system or computer network to perform useful work.

(8) "Property" means anything of value as defined in s. 812.011 and includes, but is not limited to, financial instruments, information, including electronically produced data and computer software and programs in either machine-readable or human-readable form, and any other tangible or intangible item of value.

(9) "Financial instrument" means any check, draft, money order, certificate of deposit, letter of credit, bill of exchange, credit card, or marketable security.

(10) "Access" means to approach, instruct, communicate with, store data in, retrieve data from, or otherwise make use of any resources of a computer, computer system, or computer network.

History.—s. 1, ch. 78-92.

**815.04 Offenses against intellectual property.**—

(1) Whoever willfully, knowingly, and without authorization modifies data, programs, or supporting documentation residing or existing internal or external to a computer, computer system, or computer network commits an offense against intellectual property.

(2) Whoever willfully, knowingly, and without authorization destroys data, programs, or supporting documentation residing or existing internal or external to a computer, computer system, or computer network commits an offense against intellectual property.

(3) Whoever willfully, knowingly, and without authorization discloses or takes data, programs, or supporting documentation which is a trade secret as defined in s. 812.081 or is confidential as provided by law residing or existing internal or external to a computer, computer system, or computer network commits an offense against intellectual property.

(4)(a) Except as otherwise provided in this subsection, an offense against intellectual property is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) If the offense is committed for the purpose of devising or executing any scheme or artifice to defraud or to obtain any property, then the offender is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 1, ch. 78-92.

**815.05 Offenses against computer equipment or supplies.**—

(1)(a) Whoever willfully, knowingly, and without authorization modifies equipment or supplies used or intended to be used in a computer, computer system, or computer network commits an offense against computer equipment or supplies.

(b)1. Except as provided in this paragraph, an offense against computer equipment or supplies as provided in paragraph (a) is a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. If the offense is committed for the purpose of devising or executing any scheme or artifice to defraud or to obtain any property, then the offender is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2)(a) Whoever willfully, knowingly, and without authorization destroys, takes, injures, or damages equipment or supplies used or intended to be used in a computer, computer system, or computer network; or whoever willfully, knowingly, and without authorization destroys, injures, or damages any computer, computer system, or computer network commits an offense against computer equipment or supplies.

(b)1. Except as provided in this paragraph, an offense against computer equipment or supplies as provided in paragraph (a) is a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. If the damage to such computer equipment or supplies or to the computer, computer system, or computer network is greater than \$200 but less than \$1,000, then the offender is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. If the damage to such computer equipment or supplies or to the computer, computer system, or computer network is \$1,000 or greater, or if there is an interruption or impairment of governmental operation or public communication, transportation, or supply of water, gas, or other public service, then the offender is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s.

775.084.

*History.*—s. 1, ch. 78-92.

#### **815.06 Offenses against computer users.—**

(1) Whoever willfully, knowingly, and without authorization accesses or causes to be accessed any computer, computer system, or computer network; or whoever willfully, knowingly, and without authorization denies or causes the denial of computer system services to an authorized user of such computer system services, which, in whole or part, is owned by, under contract to, or operated for, on behalf of, or in conjunction with another commits an offense against computer users.

(2)(a) Except as provided in this subsection, an offense against computer users is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) If the offense is committed for the purposes of devising or executing any scheme or artifice to defraud or to obtain any property, then the offender is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

*History.*—s. 1, ch. 78-92.

**815.07 This chapter not exclusive.**—The provisions of this chapter shall not be construed to preclude the applicability of any other provision of the criminal law of this state which presently applies or may in the future apply to any transaction which violates this chapter, unless such provision is inconsistent with the terms of this chapter.

*History.*—s. 1, ch. 78-92.

## CHAPTER 817

## FRAUDULENT PRACTICES

## PART I FALSE PRETENSES AND FRAUDS GENERALLY (ss. 817.02-817.562)

## PART II CREDIT CARD CRIMES (ss. 817.57-817.68)

## PART I

FALSE PRETENSES AND FRAUDS  
GENERALLY

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**817.02 Obtaining property by false personation.**—Whoever falsely personates or represents another, and in such assumed character receives any property intended to be delivered to the party so personated, with intent to convert the same to his own use, shall be punished as if he had been convicted of larceny.

**History.**—s. 49, sub-ch. 4, ch. 1637, 1868; RS 2466; GS 3321; RGS 5156; CGL 7259.

**817.03 Making false statement to obtain property or credit.**—Any person who shall make or cause to be made any false statement, in writing, relating to his financial condition, assets or liabilities, or relating to the financial condition, assets or liabilities of any firm or corporation in which such person has a financial interest, or for whom he is acting, with a fraudulent intent of obtaining credit, goods, money or other property, and shall by such false statement obtain credit, goods, money or other property, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 1, ch. 5134, 1903; RS 3322; s. 1, ch. 6869, 1915; RGS 5160; CGL 7263; s. 843, ch. 71-136.

cf.—s. 509.151 Obtaining lodging with intent to defraud.

**817.035 Schemes to defraud; proof; penalties.**—

(1) Any person who engages in a scheme constituting a systematic, ongoing course of conduct with intent to defraud more than one person, or to obtain property from more than one person by false or fraudulent pretenses, representations, or promises, and who so obtains property from one or more of such persons is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) Any person who engages in a scheme constituting a systematic, ongoing course of conduct with intent to defraud 10 or more persons, or to obtain property from 10 or more persons by false or fraudulent pretenses, representations, or promises, and who so obtains property from 1 or more of such persons is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) In any prosecution under this section, it shall be necessary to prove the identity of at least one person from whom the defendant so obtained property, but it shall not be necessary to prove the identity of any intended victim.

**History.**—s. 1, ch. 77-348.

**817.036 Organized fraud defined; penalties.**—

(1) As used in this section, the term "organized fraud" means a scheme or operation by fraud or misrepresentation whereby any person obtains any property of an aggregate value of \$50,000 or more from five or more victims.

(2) Any person who commits the crime of organized fraud shall, upon conviction, be guilty of a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 1, ch. 78-210.

**817.04 Making false statements; venue of prosecution.**—Prosecutions under s. 817.03 may be begun in the county where the statement was written, or purports to have been written.

**History.**—s. 2, ch. 5134, 1903; GS 3323; RGS 5161; CGL 7264.

cf.—s. 910.03 Place of trial generally.

**817.05 False statements to merchants as to financial condition.**—Any merchant in the state, before extending credit to any person applying for the same, may require such applicant to furnish a statement in writing showing the property owned and the salary being earned by said applicant, and if said statement, or any part thereof, is false, provided the same be made willfully, and signed by applicant in presence of two witnesses, and any person obtains credit from any merchant by reason of the merchant relying on and being deceived by said false statement, or any part thereof, then said person so obtaining credit or goods shall be deemed guilty of obtaining money or goods under false pretenses and shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 1, ch. 19487, 1939; CGL 1940 Supp. 7264(1); s. 844, ch. 71-136.

**817.06 Misleading advertisements prohibited; penalty.**—

(1) No person, persons, association, copartnership, or institution shall, with intent to offer or sell or in anywise dispose of merchandise, securities, certificates, diplomas, documents, or other credentials purporting to reflect proficiency in any trade, skill, profession, credits for academic achievement, service or anything offered by such person, persons, association, copartnership, corporation, or institution directly or indirectly, to the public, for sale or distribution or issuance, or with intent to increase the consumption or use thereof, or with intent to induce the public in any manner to enter into any obligation relating thereto, or to acquire title thereto, or any interest therein, or ownership thereof, knowingly or intentionally make, publish, disseminate, circulate or place before the public, or cause, directly or indirectly, to be made, published, disseminated or circulated or placed before the public in this state in a newspaper or other publication or in the form of a book, notice, handbill, poster, bill, circular, pamphlet or letter or in any other way, an advertisement of any sort regarding such certificate, diploma, document, credential, academic credits, merchandise, security, service or anything so offered to the public, which advertisement contains any assertion, representation or statement which is untrue, deceptive, or misleading.

(2) Any person, persons, association, copartnership, corporation, or institution found guilty of a violation of subsection (1) shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—ss. 1, 2, ch. 11827, 1927; CGL 7311, 7312; ss. 1, 2, ch. 57-410; s. 846, ch. 71-136.

**Note.**—Former s. 817.07.

#### **817.061 Misleading solicitation of payments prohibited.—**

(1) It is unlawful for any person, company, corporation, agency, association, partnership, institution, or charitable entity to solicit payment of money by another by means of a statement or invoice, or any writing that would reasonably be interpreted as a statement or invoice, for goods not yet ordered or for services not yet performed and not yet ordered, unless there appears on the face of the statement or invoice or writing in 30 point boldface type the following warning:

"This is a solicitation for the order of goods or services, and you are under no obligation to make payment unless you accept the offer contained herein."

(2) Any person damaged by noncompliance with this section, in addition to other remedies, is entitled to damages in the amount equal to three times the sum solicited.

(3) Any person, company, corporation, agency, association, partnership, institution, or charitable entity that violates this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083.

**History.**—ss. 1, 2, ch. 69-246; s. 845, ch. 71-136.

**817.08 Receiving money or property upon false promises of services as seaman or sponge fisherman.**—Whoever enters into a written agreement with any master or owner of a vessel to perform certain services upon said vessel as seaman or sponge fisherman for a contemplated voyage, and receives or accepts any money or goods, wares or merchandise, as advances or bounty for the performance of said services, and shall willfully and without just cause refuse to perform said services, or to go on said vessel at the time of the sailing of the same, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 1, ch. 5161, 1903; GS 3324; RGS 5162; CGL 7265; s. 847, ch. 71-136.

**817.11 Obtaining property by fraudulent promise to furnish inside information.**—No person shall defraud or attempt to defraud any individual out of any thing of value by assuming to have or be able to obtain any secret, advance or inside information regarding any person, transaction, act or thing, whether such person, transaction, act or thing exists or not.

**History.**—s. 1, ch. 8466, 1921; CGL 7308.

**817.12 Penalty for violation of s. 817.11.**—Any person guilty of violating the provisions of s. 817.11 shall be deemed guilty of a felony of the third degree,

punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 2, ch. 8466, 1921; CGL 7309; s. 848, ch. 71-136.

**817.13 Paraphernalia as evidence of violation of s. 817.11.**—All paraphernalia of whatsoever kind in possession of any person and used in defrauding or attempting to defraud as specified in s. 817.11 shall be held and accepted by any court of competent jurisdiction in this state as prima facie evidence of guilt.

**History.**—s. 3, ch. 8466, 1921; CGL 7310.

**817.14 Procuring assignments of produce upon false representations.**—Any person acting for himself or another, who shall procure any consignment of produce grown in this state, to himself or such other, for sale on commission or for other compensation by any knowingly false representation as to the prevailing market price at such time for such produce at the point to which it is consigned, or as to the price which such person for whom he is acting is at said time paying to other consignors for like produce at said place, or as to the condition of the market for such produce at such time and place, and any such person acting for another who shall procure any consignment for sale as aforesaid by false representation of authority to him by such other to make a guaranteed price to the consignor, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 1, ch. 5141, 1903; GS 3325; RGS 5163; CGL 7266; s. 849, ch. 71-136.

**817.15 Making false entries, etc., on books of corporation.**—Any officer, agent, clerk or servant of a corporation who makes a false entry in the books thereof, with intent to defraud, and any person whose duty it is to make in such books a record or entry of the transfer of stock, or of the issuing and canceling of certificates thereof, or of the amount of stock issued by such corporation, who omits to make a true record or entry thereof, with intent to defraud, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 47, ch. 1637, 1868; RS 2467; GS 3326; RGS 5164; CGL 7267; s. 850, ch. 71-136.

**817.16 False reports, etc., by officers of banks, trust companies, etc., under supervision of Department of Banking and Finance with intent to defraud.**—Any officer, director, agent or clerk of any bank, trust company, building and loan association, small loan licensee, credit union, or other corporation under the supervision of the Department of Banking and Finance, who willfully and knowingly subscribes or exhibits any false paper with intent to deceive any person authorized to examine as to the records of such bank, trust company, building and loan association, small loan licensee, credit union, or other corporation under the supervision of the Department of Banking and Finance, or willfully and knowingly subscribes to or makes any false reports to the Department of Banking and Finance or causes to be published any false report,

shall be guilty of a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 1, ch. 15876, 1933; CGL 1936 Supp. 7315(1); ss. 12, 35, ch. 69-106; s. 851, ch. 71-136.  
cf.—s. 381.411 Fraud in obtaining insulin.  
s. 526.01 Fraud and deception in sale, etc., of liquid fuels.

**817.17 Wrongful use of city's name.**—No person or persons engaged in manufacturing in this state, shall cause to be printed, stamped, marked, engraved or branded, upon any of the articles manufactured by them, or on any of the boxes, packages, or bands containing such manufactured articles, the name of any city in the state, other than that in which said articles are manufactured; provided, that nothing in this section shall prohibit any person from offering for sale any goods having marked thereon the name of any city in Florida other than that in which said goods were manufactured, if there be no manufactory of similar goods in the city the name of which is used.

**History.**—s. 1, ch. 4145, 1893; GS 3327; RGS 5167; CGL 7270.

**817.18 Wrongful stamping, marking, etc.; penalty.**—

(1) No person shall knowingly sell or offer for sale, within the state, any manufactured articles which shall have printed, stamped, marked, engraved, or branded upon them, or upon the boxes, packages, or bands containing said manufactured articles, the name of any city in the state, other than that in which such articles were manufactured; provided, that nothing in this section shall prohibit any person from offering for sale any goods, having marked thereon the name of any city in Florida, other than that in which said goods are manufactured, if there be no manufactory of similar goods in the city the name of which is used.

(2) Any person violating the provisions of this or the preceding section shall be guilty of a misdemeanor or of the second degree, punishable as provided in s. 775.083.

**History.**—s. 2, ch. 4145, 1893; GS 3328; RGS 5168; CGL 7271; s. 852, ch. 71-136.

**817.19 Fraudulent issue of certificate of stock of corporation.**—Any officer, agent, clerk or servant of a corporation, or any other person, who fraudulently issues or transfers a certificate of stock of a corporation to any person not entitled thereto, or fraudulently signs such certificate, in blank or otherwise, with the intent that it shall be so issued or transferred by himself or any other person, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 46, ch. 1637, 1868; RS 2468; GS 3329; RGS 5169; CGL 7272; s. 853, ch. 71-136.

**817.20 Issuing stock or obligation of corporation beyond authorized amount.**—Any officer, agent, clerk or servant of a corporation, or any other person, who issues, or signs with intent to issue, any certificate of stock in a corporation, or who issues, signs or indorses with intent to issue any bond, note, bill or other obligation or security in the name of such corporation, beyond the amount authorized by law, or limited by the legal votes of such corporation or its proper officers; or negotiates, transfers or disposes of such certificate, with intent to defraud, shall

be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 45, ch. 1637, 1868; RS 2469; GS 3330; RGS 5170; CGL 7273; s. 854, ch. 71-136.

**817.21 Books to be evidence in such cases.**—On the trial of any person under ss. 817.19 and 817.20 the books of any corporation to which such person has access or the right of access shall be admissible in evidence.

**History.**—s. 48, ch. 1637, 1868; RS 2470; GS 3331; RGS 5171; CGL 7274.

**817.22 Making false invoice to defraud insurer.**—If the owner of a ship or vessel or of property laden or pretended to be laden on board the same, or if any other person concerned in the lading or fitting out of a ship or vessel, makes out or exhibits, or causes to be made out or exhibited, a false or fraudulent invoice, bill of lading, bill or parcels or other false estimates of any goods or property laden or pretended to be laden, on board such ship or vessel, with intent to injure and defraud an insurer of such ship, vessel or property, or of any part thereof, he shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 72, ch. 1637, 1868; RS 2471; GS 3332; RGS 5172; CGL 7275; s. 7, ch. 22858, 1945; s. 855, ch. 71-136.

**817.23 Making false affidavit to defraud insurer.**—If a master, other officer, or mariner of a ship or vessel, makes or causes to be made, or swears to any false affidavit or protest, or if an owner or other person concerned in such ship or vessel or in the goods and property laden on board the same, procures any such false affidavits or protest to be made, or exhibits the same, with intent to injure, deceive or defraud an insurer of such ship or vessel, or of any goods or property laden on board the same, he shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 73, ch. 1637, 1868; RS 2472; GS 3333; RGS 5173; CGL 7276; s. 856, ch. 71-136.

**817.233 Burning to defraud the insurer.**—Any person who willfully and with intent to injure or defraud the insurer sets fire to or burns or attempts so to do or who causes to be burned or who aids, counsels or procures the burning of any building, structure or personal property, of whatsoever class or character, whether the property of himself or of another, which shall at the time be insured by any person against loss or damage by fire, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 1, ch. 15602, 1931; CGL 1936 Supp. 7208(12); s. 791, ch. 71-136; s. 65, ch. 74-383.

**Note.**—Former s. 806.06.

**817.234 False and fraudulent insurance claims.**—

(1)(a) Any person who, with the intent to injure, defraud, or deceive any insurance company, including, but not limited to, any motor vehicle, life, disability, credit life, credit, casualty, surety, workmen's compensation, title, premium finance, reinsurance, fraternal benefit, or home or automobile warranty company:



1. Presents or causes to be presented any written or oral statement as part of, or in support of, a claim for payment or other benefit pursuant to an insurance policy, knowing that such statement contains any false, incomplete, or misleading information concerning any fact or thing material to such claim; or

2. Prepares or makes any written or oral statement that is intended to be presented to any insurance company in connection with, or in support of, any claim for payment or other benefit pursuant to an insurance policy, knowing that such statement contains any false, incomplete, or misleading information concerning any fact or thing material to such claim

is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) All claims forms shall contain a statement in a form approved by the Department of Insurance that clearly states in substance the following: "Any person who knowingly and with intent to injure, defraud, or deceive any insurance company files a statement of claim containing any false, incomplete, or misleading information is guilty of a felony of the third degree."

(2) Any physician licensed under chapter 458, osteopath licensed under chapter 459, chiropractor licensed under chapter 460, or other practitioner licensed under the laws of this state who knowingly and willfully assists, conspires with, or urges any insured party to fraudulently violate any of the provisions of this section or part X of chapter 627, or any person who, due to such assistance, conspiracy, or urging by said physician, osteopath, chiropractor, or practitioner, knowingly and willfully benefits from the proceeds derived from the use of such fraud, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. In the event that a physician, osteopath, chiropractor, or practitioner is adjudicated guilty of a violation of this section, the <sup>2</sup>State Board of Medical Examiners as set forth in chapter 458, the <sup>3</sup>State Board of Osteopathic Medical Examiners as set forth in chapter 459, the <sup>4</sup>Florida State Board of Chiropractic Examiners as set forth in chapter 460, or other appropriate licensing authority shall hold an administrative hearing to consider the imposition of administrative sanctions as provided by law against said physician, osteopath, chiropractor, or practitioner.

(3) Any attorney who knowingly and willfully assists, conspires with, or urges any claimant to fraudulently violate any of the provisions of this section or part X of chapter 627, or any person who, due to such assistance, conspiracy, or urging on such attorney's part, knowingly and willfully benefits from the proceeds derived from the use of such fraud, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) No person or governmental unit licensed under chapter 395 to maintain or operate a hospital, and no administrator or employee of any such hospital, shall knowingly and willfully allow the use of the facilities of said hospital by an insured party in a scheme or conspiracy to fraudulently violate any of the provisions of this section or part X of chapter

627. Any hospital administrator or employee who violates this subsection is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Any adjudication of guilt for a violation of this subsection, or the use of business practices demonstrating a pattern indicating that the spirit of the law set forth in this section or part X of chapter 627 is not being followed, shall be grounds for suspension or revocation of the license to operate the hospital or the imposition of an administrative penalty of up to \$5,000 by the licensing agency, as set forth in chapter 395.

(5) Any insurance company damaged as a result of a violation of any provision of this section when there has been a criminal adjudication of guilt shall have a cause of action to recover compensatory damages, plus all reasonable investigation and litigation expenses, including attorneys' fees, at the trial and appellate courts.

(6) For the purposes of this section, "statement" includes, but is not limited to, any notice, statement, proof of loss, bill of lading, invoice, account, estimate of property damages, bill for services, diagnosis, prescription, hospital or doctor records, x-ray, test result, or other evidence of loss, injury, or expense.

(7) The provisions of this section shall also apply as to any insurer or adjusting firm or its agents or representatives who, with intent, injure, defraud, or deceive any claimant with regard to any claim. The claimant shall have the right to recover the damages provided in this section.

(8) It is unlawful for any person, in his individual capacity or in his capacity as a public or private employee, or for any firm, corporation, partnership, or association, to solicit any business in or about city receiving hospitals, city and county receiving hospitals, county hospitals, justice courts, or municipal courts; in any public institution; in any public place; upon any public street or highway; in or about private hospitals, sanitariums, or any private institution; or upon private property of any character whatsoever for the purpose of making motor vehicle tort claims or claims for personal injury protection benefits required by s. 627.736. Any person who violates the provisions of this subsection is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(9) It is unlawful for any attorney to solicit any business relating to the representation of persons injured in a motor vehicle accident for the purpose of filing a motor vehicle tort claim or a claim for personal injury protection benefits required by s. 627.736. Any attorney who violates the provisions of this subsection is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Whenever any circuit or special grievance committee acting under the jurisdiction of the Supreme Court shall find probable cause to believe that an attorney is guilty of a violation of this section, such committee shall forward to the appropriate state attorney a copy of the finding of probable cause and the report being filed in the matter. This section shall not be interpreted to prohibit advertising by attorneys which is permitted by the Code of

Professional Responsibility as promulgated by the Florida Supreme Court.

**History.**—s. 7, ch. 76-266; s. 36, ch. 77-468; s. 3, ch. 78-258; s. 1, ch. 79-81.  
**Note.**—See ch. 79-40, which redesignated "workmen's" compensation as "workers' " compensation.

**Note.**—See ch. 79-302, which abolished this board and established the "Board of Medical Examiners."

**Note.**—See ch. 79-230, which abolished this board and established the "Board of Osteopathic Medical Examiners."

**Note.**—See ch. 79-211, which abolished this board and established the "Board of Chiropractic."

**Note.**—Former s. 627.7375.

#### **817.235 Personal property; removing or altering identification marks.—**

(1) Except as otherwise provided by law, any person who, with intent to prevent identification by the true owner, removes, erases, defaces, or otherwise alters any serial number or other mark of identification placed on any item of personal property by the manufacturer or owner thereof is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Any person who possesses any item of personal property with the knowledge that the serial number or other mark of identification placed thereon by the manufacturer or owner thereof has been removed, erased, defaced, or otherwise altered with intent to prevent identification by the true owner is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 1, ch. 74-6.

**817.24 Unlawful to add or alter or deface existing brand.**—It is unlawful for anyone to add to or alter or deface any existing brand on any animal not his own or without the consent of the owner, with a fraudulent intent to claim the same, any bar, letter, figure, or character of any kind. Any violation of this section shall be a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—ss. 1, 3, ch. 4734, 1899; GS 3334; RGS 5174; CGL 7277; s. 857, ch. 71-136.

**817.25 Fraudulently marking or branding.**—Whoever shall fraudulently mark or brand any unmarked or unbranded animal with the intent to claim the same or to prevent identification by the true owner or owners thereof, shall be punished as provided in s. 817.24.

**History.**—s. 4, ch. 4734, 1899; GS 3335; RGS 5175; CGL 7278.

**817.26 Fraudulently changing marks on animal.**—If any person shall fraudulently alter or change the marks of any animal, not his own, with intent to claim the same or to prevent identification by the true owner thereof, the person so offending shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 1, ch. 5663, 1907; RGS 5176; CGL 7279; s. 858, ch. 71-136.

**817.27 Cutting off ears or head of animal before same is dressed.**—No person shall cut the ears or head off of any hogs, sheep, beef, or other domestic animal until the same has been dressed. Any person violating the provisions of this section shall be guilty

of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—ss. 1, 2, ch. 5157, 1903; GS 3336; RGS 5177; CGL 7280; s. 859, ch. 71-136.

**817.28 Fraudulent obtaining of property by gaming.**—Whoever, by the game of three-card monte, so-called, or any other game, device, sleight-of-hand, pretensions to fortunetelling, or other means whatever by the use of cards or other implement or implements, fraudulently obtains from another person property of any description, shall be punished as if he had been convicted of larceny.

**History.**—s. 53, ch. 1637, 1868; RS 2473; GS 3343; RGS 5186; CGL 7289.

**817.29 Cheating.**—Whoever is convicted of any gross fraud or cheat at common law shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 54, ch. 1637, 1868; RS 2475; GS 3344; RGS 5187; CGL 7290; s. 860, ch. 71-136.

**817.30 Punishment for unlawful use of badge of certain orders and organizations.**—Any person who willfully wears the badge or button of the Grand Army of the Republic, the insignia, badge or rosette of the Military Order of the Loyal Legion of the United States, or of the Military Order of Foreign Wars of the United States, or of the Patrons of Husbandry, or the Benevolent and Protective Order of Elks of the United States of America, or of the Woodmen of the World, or of any society, order or organization of 5 years' standing in the state, or uses the the same to obtain aid or assistance within this state, or willfully uses the name of such society, order or organization, the titles of its officers, or its insignia, ritual or ceremonies, unless entitled to use or wear the same under the constitution and bylaws, rules and regulations of such order or of such society, order or organization, is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 1, ch. 6502, 1913; RGS 5197; CGL 7300; s. 862, ch. 71-136.

**817.31 Unlawful use of insignia of American Legion; penalty.**—Any person who willfully wears the badge, button or other insignia of the American Legion shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083; provided, that the provisions of this section shall not apply to any member of the American Legion.

**History.**—s. 1, ch. 8464, 1921; CGL 7301; s. 861, ch. 71-136.

#### **817.311 Unlawful use of badges, etc.—**

(1) From and after May 9, 1949, any person who shall wear or display a badge, button, insignia or other emblem, or shall use the name of or claim to be a member of any benevolent, fraternal, social, humane, or charitable organization, which organization is entitled to the exclusive use of such name and such badge, button, insignia or emblem either in the identical form or in such near resemblance thereto as to be a colorable imitation thereof, unless such person is entitled so to do under the laws, rules and regulations of such organization, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) This section shall be cumulative to any and all laws now in force in the state.

**History.**—s. 1, ch. 25025, 1949; s. 863, ch. 71-136.

**817.32 Fraudulent operation of coin-operated devices.**—Any person who shall operate or cause to be operated, or who shall attempt to operate, or attempt to cause to be operated, any automatic vending machine, slot machine, coinbox telephone, or other receptacle designed to receive lawful coin of the United States in connection with the sale, use or enjoyment of property or service, by means of a slug or any false, counterfeited, mutilated, sweated, or foreign coin, or by any means, method, trick, or device whatsoever not lawfully authorized by the owner, lessee, or licensee of such machine, coinbox telephone or receptacle, or who shall take, obtain or receive from or in connection with any automatic vending machine, slot machine, coinbox telephone or other receptacle designed to receive lawful coin of the United States in connection with the sale, use, or enjoyment of property or service, any goods, wares, merchandise, gas, electric current, article of value, or the use or enjoyment of any telephone or telegraph facilities or service, or of any musical instrument, phonograph, or other property, without depositing in and surrendering to such machine, coinbox telephone or receptacle lawful coin of the United States to the amount required therefor by the owner, lessee, or licensee of such machine, coinbox telephone or receptacle, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 1, ch. 12267, 1927; CGL 7313; s. 864, ch. 71-136. cf.—s. 849.15 Possession of slot machines unlawful.

**817.33 Manufacture, etc., of slugs to be used in coin-operated devices prohibited.**—Any person who, with intent to cheat or defraud the owner, lessee, licensee, or other person entitled to the contents of any automatic vending machine, slot machine, coinbox telephone or other receptacle, depository, or contrivance designed to receive lawful coin of the United States in connection with the sale, use, or enjoyment of property or service, or who, knowing that the same is intended for unlawful use, shall manufacture for sale, or sell or give away any slug, device or substance whatsoever intended or calculated to be placed or deposited in any such automatic vending machine, slot machine, coinbox telephone or other such receptacle, depository or contrivance, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 2, ch. 12267, 1927; CGL 7314; s. 865, ch. 71-136.

**817.34 False entries and statements by investment companies offering stock or security for sale.**—Any person who shall knowingly subscribe to or make or cause to be made, any false statements or false entry in any book of any investment company or exhibit any false paper with the intention of deceiving any person authorized to examine into the affairs of any investment company, or shall make, utter or publish any false statement of the financial condition of any investment company, or the stock, bonds or other securities by it of-

ferred for sale, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 9, ch. 6422, 1913; RGS 5748; CGL 7975; s. 866, ch. 71-136.

**817.35 Sale of cemetery lots, etc.; promises.**—

(1) It shall be unlawful for any person, firm or corporation, to sell, offer for sale, or advertise for sale, cemetery lots or mausoleum space, upon the guarantee, promise, representation or inducement to the purchaser that the same may be sold or repurchased at a financial profit.

(2) Any violation of this section shall constitute a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—ss. 1, 2, ch. 22080, 1943; s. 7B, ch. 24337, 1947; s. 867, ch. 71-136.

**817.36 Resale of tickets of common carriers, places of amusement, etc.**—

(1) Whoever shall offer for sale or sell any ticket good for passage or accommodations on any common carrier in this state, or good for admission to any sporting exhibition, athletic contest, theater, or any exhibition where an admission price is charged, and request or receive a price in excess of \$1 above the price charged therefor by the original seller of said ticket shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) The provisions of this law shall not apply to travel agencies that have an established place of business in this state, which place of business is required to pay state, county, and city occupational license taxes.

**History.**—ss. 1, 1a, ch. 22726, 1945; s. 868, ch. 71-136.

**817.37 Touting; defining; providing punishment; ejection from racetracks.**—

(1) Any person who knowingly and designedly by false representation attempts to, or does persuade, procure or cause another person to wager on a horse in a race to be run in this state or elsewhere, and upon which money is wagered in this state, and who asks or demands compensation as a reward for information or purported information given in such case is a tout, and is guilty of touting.

(2) Any person who is a tout, or who attempts or conspires to commit touting, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(3) Any person who in the commission of touting falsely uses the name of any official of the Florida Division of Pari-mutuel Wagering, its inspectors or attaches, or of any official of any racetrack association, or the names of any owner, trainer, jockey, or other person licensed by the Florida Division of Pari-mutuel Wagering, as the source of any information or purported information shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) Any person who has been convicted of touting by any court, and the record of whose conviction on such charge is on file in the office of the Florida Division of Pari-mutuel Wagering, any court of this state, or of the Federal Bureau of Investigation, or any person who has been ejected from any racetrack of this or any other state for touting or practices



inimical to the public interest shall be excluded from all racetracks in this state and if such person returns to a racetrack he shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Any such person who refuses to leave such track when ordered to do so by inspectors of the Florida Division of Pari-mutuel Wagering or by any peace officer, or by an accredited attache of a racetrack or association shall be guilty of a separate offense which shall be a misdemeanor of the second degree, punishable as provided in s. 775.083.

**History.**—ss. 1-4, ch. 24344, 1947; s. 10, ch. 26484, 1951; s. 1, ch. 67-233; s. 2, ch. 71-98; s. 869, ch. 71-136.

#### **817.38 Simulated process.—**

(1) **CIRCULATION PROHIBITED.**—It is unlawful for any person, firm, or corporation to send or deliver, or cause to be sent or delivered any letter, paper, document, notice of intent to bring suit, or other notice or demand, which simulates a summons, complaint, writ, or other court process, or any letter, paper, or document which simulates the seal of the state or the stationery of any state agency or fictitious state agency with intent to lead the recipient or sendee to believe that the same is genuine, for the purpose of obtaining any money or thing of value, or that a state agency is the sending party. The sending of such simulating document shall be prima facie evidence of such intent, and it shall be no defense to show that the document bears any statement to the contrary, nor shall it be a defense to show that the money or thing of value sought to be obtained was to apply as payment on a valid obligation.

(2) **EVIDENCE OF DELIVERY.**—In prosecutions for violation of this section, the prosecution may show that the simulating document was deposited in the post office for mailing or was delivered to any person with intent to be forwarded, and such showing shall be sufficient proof of the sending or delivery.

(3) **VENUE.**—Any person violating this section may be tried therefor in the county where such simulating document was so deposited, or the county where the same was received.

(4) **EXCEPTION.**—Nothing in this section shall be construed to prohibit the printing, publication or distribution of blank forms of genuine summons and other court process.

(5) **PENALTIES.**—Any person, firm or corporation violating this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—ss. 1-5, ch. 57-73; s. 1, ch. 65-336; s. 870, ch. 71-136.

#### **817.39 Simulated forms of court or legal process, or official seal or stationery; publication, sale or circulation unlawful; penalty.—**

(1) Any person, firm, or corporation who shall print, for the purpose of sale or distribution and for use in the state, or who shall circulate, publish, or offer for sale any letter, paper, document, notice of intent to bring suit, or other notice or demand, which simulates a form of court or legal process, or any person who without authority of the state shall print, for the purpose of sale or distribution for use in the state, or who without authority of the state

shall circulate, publish, use, or offer for sale any letters, papers, or documents which simulate the seal of the state, or the stationery of a state agency or fictitious state agency is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) It shall be no defense that the paper or other instrument referred to in subsection (1) shall declare that it is not a court or legal process.

(3) Nothing in this section shall prevent the printing, publication, sale or distribution of genuine legal forms for the use of attorneys or clerks of courts.

**History.**—ss. 1-3, ch. 57-265; s. 2, ch. 65-336; s. 871, ch. 71-136; s. 240, ch. 77-104.

#### **817.40 False, misleading and deceptive advertising and sales; definitions.—**When construing ss. 817.40, 817.41, 817.42-817.47, and each and every word, phrase or part thereof, where the context will permit:

(1) The word or term "wholesale" or "wholesale sale" shall extend to and include an "at-cost sale," "below-cost sale," and terms of similar purport, and embraces all sales purporting to be made at or below the seller's net delivered cost price, or below the average wholesale cost of the items sold or to be sold, but which are in fact made for a price in excess of the average wholesale of like items.

(2) The word or term "retail" means the sale or offering for sale of individual items of merchandise to the ultimate consumer.

(3) The term or word "retailer" means one who acquires for the purpose of sale, keeps for sale, offers or exposes for sale, or sells individual units of merchandise to the ultimate consumer and not for resale.

(4) The term or word "merchandise" includes goods, wares and merchandise, as generally understood, and in addition thereto services and other things of value.

(5) The phrase "misleading advertising" includes any statements made, or disseminated, in oral, written or printed form or otherwise, to or before the public, or any portion thereof, which are known, or through the exercise of reasonable care or investigation could or might have been ascertained, to be untrue or misleading, and which are or were so made or disseminated with the intent or purpose, either directly or indirectly, of selling or disposing of real or personal property, services of any nature whatever, professional or otherwise, or to induce the public to enter into any obligation relating to such property or services.

(6) The definitions contained in s. 1.01, insofar as the context of this act will permit, shall be applicable hereto.

**History.**—s. 1, ch. 59-301.

#### **817.41 Misleading advertising prohibited.—**

(1) It shall be unlawful for any person to make or disseminate or cause to be made or disseminated before the general public of the state, or any portion thereof, any misleading advertisement. Such making or dissemination of misleading advertising shall constitute and is hereby declared to be fraudulent and unlawful, designed and intended for obtaining

money or property under false pretenses.

(2) It shall be unlawful for any person to advertise, in any way or by any medium whatsoever, any sale as a "wholesale sale," "below cost sale," or terms of similar purport, unless the goods, wares or merchandise offered for sale thereby are offered by the seller at or below his delivered net cost price, or below the average wholesale price of such goods, wares, or merchandise. Such advertising of goods, wares, or merchandise for sale shall constitute and is hereby declared to be fraudulent and unlawful, designed and intended for obtaining money or property under false pretenses.

(3) Any retailer using the term or phrase "wholesale sale," "below cost sale," or terms of similar purport, in connection with the sale of goods, wares, or merchandise at retail, shall, upon demand by a customer, forthwith make available, unless the same shall have theretofore been made available, to the Better Business Bureau, the Merchant's Division of the Chamber of Commerce, or to the state attorney's office for inspection, invoices, or shipping charges or true and correct copies thereof, of any goods, wares, or merchandise so offered for sale, described or represented, indicating the delivery net cost to the seller of the particular goods, wares or merchandise sold or offered for sale, from which the seller's delivered net cost may be determined. The said retailer shall also and at the same time give all reasonable assistance in determining and ascertaining his net cost price of said goods, wares, or merchandise. The said Better Business Bureau, Merchant's Division of the Chamber of Commerce or state attorney, upon determining the said delivered net cost, shall forthwith issue a certificate evidencing such delivered net cost, as determined, and deliver the same to the retailer for delivery or exhibition to the customer. Unless such certificate shall show a delivered net cost equal to or in excess of the advertised price, the retailer shall be presumed to have violated this law.

(4) There shall be a rebuttable presumption that the person named in or obtaining the benefits of any misleading advertisement or any such sale is responsible for such misleading advertisement or unlawful sale.

(5) No retailer shall knowingly and willfully advertise merchandise for sale at a special or wholesale price, in any way or by any medium whatsoever, if he does not have sufficient quantities of the advertised merchandise to meet the reasonably foreseeable demand, unless the fact of limited quantity and the approximate number of items is stated in the advertisement, or unless the retailer provides a means by which the consumer may obtain the advertised item at the advertised price within a reasonable time or a value equivalent thereto.

(6) Any person prevailing in a civil action for violation of this section shall be awarded costs, including reasonable attorney's fees, and may be awarded punitive damages in addition to actual damages proven. This provision is in addition to any other remedies prescribed by law.

History.—s. 2, ch. 59-301; s. 1, ch. 73-60; s. 2, ch. 77-304.

**817.411 False information; advertising.**—No person, firm or corporation shall knowingly publish, disseminate, circulate, or place before the public, or cause directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, any advertisement, announcement, or statement containing any assertion, representation, or statement that commodities, mortgages, promissory notes, securities, or other things of value offered for sale are covered by insurance guaranties where such insurance is nonexistent or does not in fact insure against the risks covered.

History.—s. 1, ch. 61-110.

**817.415 Florida Free Gift Advertising Law.—**

**(1) LEGISLATIVE INTENT.—**

(a) The Legislature of the State of Florida recognizes that the deceptive misuse of the term "free" and words of similar meaning and intent in advertising by the unscrupulous has resulted in deception of consumers, leading them unknowingly to assume contractual obligations which were initially concealed by the deception.

(b) It is the intent of the Legislature to prevent such deception by requiring disclosure of all contingent conditions, obligations, or considerations in any form in connection with the advertising of goods or services using the term "free" or words of similar meaning and intent.

(c) It is not the intent of the Legislature to prohibit the use of gifts in legitimate promotions of trade so long as the advertising of such gifts and promotions makes full disclosure of any requirement for purchase or contractual obligations to be assumed in order to qualify for the gift.

(2) **SHORT TITLE.**—This act may be cited as the "Florida Free Gift Advertising Law."

**(3) DEFINITIONS.**—As used in this act:

(a) "Person" includes an individual, partnership, corporation, association, or other entity doing business in the state.

(b) "Free" includes the use of terms such as "awarded," "prize," "absolutely without charge," "free of charge," and words or groups of words of similar intent which reasonably lead a person to believe that he may receive, or has been selected to receive, something of value, entirely or in part without a requirement of compensation in any form from the recipient.

(c) "Item" means goods, services, or any tangible or intangible thing of value and the rights therein.

(d) "Advertisement" and "advertising" includes every form of communication which offers for sale, or attempts to induce the creation of obligations in exchange for, any item or rights therein.

(4) **RESTRICTIONS ON USE OF WORD "FREE."**—Any item or portion of an item unconditionally offered as "free" shall in fact be free, without obligation or requirement of consideration in any form, when accepted in writing within the time limit set forth in the advertisement or within a reasonable time, if no time limit is so set. However, any person so receiving and accepting such offer may be required to pay any necessary transportation or de-

livery charges directly to the United States Postal Service or other regulated public carrier.

(5) **TYPE REQUIREMENTS IN ADVERTISEMENTS.**—Advertising in which items are offered as free with conditions or obligations necessary to acceptance shall include a statement of any such conditions or obligations with equal prominence and type size at least half that of the term "free," and advertising in compliance herewith shall not be considered deceptive.

(6) **VIOLATIONS.**—Any violation of this section is declared to be a deceptive trade practice and unlawful.

(7) **INJUNCTIONS.**—The Commissioner of Agriculture or the Attorney General may bring an action for injunction to prohibit practices in violation of this law, and any such injunction shall be issued without bond. Such suit may be brought in any circuit court of this state having jurisdiction over the party or parties defendant.

*History.*—ss. 1-5, ch. 70-164; s. 1, ch. 70-439; ss. 1-6, ch. 72-4.

#### **817.416 Franchises and distributorships; misrepresentations.—**

(1) **DEFINITIONS.**—For the purpose of this section:

(a) The term "person" means an individual, partnership, corporation, association, or other entity doing business in Florida.

(b) The term "franchise or distributorship" means a contract or agreement, either expressed or implied, whether oral or written, between two or more persons:

1. Wherein a commercial relationship of definite duration or continuing indefinite duration is involved;

2. Wherein one party, hereinafter called the "franchisee," is granted the right to offer, sell, and distribute goods or services manufactured, processed, distributed or, in the case of services, organized and directed by another party;

3. Wherein the franchisee as an independent business constitutes a component of franchiser's distribution system; and

4. Wherein the operation of the franchisee's business franchise is substantially reliant on franchisers for the basic supply of goods.

(c) The term "goods" means any article or thing without limitation, or any part of such article or thing, including any article or thing used or consumed by a franchisee in rendering a service established, organized, directed, or approved by a franchiser.

(2) **DECLARATIONS.**—

(a) It is unlawful, when selling or establishing a franchise or distributorship, for any person:

1. Intentionally to misrepresent the prospects or chances for success of a proposed or existing franchise or distributorship;

2. Intentionally to misrepresent, by failure to disclose or otherwise, the known required total investment for such franchise or distributorship; or

3. Intentionally to misrepresent or fail to disclose efforts to sell or establish more franchises or distributorships than is reasonable to expect the market or market area for the particular franchise or distributorship to sustain.

(b) The execution or carrying out of a scheme, plan, or corporate organization which violates any of the provisions of this section, if knowledge or intent be proved, shall be a misdemeanor of the second degree, punishable as provided in ss. 775.082 and 775.083.

(3) **CIVIL PROVISIONS.**—Any person, who shows in a civil court of law a violation of this section may receive a judgment for all moneys invested in such franchise or distributorship. Upon such a showing, the court may award any person bringing said action reasonable attorney's fees and shall award such person reasonable costs incurred in bringing the action, and execution shall thereupon issue.

(4) **INJUNCTIONS.**—The Department of Legal Affairs, or the Department of Legal Affairs and the Department of Agriculture and Consumer Services jointly, may sue in behalf of the people of this state for injunctive relief against franchise or distributorship plans or activities in violation of paragraph (2)(a).

*History.*—ss. 1, 2, 2A, 3, 4, ch. 71-61.

**817.43 Exemption.**—The provisions of s. 817.40 or s. 817.41 shall not apply to any publisher of a newspaper, magazine or other publication, or the owner or operator of a radio or television station, or any other owner or operator of a media primarily devoted to advertising, who publishes, broadcasts, or otherwise disseminates an advertisement in good faith without knowledge of its false, deceptive or misleading character.

*History.*—s. 4, ch. 59-301; s. 178, ch. 79-164.

#### **817.44 Intentional false advertising prohibited.—**

(1) **WHAT CONSTITUTES INTENTIONAL FALSE ADVERTISING.**—It is unlawful to offer for sale or to issue invitations for offers for the sale of any property, real or personal, tangible or intangible, or any services, professional or otherwise, by placing or causing to be placed before the general public, by any means whatever, an advertisement describing such property or services as part of a plan or scheme with the intent not to sell such property or services so advertised, or with the intent not to sell such property or services at the price at which it was represented in the advertisement to be available for purchase by any member of the general public.

(2) **PRESUMPTION OF VIOLATION.**—The failure to sell any article or a class of articles advertised, or the refusal to sell at the price at which it was advertised to be available for purchase, shall create a rebuttable presumption of an intent to violate this section.

(3) **EXEMPTION.**—This section shall not apply to any publisher of a newspaper, magazine or other publication, or the owner or operator of a radio station, television station or other advertising media, who places before the public an advertisement in good faith without knowledge that the person so engaging or hiring such owner, operator, or publisher has the intent not to sell the property or services so



advertised or with the intent not to sell such property or services at the price at which it was represented in the advertisement to be available for purchase by any member of the general public.

**History.**—s. 5, ch. 59-301.

**817.45 Penalty.**—Any person convicted of violating any of the provisions of s. 817.41, s. 817.411, or s. 817.44 shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 6, ch. 59-301; s. 872, ch. 71-136; s. 179, ch. 79-164.

**817.47 Insurance advertising exempt.**—Nothing in ss. 817.40, 817.41, 817.42-817.45, 817.47 shall be deemed to apply to advertising in connection with sales of insurance which are regulated under the insurance laws of this state.

**History.**—s. 9, ch. 59-301.

**817.481 Credit cards; obtaining goods by use of false, expired, etc.; penalty.**—

(1) It shall be unlawful for any person knowingly to obtain or attempt to obtain credit, or to purchase or attempt to purchase any goods, property or service, by the use of any false, fictitious, counterfeit, or expired credit card, telephone number, credit number, or other credit device, or by the use of any credit card, telephone number, credit number, or other credit device of another without the authority of the person to whom such card, number or device was issued, or by the use of any credit card, telephone number, credit number, or other credit device in any case where such card, number or device has been revoked and notice of revocation has been given to the person to whom issued.

(2) It shall be unlawful for any person to avoid or attempt to avoid or to cause another to avoid payment of the lawful charges, in whole or in part, for any telephone or telegraph service or for the transmission of a message, signal or other communication by telephone or telegraph or over telephone or telegraph facilities by the use of any fraudulent scheme, means or method, or any mechanical, electric, or electronic device.

(3)(a) If the value of the property, goods, or services obtained or which are sought to be obtained in violation of this section is \$100 or more, the offender shall be guilty of grand larceny.

(b) If the value of the property, goods, or services obtained or which are sought to be obtained in violation of this section is less than \$100 the offender shall be guilty of petit larceny.

**History.**—ss. 1-3, ch. 61-83; s. 1, ch. 65-245; s. 1, ch. 65-128; s. 873, ch. 71-136. cf.—Ch. 817, part II State Credit Card Crime Act.

**817.482 Possessing or transferring device for theft of telecommunications service; concealment of destination of telecommunications service.**—

(1) It shall be unlawful for any person knowingly to:

(a) Make or possess any instrument, apparatus, equipment or device designed or adapted for use for the purpose of avoiding or attempting to avoid payment of telecommunications service in violation of s. 817.481; or

(b) Sell, give, transport, or otherwise transfer to another, or offer or advertise to sell, give, or otherwise transfer, any instrument, apparatus, equipment, or device described in paragraph (a), or plans or instructions for making or assembling the same; under circumstances evincing an intent to use or employ such instrument, apparatus, equipment, or device, or to allow the same to be used or employed, for a purpose described in paragraph (a), or knowing or having reason to believe that the same is intended to be so used, or that the aforesaid plans or instructions are intended to be used for making or assembling such instrument, apparatus, equipment, or device.

Any person violating the provisions of paragraphs (a) and (b) is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Any person who shall make or possess, for purposes of avoiding or attempting to avoid payment for long distance telecommunication services, any electronic device capable of duplicating tones or sounds utilized in long distance telecommunications shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) Any such instrument, apparatus, equipment, or device, or plans or instructions therefor, referred to in subsections (1) and (2), may be seized by court order or under a search warrant of a judge or magistrate or incident to a lawful arrest; and upon the conviction of any person for a violation of any provision of this act, or s. 817.481, such instrument, apparatus, equipment, device, plans, or instructions either shall be destroyed as contraband by the sheriff of the county in which such person was convicted or turned over to the telephone company in whose territory such instrument, apparatus, equipment, device, plans, or instructions were seized.

**History.**—s. 2, ch. 65-245; s. 874, ch. 71-136; s. 1, ch. 74-137.

**817.483 Transmission or publication of information regarding schemes, devices, means, or methods for theft of communication services.**—Any person who transmits or publishes the number or code of an existing, canceled, revoked, or nonexistent telephone number or credit number or other credit device, or method of numbering or coding which is employed in the issuance of telephone numbers or credit numbers or other credit devices, with the intent to avoid or to cause another to avoid lawful charges is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 1, ch. 74-138.

**817.49 False reports of commission of crimes; penalty.**—Whoever willfully imparts, conveys or causes to be imparted or conveyed to any law enforcement officer false information or reports concerning the alleged commission of any crime under the laws of this state, knowing such information or report to be false, in that no such crime had actually been committed, shall upon conviction thereof be

guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 1, ch. 59-294; s. 875, ch. 71-136.

**817.50 Fraudulently obtaining goods, services, etc., from hospital.—**

(1) Whoever shall, willfully and with intent to defraud, obtain or attempt to obtain goods, products, merchandise or services from any hospital in this state shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) If any person shall give to any hospital in this state a false or fictitious name, a false or fictitious address, any other false or fictitious information required to be obtained by such hospital in compliance with s. 382.31, et seq., or shall assign to any hospital the proceeds of any insurance contract, then knowing that such contract is no longer in force or is invalid or is void for any reason, any such action shall be prima facie evidence of the intent of such person to defraud such hospital.

**History.**—ss. 1, 2, ch. 61-154; s. 876, ch. 71-136.  
cf.—s. 382.31 Hospitals and almshouses required to keep records.

**817.51 Obtaining groceries, retail poultry, dairy, bakery, and other retail products; intent to defraud.**—Any person who shall obtain any items from retail grocery establishments, or retail poultry, dairy, bakery or any other retail dealers with intent to defraud the owner or keeper thereof shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083; provided that the provisions of this section shall not apply where there has been an agreement in writing for delay in payments.

**History.**—s. 1, ch. 61-206; s. 1, ch. 67-513; s. 877, ch. 71-136.

**817.52 Obtaining vehicles with intent to defraud, failing to return hired vehicle, or tampering with mileage device of hired vehicle.—**

(1) **OBTAINING BY TRICK, FALSE REPRESENTATION, ETC.**—Whoever, with intent to defraud the owner or any person lawfully possessing any motor vehicle, obtains the custody of such motor vehicle by trick, deceit, or fraudulent or willful false representation shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) **HIRING WITH INTENT TO DEFRAUD.**—Whoever, with intent to defraud the owner or any person lawfully possessing any motor vehicle of the rental thereof, hires a vehicle from such owner or such owner's agents or any person in lawful possession thereof shall, upon conviction, be deemed guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The absconding without paying or offering to pay such hire shall be prima facie evidence of such fraudulent intent.

(3) **FAILURE TO REDELIVER HIRED VEHICLE.**—Whoever, after hiring a motor vehicle under an agreement to redeliver the same to the person letting such motor vehicle or his agent, at the termination of the period for which it was let, shall, without the consent of such person or persons and with intent to defraud, abandon or willfully refuse to re-

deliver such vehicle as agreed shall, upon conviction, be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) **TAMPERING WITH MILEAGE DEVICE.**—Whoever, after hiring a motor vehicle from any person or persons under an agreement to pay for the use of such motor vehicle a sum of money determinable either in whole or in part upon the distance such motor vehicle travels during the period for which hired, removes, attempts to remove, tampers with, or attempts to tamper with or otherwise interfere with any odometer or other mechanical device attached to said hired motor vehicle for the purpose of registering the distance such vehicle travels, with the intent to deceive the person or persons letting such vehicle or their lawful agent as to the actual distance traveled thereby, shall upon conviction be deemed guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Any person who shall knowingly aid, abet or assist another in violating the provisions of this subsection shall, as a principal in the first degree, be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Any person violating this section may be informed against or indicted in the county where such odometer or such other mechanical device is removed, or attempted to be removed, or tampered with, or attempted to be tampered with, or otherwise interfered with, or in the county where such persons knowingly aid, abet, or assist another in violating the provisions of this section, or in the county where any part of such motor vehicle upon which is attached such odometer, or such other mechanical device, is removed or attempted to be removed.

**History.**—s. 1, ch. 63-177; s. 878, ch. 71-136; s. 1, ch. 74-373; s. 8, ch. 78-412; s. 180, ch. 79-164.

**817.53 False charges for radio and television repairs and parts; penalty.—**

(1) It is unlawful for a person to knowingly charge for any services which are not actually performed in repairing a radio or television set, or to knowingly charge for any parts which are not actually furnished, or to knowingly misinform a customer concerning what is wrong with his radio or television set, or to knowingly and fraudulently substitute parts when such substitution has no relation to the repairing or servicing of the radio or television set.

(2) Any person violating the provisions of this section shall be deemed guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 1, ch. 63-383; s. 879, ch. 71-136.

**817.54 Obtaining of mortgage, mortgage note, promissory note, etc., by false representation.—**

Any person who, with intent to defraud, obtains any mortgage, mortgage note, promissory note or other instrument evidencing a debt from any person or obtains the signature of any person to any mortgage, mortgage note, promissory note or other instrument evidencing a debt by color or aid of fraudulent or false representation or pretenses, or obtains the signature of any person to a mortgage, mortgage note, promissory note, or other instrument evidencing a debt, the false making whereof would

be punishable as forgery, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

*History.*—s. 1, ch. 63-142; s. 880, ch. 71-136.

**817.55 Tourist attraction advertisement; misleading use of the word "free."**—

(1) It shall be unlawful for any person or persons, including corporations, operating a tourist attraction, event, show, or similar places of business for profit catering to the public to use or advertise in connection therewith the words "free" or "free admission" or any similar words or words of similar or like import and meaning, in a false, misleading, deceptive, or fraudulent manner, calculated to cause or actually causing any member of the public to be misled, deceived or defrauded to his detriment.

(2) The State Attorney for any county in which any violation of this act occurs or the Division of Economic Development of the Department of Commerce may enjoin the use of such word or words by temporary and permanent injunction by application to any court of competent jurisdiction.

(3) Violations of this act whether or not enjoined as provided herein, shall be punishable as a misdemeanor of the second degree, as provided in s. 775.082 or s. 775.083.

*History.*—s. 1, ch. 63-506; ss. 17, 35, ch. 69-106; s. 881, ch. 71-136; s. 1, ch. 73-283; s. 32, ch. 73-334.

**817.559 Television picture tube labels; definitions.**—

(1) As used in this section:

(a) "Picture tube" means a cathode ray tube, commonly known as a television picture tube, designed primarily for use in a home-type television receiver alone or in combination with any electronic device or appliance.

(b) "Used picture tube" means a picture tube which has been sold to and used by a consumer.

(c) "Used component or material" means any part or material salvaged from a used or secondhand picture tube.

(2) No manufacturer, processor, or distributor of television picture tubes shall sell, offer for sale, or expose for sale any such tube unless the television picture tube and its container, if any, are correctly labeled to indicate the new and used components and materials of such tube according to the schedule and manner hereinafter provided.

(3) Description of the picture tube by new and used components and materials shall be indicated by setting forth on the label the particular grade and verbatim description as selected from the following which applies to such tube:

(a) *Black and white picture tube.*—

1. Grade AA.—Description: All new components and materials, including new glass envelope.

2. Grade A.—Description: Used glass envelope; all other components and materials are new.

3. Grade B.—Description: Used glass envelope, used phosphorescent viewing screen, used aluminization, and used internal conductive coating; all other components and materials are new.

4. Grade C.—Description: Used picture tube for resale; all significant components and materials are used.

(b) *Color picture tube.*—

1. Grade AA.—Description: All new components and materials, including new glass envelope.

2. Grade A.—Description: Used glass envelope and new or used shadow mask; all other components and materials are new.

3. Grade B.—Description: New electron gun; all other components and materials are used.

4. Grade C.—Description: Used picture tube for resale; all significant components and materials are used.

(c) *Used picture tube.*—The fact that a used picture tube has been rejuvenated, has a new or used brightener attached to it, or has fresh paint or coating on the outside, or any combination of the above, shall not change its status or description as a grade C picture tube, and the terms "rebuilt" or "reconditioned" or words of like import shall not be used to describe such tube.

(d) *Picture tube-seconds.*—When a picture tube is a "second," such tube shall be designated by label as a "second" to the exclusion of any other grade designation or component description, and the following additional notation shall appear verbatim on the label: "This picture tube is a manufacturer's reject or second line quality tube, but it is capable of giving satisfactory performance."

(4) Any person who violates the provisions of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

*History.*—ss. 1, 2, ch. 73-239.

**817.56 Misrepresentations of television picture tubes prohibited, penalty; definitions.**—

(1) As used in this section:

(a) "Tube" is an electron receiving tube or cathode ray tube (commonly known as a picture tube) designed primarily for use in a home-type television or radio receiver, phonograph, tape recorder, or any combination thereof, or other home type electronic device or appliance.

(b) "Used tube" or "secondhand tube" is a tube which has been sold to and used by a consumer.

(c) A "used component" is any part or material salvaged from a used or secondhand tube.

(d) A "tube utilizing used components" is a tube which has not been used as an entity but which in the manufacture thereof has utilized one or more used components. Such a tube shall not be deemed to be a used or secondhand tube within the meaning of that definition.

(e) A "reactivated tube" is a weak, wornout, or defective tube which has been temporarily recharged by the administration of a charge of high voltage electric current to the elements thereof.

(f) A "reduction" is the sale of a tube at a price that is less than the manufacturer's list price for that tube.

(g) A "savings" is the sale of a tube at a price that is less than the list price for a tube by the same or another manufacturer when the tubes are identical.

(2) No person shall knowingly:

(a) Distribute or sell, offer to distribute or sell, expose for distribution or sale, possess with intent to distribute or sell, or otherwise dispose of for a consideration any reactivated tube, secondhand tube, or



used tube, or tube utilizing used components without clearly disclosing the true or actual quality or condition of such tube by means of a stamp, mark, tag, notice, or label attached to such tube and to any carton or container thereof in such manner that it cannot readily be removed or of such a nature as to remain affixed until removed by a purchaser at retail;

(b) Remove, deface, cover, obliterate, mutilate, alter, or cause to be removed, defaced, covered, obliterated, mutilated, or altered any notice, tag, or label from any tube, carton, or container required under paragraph (a) of this subsection;

(c) Install any reactivated tube, secondhand tube, or used tube, or tube utilizing used components, without disclosing the true or actual quality or condition of such tube on a written invoice furnished to the customer when installed by a person performing such services or repairs for any consideration. Such disclosure in the invoice is required irrespective of the fact that such tube, or carton, or container therefor contains a notice, tag, or label disclosing such quality or condition;

(d) Reactivate or cause to be reactivated any tube for the purpose of deceiving another;

(e) Represent a used tube, secondhand tube, or reactivated tube, or tube utilizing used components, directly or indirectly, to be a new tube or a first quality tube;

(f) Make representations, directly or indirectly, concerning a tube by reference to a patent license pursuant to which such tube was manufactured which could mislead another into the belief that such tube is manufactured or sponsored by said patent licensor, when such is not the fact;

(g) Represent to a retail buyer that a tube is guaranteed by the use of such word or words of similar import unless a writing disclosing the nature, extent, and duration of the guarantee, the identity of the guarantor, and the manner in which the guarantor will perform thereunder, is furnished to such purchaser at the time of purchase. No tube shall be represented as fully guaranteed or unconditionally guaranteed by the use of such word or words of similar import unless the written guarantee furnished to the purchaser is free from any conditions or limitations;

(h) Represent that a tube is being sold at a reduction or savings when the alleged reduction or savings is from a fictitious price. Without limiting the generality of the foregoing, an alleged reduction or savings is from a fictitious price;

1. When the alleged reduction or savings of a reactivated tube, secondhand tube, or used tube is from the manufacturer's established list price for his first quality or new tubes;

2. When the alleged reduction of a tube utilizing used components is from the manufacturer's established list price for tubes utilizing only new components in the manufacture thereof;

3. When the alleged reduction is, in fact, a savings in that it is from the list price of a manufacturer other than the owner of the brand name appearing on the tube being sold.

(3) Nothing in this section applies to any television or sound radio broadcasting station or any pub-

lisher or printer of a newspaper, magazine, or other form of printed advertising who broadcasts, publishes, or prints such advertising.

(4) Whoever violates any provision of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—ss. 1-4, ch. 65-464; s. 882, ch. 71-136.

**817.561 Violations may be enjoined.**—In addition to the punishments provided herein, the state attorneys of the various judicial circuits throughout the state are vested with authority and power to invoke the jurisdiction of courts of equity within their respective judicial circuits to enjoin or obtain other equitable relief against persons violating the provisions of ss. 817.06, 817.061, 817.38-817.44, and 817.55. The prevailing party shall receive court costs and reasonable attorneys' fees, to be deposited in or paid from the general fund.

History.—s. 1, ch. 71-233; s. 32, ch. 73-334.

**817.562 Fraud involving a security interest.**—

(1) As used in this section, the terms "proceeds," "security agreement," "security interest," and "secured party" shall be given the meanings prescribed for them in chapter 679.

(2) A person is guilty of fraud involving a security interest when, having executed a security agreement creating a security interest in personal property, including accounts receivable, which security interest secures a monetary obligation owed to a secured party, and:

(a) Having under the security agreement both the right of sale or other disposition of the property and the duty to account to the secured party for the proceeds of disposition, he sells or otherwise disposes of the property and wrongfully and willfully fails to account to the secured party for the proceeds of disposition; or

(b) Having under the security agreement no right of sale or other disposition of the property, he knowingly secretes, withholds, or disposes of such property in violation of the security agreement.

(3) Any person who knowingly violates this section shall be punished as follows:

(a) If the value of the property sold, secreted, withheld, or disposed of or the proceeds from the sale or disposition of the property is \$100 or more, such person is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) If the value of the property sold, secreted, withheld, or disposed of or the proceeds obtained from the sale or disposition of the property is less than \$100, such person is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 1, ch. 79-113.

## PART II

### CREDIT CARD CRIMES

817.57 Short title.  
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- 817.61 Fraudulent use of credit cards.
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- 817.65 Defenses not available.
- 817.66 Presumptions.
- 817.67 Penalties.
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**817.57 Short title.**—Part II of this chapter shall be known and may be cited as the 1967 "State Credit Card Crime Act."

*History.*—s. 13, ch. 67-340.

**817.58 Definitions.**—As used in ss. 817.57-817.68:

(1) "Cardholder" means the person or organization named on the face of a credit card to whom or for whose benefit the credit card is issued by an issuer.

(2) "Credit card" means any instrument or device, whether known as a credit card, credit plate or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining money, goods, services, or anything else of value on credit.

(3) "Expired credit card" means a credit card which is no longer valid because the term shown on it has elapsed.

(4) "Issuer" means the business organization or financial institution, or its duly authorized agent, which issues a credit card.

(5) "Receives" or "receiving" means acquiring possession or control or accepting as security for a loan a credit card.

(6) "Revoked credit card" means a credit card which is no longer valid because permission to use it has been suspended or terminated by the issuer.

*History.*—s. 1, ch. 67-340.

**817.59 False statement as to financial condition or identity.**—A person who makes or causes to be made, either directly or indirectly, any false statement as to a material fact in writing, knowing it to be false and with intent that it be relied on respecting his identity or that of any other person, firm, or corporation or his financial condition or that of any other person, firm, or corporation, for the purpose of procuring the issuance of a credit card, violates this section and is subject to the penalties set forth in s. 817.67(1).

*History.*—s. 2, ch. 67-340.

**817.60 Theft; obtaining credit card through fraudulent means.**—

(1) **THEFT BY TAKING OR RETAINING POSSESSION OF CARD TAKEN.**—A person who takes a credit card from the person, possession, custody, or control of another without the cardholder's consent

or who, with knowledge that it has been so taken, receives the credit card with intent to use it, to sell it or to transfer it to a person other than the issuer or the cardholder is guilty of credit card theft and is subject to the penalties set forth in s. 817.67(1). Taking a credit card without consent includes obtaining it by conduct defined or known as statutory larceny, common law larceny by trespassory taking, common law larceny by trick or embezzlement or obtaining property by false pretense, false promise or extortion.

(2) **THEFT OF CREDIT CARD LOST, MISLAID OR DELIVERED BY MISTAKE.**—A person who receives a credit card that he knows to have been lost, mislaid, or delivered under a mistake as to the identity or address of the cardholder and who retains possession with intent to use it, to sell it or to transfer it to a person other than the issuer or the cardholder is guilty of credit card theft and is subject to the penalties set forth in s. 817.67(1).

(3) **PURCHASE OR SALE OF CREDIT CARD OF ANOTHER.**—A person other than the issuer who sells a credit card or a person who buys a credit card from a person other than the issuer violates this subsection and is subject to the penalties set forth in s. 817.67(1).

(4) **OBTAINING CONTROL OF CREDIT CARD AS SECURITY FOR DEBT.**—A person who, with intent to defraud the issuer, a person or organization providing money, goods, services, or anything else of value or any other person, obtains control over a credit card as security for debt violates this subsection and is subject to the penalties set forth in s. 817.67(1).

(5) **DEALING IN CREDIT CARDS OF ANOTHER.**—A person other than the issuer who, during any 12-month period receives two or more credit cards issued in the name or names of different cardholders, which he has reason to know were taken or retained under circumstances which constitute credit card theft or a violation of this part violates this subsection and is subject to the penalties set forth in s. 817.67(2).

(6) **FORGERY OF CREDIT CARD.**—

(a) A person who, with intent to defraud a purported issuer or a person or organization providing money, goods, services, or anything else of value or any other person, falsely makes or falsely embosses a purported credit card or utters such a credit card is guilty of credit card forgery and is subject to the penalties set forth in s. 817.67(2).

(b) A person other than the purported issuer who possesses two or more credit cards which are falsely made or falsely embossed is presumed to have violated this subsection.

(c) A person falsely makes a credit card when he makes or draws in whole or in part a device or instrument which purports to be the credit card of a named issuer but which is not such a credit card because the issuer did not authorize the making or drawing, or alters a credit card which was validly issued.

(d) A person falsely embosses a credit card when, without the authorization of the named issuer, he completes a credit card by adding any of the matter, other than the signature of the cardholder, which an issuer requires to appear on the credit card before it

can be used by a cardholder.

(7) **SIGNING CREDIT CARD OF ANOTHER.**—A person other than the cardholder or a person authorized by him who, with intent to defraud the issuer or a person or organization providing money, goods, services, or anything else of value or any other person, signs a credit card violates this subsection and is subject to the penalties set forth in s. 817.67(1).

History.—s. 3, ch. 67-340.

**817.61 Fraudulent use of credit cards.**—A person who, with intent to defraud the issuer or a person or organization providing money, goods, services or anything else of value or any other person, uses, for the purpose of obtaining money, goods, services, or anything else of value, a credit card obtained or retained in violation of this part or a credit card which he knows is forged, expired or revoked or who obtains money, goods, services or anything else of value by representing, without the consent of the cardholder, that he is the holder of a specified card or by representing that he is the holder of a card and such card has not in fact been issued, violates this subsection and is subject to the penalties set forth in s. 817.67(1), if the value of all money, goods, services, and other things of value obtained in violation of this subsection does not exceed \$100 in any 6-month period. The violator is subject to the penalties set forth in s. 817.67(2), if such value does exceed \$100 in any 6-month period. Knowledge of revocation shall be presumed to have been received by a cardholder 4 days after it has been mailed to him at the address set forth on the credit card or at his last known address by registered or certified mail, return receipt requested, and, if the address is more than 500 miles from the place of mailing, by air mail. If the address is located outside the United States, Puerto Rico, the Virgin Islands, the Canal Zone or Canada, notice shall be presumed to have been received 10 days after mailing by registered or certified mail.

History.—s. 4, ch. 67-340.

**817.62 Fraud by person authorized to provide goods or services.**—

(1) **ILLEGALLY OBTAINED OR ILLEGALLY POSSESSED CREDIT CARD; FORGED, REVOKED, OR EXPIRED CREDIT CARD.**—A person who is authorized by an issuer to furnish money, goods, services, or anything else of value upon presentation of a credit card by the cardholder or any agent or employees of such person who, with intent to defraud the issuer or the cardholder, furnishes money, goods, services, or anything else of value upon presentation of a credit card obtained or retained in violation of this part or a credit card which he knows is forged, expired or revoked violates this subsection and is subject to the penalties set forth in s. 817.67(1), if the value of all money, goods, services, and other things of value furnished in violation of this subsection does not exceed \$100 in any 6-month period. The violator is subject to the penalties set forth in s. 817.67(2), if such value does exceed \$100 in any 6-month period.

(2) **MISREPRESENTATION TO ISSUER.**—A person who is authorized by an issuer to furnish money, goods, services, or anything else of value upon presentation of a credit card by the cardholder

or any agent or employee of such person who, with intent to defraud the issuer or the cardholder, fails to furnish money, goods, services, or anything else of value which he represents in writing to the issuer that he has furnished, violates this subsection and is subject to the penalties set forth in s. 817.67(1), if the difference between the value of all money, goods, services, and anything else of value actually furnished and the value represented to the issuer to have been furnished does not exceed \$500 in any 6-month period. The violator is subject to the penalties set forth in s. 817.67(2), if such difference does exceed \$500 in any 6-month period.

History.—s. 5, ch. 67-340.

**817.63 Possession of machinery, plates or other contrivance or incomplete credit cards.**—

A person other than the cardholder possessing two or more incomplete credit cards with intent to complete them without the consent of the issuer or a person possessing with knowledge of its character any machinery, plates or any other contrivance designed to reproduce instruments purporting to be the credit cards of an issuer who has not consented to the preparation of such credit cards, violates this subsection and is subject to the penalties set forth in s. 817.67(2). A credit card is incomplete if part of the matter other than the signature of the cardholder, which an issuer requires to appear on the credit card before it can be used by a cardholder, has not yet been stamped, embossed, imprinted, or written on it.

History.—s. 6, ch. 67-340.

**817.64 Receipt of money, etc., obtained by fraudulent use of credit cards.**—A person who receives money, goods, services, or anything else of value obtained in violation of s. 817.61, knowing or believing that it was so obtained, violates this section and is subject to the penalties set forth in s. 817.67(1). A person who obtains at a discount price a ticket issued by an airline, railroad, steamship, or other transportation company which was acquired in violation of s. 817.61 without reasonable inquiry to ascertain that the person from whom it was obtained had a legal right to possess it shall be presumed to know that such ticket was acquired under circumstances constituting a violation of s. 817.61.

History.—s. 7, ch. 67-340.

**817.645 Alteration of credit card invoice; penalties.**—Whoever, with intent to defraud any person, falsely alters any invoice for money, goods, services, or anything else of value obtained by use of a credit card after it has been signed by the cardholder or a person authorized by him violates this section and is subject to the penalties set forth in s. 817.67(1).

History.—s. 1, ch. 72-127.

**817.65 Defenses not available.**—In any prosecution for violation of this part, the state is not required to establish and it is no defense that a person, other than the defendant, who violated this part has not been convicted, apprehended or identified.

History.—s. 8, ch. 67-340.



**817.66 Presumptions.**—When this part establishes a presumption with respect to any fact which is an element of a crime, it has the following consequences:

(1) When there is sufficient evidence of the facts which give rise to the presumption to go to the jury, the issue of the existence of the presumed fact must be submitted to the jury, unless the court is satisfied that the evidence as a whole clearly negatives the presumed fact; and

(2) When the issue of the existence of the presumed fact is submitted to the jury, the court shall charge that while the presumed fact must, on all the evidence, be proved beyond a reasonable doubt, the law declares that the jury may regard the facts giving rise to the presumption as sufficient evidence of the presumed fact.

*History.*—s. 9, ch. 67-340.

**817.67 Penalties.**—

(1) A person who is subject to the penalties of this subsection shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) A person who is subject to the penalties of this subsection shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

*History.*—s. 10, ch. 67-340; s. 883, ch. 71-136.

**817.68 Part II not exclusive.**—This part II shall not be construed to preclude the applicability of any other provision of the criminal law of this state which presently applies or may in the future apply to any transaction which violates this part, unless such provision is inconsistent with the terms of this part.

*History.*—s. 11, ch. 67-340.

## CHAPTER 818

## SALE OF MORTGAGED PERSONAL PROPERTY; SIMILAR OFFENSES

- 818.01 Disposing of personal property under lien, etc.  
 818.02 Executing mortgage on personalty without notifying mortgagee of prior mortgages.  
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**818.01 Disposing of personal property under lien, etc.—**

(1) Whoever shall pledge, mortgage, sell, or otherwise dispose of any personal property to him belonging, or which shall be in his possession, and which shall be subject to any written lien, or which shall be subject to any statutory lien, whether written or not, or which shall be the subject of any written conditional sale contract under which the title is retained by the vendor, without the written consent of the person holding such lien, or retaining such title; and whoever shall remove or cause to be removed beyond the limits of the county where such lien was created or such conditional sale contract was entered into, any such property, without the consent aforesaid, or shall hide, conceal or transfer, such property with intent to defeat, hinder or delay the enforcement of such lien, or the recovery of such property by the vendor, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) It shall be prima facie evidence of concealing, selling, or disposing of such personal property whenever the person owning the property at the time the lien was created, or who bought the same under such retained title contract, fails or refuses to produce such property for inspection within the county where the lien was created, or the property delivered, upon demand of the person having such lien, or retaining such title, after the debt secured by such lien has become enforceable, or the vendee has substantially defaulted in the performance of such retained title contract.

**History.**—s. 1, ch. 4142, 1893; GS 3356; RGS 5202; s. 1, ch. 9288, 1923; CGL 7316; s. 887, ch. 71-136.

cf.—s. 1.01 "Person" defined.

s. 713.69 Removing property subject to lien of hotel, etc.

**818.02 Executing mortgage on personalty without notifying mortgagee of prior mortgages.**—Whoever executes a second or subsequent mortgage of personal property and receives money or thing of value therein without first notifying the

second or subsequent mortgagee of the existence of the prior mortgage or mortgages, whether the same be recorded or not, and of the amount of such prior indebtedness, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 1, ch. 5708, 1907; RGS 5203; CGL 7317; s. 888, ch. 71-136.

**818.03 Removing such property beyond the limits of county.**—Whoever shall knowingly and without the written consent of the person having such a lien thereon, as mentioned in s. 818.01, buy, take, receive or remove or cause to be removed beyond the limits of the county, any personal property subject to such lien from the owner or any person in possession thereof, and whoever shall willfully conceal such property or obstruct, delay or hinder such lienholder in prosecuting his rights against any of such property, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 56, ch. 1637, 1868; RS 2477; s. 2, ch. 4142, 1893; GS 3357, RGS 5204; CGL 7318; s. 889, ch. 71-136.

**818.04 Selling collateral security before debt due.**—Whoever holding any collateral security deposited with him for the payment of a debt which may be due him sells, pledges, loans or in any way disposes of the same, as his own, before such debt becomes due and payable, and without the authority of the person depositing the same, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 59, ch. 1637, 1868; RS 2478; GS 3358; RGS 5205; CGL 7319; s. 890, ch. 71-136.

**818.05 Sale, etc., of property held under contract or conditional sale; penalty.**—

(1) No person who is in possession of any personal property under and by virtue of any contract or conditional sale or otherwise where the title to said personal property does not vest in the possessor, shall sell, conceal or dispose of such personal property without first having the written consent of the person then having or retaining the bona fide title to such personal property so to sell, dispose of, or conceal the same.

(2) Any person who shall violate the provisions of this section shall be deemed guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—ss. 1, 2, ch. 7860, 1919; CGL 7230, 7321; s. 891, ch. 71-136.  
 cf.—s. 1.01 "Person" defined.

## CHAPTER 823

## PUBLIC NUISANCES

- 823.01 Indictment for nuisance; removal by county court judge.
- 823.02 Building bonfires.
- 823.04 Diseased animals.
- 823.041 Disposal of bodies of dead animals; penalty.
- 823.05 Places declared a nuisance; may be abated and enjoined.
- 823.06 Doors of public buildings to open outward.
- 823.07 Iceboxes, refrigerators, deep-freeze lockers, clothes washers, clothes dryers, or airtight units; abandonment, discard.
- 823.08 Iceboxes, refrigerators, deep-freeze lockers, clothes washers, clothes dryers, or similar airtight units abandoned or discarded; attractive nuisance.
- 823.09 Same; penalty.
- 823.10 Places where controlled substances are illegally kept, sold, or used, declared a public nuisance.
- 823.11 Abandoned and derelict vessels; removal; penalty.
- 823.12 Smoking in elevators unlawful.
- 823.13 Places where obscene materials are illegally kept, sold, or used declared a public nuisance; drive-in theaters, films visible from public streets or public places.
- 823.14 Commercial agricultural or farming operations.

**823.01 Indictment for nuisance; removal by county court judge.—**

(1) All nuisances which tend to annoy the community or injure the health of the citizens in general, or to corrupt the public morals, shall be misdemeanors of the second degree, punishable as provided in s. 775.083.

(2) Any nuisance which tends to the immediate annoyance of the citizens in general, or is manifestly injurious to the public health and safety, or tends greatly to corrupt the manners and morals of the people, may be removed and suppressed by the order of the county court judge of the county, founded upon the verdict of 12 householders of the same, who shall be summoned, sworn, and impaneled for that purpose, which order shall be directed to and executed by any sheriff of the county; and an indictment or information shall lie for the same.

**History.**—s. 47, Feb. 10, 1832; RS 2704; GS 3680; RGS 5624; CGL 7817; s. 932, ch. 71-136; s. 32, ch. 73-334; s. 66, ch. 74-383; s. 1, ch. 75-24; s. 41, ch. 75-298. cf.—s. 60.05 Abatement of nuisances.

Ch. 386 Nuisances injurious to health.

s. 533.06 Permitting escape of mine waste or debris.

**823.02 Building bonfires.**—Whoever is concerned in causing or making a bonfire within 10 rods of any house or building shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 12, ch. 1637, 1868; RS 2705; GS 3681; RGS 5625; CGL 7818; s. 933, ch. 71-136; s. 66, ch. 74-383; s. 1, ch. 75-24; s. 41, ch. 75-298.

**823.04 Diseased animals.**—It is unlawful for any person to bring into this state or to offer for sale therein any horses, mules, cattle, hogs, or other domestic animals, knowing at the time of such introduction or offering for sale of any such animals that they are suffering from disease known as glanders, farcy, cholera, Texas fever, or other virulent, contagious, or infectious diseases; and any person convicted of such offense shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 1, ch. 4351, 1895; GS 3692; RGS 5637; CGL 7830; s. 935, ch. 71-136; s. 66, ch. 74-383; s. 1, ch. 75-24; s. 41, ch. 75-298.

**823.041 Disposal of bodies of dead animals; penalty.—**

(1) Any owner, custodian, or person in charge of domestic animals, upon the death of such animals due to disease, shall dispose of the carcasses of such animals by burning or burying at least 2 feet below the surface of the ground; provided, however, nothing in this section shall prohibit the disposal of such animal carcasses to rendering companies licensed to do business in this state.

(2) It is unlawful to dispose of the carcass of any domestic animal by dumping such carcass on any public road or right-of-way, or in any place where such carcass can be devoured by beast or bird.

(3) Any person violating any of the provisions of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(4) For the purposes of this act, the words "domestic animal" shall include any equine or bovine animal, goat, sheep, swine, dog, cat, poultry, or other domesticated beast or bird.

**History.**—ss. 1-4, ch. 61-359; s. 936, ch. 71-136; s. 66, ch. 74-383; s. 1, ch. 75-24; s. 41, ch. 75-298.

**823.05 Places declared a nuisance; may be abated and enjoined.**—Whoever shall erect, establish, continue, or maintain, own or lease any building, booth, tent or place which tends to annoy the community or injure the health of the community, or become manifestly injurious to the morals or manners of the people as described in s. 823.01, or shall be frequented by the class of persons mentioned in s. 856.02, or any house or place of prostitution, assignation, lewdness or place or building where games of chance are engaged in violation of law or any place where any law of the state is violated, shall be deemed guilty of maintaining a nuisance, and the building, erection, place, tent or booth and the furniture, fixtures and contents are declared a nuisance. All such places or persons shall be abated or enjoined as provided in ss. 60.05 and 60.06.

**History.**—s. 1, ch. 7367, 1917; RGS 5639; CGL 7832; s. 24, ch. 57-1; s. 66, ch. 74-383; s. 1, ch. 75-24; s. 41, ch. 75-298.

cf.—s. 386.01 et seq. Nuisances injurious to health.

Ch. 796 Prostitution.

**823.06 Doors of public buildings to open outward.**—All buildings erected in this state for theatrical, operatic, or other public entertainments of



whatsoever kind shall be so constructed that the shutters to all entrances to said building shall open outwardly and be so arranged as to readily allow any person inside said building to escape therefrom in case of fire or other accident. Any owner, manager, lessee, or other person having charge of any public building for the use expressed herein who fails to comply with the provisions of this section shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—ss. 1, 3, ch. 4053, 1891; GS 3694; RGS 5640; CGL 7834; s. 937, ch. 71-136; s. 66, ch. 74-383; s. 1, ch. 75-24; s. 41, ch. 75-298.

**823.07 Iceboxes, refrigerators, deep-freeze lockers, clothes washers, clothes dryers, or airtight units; abandonment, discard.—**

(1) The purpose of ss. 823.07-823.09 is to prevent deaths due to suffocation of children locked in abandoned or discarded iceboxes, refrigerators, deep-freeze lockers, clothes washers, clothes dryers, or similar airtight units from which the doors have not been removed.

(2) It is unlawful for any person knowingly to abandon or discard or to permit to be abandoned or discarded on premises under his control any icebox, refrigerator, deep-freeze locker, clothes washer, clothes dryer, or similar airtight unit having an interior storage capacity of 1½ cubic feet or more from which the door has not been removed.

(3) The provisions of this section shall not apply to an icebox, refrigerator, deep-freeze locker, clothes washer, clothes dryer, or similar airtight unit which is crated or is securely locked from the outside or is in the normal use on the premises of a home, or rental unit, or is held for sale or use in a place of business; provided, however, that "place of business" as used herein shall not be deemed to include a junkyard or other similar establishment dealing in secondhand merchandise for sale on open unprotected premises.

(4) It shall be unlawful for any junkyard dealer or secondhand furniture dealer with unenclosed premises used for display of secondhand iceboxes, refrigerators, deep-freeze lockers, clothes washers, clothes dryers, or similar airtight units to fail to remove the doors on such secondhand units having an interior storage capacity of 1½ cubic feet or more from which the door has not been removed. This section will not apply to any dealer who has fenced and locked his premises.

**History.**—ss. 1, 2, ch. 29707, 1955; s. 1, ch. 67-135; s. 1, ch. 71-116; s. 66, ch. 74-383; s. 1, ch. 75-24; s. 41, ch. 75-298.

**823.08 Iceboxes, refrigerators, deep-freeze lockers, clothes washers, clothes dryers, or similar airtight units abandoned or discarded; attractive nuisance.—**Abandoned or discarded iceboxes, refrigerators, deep-freeze lockers, clothes washers, clothes dryers, or similar airtight units from which the doors have not been removed are declared to be an attractive nuisance to children and a menace to their health and safety when accessible to them whether or not such children are trespassers.

**History.**—s. 3, ch. 29707, 1955; s. 1, ch. 67-135; s. 2, ch. 71-116; s. 66, ch. 74-383; s. 1, ch. 75-24; s. 41, ch. 75-298.

**823.09 Same; penalty.—**Any person violating any provision of s. 823.07, is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083; provided, however, that in the event death of a minor child or permanent physical or mental injury to a minor child results from willful and wanton misconduct amounting to culpable negligence on the part of the person committing such violation, then such person shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 4, ch. 29707, 1955; s. 1, ch. 67-135; s. 938, ch. 71-136; s. 66, ch. 74-383; s. 1, ch. 75-24; s. 41, ch. 75-298.

**823.10 Places where controlled substances are illegally kept, sold, or used, declared a public nuisance.—**Any store, shop, warehouse, dwelling house, building, vehicle, ship, boat, vessel, aircraft, or any place whatever, which is visited by persons for the purpose of unlawfully using any substance controlled under chapter 893 or any drugs as described in chapter 500, or which is used for the illegal keeping, selling, or delivering of the same, shall be deemed a public nuisance. No person shall keep or maintain such public nuisance or aid and abet another in keeping or maintaining such public nuisance.

**History.**—s. 1, ch. 69-364; s. 29, ch. 73-331; s. 66, ch. 74-383; s. 1, ch. 75-24; s. 41, ch. 75-298.

**823.11 Abandoned and derelict vessels; removal; penalty.—**

(1) It is unlawful for any person, firm, or corporation to store or leave any vessel as defined by maritime law in a wrecked, junked, or substantially dismantled condition or abandoned upon or in any public water or at any port in this state without the consent of the agency having jurisdiction thereof, or docked at any private property without the consent of the owner of such property.

(2) The Department of Natural Resources, Division of Marine Resources, is hereby designated as the agency of the state authorized and empowered to remove or cause to be removed any abandoned or derelict vessel from public waters in any instance when the same obstructs or threatens to obstruct navigation or in any way constitutes a danger to the environment. All costs incurred by the department in the removal of any abandoned or derelict vessel as set out above shall be recoverable against the owner thereof.

(3) Any person, firm, or corporation violating this act is guilty of a misdemeanor of the first degree and shall be punished as provided by law.

**History.**—ss. 1-3, ch. 73-207.

**823.12 Smoking in elevators unlawful.—**It is unlawful for any person to ignite any flame or to smoke any type of tobacco product or other substance while entering or occupying an elevator. Violation of the provisions of this section is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 1, ch. 74-115.

**cf.**—s. 399.07 Certificates in elevators informing public that smoking in elevators is unlawful.

**823.13 Places where obscene materials are illegally kept, sold, or used declared a public nuisance; drive-in theaters, films visible from public streets or public places.—**

(1) Any store, shop, warehouse, building, vehicle, ship, boat, vessel, aircraft, or any place whatever, which is visited by persons for the purpose of unlawfully purchasing or viewing any obscene material or performance as described in chapter 847, or which is used for the illegal keeping, selling, or delivering of the same, shall be deemed a public nuisance. No person shall keep or maintain such public nuisance or aid and abet another in keeping or maintaining such public nuisance.

(2) It shall be unlawful and is hereby declared a public nuisance for any ticket seller, ticket taker, usher, motion picture projection machine operator, manager, owner, or any other person connected with or employed by any drive-in theater in the state to knowingly exhibit, or aid or assist in exhibiting, any motion picture, slide, or other exhibit which depicts nudity which is harmful to minors as described in s. 847.013, if such motion picture, slide, or other exhib-

it is visible from any public street or public place, other than that place intended for the showing of such motion pictures, slides, or other exhibits.

*History.—s. 1, ch. 78-172.*

**823.14 Commercial agricultural or farming operations.—**No commercial agricultural or farming operation, place, establishment, or facility, or any of its appurtenances, or the operation thereof, shall be or shall become a nuisance as a result of changed conditions in or around the locality of such agricultural or farming operation, place, establishment, or facility if such agricultural or farming operation, place, establishment, or facility has been in operation for 1 year or more and if it was not a nuisance at the time it began operation. This section, however, shall not apply whenever a nuisance injurious to health, as defined in chapter 386, results from the operation of any such agricultural or farming operation, place, establishment, or facility or any of its appurtenances.

*History.—s. 1, ch. 79-61.*

## CHAPTER 826

## BIGAMY; INCEST

826.01 Bigamy; punishment.

826.02 Exceptions.

826.03 Knowingly marrying husband or wife of another.

826.04 Incest.

**826.01 Bigamy; punishment.**—Whoever, having a husband or wife living, marries another person shall, except in the cases mentioned in s. 826.02, be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 4, sub-ch. 8, ch. 1637, 1868; RS 2603; GS 3526; RGS 5416; CGL 7559; s. 775, ch. 71-136; s. 44, ch. 74-383; s. 30, ch. 75-298.

**Note.**—Former s. 799.01.

**826.02 Exceptions.**—The provisions of s. 826.01 shall not extend to any person:

(1) Who reasonably believes that the prior spouse is dead.

(2) Whose prior spouse has voluntarily deserted him and remained absent for the space of 3 years continuously, the party marrying again not knowing the other to be living within that time.

(3) Whose bonds of matrimony have been dissolved.

(4) Who violates its provisions because a domestic or foreign court has entered an invalid judgment purporting to terminate or annul the prior marriage

and the defendant does not know that judgment to be invalid.

(5) Who reasonably believes that he is legally eligible to remarry.

**History.**—s. 5, sub-ch. 8, ch. 1637, 1868; RS 2604; s. 1, ch. 4963, 1901; GS 3527; RGS 5417; CGL 7560; s. 1, ch. 73-300; s. 45, ch. 74-383.

**Note.**—Former s. 799.02.

**826.03 Knowingly marrying husband or wife of another.**—Whoever knowingly marries the husband or wife of another person, knowing him or her to be the spouse of another person, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 39, Feb. 10, 1832; RS 2605; GS 3528; RGS 5418; CGL 7561; s. 776, ch. 71-136; s. 46, ch. 74-383; s. 30, ch. 75-298.

**Note.**—Former s. 799.03.

**826.04 Incest.**—Whoever knowingly marries or has sexual intercourse with a person to whom he is related by lineal consanguinity, or a brother, sister, uncle, aunt, nephew, or niece, commits incest, which constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. "Sexual intercourse" is the penetration of the female sex organ by the male sex organ, however slight; emission of semen is not required.

**History.**—s. 47, ch. 74-383; s. 30, ch. 75-298.



## CHAPTER 827

## ABUSE OF CHILDREN OR DISABLED PERSONS

- 827.01 Definitions.
- 827.03 Aggravated child abuse.
- 827.04 Child abuse.
- 827.05 Negligent treatment of children.
- 827.06 Persistent nonsupport.
- 827.07 Abuse or neglect of children.
- 827.08 Misuse of child support money.
- 827.09 Abuse of disabled persons; reports; penalties.

**827.01 Definitions.**—As used in this chapter:

(1) "Child" means any person under the age of 18 years.

(2) "Placement" means the giving or transferring of possession or custody of a child by any person to another person for adoption or with the intent or purpose of surrendering the control of the child.

(3) "Torture" means every act, omission, or neglect whereby unnecessary or unjustifiable pain or suffering is caused.

**History.**—s. 48, ch. 74-383; s. 1, ch. 77-174.

**827.03 Aggravated child abuse.**—Whoever:

- (1) Commits aggravated battery on a child;
- (2) Willfully tortures a child;
- (3) Maliciously punishes a child; or
- (4) Willfully and unlawfully cages a child

shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 1, ch. 4721, 1899; s. 1, ch. 4971, 1901; GS 3236, 3238; RGS 5069, 5071; s. 1, ch. 9331, 1923; CGL 7171, 7173; s. 1, ch. 65-113; s. 1, ch. 70-8; s. 940, ch. 71-136; s. 49, ch. 74-383; s. 30, ch. 75-298.

**Note.**—Former s. 828.04.  
cf.—s. 450.151 Hiring and employing children.

**827.04 Child abuse.**—

(1) Whoever, willfully or by culpable negligence, deprives a child of, or allows a child to be deprived of, necessary food, clothing, shelter, or medical treatment, or who, knowingly or by culpable negligence, permits physical or mental injury to the child, and in so doing causes great bodily harm, permanent disability, or permanent disfigurement to such child, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) Whoever, willfully or by culpable negligence, deprives a child of, or allows a child to be deprived of, necessary food, clothing, shelter, or medical treatment, or who, knowingly or by culpable negligence, permits physical or mental injury to the child, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) Any person who commits any act which thereby causes or tends to cause or encourage any person under the age of 18 years to become a delinquent or dependent child, as defined under the laws of Florida, or which contributes thereto, or any person who shall, by act, threats, commands, or persuasion, induce or endeavor to induce any person under the age of 18 years to do or to perform any act, to

follow any course of conduct, or so to live, as would cause or tend to cause such person under the age of 18 years to become or to remain a dependent or delinquent child, as defined under the laws of this state, is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. It shall not be necessary for any court exercising juvenile jurisdiction to make an adjudication that any child is delinquent or dependent in order to prosecute a parent or any other person under this section. An adjudication that a child is delinquent or dependent shall not preclude a subsequent prosecution of a parent or any other person who contributes to the delinquency or dependency of the child.

**History.**—s. 50, ch. 74-383; s. 30, ch. 75-298; s. 1, ch. 77-73; s. 1, ch. 77-429.

**827.05 Negligent treatment of children.**—

Whoever, though financially able, negligently deprives a child of, or allows a child to be deprived of, necessary food, clothing, shelter, or medical treatment or permits a child to live in an environment, when such deprivation or environment causes the child's physical or emotional health to be significantly impaired or to be in danger of being significantly impaired shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 2, ch. 65-113; s. 942, ch. 71-136; s. 51, ch. 74-383; s. 30, ch. 75-298; s. 2, ch. 77-429.

**Note.**—Former s. 828.042.

**827.06 Persistent nonsupport.**—

(1) Any person who, after notice, fails to provide support which he is able to provide to children or spouse whom he knows he is legally obligated to support, and over whom no court has jurisdiction in any proceedings for child support or dissolution of marriage, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) Prior to commencing prosecution under this section, the State Attorney must advise the person responsible for support by certified mail, return receipt requested, that a prosecution under this section will be commenced against him unless he makes such delinquent support payments or provides a satisfactory explanation as to why he has not made such payments.

**History.**—s. 52, ch. 74-383; s. 31, ch. 75-298.

cf.—s. 1.01 Defines "registered mail" to include certified mail with return receipt requested.

**827.07 Abuse or neglect of children.**—

(1) **LEGISLATIVE INTENT.**—The intent of this section is to provide for comprehensive protective services for abused<sup>1</sup> or neglected children found in the state by requiring that reports of each abused<sup>1</sup> or neglected child be made to the Department of Health and Rehabilitative Services in an effort to prevent further harm to the child or any other children living in the home and to preserve the family life of the parents and children, to the maximum extent possible, by enhancing the parental capacity for adequate child care.

## (2) DEFINITIONS.—As used in this section:

(a) "Child" means any person under the age of 18 years.

(b) "Child abuse 'or neglect'" means harm or threatened harm to a child's physical or mental health or welfare by the acts or omissions of the parent or other person responsible for the child's welfare.

(c) "Abused or neglected child" means a child whose physical or mental health or welfare is harmed, or threatened with harm, by the acts or omissions of the parent or other person responsible for the child's welfare.

(d) "Harm" to a child's health or welfare can occur when the parent or other person responsible for the child's welfare:

1. Inflicts, or allows to be inflicted, upon the child physical or mental injury, including injury sustained as a result of excessive corporal punishment;

2. Commits, or allows to be committed, sexual battery, as defined in chapter 794, against the child;

3. Exploits a child, or allows a child to be exploited, for pornographic purposes as provided in ss. 847.014 and 450.151, or for prostitution;

4. Abandons the child;

5. Fails to provide the child with supervision or guardianship by specific acts or omissions of a serious nature requiring the intervention of the department or the court; or

6. Fails to supply the child with adequate food, clothing, shelter, or health care, although financially able to do so or although offered financial or other means to do so; however, a parent or other person responsible for the child's welfare legitimately practicing his religious beliefs, who by reason thereof does not provide specified medical treatment for a child, shall not be considered abusive or neglectful for that reason alone, but such an exception shall not:

a. Eliminate the requirement that such a case be reported to the department;

b. Prevent the department from investigating such a case; or

c. Preclude a court from ordering, when the health of the child requires it, the provision of medical services by a physician, as defined herein, or treatment by a duly accredited practitioner who relies solely on spiritual means for healing in accordance with the tenets and practices of a well-recognized church or religious organization.

(e) "Other person responsible for a child's welfare" includes the child's legal guardian, legal custodian, or foster parent; an employee of a public or private child day care center, residential home, institution, or agency; or any other person legally responsible for the child's welfare in a residential setting.

(f) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily part.

(g) "Mental injury" means an injury to the intellectual or psychological capacity of a child as evidenced by a discernible and substantial impairment in his ability to function within his normal range of performance and behavior, with due regard to his culture.

(h) "Physician" means any licensed physician,

dentist, podiatrist, or optometrist and <sup>2</sup>includes any intern or resident.

(i) "Department" means the Department of Health and Rehabilitative Services.

(j) "Unfounded report" means a report made pursuant to this section when an investigation determines that no indication of abuse or neglect exists.

(k) "Indicated report" means a report made pursuant to this section when a child protective investigation determines that some indication of abuse or neglect exists.

(l) "Institutional child abuse 'or neglect'" means situations of known or suspected child abuse or neglect in which the person allegedly perpetrating the child abuse or neglect is an employee of a public or private day care center, residential home, institution, or agency responsible for the child's care.

(3) REPORTS OF CHILD ABUSE OR NEGLECT REQUIRED.—Any person, including, but not limited to, any:

(a) Physician, osteopath, medical examiner, chiropractor, nurse, or hospital personnel engaged in the admission, examination, care, or treatment of persons;

(b) Health or mental health professional other than one listed in paragraph (a);

(c) Practitioner who relies solely on spiritual means for healing;

(d) School teacher or other school official or personnel;

(e) Social worker, day care center worker, or other professional child care, foster care, residential, or institutional worker; or

(f) Law enforcement officer,

who knows, or has reasonable cause to suspect, that a child is an abused or neglected child shall report such knowledge or suspicion to the department in the manner prescribed in subsection (9).

(4) MANDATORY REPORTING OF DEATH AND POSTMORTEM INVESTIGATION BY MEDICAL EXAMINER.—Any person required to report or investigate cases of suspected child abuse or neglect who has reasonable cause to suspect that a child died as a result of child abuse or neglect shall report his suspicion to the appropriate medical examiner. The medical examiner shall accept the report for investigation pursuant to s. 406.11 and shall report his findings, in writing, to the local law enforcement agency, the appropriate state attorney, and the department. Autopsy reports maintained by the medical examiner shall not be subject to the confidentiality requirements provided for in this section.

(5) PHOTOGRAPHS, MEDICAL EXAMINATIONS, AND X RAYS.—Any person required to investigate cases of suspected child abuse or neglect may take or cause to be taken photographs of the areas of trauma visible on a child who is the subject of a report and, if the areas of trauma visible on a child indicate a need for a medical examination, may cause the child to be referred for diagnosis to a licensed physician or an emergency department in a hospital without the consent of the child's parents, legal guardian, or legal custodian. Any licensed physician who has reasonable cause to suspect that an

injury was the result of child abuse may authorize a radiological examination to be performed on the child without the consent of the child's parent, legal guardian, or legal custodian. The county in which the child is a resident shall bear the initial costs of the examination of the allegedly abused child; however, the parents, legal guardian, or legal custodian of the child shall be required to reimburse the county for the costs of such examination and to reimburse the Department of Health and Rehabilitative Services for the cost of the photographs taken pursuant to this subsection. Any photograph or report on examinations made or X rays taken pursuant to this subsection, or copies thereof, shall be sent to the department as soon as possible.

(6) **PROTECTIVE CUSTODY.**—A law enforcement officer or authorized agent of the department may take a child into custody as provided in chapter 39. Any person in charge of a hospital or similar institution or any physician treating a child may keep that child in his custody without the consent of the parents, legal guardian, or legal custodian, whether or not additional medical treatment is required, if the circumstances are such, or if the condition of the child is such, that continuing the child in the child's place of residence or in the care or custody of the parents, legal guardian, or legal custodian presents an imminent danger to the child's life or physical or mental health. Any person taking a child into protective custody shall immediately notify the department, whereupon the department shall immediately begin a child protective investigation in accordance with the provisions of subsection (10) and shall make every reasonable effort to immediately notify the parents, legal guardian, or legal custodian that such child has been taken into protective custody. If the department determines, according to the criteria set forth in s. 39.402, that the child should remain in protective custody longer than 24 hours, it shall petition the court for an order authorizing such custody in the same manner as if the child were placed in a shelter. The department shall attempt to avoid the placement of a child in an institution whenever possible.

(7) **IMMUNITY FROM LIABILITY.**—Any person, official, or institution participating in good faith in any act authorized or required by this section shall be immune from any civil or criminal liability which might otherwise result by reason of such action.

(8) **ABROGATION OF PRIVILEGED COMMUNICATIONS.**—The privileged quality of communication between husband and wife and between any professional person and his patient or client, and any other privileged communication except that between attorney and client, as such communication relates both to the competency of the witness and to the exclusion of confidential communications, shall not apply to any situation involving known or suspected child abuse or neglect and shall not constitute grounds for failure to report as required by this section, failure to cooperate with the department in its activities pursuant to this section, or failure to give evidence in any judicial proceeding relating to child abuse or neglect.

(9) **INITIAL REPORTING PROCEDURE.**—

(a) Each report of known or suspected child abuse or neglect pursuant to this section shall be made immediately to the department's abuse registry on the single statewide tollfree telephone number or directly to the local office of the department responsible for investigation of reports made pursuant to this section.

(b) Each report made by a person in an occupation designated in subsection (3) shall be confirmed in writing to the local office of the department within 48 hours of the initial report.

(c) Reports involving known or suspected institutional child abuse or neglect shall be made and received in the same manner as all other reports made pursuant to this section.

(10) **CHILD PROTECTIVE INVESTIGATIONS.**—

(a) The department shall be capable of receiving and investigating reports of known or suspected child abuse or neglect 24 hours a day, 7 days a week. If it appears that the immediate safety or well-being of a child is endangered, that the family may flee or the child will be unavailable for purposes of conducting a child protective investigation, or that the facts otherwise so warrant, the department shall commence an investigation immediately, regardless of the time of day or night. In all other child abuse or neglect cases, a child protective investigation shall be commenced within 24 hours of receipt of the report.

(b) For each report it receives, the department shall perform an onsite child protective investigation to:

1. Determine the composition of the family or household, including the name, address, age, sex, and race of each child named in the report; any siblings or other children in the same household or in the care of the same adults; the parents or other persons responsible for the child's welfare; and any other adults in the same household.

2. Determine whether there is indication that any child in the family or household is abused or neglected, including a determination of harm or threatened harm to each child; the nature and extent of present or prior injuries, abuse, or neglect, and any evidence thereof; and a determination as to the person or persons apparently responsible for the abuse or neglect.

3. Determine the immediate and long-term risk to each child if the child remains in the existing home environment.

4. Determine the protective, treatment, and ameliorative services necessary to safeguard and ensure the child's well-being and development and, if possible, to preserve and stabilize family life.

(c) The department may develop and coordinate one or more multidisciplinary child protection teams in each of the department's service districts. The department may convene such teams when necessary to assist in its diagnostic, assessment, service, and coordination responsibilities. Members of the team may include representatives of appropriate health, mental health, social service, legal service, and law enforcement agencies.

(d) If the department is denied reasonable access to a child by the parents or other persons responsible



for the child's welfare and the department deems that the best interests of the child so require, it shall seek an appropriate court order or other legal authority to examine and interview the child.

(e) If the department determines that a child requires immediate or long-term protection through:

1. Medical or other health care;
2. Homemaker care, day care, protective supervision, or other services to stabilize the home environment; or
3. Foster care, shelter care, or other substitute care to remove the child from his parents' custody,

such services shall first be offered for the voluntary acceptance of the parents or other person responsible for the child's welfare, who shall be informed of the right to refuse services as well as the department's responsibility to protect the child regardless of the acceptance or refusal of services. If the services are refused or the department deems that the child's need for protection so requires, the department shall take the child into protective custody or petition the court as provided in chapter 39.

(f) No later than 30 days after receiving the initial report, the local office of the department shall complete its investigation, determine whether the reported abuse was indicated or unfounded, and report its findings to the department's abuse registry.

(g) Immediately upon receipt of a report alleging, or immediately upon learning during the course of an investigation, that:

1. A child died as a result of abuse or neglect;
2. A child is a victim of aggravated child abuse as defined in s. 827.03;
3. A child received an observable injury as a result of child abuse or neglect; or
4. A child is a victim of sexual battery,

the department shall orally notify the appropriate state attorney and may notify the appropriate law enforcement agency in order that they may begin a criminal investigation concurrent with the agency's child protective investigation. The department shall make a full written report to the state attorney within 3 days of the oral report. The department may notify the state attorney or law enforcement agency of any other child abuse or neglect case in which a criminal investigation is deemed appropriate by the department.

#### (11) RESPONSIBILITIES OF PUBLIC AGENCIES.—

(a) The department shall:

1. Have prime responsibility for strengthening and improving child abuse and neglect prevention and treatment efforts.
2. Seek and encourage the development of improved or additional programs and activities, the assumption of prevention and treatment responsibilities by additional agencies and organizations, and the coordination of existing programs and activities.
3. To the fullest extent possible, cooperate with and seek cooperation of all appropriate public and private agencies, including health, education, social services, and law enforcement agencies, and courts, organizations, or programs providing or concerned with human services related to the prevention, iden-

tification, or treatment of child abuse or neglect.

4. Provide ongoing protective, treatment, and ameliorative services to, and on behalf of, children in need of protection to safeguard and ensure their well-being and, whenever possible, to preserve and stabilize family life.

(b) All state, county, and local agencies have a duty to give such cooperation, assistance, and information to the department as will enable it to fulfill its responsibilities under this section.

(12) EDUCATION AND TRAINING.—The department shall, within available appropriations, conduct a continuing publicity and education program for district staff and officials required to report and any other appropriate persons to encourage the fullest degree of reporting of suspected child abuse or neglect. The program shall include, but not be limited to, information concerning the responsibilities, obligations, and powers provided under this chapter; the methods for diagnosis of child abuse or neglect; and the procedures of the child protective service program, the circuit court, and other duly authorized agencies. In developing training programs for district staff, the department shall place emphasis on preservice and inservice training for single intake, protective services, and foster care staff which would include skills in diagnosis and treatment of child abuse and neglect and procedures of the child protective system and judicial process.

#### (13) ABUSE REGISTRY.—

(a) The department shall establish and maintain a central abuse registry which shall receive reports made pursuant to this section in writing or through a single statewide tollfree telephone number which any person may use to report known or suspected child abuse or neglect at any hour of the day or night, any day of the week. The abuse registry shall be operated in such a manner as to enable the department to:

1. Immediately identify and locate prior reports or cases of child abuse or neglect.

2. Regularly evaluate the effectiveness of the department's program for abused and neglected children through the development and analysis of statistical and other information.

(b) Upon receiving an oral or written report of known or suspected child abuse or neglect, the abuse registry shall immediately notify the local office of the department with respect to the report, any previous report concerning a subject of the present report, or any other pertinent information relative thereto.

(c) Upon completion of its investigation, the local office of the department shall classify reports as indicated or unfounded. All identifying information in the abuse registry maintained in unfounded reports shall be expunged immediately. All identifying information in the abuse registry maintained in indicated reports shall be expunged from the registry 7 years from the date of the last indicated report concerning the same child, siblings, or the same perpetrator. All information, other than identifying information, maintained in indicated or unfounded reports at the time of expunction shall be disposed of in a manner deemed appropriate by the department and pursuant to ss. 119.041 and s. 267.051(6). Nothing in this section is intended to require the expunc-

tion or destruction of case records or information required by the Federal Government to be retained for future audit.

(14) **REPORTS OF INSTITUTIONAL CHILD ABUSE OR NEGLECT.**—The department shall conduct a child protective investigation of each report of institutional child abuse<sup>1</sup> or neglect. Upon receipt of a report which alleges that an employee or agent of the department acting in an official capacity, including, but not limited to, a foster parent, has committed an act of child abuse or neglect, the department shall immediately initiate a child protective investigation and notify the state attorney in whose circuit the alleged child abuse or neglect occurred. The state attorney shall immediately investigate the report and, no later than 15 days after completing the investigation, shall report his findings to the department.

(15) **CONFIDENTIALITY OF REPORTS AND RECORDS.**—

(a) In order to protect the rights of the child and his parents or other persons responsible for the child's welfare, all records concerning reports of child abuse<sup>1</sup> or neglect, including reports made to the abuse registry and to local offices of the department and all records generated as a result of such reports, shall be confidential and exempt from the provisions of s. 119.07(1), and shall not be disclosed except as specifically authorized by this section.

(b) Access to such records, excluding the name of the reporter which shall be released only as provided in paragraph (e), shall be granted only to the following persons, officials, and agencies for the following purposes:

1. Employees or agents of the department responsible for carrying out child protective investigations, ongoing child protective services, or licensure or approval of adoptive homes, foster homes, or other homes used for the care of children.

2. A law enforcement agency investigating a report of known or suspected child abuse or neglect.

3. The state attorney of the judicial circuit in which the child resides or in which the alleged abuse or neglect occurred.

4. Any child, parent, or perpetrator who is the subject of a report or the subject's guardian, custodian, guardian ad litem, or counsel.

5. A court, by subpoena, upon its finding that access to such records may be necessary for the determination of an issue before the court; however, such access shall be limited to in camera inspection, unless the court determines that public disclosure of the information contained therein is necessary for the resolution of an issue then pending before it.

6. A grand jury, by subpoena, upon its determination that access to such records is necessary in the conduct of its official business.

7. Any appropriate official of the department responsible for:

a. Administration or supervision of the department's program for the prevention, investigation, or treatment of child abuse or neglect when carrying out his official function; or

b. Taking appropriate administrative action concerning an employee of the department alleged to

have perpetrated institutional child abuse or neglect.

8. Any person engaged in bona fide research or audit purposes. However, no information identifying the subjects of the report shall be made available to the researcher unless such information is absolutely essential to the research purpose, suitable provision is made to maintain the confidentiality of the data, and the department has given written approval.

(c) The department may release to professional persons such information as is necessary for the diagnosis and treatment of the child or the person perpetrating the abuse.

(d) The department shall, with the written consent of a person applying to a licensed child-placing agency for the adoption of a child or for licensure as a foster home, search its abuse registry for the existence of an indicated report and advise the licensed child-placing agency of any such report found and the results of the investigation conducted pursuant thereto.

(e) The name of any person reporting child abuse<sup>1</sup> or neglect shall in no case be released to any person other than employees of the department responsible for child protective services, the abuse registry, or the appropriate state attorney without the written consent of the person reporting. This shall not prohibit the subpoenaing of a person reporting child abuse or neglect when deemed necessary by the state attorney or the department to protect a child who is the subject of a report, provided that the fact that such person made the report is not disclosed.

(16) **GUARDIAN AD LITEM.**—A guardian ad litem shall be appointed by the court to represent the child in any child abuse or neglect judicial proceeding. Any person participating in a judicial proceeding resulting from such appointment shall be presumed prima facie to be acting in good faith and in so doing shall be immune from any liability, civil or criminal, that otherwise might be incurred or imposed. In those cases in which the parents are financially able, the parent or parents of the child shall reimburse the court, in part or in whole, for the cost of provision of guardian ad litem services. Reimbursement to the individual providing guardian ad litem services shall not be contingent upon successful collection by the court from the parent or parents.

(17) **RULES.**—The department shall, by October 1, 1979, promulgate rules in furtherance of the purpose of this section and may amend such rules as may be necessary.

(18) **PENALTIES.**—

(a) Any person required by this section to report known or suspected child abuse or neglect who knowingly and willfully fails to do so, or who knowingly and willfully prevents another person from doing so, is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Any person who knowingly and willfully makes public or discloses any confidential information contained in the abuse registry or in the records

of any child abuse or neglect case, except as provided in this section, is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—ss. 1-6, ch. 63-24; s. 941, ch. 71-136; ss. 1, 1A, ch. 71-97; s. 32, ch. 73-334; s. 65, ch. 74-383; s. 1, ch. 75-101; s. 1, ch. 75-185; s. 4, ch. 76-237; s. 1, ch. 77-77; s. 3, ch. 77-429; ss. 1, 2, ch. 78-322; s. 3, ch. 78-326; s. 22, ch. 78-361; s. 1, ch. 78-379; s. 181, ch. 79-164; s. 1, ch. 79-203.

<sup>1</sup>**Note.**—The word "or" was substituted for "and" by the editors.

<sup>2</sup>**Note.**—The word "includes" was inserted by the editors.

**Note.**—Former s. 828.041.

**827.08 Misuse of child support money.**—Any person who willfully misapplies funds paid by another or by any governmental agency for the purpose of support of a child shall, for the first offense, be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, and for a second or subsequent conviction under this section, be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A person shall be deemed to have misapplied child support funds when such funds are spent for any purpose other than for necessary and proper home, food, clothing, and the necessities of life, which expenditure results in depriving the child of the above named necessities. All public welfare agencies shall give notice of the provisions of this section at least once to each payee of any public grant made for the benefit of any child and shall report violations of this section to the proper prosecuting officer.

**History.**—s. 1, ch. 61-216; s. 956, ch. 71-136; s. 65, ch. 74-383.

**Note.**—Former s. 828.201.

**827.09 Abuse of disabled persons; reports; penalties.**—

(1) **DEFINITIONS.**—As used in this section:

(a) "Disabled person" means any person who suffers from a condition of mental retardation, epilepsy, cerebral palsy, mental illness, or other disability which causes the person to be substantially unable to protect himself from the abusive conduct of others.

(b) "Abuse" and "maltreatment" mean neglect, malnutrition, physical or psychological injury inflicted other than by accidental means, and failure to provide necessary treatment, habilitation, care, sustenance, clothing, shelter, supervision, or medical services.

(c) "Abused person" means any disabled person who has been subjected to abuse or whose condition suggests that he has been abused.

(d) "Facility" means any public or private hospital, training center, clinic, school, or other program or service for disabled persons.

(e) "Department" means the Department of Health and Rehabilitative Services.

(2) **PURPOSE.**—The purpose of this section is to provide for the detection and correction of the abuse or maltreatment of disabled persons whose health and welfare are adversely affected or further threatened by the abusive conduct of others. It is intended that the mandatory reporting of such cases will cause the protective services of the state to be brought to bear in an effort to prevent further abuse and to protect and enhance the welfare of disabled persons.

(3) **REPORTS OF ABUSE.**—

(a) Any person, including, but not limited to, any

physician, psychologist, nurse, teacher, social worker, employee of a public or private facility serving disabled persons, or parent of such disabled person, who has reason to believe that a disabled person has been subjected to abuse shall report, or cause reports to be made, to the department. When the attendance of any person with respect to a disabled person is pursuant to the performance of services as a member of a staff of a hospital, training center, clinic, school, or similar facility, he shall also notify the person in charge of the facility or his designated delegate, who shall also report or cause reports to be made in accordance with the provisions of this section.

(b) Every facility serving disabled persons shall inform residents of their right to report abusive practices and shall establish appropriate policies and procedures to facilitate such reporting.

(4) **CONDITIONS PRELIMINARY TO SUBMISSION OF THE REPORT.**—

(a) In consideration of physical injury, the following items shall be considered evidence of maltreatment before the report is required:

1. Characteristic distribution of fractures.
2. Disproportionate amount of soft tissue injury.
3. Evidence that injuries occurred at different times or are in different stages of resolution.
4. Cause of recent trauma in question.
5. Family or facility history.
6. History of previous episodes.
7. No new lesions occurring during the abused person's hospitalization or removal from custody of parent, custodian, or facility.

(b) In consideration of abusive conduct in facilities for the disabled, in addition to those items enumerated in paragraph (a), the following items shall be considered evidence of maltreatment before the report is required:

1. Cruel and unusual disciplinary practices and procedures, including, but not limited to, corporal punishment, seclusion or excessive "time out" procedures, unnecessary or excessive medication, and unnecessary or excessive use of physical restraints.
2. Evidence of inappropriate or harmful program, habilitation, or treatment.
3. Cause of the recent abusive conduct in question.
4. Individual or facility history.
5. Evidence of degrading and dehumanizing practices and procedures.

(5) **NATURE AND CONTENT OF REPORT.**—

An oral report shall be made immediately by telephone or otherwise to the department, followed as soon thereafter as possible by a report in writing. Such reports shall contain, if known, the names and addresses of the disabled person and his parents or other persons responsible for his care, other disabled persons threatened by abusive conduct, the abused person's age, the nature and extent of his disability, the nature and extent of the injuries, and any other information that the reporter believes might be helpful in establishing the cause of the injuries, abuse, or maltreatment and the identity of the perpetrator.

<sup>1</sup>(6) **RESPONSIBILITIES OF PUBLIC AGENCIES.**—Upon receipt of a report of abuse of a disabled person, the department shall cause an immedi-



ate investigation to be made and shall in turn, upon determining probable cause, notify the state attorney. The department shall, within 24 hours of receipt of the report, notify the appropriate human rights advocacy committee, as established pursuant to s. 20.19(7), that an alleged abuse has occurred. Such notice may be accomplished verbally or in writing and shall include the name of the person alleged to have been abused and the nature of the report. All state, county, and local agencies have a duty to cooperate fully with the department, transmit reports of abuse to the department, and protect and enhance the welfare of abused disabled persons and disabled persons potentially subject to abuse detected by a report made pursuant to this section.

(7) **CENTRAL REGISTRY.**—Reports of abuse shall be recorded in the central registry established and maintained by the department as required by s. 827.07, dealing with abuse of children. The registry shall contain information as to the name of the abused disabled person and the members of the family or other persons responsible for his care, the facts of the investigation, and the result of the investigation. The information contained in the registry shall not be open to inspection by the public. However, appropriate disclosure may be made for use in connection with the treatment of the abused person or the person perpetrating abuse and to counsel representing either person in any criminal or civil proceeding. Appropriate disclosure may also be made for use in connection with the hiring or employment of persons to serve disabled persons. In addition, information contained in the registry may be available for purposes of research relating to the abuse of disabled persons. The department shall make such information available upon application by a researcher or research agency of professional repute provided the need for the records has been demonstrated to the satisfaction of the department. Records shall not be opened under this provision unless adequate assur-

ances are given that names and other information identifying disabled persons will not be disclosed by the applicant.

(8) **TRANSMITTAL OF RECORDS.**—With respect to any case of reported abuse of a disabled person, the department when appropriate shall transmit all reports received by it, which shall contain the results of the investigation, to the state attorney of the county where the incident occurred.

(9) **IMMUNITY.**—Anyone participating in the making of a report pursuant to this section or participating in a judicial proceeding resulting therefrom shall be presumed prima facie to be acting in good faith and in so doing shall be immune from any liability, civil or criminal, that otherwise might be incurred or imposed. Also, no resident or employee of a facility serving disabled persons shall be subjected to reprisal or discharge because of his actions in reporting abuse pursuant to the requirements of this section.

(10) **PRIVILEGES.**—The physician-patient privilege, husband-wife privilege, or any privilege, except the attorney-client privilege, provided for or covered by law, both as it relates to the competency of a witness and to the exclusion of confidential communications, shall not pertain in any civil or criminal litigation in which the abuse or maltreatment of a disabled person is an issue or in any judicial proceedings resulting from a report submitted pursuant to this section.

(11) **PENALTIES.**—Anyone knowingly and willfully violating the provisions of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—ss. 1-11, ch. 73-176; s. 1, ch. 77-174; ss. 3, 5, ch. 79-287; s. 15, ch. 79-298.

**Note.**—Section 5, ch. 79-287, provides that, if subsections (6) and (7) of s. 20.19 are repealed in accordance with the intent expressed in the Sundown Act, it is the intent of the Legislature that ch. 79-287 shall also be repealed on the same date as is therein provided.

**Note.**—Former s. 828.043.

## CHAPTER 828

## CRUELTY TO ANIMALS

- 828.02 Definition of "animal."
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**828.02 Definition of "animal."**—In this chapter, and in every law of the state relating to or in any way affecting animals, the word "animal" shall be held to include every living dumb creature; the words "torture," "torment," and "cruelty" shall be held to include every act, omission, or neglect whereby unnecessary or unjustifiable pain or suffering is caused, except when done in the interest of medical science, permitted, or allowed to continue when there is reasonable remedy or relief; and the words "owner" and "person" shall be held to include corporations, and the knowledge and acts of agents and employees of corporations in regard to animals transported, owned, employed by or in the custody of a corporation, shall be held to be the knowledge and act of such corporation.

*History.*—s. 10, ch. 4971, 1901; GS 3156; RGS 4982; CGL 7071.

**828.03 Agents of counties, societies, etc., may prosecute violators.—**

(1) Any county or any society or association for the prevention of cruelty to children or animals, organized under the laws of this state, may appoint agents for the purpose of investigating violations of any of the provisions of this chapter or any other law of the state for the purpose of protecting children and animals or preventing any act of cruelty thereto.

(2) All appointments of such agents by such societies or corporations must have the approval of the mayor of the city in which the society or association exists, and if the society or association exists or works outside of any city, the appointment must be approved by the county court judge or the judge of the circuit court for the county, and the mayor or

judge shall keep a record of such appointment. The approval of the appointment of any agent by a county for either the incorporated or unincorporated areas of such county shall be by the county commission.

*History.*—s. 12, ch. 4971, 1901; GS 3158; RGS 4984; CGL 7073; s. 32, ch. 73-334; s. 1, ch. 75-223; s. 1, ch. 76-102; s. 1, ch. 77-174. cf.—s. 901.15 When arrest without warrant is lawful.

**828.05 Killing an animal when useless.**—In case any horse, mule, ox, cow, or other domestic animal shall be so injured or diseased as to be utterly useless, and of no value to the owner, and is in a suffering condition, and it shall appear by the certificate of a veterinary surgeon that such animal cannot be cured or rendered fit for service, the city or town marshal or chief of police shall, upon the application of the officers of any society for the prevention of cruelty to animals, cause such animal to be immediately killed.

*History.*—s. 2, ch. 4151, 1893; GS 3159; RGS 4985; CGL 7074.

**828.073 Animals found in distress; when agent may take charge; hearing; disposition; sale.—**

(1) The purpose of this section is to provide a means by which a neglected or mistreated animal can be removed from its present custody and given protection and an appropriate and humane disposition made.

(2) Any law enforcement officer or any agent of any county or of any society or association for the prevention of cruelty to animals appointed under the provisions of s. 828.03 may lawfully take custody of any animal found neglected or cruelly treated and shall forthwith petition the county court judge of the county wherein the animal is found for a hearing, to be set within 30 days from the date of seizure of the animal and held not more than 15 days after the setting of such date, to determine whether the owner, if known, is able to provide adequately for the animal and is fit to have custody of the animal. No fee shall be charged for the filing of the petition. Nothing herein is intended to require court action for the taking into custody and making proper disposition of stray or abandoned animals as lawfully performed by animal-control agents.

(3) The officer or agent of any county or of any society or association for the prevention of cruelty to animals taking charge of any animal pursuant to the provisions of this section shall have written notice served, at least 5 days prior to the hearing set forth in subsection (2), upon the owner of the animal, if he is known and is residing in the county where the animal was taken, in conformance with the provisions of chapter 48 relating to service of process. The sheriff of the county shall not charge a fee for service of such notice. If the owner of the animal is known but is residing outside of the county wherein the animal was taken, notice of the hearing shall be by publication in conformance with the provisions of chapter 49.

(4)(a) The officer or agent of any county or of any

society or association for the prevention of cruelty to animals taking charge of an animal as provided for in this section shall provide for the animal until the owner is adjudged by the court to be able to provide adequately for, and have custody of, the animal, in which case the animal shall be returned to the owner, upon payment by the owner for the care and provision for the animal while in the agent's or officer's custody.

(b) Upon the court's judgment that the owner of the animal is unable or unfit to adequately provide for the animal:

1. The court shall order the animal to be sold by the sheriff at public auction, and shall provide in its order that the current owner shall have no further custody of the animal and that any animal not bid upon shall be remanded to the custody of the Society for the Prevention of Cruelty to Animals, the Humane Society, the county, or any agency or person the judge deems appropriate, to be disposed of as the agency or person sees fit; or

2. The court may order the animal destroyed or remanded directly to the custody of the Society for the Prevention of Cruelty to Animals, the Humane Society, the county, or any agency or person the judge deems appropriate, to be disposed of as the agency or person sees fit, upon the testimony of the agent who took custody of the animal, or upon the testimony of other qualified witnesses, that the animal requires destruction or other disposition for humanitarian reasons or is of no commercial value.

(5) In determining the person's fitness to have custody of an animal under the provisions of this act, the court may consider, among other matters:

(a) Testimony from the agent or officer who seized the animal and other witnesses as to the condition of the animal when seized.

(b) Testimony from any witnesses as to prior treatment or condition of this or other animals in the same custody.

(c) The owner's past record of judgments under the provisions of this chapter.

(d) Convictions under the statutes prohibiting cruelty to animals.

(e) Any other evidence the court considers to be material or relevant.

(6) In any case in which an animal is offered for auction under the provisions of this section, the proceeds shall be:

(a) Applied, first, to the cost of the sale.

(b) Applied, secondly, to the care and provision for the animal by the officer or agent of any county or of any society or association for the prevention of cruelty to animals taking charge.

(c) Applied, thirdly, to the payment of the owner for the sale of the animal.

(d) Paid over to the court if the owner is not known.

**History.**—s. 2, ch. 75-223; s. 2, ch. 76-102; s. 1, ch. 78-12; s. 1, ch. 79-234.

**828.08 Penalty for exposing poison.**—Whoever leaves or deposits any poison or any substance containing poison, in any common street, alley, lane, or thoroughfare of any kind, or in any yard or en-

sure other than the yard or enclosure occupied or owned by such person, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 8, ch. 4971, 1901; GS 3399; RGS 5248; CGL 7367; s. 945, ch. 71-136; s. 66, ch. 74-383; s. 1, ch. 75-24; s. 41, ch. 75-298.

**828.12 Cruelty to animals.**—Whoever unnecessarily overloads, overdrives, tortures, torments, deprives of necessary sustenance or shelter, or unnecessarily or cruelly beats, mutilates, or kills any animal, or causes the same to be done, or carries in or upon any vehicle, or otherwise, any animal in a cruel or inhuman manner, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 4, ch. 4971, 1901; GS 3395; RGS 5244; CGL 7363; s. 2, ch. 70-50; s. 4, ch. 71-12; s. 949, ch. 71-136.

**828.121 Conduct of simulated bullfighting exhibitions.**—It shall be unlawful, and punishable as a misdemeanor, for any person to conduct or engage in a simulated or bloodless bullfighting exhibition.

**History.**—s. 3, ch. 71-12.

**828.122 Fighting or baiting animals; penalties.**—

(1) This act shall be known and may be cited as "The Animal Fighting Act of 1976."

(2) As used in this section:

(a) "Animal" means any bull, bear, or dog.

(b) "Baiting" means to attack with violence, to provoke, or to harass an animal with one or more animals, for the purpose of training an animal for, or to cause an animal to engage in, fights with or among other animals.

(c) "Person" means every natural person, firm, copartnership, association, or corporation.

(3) Any person who commits any of the following acts shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, or by a fine not less than \$1,000 and not more than \$5,000, or both:

(a) Baiting, or using any animal for the purpose of fighting or baiting any other animal;

(b) Knowingly owning, managing, or operating any facility kept or used for the purpose of fighting or baiting any animal; or

(c) Promoting, staging, advertising, or charging any admission fee to a fight or baiting between two or more animals.

(4) Any person who willfully commits any of the following acts shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, or by a fine not less than \$500 and not more than \$1,000, or both:

(a) Betting or wagering any money or other valuable consideration on the fighting or baiting of animals; or

(b) Attending the fighting or baiting of animals.

(5) Whenever an indictment is returned or an information is filed charging a violation of s. 828.12 of this section and, in the case of an information, a magistrate finds probable cause that a violation has occurred, the court shall order the animals seized and held until final disposition of the charges



and shall provide for appropriate and humane care or disposition of the animals. This provision shall not be construed as a limitation on the power to seize animals as evidence at the time of arrest. If the animal is unable to humanely survive the final disposition of the charges, the court may order termination of the animal's life. Upon conviction of the persons charged, the animals involved shall become the property of the state, and the court shall order a humane disposition of them.

(6) The provisions of subsection (3) and paragraph (4)(b) shall not apply to:

(a) Any person simulating a fight for the purpose of using the simulated fight as part of a motion picture which will be used on television or in a motion picture, provided s. 828.12 is not violated.

(b) Any person using animals to pursue or take wildlife or to participate in any hunting as regulated or subject to being regulated by the rules and regulations of the Game and Fresh Water Fish Commission.

(c) Any person using animals to work livestock for agricultural purposes.

(d) Any person using animals to train greyhounds for legalized racing, if not otherwise prohibited by law.

(e) Any person violating s. 828.121.

(f) Any person using animals to hunt wild hogs or to retrieve domestic hogs.

History.—ss. 1, 2, ch. 76-59.

**828.13 Confinement of animals without sufficient food.**—Whoever impounds or confines any animal in any place and fails to supply the same during such confinement with a sufficient quantity of good and wholesome food and water, or who keeps any animals in any enclosure without wholesome exercise and change of air, or who feeds cows on food that produces impure or unwholesome milk, or abandons to die any animal that is maimed, sick, infirm, or diseased, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—ss. 2, 4, ch. 3921, 1889; RS 2510; GS 3396; RGS 5245; CGL 7364; s. 950, ch. 71-136.

**828.14 Water and food for stock on trains, vessels, etc.**—

(1) No person or corporation, or agent of either, engaged in transporting livestock on railway trains or on steam or sailing vessels, or otherwise, shall detain such stock for a longer continuous period than 28 hours after the same are so placed without supplying the same with necessary food, water, and attention, or shall permit them to be crowded so as to overlie, crush, wound, or kill each other; and any person or agent as aforesaid violating the provisions of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and any corporation violating the provisions of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083.

(2) Nothing in this section shall apply to owners, officers, or crew of water craft detained on the navi-

gable waters of this state by storms and prevented by bad weather from reaching port.

History.—s. 6, ch. 4971, 1901; GS 3397; RGS 5246; CGL 7365; s. 951, ch. 71-136.

cf.—s. 352.34 Care of livestock in transit.

s. 352.35 Violations of regulations as to transporting livestock.

**828.15 Sections 828.12, 828.13, 828.14 not to apply to poultry shipped.**—Nothing in ss. 828.12, 828.13, and 828.14 shall be construed to apply to poultry shipped on steamboats or other craft.

History.—s. 4, ch. 3921, 1889; RS 2512; GS 3398; RGS 5247; CGL 7366.

**828.16 Contagious diseases.**—Whoever, being the owner, or having the charge of any animal, knowing the same to have any contagious or infectious disease, or to have been recently exposed thereto, sells, barter, or disposes of such animal without first disclosing to the person to whom the same is sold, bartered, or disposed of, that such animal is so diseased, or has been exposed, as aforesaid, or knowingly permits such animal to run at large, or knowingly allows the same to come into contact with any such animal of another person without his knowledge or permission, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 9, ch. 4971, 1901; GS 3400; RGS 5249; CGL 7368; s. 952, ch. 71-136.

**828.161 Prohibiting artificial coloring and sale of certain animals and fowls; construction.**—

(1) It is unlawful for any person to dye or color artificially any animal or fowl, including but not limited to rabbits, baby chickens, and ducklings, or to bring any dyed or colored animal or fowl into this state.

(2) It is unlawful for any person to sell, offer for sale, or give away as merchandising premiums, baby chickens, ducklings, or other fowl under 4 weeks of age or rabbits under 2 months of age to be used as pets, toys or retail premiums.

(3) This section shall not be construed to apply to any animal or fowl, including but not limited to rabbits, baby chickens, and ducklings to be used or raised for agricultural purposes by persons with proper facilities to care for them or for poultry or livestock exhibitions.

(4) Any person violating the provisions of this section shall, upon conviction, be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 1, ch. 67-177; s. 953, ch. 71-136.

**828.17 Officer to arrest without warrant.**—Any sheriff or any other peace officer of the state, or any police officer of any city or town of the state, shall arrest without warrant any person found violating any of the provisions of ss. 828.04, 828.08, 828.12, and 828.13-828.16, and the officer making the arrest shall hold the offender until a warrant can be procured, and he shall use proper diligence to procure such warrant.

History.—s. 15, ch. 4971, 1901; GS 3401; RGS 5250; CGL 7369; s. 1, ch. 28060, 1953; s. 32, ch. 73-334.

cf.—s. 901.15 When arrest without warrant is lawful.

**828.22 Humane slaughter requirement.—**

(1) The Legislature of this state finds that the use of humane methods in the slaughter of livestock prevents needless suffering, results in safer and better working conditions for persons engaged in the slaughtering industry, brings about improvement of products and economy in slaughtering operations, and produces other benefits for producers, processors, and consumers which tend to expedite the orderly flow of livestock and their products.

(2) It is therefore declared to be the policy of this state to require that the slaughter of all livestock and the handling of livestock in connection with slaughter shall be carried out only by humane methods and to provide that methods of slaughter shall conform generally to those employed in other states where humane slaughter is required by law and to those authorized by the Federal Humane Slaughter Act of 1958, and regulations thereunder.

(3) Nothing in this act shall be construed to prohibit, abridge, or in any way hinder the religious freedom of any person or group. Notwithstanding any other provision of this act, in order to protect freedom of religion, ritual slaughter and the handling or other preparation of livestock for ritual slaughter are exempted from the terms of this act. For the purposes of this action the term "ritual slaughter" means slaughter in accordance with s. 828.23(7)(b).

History.—s. 1, ch. 61-254.

**828.23 Definitions.**—As used in ss. 828.22 to 828.26, the following words shall have the meaning indicated:

(1) "Department" means the Department of Agriculture and Consumer Services.

(2) "Person" means any individual, partnership, corporation, or association doing business in this state, in whole or in part.

(3) "Slaughterer" means any person regularly engaged in the commercial slaughtering of livestock.

(4) "Livestock" means cattle, calves, sheep, swine, horses, mules, goats, and any other animal which can or may be used in and for the preparation of meat or meat products.

(5) "Packer" means any person engaged in the business of slaughtering, or of manufacturing or preparing meat or meat products for sale, either by such person or others; or of manufacturing or preparing livestock products for sale by such person or others.

(6) "Stockyard" means any place, establishment, or facility commonly known as a stockyard, conducted or operated for compensation or profit as a public market, consisting of pens, or other enclosures, and their appurtenances, for the handling, keeping, and holding of livestock for the purpose of sale or shipment.

(7) "Humane method" means either:

(a) A method whereby the animal is rendered insensible to pain by mechanical, electrical, chemical, or other means that are rapid and effective, before being shackled, hoisted, thrown, cast, or cut; or

(b) A method in accordance with ritual requirements of any religious faith whereby the animal suffers loss of consciousness by anemia of the brain caused by the simultaneous and instantaneous sever-

ance of the carotid arteries with a sharp instrument.

History.—s. 1, ch. 61-254; ss. 14, 35, ch. 69-106; s. 282, ch. 71-377.

**828.24 Prohibited acts; exemption.—**

(1) No slaughterer, packer, or stockyard operator shall shackle, hoist, or otherwise bring livestock into position for slaughter, by any method which shall cause injury or pain.

(2) No slaughterer, packer, or stockyard operator shall bleed or slaughter any livestock except by a humane method.

(3) This act shall not apply to any person, firm or corporation slaughtering or processing for sale within the state not more than 20 head of cattle nor more than 35 head of hogs per week.

History.—s. 1, ch. 61-254; ss. 14, 35, ch. 69-106; s. 241, ch. 77-104.

**828.25 Administration; rules and regulations; inspection; fees.—**

(1) The department shall administer the provisions of this act. It shall promulgate and may from time to time revise rules and regulations which shall conform substantially to the rules and regulations promulgated by the Secretary of Agriculture of the United States pursuant to the Federal Humane Slaughter Act of 1958, Pub. L. No. 85-765, 72 Stat. 862 and any amendments thereto; provided, however, that the use of a manually operated hammer, sledge or poleax is declared to be an inhumane method of slaughter within the meaning of this act.

(2) The department may appoint any member of its staff as an official inspector for the purposes of this act. Such inspector shall have the power to enter the premises of any slaughterer for the purposes of verifying compliance or noncompliance with the provisions of this act.

(3) As soon as practicable after October 1, 1961, an inspection shall be made of the premises of each slaughterer. Additional inspections shall be made not less frequently than quarterly. No fee shall be charged for such inspection.

History.—s. 1, ch. 61-254; ss. 14, 35, ch. 69-106.

**828.26 Penalty.—**

(1) No slaughterer found by the department in accordance with the above not to be in compliance with the provisions of this act shall sell any meat or meat products to any public agency in the state, or to any institution supported by state, county, or municipal funds. Failure to comply with this provision shall be a misdemeanor of the second degree, punishable as provided in s. 775.083.

(2) Upon failure to be in compliance with the provisions of this act after a period of 1 year from the date of the first inspection required under s. 828.25, the department shall direct the slaughterer to cease slaughtering livestock. Failure to comply with this directive shall be a misdemeanor of the second degree, punishable as provided in s. 775.083, and constituting a separate offense for each day of continued slaughtering operations beyond the first week following mailing of such directive to the slaughterer by the department.

History.—s. 1, ch. 61-254; ss. 14, 35, ch. 69-106; s. 958, ch. 71-136.

## CHAPTER 831

## FORGERY AND COUNTERFEITING

- 831.01 Forgery.
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- 831.30 Medicinal drugs; fraud in obtaining.

**831.01 Forgery.**—Whoever falsely makes, alters, forges or counterfeits a public record, or a certificate, return or attestation of any clerk or register of a court, public register, notary public, town clerk or any public officer, in relation to a matter wherein such certificate, return or attestation may be received as a legal proof; or a charter, deed, will, testament, bond, or writing obligatory, letter of attorney, policy of insurance, bill of lading, bill of exchange or promissory note, or an order, acquittance, or discharge for money or other property, or an acceptance of a bill of exchange or promissory note for the payment of money, or any receipt for money, goods or other property, or any passage ticket, pass or other evidence of transportation issued by a common carrier, with intent to injure or defraud any person,

shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 1, ch. 1637, 1868; RS 2479; s. 6, ch. 4702, 1899; GS 3359; RGS 5206; CGL 7324; s. 1, ch. 59-31; s. 1, ch. 61-98; s. 959, ch. 71-136; s. 32, ch. 73-334. cf.—s. 319.33 Alteration or forgery of certificate of title.

s. 703.17 Alteration of abstracts, etc., in clerk's office.

**831.02 Uttering forged instruments.**—Whoever utters and publishes as true a false, forged or altered record, deed, instrument or other writing mentioned in s. 831.01 knowing the same to be false, altered, forged or counterfeited, with intent to injure or defraud any person, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 2, ch. 1637, 1868; RS 2480; GS 3360; RGS 5208; CGL 7326; s. 2, ch. 59-31; s. 2, ch. 61-98; s. 960, ch. 71-136.

**831.025 Evidence in prosecution for forgery or counterfeiting.**—In prosecutions for forging or counterfeiting notes or bills of banks, or for uttering, publishing, or tendering in payment as true, any forged or counterfeit bank bills, or notes, or for being possessed thereof with intent to utter and pass the same as true, the testimony of the president and cashier of such banks may be dispensed with, if their place of residence is out of the state or more than 40 miles from the place of trial; and the testimony of any person acquainted with the signature of such president or cashier, or who has knowledge of the difference in the appearance of the true and counterfeit bills or notes of such banks may be admitted to prove that such bills or notes are counterfeit.

**History.**—s. 122g, ch. 19554, 1939; CGL 1940 Supp. 8663(128); s. 179, ch. 70-339.

**Note.**—Former s. 906.22.

**831.03 Forging or counterfeiting private labels.**—Whoever, knowingly and willfully, forges or counterfeits, or causes or procures to be forged or counterfeited upon any goods, wares or merchandise, the private label, stamps or trademark of any mechanic or manufacturer, knowing the same to be forged or counterfeited, without disclosing the fact to the purchaser, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 1, ch. 3621, 1885; RS 2481; GS 3361; RGS 5209; CGL 7327; s. 961, ch. 71-136.

cf.—Ch. 506 Stamped or marked boxes or bottles.

**831.04 Penalty for changing or forging certain instruments of writing.**—

(1) Any person making any erasure, alteration, interlineation or interpolation in any writing or instrument mentioned in s. 92.28, and made admissible in evidence, with the fraudulent intent to change the same in any substantial manner after the same has once been made, shall be guilty of the crime of forgery, which, for the purposes of this section, constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) Any person who may be in the business of making writings or written entries, maps or plats concerning or relating to lands or real estate, in any



county in this state to which said sections apply, and of furnishing to persons applying therefor abstracts or copies of such writing or written entries, maps or plats as aforesaid, for a fee, reward or compensation therefor, and shall make the same with an alteration or interpolation in any matter of substance, with fraudulent intent to alter or change the same in any material manner or matter of substance, shall be guilty of the crime of forgery, and shall be punished as provided in subsection (1).

**History.**—s. 6, ch. 4951, 1901; GS 3362; RGS 5210; CGL 7328; s. 962, ch. 71-136.

**831.05 Vending goods with counterfeit labels.**—Whoever vends any goods, wares or merchandise having thereon a forged or counterfeit stamp, label or trademark of any mechanic or manufacturer, knowing the same to be forged or counterfeited, without disclosing the fact to the purchaser, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 52, ch. 1637, 1868; RS 2482; GS 3363; RGS 5211; CGL 7329; s. 963, ch. 71-136.

**831.06 Fictitious signature of officer of corporation.**—If a fictitious or pretended signature, purporting to be the signature of an officer or agent of a corporation, is fraudulently affixed to any instrument or writing purporting to be a note, draft or evidence of debt issued by such corporation, with intent to pass the same as true, it shall be deemed a forgery, though no such person may ever have been an officer or agent of such corporation, or ever have existed.

**History.**—s. 12, ch. 1637, 1868; RS 2483; GS 3364; RGS 5212; CGL 7330.

**831.07 Forging bank bills or promissory notes.**—Whoever falsely makes, alters, forges or counterfeits a bank bill or promissory note payable to the bearer thereof, or to the order of any person, issued by an incorporated banking company established in this state, or within the United States, or any foreign province, state or government, with intent to injure any person, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 4, ch. 1637, 1868; RS 2485; GS 3366; RGS 5214; CGL 7332; s. 964, ch. 71-136.

**831.08 Having forged notes, etc., in possession.**—Whoever has in his possession 10 or more similar false, altered, forged or counterfeit notes, bills of credit, bank bills or notes, such as are mentioned in any of the preceding sections of this chapter, payable to the bearer thereof or to the order of any person, knowing the same to be false, altered, forged or counterfeited, with intent to utter and pass the same as true, and thereby to injure or defraud any person, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 5, ch. 1637, 1868; RS 2486; GS 3367; RGS 5215; CGL 7333; s. 965, ch. 71-136.

**831.09 Uttering forged bills.**—Whoever utters or passes or tenders in payment as true, any such false, altered, forged or counterfeit note, or any bank bill or promissory note, payable to the bearer thereof

or to the order of any person, issued as aforesaid, knowing the same to be false, altered, forged or counterfeited, with intent to injure or defraud any person, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 6, ch. 1637, 1868; RS 2487; GS 3368; RGS 5216; CGL 7334; s. 966, ch. 71-136.

**831.10 Second conviction of uttering forged bills.**—Whoever, having been convicted of the offense mentioned in s. 831.09 is again convicted of the like offense committed after the former conviction, and whoever is at the same term of the court convicted upon three distinct charges of such offense, shall be deemed a common utterer of counterfeit bills, and shall be punished as provided in s. 775.084.

**History.**—s. 7, ch. 1637, 1868; RS 2488; GS 3369; RGS 5217; CGL 7335; s. 967, ch. 71-136.

**831.11 Bringing into the state forged bank bills.**—Whoever brings into this state or has in his possession a false, forged or counterfeit bill or note in the similitude of the bills or notes payable to the bearer thereof or to the order of any person issued by or for any bank or banking company established in this state, or within the United States, or any foreign province, state or government, with intent to utter and pass the same or to render the same current as true, knowing the same to be false, forged or counterfeited, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 8, ch. 1637, 1868; RS 2489; GS 3370; RGS 5218; CGL 7336; s. 968, ch. 71-136.

**831.12 Fraudulently connecting parts of genuine instrument.**—Whoever fraudulently connects together parts of several banknotes or other genuine instruments in such a manner as to produce one additional note or instrument, with intent to pass all of them as genuine, shall be deemed guilty of forgery in like manner as if each of them had been falsely made or forged.

**History.**—s. 19, ch. 1637, 1868; RS 2490; GS 3371; RGS 5219; CGL 7337.

**831.13 Having in possession uncurrent bills.**—Whoever has in his possession at the same time five or more uncurrent bank bills or notes, knowing the same to be worthless, or has papers, not bank bills or notes but made in the similitude of bank bills or notes of any bank which has never existed, knowing the character of such papers, with intent to pass, utter or circulate the same, or to procure any other person to do so, for the purpose of injuring or defrauding, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 22, ch. 1637, 1868; RS 2491; GS 3372; RGS 5220; CGL 7338; s. 969, ch. 71-136.

**831.14 Uttering uncurrent bills.**—Whoever utters, or passes or tenders in payment as true, any such worthless and uncurrent bank bill or note, or any paper not a bank bill or note but made in the similitude of a bank bill or note, or any paper purporting to be the bill or note of any bank which has never existed, knowing the same to be worthless and

uncurrent, as aforesaid, with intent to injure and defraud, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 23, ch. 1637, 1868; RS 2492; GS 3373; RGS 5221; CGL 7339; s. 970, ch. 71-136.

**831.15 Counterfeiting coin; having 10 or more such coins in possession with intent to utter.**—Whoever counterfeits any gold, silver, or any metallic money coin, current by law or usage within this state, or has in his possession at the same time 10 or more pieces of false money, or coin counterfeited in the similitude of any gold, silver or metallic coin; current as aforesaid, knowing the same to be false and counterfeit, and with intent to utter or pass the same as true, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 14, ch. 1637, 1868; RS 2493; GS 3374; RGS 5222; CGL 7340; s. 971, ch. 71-136.

**831.16 Having less than 10 counterfeit coins in possession, with intent to utter.**—Whoever has in his possession any number of pieces less than 10 of the counterfeit coin mentioned in the preceding section, knowing the same to be counterfeit, with intent to utter or pass the same as true, or who utters, passes or tenders in payment as true any such counterfeit coin, knowing the same to be false and counterfeit, shall be punished by imprisonment in the state prison not exceeding 10 years, or in the county jail not exceeding 12 months, or by fine not exceeding \$1,000.

**History.**—s. 15, ch. 1637, 1868; RS 2494; GS 3375; RGS 5223; CGL 7341.

**831.17 Having less than 10 counterfeit coins, etc.; second conviction.**—Whoever having been convicted of either of the offenses mentioned in the preceding section, is again convicted of either of the same offenses, committed after the former conviction, and whoever is at the same term of the court convicted upon three distinct charges of said offenses, shall be deemed a common utterer of counterfeit coin and punished by imprisonment in the state prison not exceeding 20 years.

**History.**—s. 16, ch. 1637, 1868; RS 2495; GS 3376; RGS 5224; CGL 7342.

**831.18 Making instruments for forging bills, etc.**—Whoever engraves, makes or amends, or begins to engrave, make or amend, any plate, block, press, or other tool, instrument or implement, or makes or provides any paper or other material, adapted and designed for the making of a false and counterfeit note, certificate, or other bill of credit, purporting to be issued by lawful authority for a debt of this state, or a false or counterfeit note or bill, in the similitude of the notes or bills issued by any bank or banking company established in this state, or within the United States, or in any foreign province, state or government; and whoever has in his possession any such plate or block engraved in any part, or any press or other tool, instrument or any paper or other material adapted and designed as aforesaid, with intent to issue the same, or to cause or permit the same to be used in forging or making any such false and counterfeit certificates, bills or notes, shall be punished by imprisonment in the state prison not

exceeding 10 years, or by fine not exceeding \$1,000.

**History.**—s. 9, ch. 1637, 1868; RS 2496; GS 3377; RGS 5225; CGL 7343.

**831.19 Making or having instruments for counterfeiting coin.**—Whoever casts, stamps, engraves, makes or amends, or knowingly has in his possession any mould, pattern, die, puncheon, engine, press or other tool or instrument, adapted and designed for coining or making counterfeit coin in the similitude of any gold, silver or metallic coin, current by law or usage in this state, with intent to use or employ the same, or to cause or to permit the same to be used or employed in coining and making any such false and counterfeit coin as aforesaid, shall be punished by imprisonment in the state prison not exceeding 10 years, or by fine not exceeding \$1,000.

**History.**—s. 17, ch. 1637, 1868; RS 2497; GS 3378; RGS 5226; CGL 7344.

**831.20 Counterfeit bills and counterfeiters' tools to be seized.**—When false, forged or counterfeit bank bills or notes, or plates, dies or other tools, instruments or implements used by counterfeiters, designed for the forging or making of false or counterfeit notes, coin or bills, or worthless and uncurrent bank bills or notes described in this chapter shall come to the knowledge of any sheriff, police officer or other officer of justice in this state, such officer shall immediately seize and take possession of and deliver the same into the custody of the court having jurisdiction of the offense of counterfeiting in the county, and the court shall, as soon as the ends of justice will permit, cause the same to be destroyed by an officer of the court who shall make return to the court of his doings in the premises.

**History.**—s. 25, ch. 1637, 1868; RS 2498; GS 3379; RGS 5227; CGL 7345; s. 32, ch. 73-334.

**831.21 Forging or counterfeiting doctor's certificate of examination.**—Whoever falsely makes, alters, forges or counterfeits any doctor's certificate or record of examination to an application for a policy of insurance, or knowing such doctor's certificate or record of examination to be falsely made, altered, forged or counterfeited, shall pass, utter or publish such certificate as true, with intent to injure or defraud any person, shall be deemed guilty of forgery, and upon conviction thereof shall be punished by imprisonment in the state penitentiary not exceeding 5 years, or by fine not exceeding \$500.

**History.**—s. 1, ch. 4525, 1897; GS 3380; RGS 5228; CGL 7346.  
cf.—s. 1.01 "Person" defined.

**831.22 Damaging bank bills.**—Whoever willfully and maliciously cuts, or in any manner damages and impairs the usefulness for circulation of any bank bill or note of any bank in this state, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.083, but the possession or uttering of a bill so damaged shall not be evidence against the party charged, unless connected with other circumstances tending to prove that the note or bill was damaged by him.

**History.**—s. 20, ch. 1637, 1868; RS 2725; GS 3717; RGS 5700; CGL 7914; s. 972, ch. 71-136.

**831.23 Impeding circulation.**—Whoever maliciously gathers up or retains or maliciously does any gathering up or retaining any bills or notes of any bank or banking company current by law or usage in this state for the purpose of endangering or impeding the circulation or business of such bank or banking company, or to compel it to do any act whatever out of its usual course of business, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. In the prosecution of any such offense it will not be necessary to set out and describe each bill, but it shall be sufficient to aver and prove any amount of the bills of any bank which has been gathered up or retained.

**History.**—s. 21, ch. 1637, 1868; RS 2726; GS 3718; RGS 5701; CGL 7915; s. 973, ch. 71-136.

**831.24 Issuing shop bills similar to bank notes.**—Whoever engraves, prints, issues, utters or circulates a shop bill or advertisement in the similitude, form and appearance of a bank bill, on paper similar to paper used for bank bills, with vignettes, figures or decoration used on bank bills, or having the general appearance of a bank bill, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 24, ch. 1637, 1868; RS 2727; GS 3719; RGS 5702; CGL 7916; s. 974, ch. 71-136.

**831.25 Bringing private bills similar to bank bills into the state.**—Whoever brings into this state, with intent to pass the same therein, any bills or notes in the likeness of banknotes, which said bills or notes are or have been issued by private individuals or private unincorporated companies in any or either of the states in the United States, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083.

**History.**—s. 1, Dec. 22, 1824; RS 2728; GS 3720; RGS 5703; CGL 7917; s. 975, ch. 71-136.

**831.26 Circulating any substitute for regular currency.**—Whoever issues or circulates, or causes to be issued or circulated, or assists in issuing or circulating as a substitute in any respect for the currency recognized by law, any scrip, notes, bills, or any other written, engraved or lithographed paper payable in anything other than money, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083.

**History.**—s. 1, ch. 3140, 1879; RS 2729; GS 3721; RGS 5704; CGL 7918; s. 976, ch. 71-136; s. 242, ch. 77-104.

**831.27 Issuing notes.**—Whoever issues any note, bill, order or check, other than foreign bills of exchange and notes or bills of some bank or company incorporated by the laws of this state, or by the laws of the United States, or by the laws of either of the British provinces in North America, with intent that the same shall be circulated as currency, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083.

**History.**—s. 18, ch. 1637, 1868; RS 2730; GS 3722; RGS 5705; CGL 7919; s. 977, ch. 71-136.

**831.29 Making or having instruments and**

**material for counterfeiting operators' or chauffeurs' licenses.**—Whoever has control, custody, or possession of any plate, block, press, stone, or other tool, instrument, or implement, or any part thereof, or whoever engraves, makes, or amends, or begins to engrave, make, or amend any plate, block, press, stone, or other tool, instrument, or implement, or whoever brings into the state any such plate, block, press, stone, or other tool, instrument or implement or any part thereof in the similitude of the operators' or chauffeurs' licenses issued by the Department of Highway Safety and Motor Vehicles or its duly authorized agents or those of any state or jurisdiction which issues licenses recognized in this state for the operation of a motor vehicle, or whoever has control, custody, possession or makes or provides any paper or other material adapted and designed for the making of a false and counterfeit operator's or chauffeur's license purporting to be issued by the Department of Highway Safety and Motor Vehicles or its duly authorized agents, or those of any state or jurisdiction which issues licenses recognized in this state for the operation of a motor vehicle; or whoever has in his possession, control or custody any such plate or block engraved in any part, or any press or other tool, instrument or any paper or other material adapted and designed as aforesaid, with intent to sell, issue, publish, pass or utter the same or to cause or permit the same to be used in forging or making any such false or counterfeit operator's or chauffeur's license; or whoever prints, photographs or in any manner makes or executes any engraved photograph print or impression by any process whatsoever in the similitude of any such licenses with the intent to sell, issue, publish or utter the same or to cause or permit the same to be used in forging or making any such false and counterfeit operator's or chauffeur's license of this state or any state or jurisdiction which issues licenses recognized in this state for the operation of a motor vehicle shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 1, ch. 65-278; s. 1, ch. 69-313; ss. 24, 35, ch. 69-106; s. 978, ch. 71-136; s. 32, ch. 73-334.

**831.30 Medicinal drugs; fraud in obtaining.**—Whoever:

(1) Falsely makes, alters, or forges any prescription, as defined in s. 465.031(2), for a medicinal drug other than a drug controlled by chapter 893;

(2) Knowingly causes such prescription to be falsely made, altered, forged, or counterfeited; or

(3) Passes, utters or publishes such prescription or otherwise knowingly holds out such false or forged prescription as true,

with intent to obtain such drug, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A second or subsequent conviction shall constitute a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 1, ch. 71-331; s. 1, ch. 72-234; s. 30, ch. 73-331.



## CHAPTER 832

## ISSUING WORTHLESS CHECKS AND DRAFTS

- 832.04 Stopping payment; purchase of farm or grove products.
- 832.041 Stopping payment with intent to defraud.
- 832.05 Knowingly making, issuing, etc., worthless checks, drafts; obtaining property in return for worthless checks, etc.; penalty; duty of drawee; evidence.
- 832.06 Prosecution for worthless checks given tax collector for licenses, etc., relative to motor vehicles and motorboats, etc.; refunds.
- 832.07 Prima facie evidence of intent; identity.

**832.04 Stopping payment; purchase of farm or grove products.—**

(1) Whoever, with intent to defraud any producer of farm or grove products or product of such products or product shall, in person or by agent, make, draw, utter, deliver, or give to such producer any check, draft or written order for the payment of money upon any bank, person or corporation, and secure from such producer such products or product for or on account of such check, draft or written order, whether such products or product be valued at the amount of such check, draft or written order or at a greater or lesser value, and shall, pursuant to and in furtherance of such intent to defraud, stop payment on such check, draft or written order, shall be deemed to be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, if the value of the products or product secured for or on account of such check, draft or written order be \$50 or more; and if the value of the products or product secured for or on account of such check, draft or written order be less than \$50, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) In all prosecutions under this section, the introduction in evidence of any unpaid and dishonored check, draft or written order for the payment of money upon any bank, person or corporation, bearing the drawee's refusal to pay the same because of payment having been stopped, stamped or written thereon or attached thereto, shall be prima facie evidence of the making or uttering of said check, draft or written order, and of due presentation to the drawee for payment, and of the dishonor thereof, and that the same was properly dishonored because of payment thereof having been stopped by the maker or drawer. And, as against the maker or drawer thereof, the stopping of payment of any such check, draft or written order made, drawn, uttered, delivered, or given to a producer of farm or grove products or product in payment for any such products or product, the possession or control of which shall have been transferred upon faith of payment of such check, draft or written order, whether such products or product be valued at the amount of such check, draft or written order or at a greater or lesser amount, shall be prima facie evidence that such maker or drawer had the above mentioned intent to defraud such producer, if such maker or drawer, or his agent, shall have personally

inspected such products or product at or before such transfer of possession or control.

(3) This section shall be taken to be cumulative and shall not be construed to repeal any other statute now in effect.

History.—ss. 1, 2, 4, ch. 26884, 1951; s. 979, ch. 71-136.

**832.041 Stopping payment with intent to defraud.—**

(1) Whoever, with intent to defraud any person shall, in person or by agent, make, draw, utter, deliver or give any check, draft or written order for the payment of money upon any bank, person or corporation, and secure from such person goods or services for or on account of such check, draft or written order, whether such goods or services be valued at the amount of such check, draft or written order or at a greater or lesser value, and shall, pursuant to and in furtherance of such intent to defraud, stop payment on such check, draft or written order, shall be deemed to be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the value of the goods or services secured for or on account of such check, draft or written order be \$50 or more; and if the value of the goods or services secured for or on account of such check, draft or written order be less than \$50, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) This section shall be taken to be cumulative and shall not be construed to repeal any other statute now in effect.

History.—ss. 1, 2, ch. 65-413; s. 980, ch. 71-136.

**832.05 Knowingly making, issuing, etc., worthless checks, drafts; obtaining property in return for worthless checks, etc.; penalty; duty of drawee; evidence.—**

(1) PURPOSE.—The purpose of this section is to remedy the evil of giving checks, drafts, bills of exchange and other orders on a bank without first providing funds in or credit with the depository on which the same are made or drawn to pay and satisfy the same, which tends to create the circulation of worthless checks, drafts, bills of exchange and other orders on banks, bad banking, check kiting and a mischief to trade and commerce.

**(2) WORTHLESS CHECKS; PENALTY.—**

(a) It shall be unlawful for any person, firm or corporation to draw, make, utter, issue or deliver to another any check, draft, or other written order on any bank or depository for the payment of money or its equivalent, knowing at the time of the drawing, making, uttering, issuing or delivering such check or draft that the maker or drawer thereof has not sufficient funds on deposit in or credit with such bank or depository with which to pay the same on presentation; provided, that this section shall not apply to any check where the payee or holder knows or has been expressly notified prior to the drawing or uttering of same or has reason to believe that the drawer did not have on deposit or to his credit with the drawee sufficient funds to insure payment as afore-

said, nor shall this section apply to any postdated check.

(b) Violation of the provisions of this subsection shall constitute a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, unless the check, draft or other written order drawn, made, uttered, issued or delivered be in the amount of \$50, or its equivalent, or more and the payee or a subsequent holder thereof receives something of value therefor. In that event the violation shall constitute a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) CASHING OR DEPOSITING ITEM; PENALTY.—

(a) It is unlawful for any person, by act or common scheme, to cash or deposit any item, as defined in s. 674.104(1)(g), in any bank or depository with intent to defraud.

(b) Violation of the provisions of this subsection shall constitute a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) OBTAINING PROPERTY IN RETURN FOR WORTHLESS CHECKS, ETC.; PENALTY.—

(a) It shall be unlawful for any person, firm or corporation to obtain any services, goods, wares or other things of value by means of a check, draft or other written order upon any bank, person, firm or corporation, knowing at the time of the making, drawing, uttering, issuing or delivering of said check or draft that the maker thereof has not sufficient funds on deposit in or credit with such bank or depository with which to pay the same upon presentation, provided however that no crime may be charged in respect to the giving of any such check or draft or other written order where the payee knows or has been expressly notified or has reason to believe that the drawer did not have on deposit or to his credit with the drawee sufficient funds to insure payment thereof.

(b) Violation of the provisions of this subsection shall, if the check, draft or other written order be for an amount less than \$50 or its equivalent, constitute a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Violation of the provisions of this subsection shall, if the check, draft or other written order be in the amount of \$50, or its equivalent, or more, constitute a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) PAYMENT NO DEFENSE.—Payment of a dishonored check, draft, bill of exchange or other orders shall not constitute a defense or ground for dismissal of charges brought under this section.

(6) CREDIT DEFINED.—The word "credit" as used herein shall be construed to mean an arrangement or understanding with the drawee for the payment of such check, draft, or other written order.

(7) REASON FOR DISHONOR, DUTY OF DRAWEE.—It shall be the duty of the drawee of any check, draft, or other written order, before refusing to pay the same to the holder thereof upon presentation, to cause to be written, printed, or stamped in plain language thereon or attached thereto, the reason for drawee's dishonor or refusal to pay same. In all prosecutions under this section, the introduction in evidence of any unpaid and dishonored check,

draft or other written order, having the drawee's refusal to pay stamped or written thereon, or attached thereto, with the reason therefor as aforesaid, shall be prima facie evidence of the making or uttering of said check, draft, or other written order, and the due presentation to the drawee for payment and the dishonor thereof, and that the same was properly dishonored for the reasons written, stamped or attached by the drawee on such dishonored checks, draft, or other written orders; and, as against the maker or drawer thereof, the withdrawing from deposit with the drawee named in the check, draft or other written order, the funds on deposit with such drawee necessary to insure payment of said check, draft or other written order upon presentation within a reasonable time after negotiation; or the drawing, making, uttering or delivering of a check, draft or written order, payment of which is refused by the drawee, shall be prima facie evidence of knowledge of insufficient funds in or credit with such drawee; provided, however, if it is determined at the trial in a prosecution hereunder, that the payee of any such check, draft or written order at the time of accepting such check, draft or written order, had knowledge of or reason to believe that the drawer of such check, draft or other written order did not have sufficient funds on deposit in or credit with such drawee, then the payee instituting such criminal prosecution shall be assessed all costs of court incurred in connection with such prosecution.

(8) COSTS.—Where prosecutions are initiated under this section before any committing magistrate, the party applying for the warrant shall be held liable for costs accruing in the event the case is dismissed for want of prosecution. No costs shall be charged to the county in such dismissed cases.

**History.**—ss. 1, 2, ch. 28096, 1953; s. 1, ch. 61-284; s. 1, ch. 61-185; s. 981, ch. 71-136; s. 1, ch. 79-98.

cf.—Ch. 812 Theft, robbery, and related crimes.

**832.06 Prosecution for worthless checks given tax collector for licenses, etc., relative to motor vehicles and motorboats, etc.; refunds.—**

(1) Whenever any person, firm, or corporation violates the provisions of s. 832.05 by drawing, making, uttering, issuing, or delivering to any county tax collector any check, draft, or other written order on any bank or depository for the payment of money or its equivalent for any tag, title, lien, tax (except ad valorem taxes), penalty, or fee relative to a boat, airplane, or motor vehicle; any occupational license, beverage license, or sales or use tax; or any hunting or fishing license, the county tax collector, after the exercise of due diligence to locate the person, firm, or corporation which drew, made, uttered, issued, or delivered the check, draft, or other written order for the payment of money, or to collect the same by the exercise of due diligence and prudence, shall swear out a complaint in the proper court against the person, firm, or corporation for the issuance of the worthless check or draft. If the state attorney cannot sign the information due to lack of proof, as determined by the state attorney in good faith, for a prima facie case in court, he shall issue a certificate so stating to the tax collector. If payment of the dishonored check, draft, or other written order, together with court costs expended, is not received in full by

the county tax collector within 30 days after service of the warrant, 30 days after conviction, or 60 days after the collector swears out the complaint or receives the certificate of the state attorney, whichever is first, the county tax collector shall make a written report to this effect to the Department of Highway Safety and Motor Vehicles relative to airplanes and motor vehicles, to the Department of Natural Resources relative to boats, to the Department of Revenue relative to occupational licenses and the sales and use tax, to the Division of Alcoholic Beverages and Tobacco of the Department of Business Regulation relative to beverage licenses, or to the Game and Fresh Water Fish Commission relative to hunting and fishing licenses, containing a statement of the amount remaining unpaid on the worthless check or draft. If the information is not signed, the certificate of the state attorney is issued, and the written report of the amount remaining unpaid is made, the county tax collector may request the sum be forthwith refunded by the appropriate governmental entity, agency, or department. If a warrant has been issued and served, he shall certify to that effect, together with the court costs and amount remaining unpaid on the check. The county tax collector may request that the sum of money certified by him be forthwith refunded by the Department of Highway Safety and Motor Vehicles, the Department of Natural Resources, the Department of Revenue, the Division of Alcoholic Beverages and Tobacco of the Department of Business Regulation, or the Game and Fresh Water Fish Commission to the county tax collector. Within 30 days after receipt of the request, the Department of Highway Safety and Motor Vehicles, the Department of Natural Resources, the Department of Revenue, the Division of Alcoholic Beverages and Tobacco of the Department of Business Regulation, or the Game and Fresh Water Fish Commission, upon being satisfied as to the correctness of the certificate of the tax collector, or the report, shall refund to the county tax collector the sums of money so certified or reported. If any officer of any court issuing the warrant is unable to serve it within 60 days after the issuance and delivery of it to the officer for service, the officer shall make a written return to the county tax collector to this effect. Thereafter, the county tax collector may certify that the warrant has been issued and that service has not been had upon the defendant and further certify the amount of the worthless check or draft and the amount of court costs expended by the county tax collector, and the county tax collector may file the certificate with the Department of Highway Safety and Motor Vehicles relative to motor vehicles and airplanes, with the Department of Natural Resources relative to boats, with the Department of Revenue relative to occupational licenses and the sales and use tax, with the Division of Alcoholic Beverages and Tobacco of the Department of Business Regulation relative to beverage licenses, or with the Game and Fresh Water Fish Commission relative to hunting and fishing licenses, together with a request that the sums of money so certified be forthwith refunded by the Department of Highway Safety and Motor Vehicles, the Department of Natural Resources, the Department of Revenue,

the Division of Alcoholic Beverages and Tobacco of the Department of Business Regulation, or the Game and Fresh Water Fish Commission to the county tax collector, and within 30 days after receipt of the request, the Department of Highway Safety and Motor Vehicles, the Department of Natural Resources, the Department of Revenue, the Division of Alcoholic Beverages and Tobacco of the Department of Business Regulation, or the Game and Fresh Water Fish Commission, upon being satisfied as to the correctness of the certificate, shall refund the sums of money so certified to the county tax collector.

(2) The provisions of this act shall be liberally construed in order to effectively carry out the purposes of this act in the interest of the public.

**History.**—ss. 1, 2, ch. 63-343; s. 6, ch. 65-190; s. 1, ch. 69-77; ss. 16, 21, 24, 25, 35, ch. 69-106; s. 1, ch. 74-348; s. 1, ch. 77-174; s. 34, ch. 79-11.

### 832.07 Prima facie evidence of intent; identity.—

#### (1) INTENT.—

(a) In any prosecution or action under this chapter, the making, drawing, uttering, or delivery of a check, draft, or order, payment of which is refused by the drawee because of lack of funds or credit, shall be prima facie evidence of intent to defraud or knowledge of insufficient funds in, or credit with, such bank, banking institution, trust company, or other depository, unless such maker or drawer, or someone for him, shall have paid the holder thereof the amount due thereon, together with a service charge not to exceed \$10 or 5 percent of the face amount of the check, whichever is greater, within 7 days after receiving written notice that such check, draft, or order has not been paid to the holder thereof. Notice mailed by certified or registered mail, evidenced by return receipt, to the address printed on the check or given at the time of issuance shall be deemed sufficient and equivalent to notice having been received by the maker or drawer, whether such notice shall be returned undelivered or not. The form of such notice shall be substantially as follows:

"You are hereby notified that a check, numbered ....., issued by you on (date)....., drawn upon (name..... of bank)....., and payable to ....., has been dishonored. Pursuant to Florida law, you have 7 days from receipt of this notice to tender payment of the full amount of such check plus a service charge of \$5 or 5 percent of the face amount of the check, whichever is greater, the total amount due being \$.....and ..... cents. Unless this amount is paid in full within the time specified above, the holder of such check may turn over the dishonored check and all other available information relating to this incident to the state attorney for criminal prosecution."

Any party holding a worthless check and giving notice in substantially similar form to that provided above shall be immune from civil liability for the giving of such notice and for proceeding under the forms of such notice.

(b) When a check is drawn on a bank in which the maker or drawer has no account, it shall be presumed that such check was issued with intent to defraud, and the notice requirement set forth in this section shall be waived.

#### (2) IDENTITY.—



(a) In any prosecution or action under the provisions of this chapter, a check, draft, or order for which the information required in paragraph (b) is available at the time of issuance shall constitute prima facie evidence of the identity of the party issuing the check, draft, or order and that such person was a party authorized to draw upon the named account.

(b) To establish this prima facie evidence, the following information regarding the identity of the party presenting the check shall be obtained by the party accepting such check: The full name, residence address, home phone number, business phone number, place of employment, sex, date of birth, height, and race. This information shall be written upon the check.

(c) The information required in paragraph (b) may be provided by either of two methods:

1. Such information may be recorded upon the check itself; or

2. The number of a check-cashing identification card issued by the accepting party may be recorded on the check. Such check-cashing identification card shall be issued only after the information required in paragraph (b) has been placed on file by the accepting party.

(d) In addition to the information required in paragraph (b), the party accepting a check shall witness the signature or endorsement of the party presenting such check, and, as evidence of such, the accepting party shall initial the check.

**History.**—s. 1, ch. 75-189; s. 1, ch. 77-174; s. 1, ch. 79-345.

**Note.**—Although s. 1, ch. 79-345, amended this paragraph to change the maximum service charge from \$5 to \$10, the form of the notice was not changed.  
cf.—ss. 125.0105, 166.251 Service fee for dishonored check.

## CHAPTER 836

## DEFAMATION; LIBEL; THREATENING LETTERS AND SIMILAR OFFENSES

- 836.01 Punishment for libel.
- 836.02 Must give name of the party written about.
- 836.03 Owner or editor of the paper also guilty.
- 836.04 Defamation.
- 836.05 Threats; extortion.
- 836.06 Punishment for making derogatory statements concerning banks and building and loan associations.
- 836.07 Notice condition precedent to prosecution for libel.
- 836.08 Correction, apology, or retraction by newspaper.
- 836.09 Communicating libelous matter to newspapers; penalty.
- 836.10 Written threats to kill or do bodily injury; punishment.
- 836.11 Publications which tend to expose persons to hatred, contempt or ridicule prohibited.

**836.01 Punishment for libel.**—Any person convicted of the publication of a libel shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or 775.083.

**History.**—s. 15, sub-ch. 7, ch. 1637, 1868; RS 2418; GS 3256; RGS 5087; CGL 7189; s. 987, ch. 71-136.  
cf.—s. 770.01 Civil action for libel.

**836.02 Must give name of the party written about.**—

(1) No person shall print, write, publish, circulate or distribute within this state any newspaper, magazine, periodical, pamphlet, or other publication of any character, either written or printed, wherein the alleged immoral acts of any person are stated or pretended to be stated, or wherein it is intimated that any person has been guilty of any immorality, unless such written or printed publication shall in such article publish in full the true name of the person intended to be charged with the commission of such acts of immorality.

(2) Any person convicted of any violation of this section shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Any person who shall aid in any way in the writing or printing of any literature in violation of this section shall be punished in the same manner as the principal might be punished upon conviction; provided, nothing in this section shall apply to mechanical employees in printing offices, or to newsboys.

**History.**—ss. 1, 2, 3, ch. 4733, 1899; GS 3257; RGS 5088; CGL 7190; s. 988, ch. 71-136.  
cf.—s. 1.01 "Person" defined.

**836.03 Owner or editor of the paper also guilty.**—Any owner, manager, publisher or editor of any newspaper or other publication who permits any anonymous communication or communications such as is signed otherwise than with the true name of the writer, and such name published therewith to appear in the columns of his publication in which said communication any person is attacked in his good name, or it is attempted to bring disgrace or ridicule

upon any person, such owner, manager, publisher or editor shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 4, ch. 4733, 1899; GS 3258; RGS 5089; CGL 7191; s. 989, ch. 71-136.

**836.04 Defamation.**—Whoever speaks of and concerning any woman, married or unmarried, falsely and maliciously imputing to her a want of chastity, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 1, ch. 3460, 1883; RS 2419; GS 3260; RGS 5091; CGL 7193; s. 990, ch. 71-136.

**836.05 Threats; extortion.**—Whoever, either verbally or by a written or printed communication, maliciously threatens to accuse another of any crime or offense, or by such communication maliciously threatens an injury to the person, property or reputation of another, or maliciously threatens to expose another to disgrace, or to expose any secret affecting another, or to impute any deformity or lack of chastity to another, with intent thereby to extort money or any pecuniary advantage whatsoever, or with intent to compel the person so threatened, or any other person, to do any act or refrain from doing any act against his will, shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 42, sub-ch. 3, ch. 1637, 1868; RS 2420; GS 3261; RGS 5092; CGL 7194; s. 1, ch. 57-254; s. 991, ch. 71-136.  
cf.—s. 839.11 Extortion generally.

**836.06 Punishment for making derogatory statements concerning banks and building and loan associations.**—Any person who shall willfully and maliciously make, circulate or transmit to another or others any false statement, rumor or suggestion, written, printed or by word of mouth, which is directly or by inference derogatory to the financial condition or affects the solvency or financial standing of any banking institution or building and loan association doing business in this state, or who shall counsel, aid, procure or induce another to start, transmit or circulate any such statement or rumor, shall be guilty of a misdemeanor, and upon conviction thereof shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 1, ch. 6819, 1915; RGS 5093; s. 1, ch. 11866, 1927; CGL 7195, 7315; s. 992, ch. 71-136.

cf.—s. 817.16 False reports by officers of banks, etc., with intent to defraud.

**836.07 Notice condition precedent to prosecution for libel.**—Before any criminal action is brought for publication, in a newspaper periodical, of a libel, the prosecutor shall at least 5 days before instituting such action serve notice in writing on defendant, specifying the article and the statements therein which he alleges to be false and defamatory.

**History.**—s. 1, ch. 16070, 1933; CGL 1936 Supp. 7064(1).  
cf.—Ch. 770 Regulating civil actions for libel.

**836.08 Correction, apology, or retraction by newspaper.**—If it appears upon the trial that said article was published in good faith, that its falsity was due to an honest mistake of the facts, and that there were reasonable grounds for believing that the statements in said article were true, and that within 10 days after the service of said notice a full and fair correction, apology and retraction was published in the same editions or corresponding issues of the newspaper or periodical in which said article appeared, and in as conspicuous place and type as was said original article, then any criminal proceeding charging libel based on an article so retracted, shall be discontinued and barred.

**History.**—s. 2, ch. 16070, 1933; CGL 1940 Supp. 7064(2); s. 993, ch. 71-136.

**836.09 Communicating libelous matter to newspapers; penalty.**—If any person shall state, deliver, or transmit by any means whatever, to the manager, editor, publisher or reporter of any newspaper or periodical for publication therein any false and libelous statement concerning any person, then and there known by such person to be false or libelous, and thereby secure the publication of the same he shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 1, ch. 5142, 1903; GS 3259; RGS 5090; CGL 7192; s. 3, ch. 16070, 1933; CGL 1936 Supp. 7064(3); s. 994, ch. 71-136.  
cf.—s. 1.01 "Person" defined.

**836.10 Written threats to kill or do bodily injury; punishment.**—If any person writes or composes and also sends or procures the sending of any letter or inscribed communication, so written or composed, whether such letter or communication be signed or anonymous, to any person, containing a

threat to kill or to do bodily injury to the person to whom such letter or communication is sent, or a threat to kill or do bodily injury to any member of the family of the person to whom such letter or communication is sent, the person so writing or composing and so sending or procuring the sending of such letter or communication, shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 1, ch. 6503, 1913; RGS 5094; CGL 7196; s. 995, ch. 71-136.

**836.11 Publications which tend to expose persons to hatred, contempt or ridicule prohibited.**—

(1) It shall be unlawful to print, publish, distribute or cause to be printed, published or distributed by any means, or in any manner whatsoever, any publication, handbill, dodger, circular, booklet, pamphlet, leaflet, card, sticker, periodical, literature, paper or other printed material which tends to expose any individual or any religious group to hatred, contempt, ridicule or obloquy unless the following is clearly printed or written thereon:

(a) The true name and post-office address of the person, firm, partnership, corporation or organization causing the same to be printed, published or distributed; and,

(b) If such name is that of a firm, corporation or organization, the name and post-office address of the individual acting in its behalf in causing such printing, publication or distribution.

(2) Any person, firm or corporation violating any of the sections of this statute shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—ss. 1, 2, ch. 22744, 1945; s. 996, ch. 71-136.



## CHAPTER 837

## PERJURY

- 837.011 Definitions.  
 837.012 Perjury when not in an official proceeding.  
 837.02 Perjury in official proceedings.  
 837.021 Perjury by contradictory statements.  
 837.05 False reports to law enforcement authorities.  
 837.06 False official statements.

**837.011 Definitions.**—In this chapter, unless a different meaning plainly is required:

(1) "Official proceeding" means a proceeding heard, or which may be or is required to be heard, before any legislative, judicial, administrative, or other governmental agency or official authorized to take evidence under oath, including any referee, master in chancery, hearing examiner, commissioner, notary, or other person taking testimony or a deposition in connection with any such proceeding.

(2) "Oath" includes affirmation or any other form of attestation required or authorized by law by which a person acknowledges that he is bound in conscience or law to testify truthfully in an official proceeding or other official matter.

(3) "Material matter" means any subject, regardless of its admissibility under the rules of evidence, which could affect the course or outcome of the proceeding. Whether a matter is material in a given factual situation is a question of law.

*History.*—s. 53, ch. 74-383.

**837.012 Perjury when not in an official proceeding.**—

(1) Whoever makes a false statement, which he does not believe to be true, under oath, not in an official proceeding, in regard to any material matter shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) Knowledge of the materiality of the statement is not an element of this crime, and the defendant's mistaken belief that his statement was not material is not a defense.

*History.*—s. 2, ch. 1637, 1868; RS 2560; GS 3472; RGS 5341; CGL 7474; s. 997, ch. 71-136; s. 54, ch. 74-383; s. 32, ch. 75-298.

*Note.*—Former s. 837.01.

- cf.—s. 11.05 By persons appearing before legislative committees.  
 s. 319.33 In connection with title certificate to motor vehicle.  
 s. 322.33 In connection with drivers' licenses law.  
 s. 440.38 False testimony in proceedings before Department of Insurance.  
 s. 440.56 False testimony before Industrial Relations Commission.

**837.02 Perjury in official proceedings.**—

(1) Whoever makes a false statement, which he

does not believe to be true, under oath in an official proceeding in regard to any material matter shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) Knowledge of the materiality of the statement is not an element of this crime, and the defendant's mistaken belief that his statement was not material is not a defense.

*History.*—s. 1, sub-ch. 6, ch. 1637, 1868; RS 2561; GS 3473; RGS 5343; CGL 7477; s. 998, ch. 71-136; s. 55, ch. 74-383; s. 33, ch. 75-298.

**837.021 Perjury by contradictory statements.**—

(1) Whoever, in one or more official proceedings, willfully makes two or more material statements under oath when in fact two or more of the statements contradict each other is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The prosecution may proceed in a single count by setting forth the willful making of inconsistent statements under oath and alleging in the alternative that one or more of them are false.

(2) The question of whether a statement was material is a question of law to be determined by the court.

(3) In any prosecution for perjury by contradictory statements under this act, it is not necessary to prove which, if any, of the statements is not true.

(4) In any prosecution under this act for perjury by contradictory statements, it shall be a defense that the accused believed each statement to be true at the time he made it.

*History.*—s. 1, ch. 72-314; s. 56, ch. 74-383; s. 34, ch. 75-298.

**837.05 False reports to law enforcement authorities.**—Whoever knowingly gives false information to any law enforcement officer concerning the alleged commission of any crime is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

*History.*—s. 57, ch. 74-383; s. 34, ch. 75-298.

**837.06 False official statements.**—Whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his official duty shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

*History.*—s. 58, ch. 74-383; s. 34, ch. 75-298.

## CHAPTER 838

## BRIBERY; MISUSE OF PUBLIC OFFICE

- 838.014 Definitions.  
 838.015 Bribery.  
 838.016 Unlawful compensation or reward for official behavior.  
 838.021 Corruption by threat against public servant.  
 838.12 Bribery in athletic contests.

**838.014 Definitions.**—For the purposes of this chapter, unless a different meaning plainly is required:

(1) "Benefit" means gain or advantage, or anything regarded by the person to be benefited as a gain or advantage, including the doing of an act beneficial to any person in whose welfare he is interested.

(2) "Pecuniary benefit" is benefit in the form of any commission, gift, gratuity, property, commercial interest, or any other thing of economic value.

(3) "Harm" means loss, disadvantage, or injury to the person affected, including loss, disadvantage, or injury to any other person in whose welfare he is interested.

(4) "Public servant" means any public officer, agent, or employee of government, whether elected or appointed, including, but not limited to, any executive, legislative, or judicial officer; any person who holds an office or position in a political party or political party committee, whether elected or appointed; and any person participating as a special master, receiver, auditor, juror, arbitrator, umpire, referee, consultant, or hearing examiner, or person acting on behalf of any of these, in performing a governmental function; but the term does not include witnesses. Such term shall include a candidate for election or appointment to any such office, including any individual who seeks or intends to occupy any such office. It shall include any person appointed to any of the foregoing offices or employments before and after he qualifies.

(5) "Government" includes the state government and any city or county government or any branch, political subdivision, or agency of the state, county, or city government.

(6) "Corruptly" means done with a wrongful intent and for the purpose of obtaining or compensating or receiving compensation for any benefit resulting from some act or omission of a public servant which is inconsistent with the proper performance of his public duties.

*History.*—s. 59, ch. 74-383.

**838.015 Bribery.**—

(1) "Bribery" means corruptly to give, offer, or promise to any public servant, or, if a public servant, corruptly to request, solicit, accept, or agree to accept for himself or another, any pecuniary or other benefit with an intent or purpose to influence the performance of any act or omission which the person believes to be, or the public servant represents as being, within the official discretion of a public servant, in violation of a public duty, or in performance of a public duty.

(2) Prosecution under this section shall not require any allegation or proof that the public servant ultimately sought to be unlawfully influenced was qualified to act in the desired way, that he had assumed office, that the matter was properly pending before him or might by law properly be brought before him, that he possessed jurisdiction over the matter, or that his official action was necessary to achieve the person's purpose.

(3) Any person who commits bribery is guilty of a felony in the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

*History.*—s. 60, ch. 74-383; s. 35, ch. 75-298.

**838.016 Unlawful compensation or reward for official behavior.**—

(1) It is unlawful for any person corruptly to give, offer, or promise to any public servant, or, if a public servant, corruptly to request, solicit, accept, or agree to accept, any pecuniary or other benefit not authorized by law, for the past, present, or future performance, nonperformance, or violation of any act or omission which the person believes to have been, or the public servant represents as having been, either within the official discretion of the public servant, in violation of a public duty, or in performance of a public duty. Nothing herein shall be construed to preclude a public servant from accepting rewards for services performed in apprehending any criminal.

(2) It is unlawful for any person corruptly to give, offer, or promise to any public servant, or, if a public servant, corruptly to request, solicit, accept, or agree to accept, any pecuniary or other benefit not authorized by law for the past, present, or future exertion of any influence upon or with any other public servant regarding any act or omission which the person believes to have been, or which is represented to him as having been, either within the official discretion of the other public servant, in violation of a public duty, or in performance of a public duty.

(3) Prosecution under this section shall not require that the exercise of influence or official discretion, or violation of a public duty or performance of a public duty, for which a pecuniary or other benefit was given, offered, promised, requested, or solicited was accomplished or was within the influence, official discretion, or public duty of the public servant whose action or omission was sought to be rewarded or compensated.

(4) Whoever violates the provisions of this section shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

*History.*—s. 60, ch. 74-383; s. 36, ch. 75-298.

**838.021 Corruption by threat against public servant.**—

(1) Whoever unlawfully harms or threatens unlawful harm to any public servant, to his immediate family, or to any other person with whose welfare he is interested, with the intent or purpose:

(a) To influence the performance of any act or omission which the person believes to be, or the pub-

lic servant represents as being, within the official discretion of the public servant, in violation of a public duty, or in performance of a public duty.

(b) To cause or induce him to use or exert, or procure the use or exertion of, any influence upon or with any other public servant regarding any act or omission which the person believes to be, or the public servant represents as being, within the official discretion of the public servant, in violation of a public duty, or in performance of a public duty.

(2) Prosecution under this section shall not require any allegation or proof that the public servant ultimately sought to be unlawfully influenced was qualified to act in the desired way, that he had assumed office, that the matter was properly pending before him or might by law properly be brought before him, that he possessed jurisdiction over the matter, or that his official action was necessary to achieve the person's purpose.

(3)(a) Whoever unlawfully harms any public servant or any other person with whose welfare he is interested shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Whoever threatens unlawful harm to any public servant or to any other person with whose welfare he is interested shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

*History.*—s. 61, ch. 74-383; s. 37, ch. 75-298.

#### **838.12 Bribery in athletic contests.—**

(1) Whoever gives, promises, offers or conspires to give, promise or offer, to anyone who participates or expects to participate in any professional or amateur game, contest, match, race or sport; or to any umpire, referee, judge or other official of such game, contest, match, race or sport; or to any owner, manager, coach or trainer of, or to any relative of, or to

any person having any direct, indirect, remote or possible connection with, any team, individual, participant or prospective participant in any such professional or amateur game, contest, match, race or sport, or the officials aforesaid, any bribe, money, goods, present, reward or any valuable thing whatsoever, or any promise, contract or agreement whatsoever, with intent to influence him or them to lose or cause to be lost any game, contest, match, race or sport, or to limit his or their or any person's or any team's margin of victory in any game, contest, match, race, or sport, or to fix or throw any game, contest, match, race or sport, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) Any participant or prospective participant in any professional or amateur game, contest, match, race or sport; or any umpire, referee, judge or other official of such game, contest, match, race or sport; or any owner, manager, coach or trainer of, or any relative of, or any person having any direct, indirect, remote or possible connection with, any team, individual, participant or prospective participant in any such professional or amateur game, contest, match, race or sport, or the officials aforesaid; who in any way solicits, receives or accepts, or agrees to receive or accept, or who conspires to receive or accept, any bribe, money, goods, present, reward or any valuable thing whatsoever, or any promise, contract or agreement whatsoever, with intent to lose or cause to be lost any game, contest, match, race or sport, or to limit his, their or any person's or any team's margin of victory in any game, contest, match, race or sport, or to fix or throw any game, contest, match, race or sport, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

*History.*—ss. 1, 2, ch. 28024, 1953; s. 1010, ch. 71-136.



## CHAPTER 839

## OFFENSES BY AUCTIONEERS, PUBLIC OFFICERS AND EMPLOYEES

- 839.01 False returns by auctioneer.
- 839.02 Default by auctioneer or other receiver of public moneys.
- 839.021 Prohibited bidding by employees of auctioneers; penalty.
- 839.04 County officers not to speculate in county warrants or certificates.
- 839.05 Municipal officers not to speculate in municipal scrip.
- 839.06 Collectors not to deal in warrants, etc.; removal.
- 839.08 Public officer not to purchase supplies for public use from himself.
- 839.09 Boards not to purchase supplies from members of boards.
- 839.091 Purchasing supplies; exemption from penalties.
- 839.10 No officer or board to bid for public work.
- 839.11 Extortion by officers of the state.
- 839.12 Officer failing to keep record of costs.
- 839.13 Falsifying records.
- 839.14 Officer withholding records from successor.
- 839.15 Judicial officer withholding records.
- 839.16 Fraud of clerk in drawing jury.
- 839.17 Misappropriation of moneys by commissioners to make sales.
- 839.18 Penalty for officer assuming to act before qualification.
- 839.19 Failure to execute process generally.
- 839.20 Refusal to execute criminal process.
- 839.21 Refusal to receive prisoner.
- 839.23 Officer taking insufficient bail.
- 839.24 Penalty for failure to perform duty required of officer.
- 839.25 Official misconduct.
- 839.26 Misuse of confidential information.

**839.01 False returns by auctioneer.**—Any auctioneer who shall neglect to make the statement of sales required by law, or who shall knowingly make a false statement, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and upon conviction his commission shall be forfeited and void.

**History.**—s. 1, ch. 3847, 1889; RS 2550; GS 3459; RGS 5326; CGL 7459; s. 1011, ch. 71-136.

**839.02 Default by auctioneer or other receiver of public moneys.**—If any auctioneer or other receiver of public moneys shall refuse or neglect to pay the moneys so received into the state treasury at the times and under the regulations prescribed by law, he shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—RS 2551; GS 3460; RGS 5327; CGL 7460; s. 1012, ch. 71-136.  
cf.—s. 116.02 Unlawful to pay commissions on funds collected but unremitted.

**839.021 Prohibited bidding by employees of auctioneers; penalty.**—

(1) It shall be unlawful for any employee or agent of an auctioneer or any one interested directly or

indirectly in the outcome of an auction to bid without notice to all bidders on any article offered for sale at any auction. No person without notice to all bidders on any article offered for sale at any auction shall act as a fictitious bidder or what is commonly known as a "capper," "booster," "by-bidder," or "shiller" and no person shall bid, offer to bid, or pretend to buy any article sold or offered for sale at any auction by a prearranged agreement with any person interested in the sale directly or indirectly as seller; provided, however, that the provisions of this section shall not apply to auctions of livestock and agricultural products.

(2) Any person violating the provisions of this section shall upon conviction be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, and upon second conviction the auctioneer's license shall be revoked.

**History.**—ss. 1, 2, ch. 59-219; s. 1013, ch. 71-136.

**839.04 County officers not to speculate in county warrants or certificates.**—Any County Court Judge, Clerk of the Circuit Court, sheriff, tax collector, property appraiser or their deputies, county commissioner, school board members, superintendent of schools, or any other county officer who buys up at a discount, or in any manner, directly or indirectly, speculates in jurors' or witnesses' certificates or in any warrants drawn upon the county treasurer for the payment of money out of any public fund of this state or of any county, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and shall be removed from office.

**History.**—ss. 1, 2, ch. 3419, 1883; RS 2558; GS 3465; RGS 5334; CGL 7467; s. 1, ch. 69-300; s. 1014, ch. 71-136; s. 32, ch. 73-334; s. 1, ch. 77-102.

**839.05 Municipal officers not to speculate in municipal scrip.**—Any mayor, marshal, treasurer, clerk, tax collector or other officer of any incorporated city or town, or any deputy of such officer, who buys up at a discount, or in any manner, directly or indirectly, speculates in any scrip or other evidence of indebtedness issued by the municipal corporation of which he is an officer, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and shall be removed from office.

**History.**—ss. 1, 2, ch. 3464, 1883; RS 2559; GS 3466; RGS 5335; CGL 7468; s. 1015, ch. 71-136; s. 242, ch. 77-104.

**839.06 Collectors not to deal in warrants, etc.; removal.**—No tax collector of any county shall, either directly or indirectly, purchase or receive in exchange any Comptroller's warrants, county orders, jurors' certificates or school district orders for a less amount than expressed on the face of such orders or demand, and any such person so offending shall, for each offense, be deemed guilty of a misdemeanor of the first degree, punishable as provided in s. 775.083, and be removed from office.

**History.**—Ch. 4010, 1891; s. 40, ch. 4322, 1895; GS 3467; s. 39, ch. 5596, 1907; RGS 5336; CGL 7469; s. 1016, ch. 71-136.

**839.08 Public officer not to purchase supplies for public use from himself.**—No state or county officer shall purchase supplies or materials for public use from himself or from any firm or corporation in which he is interested, nor in any manner share in the proceeds of such purchase. Any person violating this section shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 1, ch. 5186, 1903; GS 3469; RGS 5338; CGL 7471; s. 1018, ch. 71-136.

**839.09 Boards not to purchase supplies from members of boards.**—No state or county board or municipal board or council shall purchase supplies, goods or materials for public use from any firm or corporation in which any member of such board is either directly or indirectly interested, nor shall any such board pay for such supplies, goods or materials so purchased. Any person violating the provisions of this section shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083; provided, that no member of any board aforesaid who shall have recorded his vote against such illegal purchase, or who shall have been absent at the taking of the vote thereon, shall be convicted of a violation of this section.

**History.**—s. 2, ch. 5186, 1903; GS 3470; s. 1, ch. 5692, 1907; RGS 5339; CGL 7472; s. 1019, ch. 71-136.

**839.091 Purchasing supplies; exemption from penalties.**—

(1) No person shall be subject to prosecution under ss. 839.08 and 839.09 when such purchases are:

(a) Made from the lowest bidder under sealed bids;

(b) Where such purchases are made at current market prices under a rotation system by which purchases are rotated among the different suppliers; or

(c) Where purchases are made at current market prices and are for an aggregate amount in any calendar year of not more than \$1,000.

(d) For utility services, newspaper advertising, telephone or telegraph service, insurance premiums, or similar services.

(2) The provisions of this section shall not apply to counties of the state with population of more than 100,000.

**History.**—ss. 1, 3, ch. 26934, 1951.

**839.10 No officer or board to bid for public work.**—No state or county officer nor member of any state or county board shall bid for, or enter into, or be in any manner interested in any contract for public work for which the said officer or state or county board is or may be a party to the letting. Any person violating the provisions of this section shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083; provided, that no member of any board aforesaid who shall have recorded his vote against the letting of such contract, or who shall have been absent at the taking of the vote thereon, shall be convicted of a violation of this section.

**History.**—s. 3, ch. 5186, 1903; GS 3471; RGS 5340; CGL 7473; s. 1020, ch. 71-136.

**839.11 Extortion by officers of the state.**—Any officer of this state who willfully charges, receives, or collects any greater fees or services than he is entitled to charge, receive, or collect by law is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—RS 2569; GS 3481; RGS 5354; CGL 7489; s. 1021, ch. 71-136; s. 1, ch. 79-132; s. 9, ch. 79-163.

**839.12 Officer failing to keep record of costs.**—If any clerk of a court, sheriff, or county court judge neglects or refuses to keep a record book of the costs which he charges, he shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083. Such record book shall be prima facie evidence in the courts of the amounts charged therein, in all cases in which any such officer is prosecuted for charging more costs than are allowed by law.

**History.**—ss. 3, 4, ch. 3252, 1881; RS 2570; GS 3482; RGS 5355; CGL 7490; s. 1022, ch. 71-136; s. 32, ch. 73-334.  
cf.—s. 116.04 Failure of officer to make sworn report of fees.

**839.13 Falsifying records.**—

(1) If any judge, justice, mayor, alderman, clerk, sheriff, coroner, or other public officer, or any person whatsoever, shall steal, embezzle, alter, corruptly withdraw, falsify or avoid any record, process, charter, gift, grant, conveyance, or contract, or any paper filed in any judicial proceeding in any court of this state, or shall knowingly and willfully take off, discharge or conceal any issue, forfeited recognizance, or other forfeiture, or other paper above mentioned, or shall forge, deface, or falsify any document or instrument recorded, or filed in any court, or any registry, acknowledgment, or certificate, or shall fraudulently alter, deface, or falsify any minutes, documents, books, or any proceedings whatever of or belonging to any public office within this state; or if any person shall cause or procure any of the offenses aforesaid to be committed, or be in anywise concerned therein, the person so offending shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) In any prosecution under this section, it shall not be necessary to prove the ownership or value of any paper or instrument involved.

**History.**—s. 19, Feb. 10, 1832; RS 2571; GS 3483; RGS 5357; CGL 7492; s. 1023, ch. 71-136.  
cf.—s. 703.18 Refusing to make abstract.  
s. 703.19 Filing untrue copies of abstracts.

**839.14 Officer withholding records from successor.**—If any officer, after the expiration of the time for which he may have been appointed or elected, or in case of his death, his executors and administrators, or the person in possession thereof, shall willfully and unlawfully withhold or detain from his successors the records, papers, documents, or other writings appertaining and belonging to his office, or mutilate, destroy, take away, or otherwise prevent the complete possession by his successors of said records, documents, papers, or other writings, he shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 21, Feb. 10, 1832; RS 2572; GS 3485; RGS 5360; CGL 7495; s. 1024, ch. 71-136.  
cf.—s. 298.65 Officers failing to produce records, etc., relating to water control

district for audit by auditor general.

### 839.15 Judicial officer withholding records.

—Any justice of the supreme court or judge of the circuit court who, upon resignation or on being impeached, fails to file all papers and records in his possession belonging to his court with the proper clerk shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 3, ch. 3007, 1877; RS 2573; GS 3486; RGS 5361; CGL 7496; s. 1025, ch. 71-136; s. 32, ch. 73-334.

**839.16 Fraud of clerk in drawing jury.**—If the clerk of any court shall be guilty of any fraud, either by practicing on a jury box previous to a draft, or in drawing a juror, or in returning into the box any juror which had been lawfully drawn out and drawing or substituting another in his stead, or in any other way in the drawing of jurors, he shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083.

**History.**—RS 2575; GS 3491; RGS 5371; CGL 7505; s. 1026, ch. 71-136.

**839.17 Misappropriation of moneys by commissioners to make sales.**—Any commissioner or master in chancery, having received the purchase money or the securities resulting from any of the sales authorized by law, who shall fail to deliver such moneys and securities, or either of them, to the executor or administrator, or the person entitled to receive the same, upon the order of the court, unless he is rendered unable to do so by some cause not attributable to his own default or neglect, shall be fined in a sum equal to the amount received from the purchaser, and shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 30, ch. 1628, 1868; RS 2576; GS 3492; RGS 5372; CGL 7506; s. 1027, ch. 71-136.

**839.18 Penalty for officer assuming to act before qualification.**—Whoever being elected, or appointed, to any office assumes to perform any of the duties thereof before qualification, according to law, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—RS 2737; GS 3732; RGS 5757; CGL 7987; s. 1028, ch. 71-136.

### 839.19 Failure to execute process generally.

—Any sheriff or other officer authorized to execute process, who willfully or corruptly refuses or neglects to execute and return, according to law, any process delivered to him, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—RS 2577; GS 3497; RGS 5382; CGL 7421; s. 1029, ch. 71-136.

cf.—s. 30.15 Execution of process.

### 839.20 Refusal to execute criminal process.

If any officer authorized to serve process, willfully and corruptly refuses to execute any lawful process to him directed and requiring him to apprehend and confine any person convicted or charged with an offense, or willfully and corruptly omits or delays to execute such process, whereby such person escapes and goes at large, he shall be guilty of a misdemeanor

of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 15, ch. 1637, 1868; RS 2578; GS 3498; RGS 5383; CGL 7522; s. 1030, ch. 71-136.

cf.—s. 30.15 Execution of process.

**839.21 Refusal to receive prisoner.**—Any jailer or other officer, who willfully refuses to receive into the jail or into his custody a prisoner lawfully directed to be committed thereto on a criminal charge or conviction, or any lawful process whatever, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 14, ch. 1637, 1868; RS 2579; GS 3499; RGS 5384; CGL 7523; s. 1031, ch. 71-136.

cf.—Ch. 950 Jails and Jailers.

**839.23 Officer taking insufficient bail.**—An official who takes bail which he knows is not sufficient, accepts a surety he knows does not have the qualifications required by law, or accepts as a surety a professional bondsman who is not registered with the clerk of the circuit court and qualified to act as surety shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. An official convicted of violating this section may be removed from office by the governor.

**History.**—s. 78, ch. 19554, 1939; CGL 1940 Supp. 8663(78); s. 175, ch. 70-339; s. 1032, ch. 71-136.

**Note.**—Former s. 903.35.

**839.24 Penalty for failure to perform duty required of officer.**—A sheriff, county court judge, prosecuting officer, court reporter, stenographer, interpreter, or other officer required to perform any duty under the criminal procedure law who willfully fails to perform his duty shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 317, ch. 19554, 1939; CGL 1940 Supp. 8663(330); s. 176, ch. 70-339; s. 1033, ch. 71-136; s. 32, ch. 73-334; s. 1, ch. 77-119.

**Note.**—Former s. 925.01.

### 839.25 Official misconduct.

(1) "Official misconduct" means the commission of one of the following acts by a public servant, with corrupt intent to obtain a benefit for himself or another or to cause unlawful harm to another:

(a) Knowingly refraining, or causing another to refrain, from performing a duty imposed upon him by law; or

(b) Knowingly falsifying, or causing another to falsify, any official record or official document.

(2) "Corrupt" means done with knowledge that act is wrongful and with improper motives.

(3) Official misconduct under this section is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 62, ch. 74-383; s. 38, ch. 75-298; s. 10, ch. 79-163.

**Note.**—Former s. 838.031.

### 839.26 Misuse of confidential information.

Any public servant who, in contemplation of official action by himself or by a governmental unit with which he is associated, or in reliance on information to which he has access in his official capacity and which has not been made public, commits any of the following acts:

(1) Acquisition of a pecuniary interest in any



property, transaction, or enterprise or gaining of any pecuniary or other benefit which may be affected by such information or official action;

(2) Speculation or wagering on the basis of such information or action; or

(3) Aiding another to do any of the foregoing,

shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 63, ch. 74-383; s. 39, ch. 75-298.

**Note.**—Former s. 838.041.

## CHAPTER 843

## OBSTRUCTING JUSTICE

- 843.01 Resisting officer with violence to his person.
- 843.02 Resisting officer without violence to his person.
- 843.03 Obstruction by disguised person.
- 843.04 Refusing to assist prison officers in arresting escaped convicts.
- 843.05 Resisting timber agent.
- 843.06 Neglect or refusal to aid peace officers.
- 843.08 Falsely personating officer, etc.
- 843.09 Voluntary escape by officer.
- 843.10 Escape by negligence of officer.
- 843.11 Conveying tools into jail to aid escape; forcible rescue.
- 843.12 Aiding escape.
- 843.13 Aiding escape of inmates of state training schools.
- 843.14 Compounding felony.
- 843.15 Failure of defendant on bail to appear.
- 843.16 Unlawful to install radio equipment using assigned frequency of state or law enforcement officers; definitions; exceptions; penalties.
- 843.165 Unauthorized transmissions on police or fire radio frequencies prohibited; penalties; exceptions.
- 843.17 Publishing name and address of law enforcement officer.

**843.01 Resisting officer with violence to his person.**—Whoever knowingly and willfully resists, obstructs, or opposes any sheriff, deputy sheriff, officer of the Florida Highway Patrol, municipal police officer, county or municipal correctional officer, beverage enforcement agent, officer of the Game and Fresh Water Fish Commission, officer of the Department of Natural Resources, member of the Florida Parole and Probation Commission or any administrative aide or supervisor employed by said commission, parole and probation supervisor or parole and probation officer employed by the Department of Corrections, county probation officer, personnel or representative of the Department of Law Enforcement, or other person legally authorized to execute process in the execution of legal process or in the lawful execution of any legal duty, by offering or doing violence to the person of such officer or legally authorized person, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 1, ch. 3276, 1881; RS 2580; GS 3500; RGS 5385; CGL 7524; s. 1, ch. 28118, 1953; s. 1, ch. 61-66; s. 1, ch. 63-234; s. 1, ch. 63-433; ss. 1, chs. 65-198, 65-226; s. 3, ch. 67-2207; ss. 20, 25, 33, 35, ch. 69-106; s. 1034, ch. 71-136; s. 32, ch. 73-334; s. 1, ch. 77-174; s. 1, ch. 78-116; s. 20, ch. 79-3; s. 26, ch. 79-8; s. 1, ch. 79-149.

cf.—s. 933.15 Search warrant, obstructing service.

**843.02 Resisting officer without violence to his person.**—Whoever shall obstruct or oppose any such officer, beverage enforcement agent, member of the Florida Parole and Probation Commission or any administrative aide or supervisor employed by said commission, parole and probation supervisor or parole and probation officer employed by the Depart-

ment of Corrections, personnel or representative of the Department of Law Enforcement, or legally authorized person, in the execution of legal process or in the lawful execution of any legal duty, without offering or doing violence to the person of the officer, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 2, ch. 3276, 1881; RS 2581; GS 3501; RGS 5386; CGL 7525; s. 1, ch. 63-433; s. 1, ch. 65-226; s. 3, ch. 67-2207; ss. 20, 33, 35, ch. 69-106; s. 1035, ch. 71-136; s. 1, ch. 77-174; s. 2, ch. 78-116; s. 21, ch. 79-3; s. 27, ch. 79-8.

**843.03 Obstruction by disguised person.**—Whoever in any manner disguises himself with intent to obstruct the due execution of the law, or with the intent to intimidate, hinder or interrupt any officer, beverage enforcement agent, or other person in the legal performance of his duty or the exercise of his rights under the constitution or laws of this state, whether such intent is effected or not, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 19, ch. 1637, 1868; RS 2582; GS 3502; RGS 5387; CGL 7526; s. 1, ch. 63-433; s. 1036, ch. 71-136.

cf.—s. 30.15 Refusal or neglect to aid sheriff.

**843.04 Refusing to assist prison officers in arresting escaped convicts.**—

(1) All prison officers and guards shall immediately arrest any convict, held under the provisions of law, who may have escaped. Any such officer or guard may call upon the sheriff or other officer of the state, or of any county or municipal corporation, or any citizen, to make search and arrest such convict.

(2) Any officer or citizen refusing to assist shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 17, ch. 6530, 1917; RGS 5389; CGL 7528; s. 1037, ch. 71-136.

cf.—s. 901.18 Officer may summon assistance.

**843.05 Resisting timber agent.**—Whoever obstructs, resists, or opposes a timber agent in the discharge of his duties, or attempts so to do, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083.

**History.**—s. 5, ch. 3020, 1877; RS 2584; GS 3504; RGS 5390; CGL 7529; s. 1038, ch. 71-136.

**843.06 Neglect or refusal to aid peace officers.**—Whoever, being required in the name of the state by any officer of the Florida Highway Patrol, police officer, beverage enforcement agent, or watchman, neglects or refuses to assist him in the execution of his office in a criminal case, or in the preservation of the peace, or the apprehending or securing of any person for a breach of the peace, or in case of the rescue or escape of a person arrested upon civil process, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 16, ch. 1637, 1868; RS 2585; GS 3505; RGS 5391; CGL 7530; s. 2, ch. 28118, 1953; s. 1, ch. 63-433; s. 1039, ch. 71-136; s. 32, ch. 73-334.

cf.—s. 901.18 Officer may summon assistance.

**843.08 Falsely personating officer, etc.—**Whoever falsely assumes or pretends to be a sheriff, officer of the Florida Highway Patrol, officer of the Game and Fresh Water Fish Commission, officer of the Department of Natural Resources, deputy sheriff, coroner, police officer, beverage enforcement agent, or watchman, or any member of the Florida Parole and Probation Commission and any administrative aide or supervisor employed by said commission, or any personnel or representative of the Department of Law Enforcement, and takes upon himself to act as such, or to require any person to aid or assist him in a matter pertaining to the duty of any such officer, shall be deemed guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 18, ch. 1637, 1868; RS 2587; GS 3507; RGS 5395; CGL 7535; s. 3, ch. 28118, 1953; s. 1, ch. 63-433; ss. 1, chs. 65-148, 65-199; s. 3, ch. 67-2207; ss. 20, 25, 33, 35, ch. 69-106; s. 1041, ch. 71-136; s. 32, ch. 73-334; s. 1, ch. 77-174; s. 28, ch. 79-8.

cf.—s. 933.15 Obstruction of service or execution of search warrant.  
s. 951.19 Interference with county prisoners.

**843.09 Voluntary escape by officer.**—If a jailer or other officer voluntarily suffers a prisoner in his custody, upon conviction of any criminal charge, to escape, he shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 13, ch. 1637, 1868; RS 2588; GS 3509; RGS 5395; CGL 7535; s. 1042, ch. 71-136.

**843.10 Escape by negligence of officer.**—If a jailer or other officer, through negligence, suffers a prisoner in his custody upon conviction of any criminal charge to escape, he shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 14, ch. 1637, 1868; RS 2589; GS 3510; RGS 5396; CGL 7536; s. 1043, ch. 71-136.

**843.11 Conveying tools into jail to aid escape; forcible rescue.**—Whoever conveys into a jail or other like place of confinement, any disguise, instrument, tool, weapon, or other thing adapted or useful to aid a prisoner in making his escape, with intent to facilitate the escape of any prisoner there lawfully committed or detained, or, by any means whatever, aids or assists such prisoner in his endeavors to escape therefrom, whether such escape is effected or attempted or not; and whoever forcibly rescues any prisoner held in custody upon any conviction or charge of an offense, shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084; or if the person whose escape or rescue was effected or intended, was charged with an offense not capital nor punishable by imprisonment in the state prison, then a person who assists a prisoner as described in this section shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083; or if the prisoner while his escape or rescue is being effected or attempted commits any crime with the weapon, tool or instrument conveyed to him, the person conveying

the weapon, tool or instrument to him shall be subject to whatever fine, imprisonment, or other punishment the law imposes for the crime committed, as an accessory before the fact.

**History.**—s. 11, ch. 1637, 1868; RS 2590; GS 3511; RGS 5397; CGL 7537; s. 1, ch. 29895, 1955; s. 1044, ch. 71-136.

**843.12 Aiding escape.**—Whoever knowingly aids or assists a person in escaping, attempting to escape, or who has escaped, from an officer or person who has or is entitled to the lawful custody of such person, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 12, ch. 1637, 1868; RS 2591; s. 1, ch. 5154, 1903; GS 3512; RGS 5398; CGL 7538; s. 1, ch. 65-221; s. 1045, ch. 71-136.

**843.13 Aiding escape of inmates of state training schools.**—Whoever in any manner knowingly aids or assists any inmate of any correctional institution for boys or girls in the state to escape therefrom, or who knowingly, or having good reason to believe that any person is an inmate of such schools and is escaping or attempting to escape therefrom, aids or assists such inmate to make his escape or to avoid detention or recapture, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 1, ch. 9138, 1923; CGL 7539; s. 1, ch. 63-128; s. 1046, ch. 71-136.

**843.14 Compounding felony.**—Whoever, having knowledge of the commission of an offense punishable with death or by imprisonment in the state prison, takes money or a gratuity or reward, or an engagement therefor, upon an agreement or understanding, expressed or implied, to compound or conceal such offense, or not to prosecute therefor, or not to give evidence thereof, shall when such offense of which he has knowledge is punishable with death or imprisonment in the state prison for life, be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084; and where the offense of which he so had knowledge was punishable in any other manner, he shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 20, ch. 1637, 1868; RS 2592; GS 3513; RGS 5399; CGL 7540; s. 1047, ch. 71-136.

**843.15 Failure of defendant on bail to appear.**—

(1) Whoever, having been released pursuant to chapter 903, willfully fails to appear before any court or judicial officer as required shall incur a forfeiture of any security which was given or pledged for his release and, in addition, shall:

(a) If he was released in connection with a charge of felony or while awaiting sentence or pending review by certiorari after conviction of any offense, be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, or;

(b) If he was released in connection with a charge of misdemeanor, be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Nothing in this section shall interfere with or



prevent the exercise by any court of its power to punish for contempt.

**History.**—ss. 1, 2, ch. 8468, 1921; CGL 7545, 7546; s. 1, ch. 69-152; s. 1048, ch. 71-136.  
cf.—s. 903.26 Forfeiture of undertaking.

**843.16 Unlawful to install radio equipment using assigned frequency of state or law enforcement officers; definitions; exceptions; penalties.—**

(1) No person, firm or corporation shall install in any motor vehicle or business establishment, except emergency vehicles as herein defined, or places established by municipal, county, state, or federal authority for governmental purposes, any frequency modulation radio receiving equipment so adjusted or tuned as to receive messages or signals on frequencies assigned by the Federal Communications Commission to police or law enforcement officers of any city or county of the state or to the state or any of its agencies. Provided, nothing herein shall be construed to affect any radio station licensed by the Federal Communications System.

(2) As used in this section the term "emergency vehicle" shall specifically mean:

(a) Any motor vehicle used by any law enforcement officer or employee of any city, county, the state, Federal Bureau of Investigation, or Armed Forces of the United States while on official business;

(b) Any fire department vehicle of any city or county of the state, or any state fire department vehicle;

(c) Any motor vehicle designated as an emergency vehicle by the Department of Highway Safety and Motor Vehicles and said vehicle is to be assigned the use of frequencies assigned to the state;

(d) Any motor vehicle designated as an emergency vehicle by the sheriff of any county in Florida when said vehicle is to be assigned the use of frequencies assigned to the said county;

(e) Any motor vehicle designated as an emergency vehicle by the chief of police of any city in the state when said vehicle is to be assigned the use of frequencies assigned to the said city.

(3) This section shall not apply to any holders of

a valid amateur radio operator or station license issued by the Federal Communications Commission.

(4) Any person, firm or corporation, violating any of the provisions of this section shall be deemed guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—ss. 1-4, ch. 26886, 1951; ss. 24, 35, ch. 69-106; s. 1049, ch. 71-136.

**843.165 Unauthorized transmissions on police or fire radio frequencies prohibited; penalties; exceptions.—**

(1) No person shall transmit, or cause to be transmitted, over any radio frequency with knowledge that such frequency is assigned to a fire or police agency, any sounds, jamming device, or speech unless authorized in writing to do so by the head of such agency.

(2) Any person who violates subsection (1) is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) It is not unlawful for any person to transmit, or cause to be transmitted, speech or sounds over any authorized transmitter assigned to police or fire frequencies when:

(a) Such person has been commanded to do so by an authorized operator of the transmitter; or

(b) Such person is acting to summon assistance for the authorized operator who, for any reason, is unable to make the transmission.

**History.**—s. 1, ch. 79-63.

**843.17 Publishing name and address of law enforcement officer.—**Any person who shall maliciously, with intent to obstruct the due execution of the law or with the intent to intimidate, hinder, or interrupt any law enforcement officer in the legal performance of his duties, publish or disseminate the residence address or telephone number of any law enforcement officer while designating the officer as such, without authorization of the agency which employs the officer, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 1, ch. 72-85.

## CHAPTER 847

## OBSCENE LITERATURE; PROFANITY

- 847.011 Prohibition of certain acts in connection with obscene, lewd, etc., materials; penalty.
- 847.012 Prohibition of sale or other distribution of harmful materials to persons under 17 years of age; penalty.
- 847.0125 Retail display of materials harmful to minors prohibited.
- 847.013 Exposing minors to harmful motion pictures, exhibitions, shows, presentations, or representations.
- 847.014 Minors participating in harmful motion pictures, exhibitions, shows, presentations, or representations.
- 847.02 Confiscation of obscene books, etc.
- 847.03 Officer to seize books, etc.
- 847.04 Open profanity.
- 847.05 Using indecent or obscene language.
- 847.06 Obscene matter; transportation into state prohibited; penalty.
- 847.07 Distribution of obscene materials; penalties; "wholesale promote" defined.
- 847.08 Hearings for determination of probable cause.
- 847.09 Legislative intent.

**847.011 Prohibition of certain acts in connection with obscene, lewd, etc., materials; penalty.—**

(1)(a) A person who knowingly sells, lends, gives away, distributes, transmits, shows or transmutes, or offers to sell, lend, give away, distribute, transmit, show or transmute, or has in his possession, custody, or control with intent to sell, lend, give away, distribute, transmit, show, transmute, or advertise in any manner, any obscene, lewd, lascivious, filthy, indecent, sadistic, or masochistic book, magazine, periodical, pamphlet, newspaper, comic book, story paper, written or printed story or article, writing, paper, card, picture, drawing, photograph, motion-picture film, figure, image, phonograph record, or wire or tape or other recording, or any written, printed, or recorded matter of any such character which may or may not require mechanical or other means to be transmuted into auditory, visual, or sensory representations of such character, or any article or instrument of indecent use, or purporting to be for indecent use or purpose; or who knowingly designs, copies, draws, photographs, poses for, writes, prints, publishes, or in any manner whatsoever manufactures or prepares any such material, matter, article, or thing of any such character; or who knowingly writes, prints, publishes, or utters, or causes to be written, printed, published, or uttered, any advertisement or notice of any kind, giving information, directly or indirectly, stating, or purporting to state, where, how, of whom, or by what means any, or what purports to be any, such material, matter, article, or thing of any such character can be purchased, obtained, or had; or who in any manner knowingly hires, employs, uses, or permits any person to do or assist in doing, either knowingly or innocently, any

act or thing mentioned above, is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. A person who, after having been convicted of a violation of this subsection, thereafter violates any of its provisions, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) The knowing possession by any person of six or more identical or similar materials, matters, articles, or things coming within the provisions of paragraph (a) is presumptive evidence of the violation of said paragraph.

(2) A person who knowingly has in his possession, custody, or control any obscene, lewd, lascivious, filthy, indecent, sadistic, or masochistic book, magazine, periodical, pamphlet, newspaper, comic book, story paper, written or printed story or article, writing, paper, card, picture, drawing, photograph, motion-picture film, film, figure, image, phonograph record, or wire or tape or other recording, or any written, printed, or recorded matter of any such character which may or may not require mechanical or other means to be transmuted into auditory, visual, or sensory representations of such character, or any article or instrument of indecent use, or purporting to be for indecent use or purpose, without intent to sell, lend, give away, distribute, transmit, show, transmute, or advertise the same, is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A person who, after having been convicted of violating this subsection, thereafter violates any of its provisions is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. In any prosecution for such possession, it shall not be necessary to allege or prove the absence of such intent.

(3) No person shall as a condition to a sale, allocation, consignment, or delivery for resale of any paper, magazine, book, periodical, or publication require that the purchaser or consignee receive for resale any other article, paper, magazine, book, periodical, or publication reasonably believed by the purchaser or consignee to be obscene, lewd, lascivious, filthy, indecent, sadistic, or masochistic, and no person shall deny or threaten to deny or revoke any franchise or impose or threaten to impose any penalty, financial or otherwise, by reason of the failure of any person to accept any such article, paper, magazine, book, periodical, or publication, or by reason of the return thereof. Whoever violates this subsection is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) Any person who knowingly promotes, conducts, performs, or participates in an obscene, lewd, lascivious, or indecent show, exhibition, or performance by live persons or a live person before an audience is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Any person who, after having been convicted of violating this subsection, thereafter violates any of its provisions and is convicted thereof is guilty of a felony of the third degree, punishable as provided in s.

775.082, s. 775.083, or s. 775.084.

(5) Every act, thing, or transaction forbidden by this section shall constitute a separate offense and shall be punishable as such.

(6) Proof that a defendant knowingly committed any act or engaged in any conduct referred to in this section may be made by showing that at the time such act was committed or conduct engaged in he had actual knowledge of the contents or character of the material, matter, article, or thing possessed or otherwise dealt with, or by showing facts and circumstances from which it may fairly be inferred that he had such knowledge, or by showing that he had knowledge of such facts and circumstances as would put a man of ordinary intelligence and caution on inquiry as to such contents or character.

(7) There shall be no right of property in any of the materials, matters, articles, or things possessed or otherwise dealt with in violation of this section, and upon the seizure of any such material, matter, article, or thing by any authorized law enforcement officer the same shall be delivered to and held by the clerk of the court having jurisdiction to try such violation. When the same is no longer required as evidence, the prosecuting officer or any claimant may move the court in writing for the disposition of the same and after notice and hearing, the court, if it finds the same to have been possessed or otherwise dealt with in violation of this section, shall order the sheriff to destroy the same in the presence of the clerk; otherwise, the court shall order the same returned to the claimant if he shows that he is entitled to possession. If destruction is ordered, the sheriff and clerk shall file a certificate of compliance.

(8)(a) The circuit court has jurisdiction to enjoin a threatened violation of this section upon complaint filed by the state attorney or attorney for a municipality in the name of the state upon the relation of such state attorney or attorney for a municipality.

(b) After the filing of such a complaint, the judge to whom it is presented may grant an order restraining the person complained of until final hearing or further order of the court. Whenever the relator state attorney or attorney for a municipality shall request a judge of said court to set a hearing upon an application for such a restraining order, such judge shall set such hearing for a time within 3 days after the making of such request. No such order shall be made unless such judge shall be satisfied that sufficient notice of the application therefor has been given to the party restrained of the time when and place where the application for such restraining order is to be made, provided, however, that such notice shall be dispensed with when it is manifest to such judge, from the sworn allegations of the complaint or the affidavit of the plaintiff or other competent person, that the apprehended violation will be committed if an immediate remedy is not afforded.

(c) The person sought to be enjoined shall be entitled to a trial of the issues within one day after joinder of issue and a decision shall be rendered by the court within 2 days of the conclusion of the trial.

(d) In the event that a final decree of injunction is entered, it shall contain a provision directing the defendant having the possession, custody, or control of the materials, matters, articles, or things affected

by the injunction to surrender the same to the sheriff and requiring the sheriff to seize and destroy the same. The sheriff shall file a certificate of his compliance.

(e) In any action brought as provided in this subsection, no bond or undertaking shall be required of the state attorney or the municipality or its attorney before the issuance of a restraining order provided for by paragraph (b), and there shall be no liability on the part of the state or the state attorney or the municipality or its attorney for costs or for damages sustained by reason of such restraining order in any case where a final decree is rendered in favor of the person sought to be enjoined.

(f) Every person who has possession, custody, or control of, or otherwise deals with any of the materials, matters, articles, or things described in this section, after the service upon him of a summons and complaint in an action for injunction brought under this subsection, is chargeable with knowledge of the contents and character thereof.

(9) The several sheriffs and state attorneys shall vigorously enforce this section within their respective jurisdictions.

(10) This section shall not apply to the exhibition of motion-picture films permitted by s. 847.013.

(11) For the purposes of this section, the test of whether or not material is obscene is: Whether to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest.

(12) For the purposes of this section, the word person includes individuals, firms, associations, corporations, and all other groups and combinations.

**History.**—ss. 1-11, ch. 61-7; s. 1053, ch. 71-136; ss. 1A-3A, 4, 5A, 6, ch. 71-337; s. 171, ch. 71-355; s. 34, ch. 73-334.  
cf.—s. 235.09 Obscenity on educational buildings.  
s. 933.02 Issuance of search warrant.

#### **847.012 Prohibition of sale or other distribution of harmful materials to persons under 17 years of age; penalty.—**

(1) As used in this section:

(a) "Juvenile" means any person under the age of 17 years.

(b) "Nudity" means the showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering; the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernible turgid state.

(c) "Sexual conduct" means acts of masturbation, homosexuality, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks or, if such person be a female, breast.

(d) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(e) "Sadomasochistic abuse" means flagellation or torture by or upon a person clad in undergarments, a mask, or bizarre costume or the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed.

(f) "Harmful to juveniles" means that quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or



sadomasochistic abuse, when it:

1. Predominantly appeals to the prurient, shameful, or morbid interest of juveniles, and
2. Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for juveniles, and
3. Is utterly without redeeming social importance for juveniles.

(g) "Knowingly" means having general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry of both:

1. The character and content of any material described herein which is reasonably susceptible of examination by the defendant, and

2. The age of the juvenile; provided, however, that an honest mistake shall constitute an excuse from liability hereunder if the defendant made a reasonable bona fide attempt to ascertain the true age of such juvenile.

(2) It shall be unlawful for any person knowingly to sell or loan for monetary consideration to a juvenile:

(a) Any picture, photograph, drawing, sculpture, motion-picture film, or similar visual representation or image of a person or portion of the human body which depicts nudity, sexual conduct, or sadomasochistic abuse and which is harmful to juveniles, or

(b) Any book, pamphlet, magazine, printed matter however reproduced, or sound recording which contains any matter enumerated in paragraph (a), or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct, or sadomasochistic abuse and which, taken as a whole, is harmful to juveniles.

(3) Any person violating any provision of this section shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) Every act, thing, or transaction forbidden by this section shall constitute a separate offense and shall be punishable as such.

(5)(a) The circuit court has jurisdiction to enjoin a violation of this section upon complaint filed by the state attorney in the name of the state upon the relation of such state attorney.

(b) After the filing of such a complaint, the judge to whom it is presented may grant an order restraining the person complained of until final hearing or further order of the court. Whenever the relator State Attorney shall request a judge of said court to set a hearing upon an application for such a restraining order, such judge shall set such hearing for a time within three days after the making of such request. No such order shall be made unless such judge shall be satisfied that sufficient notice of the application therefor has been given to the party restrained of the time when and place where the application for such restraining order is to be made.

(c) The person sought to be enjoined shall be entitled to a trial of the issues within 1 day after joinder of issue and a decision shall be rendered by the court within 2 days of the conclusion of the trial.

(d) In the event that a final decree of injunction is entered, it shall contain a provision directing the defendant having the possession, custody, or control

of the materials, matters, articles, or things affected by the injunction to surrender the same to the sheriff and requiring the sheriff to seize and destroy the same. The sheriff shall file a certificate of his compliance.

(e) In any action brought as provided in this section, no bond or undertaking shall be required of the state or the State Attorney before the issuance of a restraining order provided for by paragraph (b), and there shall be no liability on the part of the state or the State Attorney for costs or for damages sustained by reason of such restraining order in any case where a final decree is rendered in favor of the person sought to be enjoined.

(f) Every person who has possession, custody, or control of, or otherwise deals with any of the materials, matters, articles, or things described in this section, after the service upon him of a summons and complaint in an action for injunction brought under this section, is chargeable with knowledge of the contents and character thereof.

(6) The several sheriffs and State Attorneys shall vigorously enforce this section within their respective jurisdictions.

(7) For the purposes of this section, the word "person" includes individuals, firms, associations, corporations, and all other groups and combinations.

(8) This section shall not apply to the exhibition of motion pictures, shows, presentations or other representations regulated under the provisions of s. 847.013.

**History.**—ss. 1-7, ch. 67-153; ss. 1, 2, ch. 69-41; s. 1054, ch. 71-136; s. 171, ch. 71-355; s. 34, ch. 73-334.

cf.—s. 847.011 Prohibition of certain acts in connection with obscene, lewd, etc., materials; penalty.

#### **847.0125 Retail display of materials harmful to minors prohibited.—**

(1) **DEFINITIONS.**—As used in this section:

(a) "Minor" means any person under the age of 17 years.

(b) "Nudity" means the showing of the human male or female genitals, pubic area, or buttocks with less than a full opaque covering; the showing of the female breast with less than a full opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernibly turgid state.

(c) "Sexual conduct" means acts of masturbation, homosexuality, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks or, if such person be a female, breast or any act or conduct which constitutes the commission of the abominable and detestable crime against nature or suggests that such crime is being or will be committed.

(d) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(e) "Sadomasochistic abuse" means flagellation or torture by or upon a person clad in undergarments, a mask, or a bizarre costume or the condition of being fettered, bound, or otherwise physically restrained and subjected to flagellation or torture on the part of one so clothed.

(f) "Harmful to minors" means that quality of any description, exhibition, presentation, or representation, in whatever form, of nudity, sexual con-

duct, sexual excitement, or sadomasochistic abuse when it:

1. Predominantly appeals to the prurient, shameful, or morbid interest of minors,

2. Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors, and

3. Is without serious literary, artistic, political, or scientific value for minors.

(g) "Knowingly" means having general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry of both:

1. The character and content of any material described herein which is reasonably susceptible of examination by the defendant, and

2. The age of the minor; however, an honest mistake shall constitute an excuse from liability hereunder if the defendant made a reasonable bona fide attempt to ascertain the true age of such minor.

(2) OFFENSES AND PENALTIES.—

(a) It is unlawful for anyone offering for sale in a retail establishment open to the general public any book, magazine, or other printed material the cover of which depicts nudity which is harmful to minors, to knowingly exhibit such book, magazine, or material in such establishment in such a way that it is on open display to, or within the convenient reach of, minors who may frequent the retail establishment. Such items may, however, be displayed behind an opaque covering which conceals the nudity, provided such items are not within the convenient reach of minors who may frequent the retail establishment.

(b) It is unlawful for anyone offering for sale in a retail establishment open to the general public any book, magazine, or other printed material, the content of which exploits, is devoted to, or is principally made up of descriptions or depictions of nudity which are harmful to minors, to knowingly exhibit such book, magazine, or material in such establishment in such a way that it is within the convenient reach of minors who may frequent the retail establishment.

(c) A violation of any provision of this section shall constitute a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 1, ch. 78-273; s. 1, ch. 79-96.

**847.013 Exposing minors to harmful motion pictures, exhibitions, shows, presentations, or representations.—**

(1) DEFINITIONS.—As used in this section:

(a) "Minor" means any person under the age of 17 years.

(b) "Nudity" means the showing of the human male or female genitals, pubic area, or buttocks with less than a full opaque covering; the showing of the female breast with less than a full opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernibly turgid state.

(c) "Sexual conduct" means acts of masturbation, homosexuality, sexual intercourse, physical contact with a person's clothed or unclothed genitals, pubic area, buttocks or, if such person be a female, breast or any act or conduct which constitutes

the commission of the abominable and detestable crime against nature or suggests that such crime is being or will be committed.

(d) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(e) "Sadomasochistic abuse" means flagellation or torture by or upon a person clad in undergarments, a mask, or bizarre costume or the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed.

(f) "Harmful to minors" means that quality of any description, exhibition, presentation, or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse, when it:

1. Predominantly appeals to the prurient, shameful or morbid interest of minors, and

2. Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for minors, and

3. Is utterly without redeeming social importance for minors.

(g) "Knowingly" means having general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry of both:

1. The character and content of any motion picture described herein which is reasonably susceptible of examination by the defendant, or the character of any exhibition, presentation, representation or show described herein, other than a motion-picture show, which is reasonably susceptible of being ascertained by the defendant, and

2. The age of the minor; provided, however, that an honest mistake shall constitute an excuse from liability hereunder if the defendant made a reasonable bona fide attempt to ascertain the true age of such minor.

(2) OFFENSES AND PENALTIES.—

(a) It is unlawful for any person knowingly to exhibit for a monetary consideration to a minor or knowingly sell to a minor an admission ticket or pass or knowingly admit a minor for a monetary consideration to premises whereon there is exhibited a motion picture, exhibition, show, representation or other presentation which, in whole or in part, depicts nudity, sexual conduct, sexual excitement, or sadomasochistic abuse and which is harmful to minors.

(b) The provisions of paragraph (a) shall not apply to a minor when he is accompanied by his parents or either of them.

(c) It is unlawful for any minor to falsely represent to the owner of any premises mentioned in paragraph (a), or to his agent, that such minor is 17 years of age or older, with the intent to procure such minor's admission to such premises for a monetary consideration.

(d) It is unlawful for any person to knowingly make a false representation to the owner of any premises mentioned in paragraph (a), or to his agent, that he is the parent of any minor or that any minor is 17 years of age or older, with intent to procure such minor's admission to such premises or to aid

such minor in procuring admission thereto for a monetary consideration.

(e) A violation of any provision of this section shall constitute a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) **INJUNCTIVE PROCEEDINGS.**—

(a) The circuit court has jurisdiction to enjoin a threatened violation of subsection (2) upon complaint filed by the state attorney in the name of the state upon the relation of such state attorney.

(b) After the filing of such a complaint, the judge to whom it is presented may grant an order restraining the person or persons complained of until final hearing or further order of the court. Whenever the relator shall request a judge of said court to set a hearing upon an application for such a restraining order, such judge shall set such hearing for a time within 3 days after the making of such request. No such order shall be made unless such judge shall be satisfied that sufficient notice of the application therefor has been given to the person or persons restrained of the time when and place where the application for such restraining order is to be heard. However, such notice shall be dispensed with when it is manifest to such judge, from the allegations of a sworn complaint or independent affidavit, sworn to by the relator or by some person associated with him in the field of law enforcement, and filed by the relator, that the apprehended violation will be committed if an immediate remedy is not afforded.

(c) The person or persons sought to be enjoined shall be entitled to a trial of the issues within 1 day after joinder of issue and a decision shall be rendered by the court within 2 days after the conclusion of the trial.

(d) In any action brought as provided in this section, no bond or undertaking shall be required of the state or the relator State Attorney before the issuance of a restraining order provided for by this section, and there shall be no liability on the part of the state or the relator State Attorney for costs or damages sustained by reason of such restraining order in any case in which a final decree is rendered in favor of the person or persons sought to be enjoined.

(e) Every person who has possession, custody, or control of, or otherwise deals with, any motion picture, exhibition, show, representation, or presentation described in this section, after the service upon him of a summons and complaint in an action for injunction brought under this section, is chargeable with knowledge of the contents or character thereof.

(4) **LEGISLATIVE INTENT.**—In order to make the application and enforcement of this section uniform throughout the state, it is the intent of the Legislature to preempt the field, to the exclusion of counties and municipalities, insofar as it concerns exposing persons under 17 years of age to harmful motion pictures, exhibitions, shows, representations and presentations. To that end, it is hereby declared that every county ordinance and every municipal ordinance adopted prior to July 1, 1969 and relating to said subject shall stand abrogated and unenforceable on and after such date and that no county, mu-

nicipality or consolidated county-municipal government shall have the power to adopt any ordinance relating to said subject on or after such effective date.

**History.**—ss. 1-4, ch. 69-10; s. 1055, ch. 71-136; s. 34, ch. 73-334.

**847.014 Minors participating in harmful motion pictures, exhibitions, shows, presentations, or representations.**—

(1) **DEFINITIONS.**—As used in this section:

(a) "Minor" means any person under the age of 18 years.

(b) "Nudity" means the showing of the human male or female genitals, pubic area, or buttocks with less than a full opaque covering; the showing of the female breast with less than a full opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernibly turgid state.

(c) "Sexual conduct" means acts of masturbation; sexual intercourse; or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person be a female, breast or any act or conduct which constitutes the commission of sexual battery or suggests that such crime is being or will be committed.

(d) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(e) "Sadomasochistic abuse" means the flagellation or torture by or upon a person clad in undergarments, a mask, or a bizarre costume or the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed.

(f) "Harmful to minors" means that quality, whether actual or simulated, of any description, exhibition, presentation, or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse, when it:

1. Predominantly appeals to the prurient, shameful, or morbid interest of minors,

2. Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for minors, and

3. Is without serious literary, artistic, political or scientific value for minors.

(g) "Knowingly" means having general knowledge of, reason to know, or a belief or ground for belief which warrants further inspection or inquiry of the character and content of any motion picture described herein which is reasonably susceptible of examination by the defendant or the character of any exhibition, presentation, representation, or show described herein, other than a motion-picture show, which is reasonably susceptible of being ascertained by the defendant.

(2) **OFFENSES AND PENALTIES.**—

(a)1. It is unlawful for any person knowingly to produce, conduct, direct, perform, or participate in any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, depicts sexual conduct, sexual excitement, or sadomasochistic abuse involving a minor.

2. It is unlawful for any person knowingly to aid, abet, counsel, hire, or otherwise procure a minor to perform or participate in any photograph, motion



picture, exhibition, show, representation, or other presentation which, in whole or in part, depicts sexual conduct, sexual excitement, or sadomasochistic abuse involving a minor.

3. It is unlawful for any person knowingly to bring or cause to be brought into this state or to send or cause to be sent from this state for sale or distribution any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, depicts sexual conduct, sexual excitement, or sadomasochistic abuse involving a minor.

4. A violation of any provision of this paragraph shall constitute a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b)1. It is unlawful for any person knowingly to exhibit any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, depicts nudity, sexual conduct, sexual excitement, or sadomasochistic abuse involving a minor and which is harmful to minors.

2. It is unlawful for any person knowingly to sell; lend; give away; distribute; transmit; transmute; offer to sell, lend, give away, distribute, transmit, or transmute; have in his possession, custody, or control with intent to sell, lend, give away, distribute, transmit, or transmute; or advertise in any manner any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, depicts nudity, sexual conduct, sexual excitement, or sadomasochistic abuse involving a minor and which is harmful to minors. The possession of three or more copies of any such photograph, motion picture, representation, or presentation is prima facie evidence of intent to sell, lend, give away, distribute, transmit, or transmute.

3. A violation of any provision of this paragraph shall constitute a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

### (3) INJUNCTIVE PROCEEDINGS.—

(a) The circuit court has jurisdiction to enjoin a violation or threatened violation of paragraph (2)(a) or a violation of paragraph (2)(b) upon complaint filed by the State Attorney in the name of the state upon the relation of such State Attorney.

(b) After the filing of such a complaint, the judge to whom it is presented may grant an order restraining the person or persons complained of until final hearing or further order of the court. Whenever the relator shall request a judge of said court to set a hearing upon an application for such a restraining order, such judge shall set such hearing for a time within 3 days after the making of such request. No such order shall be made unless such judge shall be satisfied that sufficient notice of the application therefor has been given to the person or persons restrained of the time when and place where the application for such restraining order is to be heard. However, such notice shall be dispensed with when it is manifest to such judge, from the allegations of a sworn complaint or independent affidavit, sworn to by the relator or by some person associated with him in the field of law enforcement and filed by the relator, that the apprehended violation will be commit-

ted if an immediate remedy is not afforded.

(c) The person or persons sought to be enjoined shall be entitled to a trial of the issues within 1 day after joinder of issue, and a decision shall be rendered by the court within 2 days after the conclusion of the trial.

(d) In any action brought as provided in this section, no bond or undertaking shall be required of the state or the relator State Attorney before the issuance of a restraining order provided for by this section, and there shall be no liability on the part of the state or the relator State Attorney for costs or damages sustained by reason of such restraining order in any case in which a final decree is rendered in favor of the person or persons sought to be enjoined.

(e) Every person who has possession, custody, or control of, or otherwise deals with, any motion picture, exhibition, show, representation, or presentation described in this section, after the service upon him of a summons and complaint in an action for injunction brought under this section, is chargeable with knowledge of the contents or character thereof.

**History.**—s. 1, ch. 77-103; s. 1, ch. 78-326.

### 847.02 Confiscation of obscene books, etc.—

Whenever anyone is convicted under s. 847.011, the court in awarding sentence shall make an order confiscating said book, pamphlet, ballad, printed paper, picture, slide, film, or other thing and authorize the executive officer of the court to destroy the same.

**History.**—s. 2, ch. 7359, 1917; RGS 5439; CGL 7582.

### 847.03 Officer to seize books, etc.—

Whenever any officer arrests any person charged with any offense under s. 847.011, he shall seize said book, pamphlet, ballad, printed paper, picture, slide, or film, or other thing, and take the same into his custody to await the sentence of the court upon the trial of the offender.

**History.**—s. 3, ch. 7359, 1917; RGS 5440; CGL 7583.

### 847.04 Open profanity.—

Whoever, having arrived at the age of discretion, uses profane, vulgar and indecent language, in any public place; or upon the private premises of another, or so near thereto as to be heard by another, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083; but no prosecution for any such offense shall be commenced after 20 days from the commission thereof.

**History.**—s. 18, ch. 1637, 1868; RS 2622; GS 3542; s. 1, ch. 5921, 1909; RGS 5442; CGL 7585; s. 1056, ch. 71-136.  
cf.—s. 231.07 Insulting school teachers.

### 847.05 Using indecent or obscene language.—

Any person who shall publicly use or utter any indecent or obscene language shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 1, ch. 3284, 1881; RS 2624; GS 3544; RGS 5444; CGL 7587; s. 1057, ch. 71-136.

### 847.06 Obscene matter; transportation into state prohibited; penalty.—

(1) Whoever knowingly transports into the state or within the state for the purpose of sale or distribution, any obscene, lewd, lascivious, or filthy book, pamphlet, picture, film, paper, letter, writing, print,

silhouette, drawing, figure, image, cast, phonograph recording, electrical transcription, or other article capable of producing sound or any other matter of indecent or immoral character, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) When any person is convicted of a violation of this section, the court in its judgment of conviction may, in addition to the penalty prescribed, order the confiscation and disposal of such items described herein which were found in the possession or under the immediate control of such person at the time of his arrest.

**History.**—s. 1, ch. 29849, 1955; s. 1058, ch. 71-136; s. 1, ch. 79-134.

#### **847.07 Distribution of obscene materials; penalties; "wholesale promote" defined.—**

(1) A person commits the offense of distributing obscene materials when, knowing the obscene nature thereof, he sells, rents, leases, advertises, publishes, exhibits, or otherwise disseminates to any person any obscene material of any description, offers to do so, or possesses such material with the intent so to do.

(2) Considered as a whole and applying community standards, material is obscene if:

(a) Its predominant appeal is to prurient interest; that is, a shameful or morbid interest in nudity, sex, or excretion;

(b) It is utterly without redeeming social value; and

(c) In addition, it goes substantially beyond customary limits of candor in describing or representing such matters.

(3) Material not otherwise obscene may be deemed obscene under this section if the distribution thereof, the offer to do so, or the possession with the intent to do so is a commercial exploitation of erotica solely for the sake of their prurient appeal.

(4)(a) Whoever distributes obscene materials is guilty, upon first conviction, of a misdemeanor of the first degree, punishable as provided in s. 775.082 or by a fine not to exceed \$5,000.

(b) Whoever distributes obscene material is guilty, upon a second or subsequent conviction, of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Any person who knowingly wholesale promotes any obscene matter or performance, or in any manner knowingly hires, employs, uses, or permits any person to wholesale promote or assist in wholesale promoting any obscene matter or performance, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. "Wholesale promote" means to manufacture, issue, sell, provide, deliver, transfer, transmute, publish, distribute, circulate, disseminate, or offer or agree to do the same, with or without consideration, for purposes of resale or redistribution.

(5) No person shall, as a condition to sale, allocation, consignment, or delivery for resale of any matter or performance, require that the purchaser or

consignee receive for resale any other matter or performance reasonably believed by the purchaser or consignee to be obscene; and no person shall deny or revoke any franchise, or threaten to do so, or impose or threaten to impose any penalty, financial or otherwise, by reason of the refusal or failure of any person to accept any such matter or by reason of the return thereof. Whoever violates this subsection is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 1, ch. 73-120.

**847.08 Hearings for determination of probable cause.**—Whenever an indictment, information, or trial affidavit is filed under the provisions of ss. 847.07-847.09, the state attorney or his duly appointed assistant may apply to the court for the issuance of an order directing the defendant or his principal agent or bailee or other like person to produce the allegedly obscene materials at a time and place so designated by the court for the purpose of determining whether there is probable cause to believe said material is obscene. After hearing the parties on the issue, if the court determines probable cause exists, it may order the material held by the clerk of the court pending further order of the court. This section shall not be construed to prohibit the seizure of obscene materials by any other lawful means.

**History.**—s. 2, ch. 73-120.

#### **847.09 Legislative intent.—**

(1) In order to make the application and enforcement of ss. 847.07-847.09 uniform throughout the state, it is the intent of the Legislature to preempt the field, to the exclusion of counties and municipalities, insofar as it concerns exposing persons over 17 years of age to harmful motion pictures, exhibitions, shows, representations, and presentations. To that end, it is hereby declared that every county ordinance and every municipal ordinance adopted prior to July 1, 1973, and relating to said subject shall stand abrogated and unenforceable on and after such date and that no county, municipality, or consolidated county-municipal government shall have the power to adopt any ordinance relating to the subject on or after such effective date. If ss. 847.07-847.09 are declared to be illegal, unconstitutional, or otherwise unenforceable, any county or municipal ordinance abrogated before ss. 847.07-847.09 were declared unconstitutional shall be in full force and effect, and each county, municipality, and consolidated county-municipal government shall have the power to adopt ordinances relating to this subject.

(2) Nothing in ss. 847.07-847.09 shall be construed to repeal or in any way supersede the provisions of s. 847.011, s. 847.012, or s. 847.013.

(3) Nothing herein shall be construed to limit the free exercise of free speech or picketing by any organization, group, or individual for the purpose of upholding community standards.

**History.**—ss. 3, 4, 6, ch. 73-120.

## CHAPTER 849

## GAMBLING

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**849.01 Keeping gambling houses, etc.**—Whoever by himself, his servant, clerk or agent, or in any other manner has, keeps, exercises or maintains a gaming table or room, or gaming implements or apparatus, or house, booth, tent, shelter or other place for the purpose of gaming or gambling or in any place of which he may directly or indirectly have charge, control or management, either exclusively or with others, procures, suffers or permits any person to play for money or other valuable thing at any game whatever, whether heretofore prohibited or not, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 1, ch. 3764, 1887; RS 2644; GS 3572; RGS 5499; CGL 7657; s. 1059, ch. 71-136.  
cf.—s. 901.19 Disposition of apparatus.  
s. 933.02 Search warrants, implements and appliances.

**849.02 Agents, servants, etc., of keeper of gambling house.**—Whoever acts as servant, clerk, agent, or employee of any person in the violation of s. 849.01 shall be punished in the manner and to the extent therein mentioned.

**History.**—s. 2, ch. 3764, 1887; RS 2645; GS 3573; RGS 5500; CGL 7658.

**849.03 Renting house for gambling purposes.**—Whoever, whether as owner or agent, knowingly rents to another a house, room, booth, tent, shelter or place for the purpose of gaming shall be punished in the manner and to the extent mentioned in s. 849.01.

**History.**—s. 3, ch. 3764, 1887; RS 2646; GS 3574; RGS 5501; CGL 7659.

**849.04 Permitting minors and persons under guardianship to gamble.**—Whoever being the proprietor, owner or keeper of any E. O., keno or pool table, or billiard table, wheel of fortune, or other game of chance, kept for the purpose of betting, willfully and knowingly allows any minor or person non compos mentis or under guardianship to play at such game or to bet on such game of chance or whoever aids or abets or otherwise encourages such playing



or betting of any money or other valuable thing upon the result of such game of chance by any minor, person non compos mentis or under guardianship shall be guilty of a felony of third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 1, ch. 3145, 1879; RS 2647; s. 9, ch. 4322, 1895; GS 3575; RGS 5502; CGL 7660; s. 1060, ch. 71-136.  
cf.—s. 1.01 Definition of "minor."

**849.05 Prima facie evidence.**—If any of the implements, devices or apparatus commonly used in games of chance in gambling houses or by gamblers, are found in any house, room, booth, shelter or other place it shall be prima facie evidence that the said house, room, booth, shelter or other place where the same are found is kept for the purpose of gambling.

**History.**—s. 4, ch. 3764, 1887; RS 2648; GS 3576; RGS 5503; CGL 7661; s. 243, ch. 77-104.  
cf.—s. 901.19 Seizure of gambling instruments.

**849.051 Prima facie evidence; possession of federal gambling stamp.**—

(1) The holding, owning, having in possession of, or paying the tax for a wagering occupational tax stamp issued by the internal revenue authorities of the United States shall be held in all the courts of this state as prima facie evidence against the person holding such stamp in any prosecution of such person for violation of the gambling laws of this state.

(2) In cases where the proper prosecuting officers shall produce said stamp or certified copy, the grand jury may indict the holder of such stamp or the proper prosecuting officer may file information against the holder of such stamp without further proof, charging such holder with the violation of the Florida gambling laws.

(3) Upon the trial of such person, proof of the owning, holding or possession of such stamp may be made by two witnesses who have seen such stamp in the place of business of the holder or on his person, or by the production of the original stamp with proof by one or more witnesses that it is the property of the defendant, or by production by the state of a copy of such stamp certified by the director of the issuing Federal Internal Revenue District as being a copy of the stamp originally issued to the defendant. Proof made as herein provided shall be sufficient evidence, without explanation, to convict of violation of the gambling laws.

**History.**—ss. 1-3, ch. 28057, 1953.

**849.07 Permitting gambling on billiard or pool table by holder of license.**—If any holder of a license to operate a billiard or pool table shall permit any person to play billiards or pool or any other game for money, or any other thing of value, upon such tables, he shall be deemed guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 14, ch. 6421, 1913; RGS 5505; CGL 7663; s. 1062, ch. 71-136.

**849.08 Gambling.**—Whoever plays or engages in any game at cards, keno, roulette, faro or other game of chance, at any place, by any device whatever, for money or other thing of value, shall be guilty

of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—RS 2651; s. 1, ch. 4514, 1895; GS 3579; RGS 5508; CGL 7666; s. 1063, ch. 71-136.  
cf.—s. 901.19 Seizure of gambling implements.

**849.09 Lottery prohibited; exceptions.**—

(1) It shall be unlawful for any person in this state to:

(a) Set up, promote, or conduct any lottery for money or for anything of value;

(b) Dispose of any money or other property of any kind whatsoever by means of any lottery;

(c) Conduct any lottery drawing for the distribution of a prize or prizes by lot or chance, or advertise any such lottery scheme or device in any newspaper or by circulars, posters, pamphlets, radio, telegraph, telephone, or otherwise;

(d) Aid or assist in the setting up, promoting or conducting of any lottery or lottery drawing, whether by writing, printing or in any other manner whatsoever, or be interested in or connected in any way with any lottery or lottery drawing;

(e) Attempt to operate, conduct or advertise any lottery scheme or device;

(f) Have in his possession any lottery wheel, implement or device whatsoever for conducting any lottery or scheme for the disposal by lot or chance of anything of value;

(g) Sell, offer for sale, or transmit, in person or by mail or in any other manner whatsoever, any lottery ticket, coupon, or share, or any share in or fractional part of any lottery ticket, coupon or share, whether such ticket, coupon or share represents an interest in a live lottery not yet played or whether it represents, or has represented, an interest in a lottery that has already been played;

(h) Have in his possession any lottery ticket, or any evidence of any share or right in any lottery ticket, or in any lottery scheme or device, whether such ticket or evidence of share or right represents an interest in a live lottery not yet played or whether it represents, or has represented, an interest in a lottery that has already been played;

(i) Aid or assist in the sale, disposal or procurement of any lottery ticket, coupon or share, or any right to any drawing in a lottery; or

(j) Have in his possession any lottery advertisement, circular, poster or pamphlet, or any list or schedule of any lottery prizes, gifts or drawings.

(k) Have in his possession any so-called run down sheets, tally sheets, or other papers, records, instruments, or paraphernalia designed for use, either directly or indirectly, in, or in connection with, the violation of the laws of this state prohibiting lotteries and gambling.

Provided, that nothing in this section shall prohibit participation in any nationally advertised contest, drawing, game or puzzle of skill or chance for a prize or prizes unless it can be construed as a lottery under this section; and provided further that this exemption for national contests shall not apply to any such contest based upon the outcome or results of any horse race, harness race, dog race or jai alai game.

(2) Any person who is convicted of violating any of the provisions of paragraphs (a), (b), (c) or (d) of

subsection (1) shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) Any person who is convicted of violating any of the provisions of paragraphs (e), (f), (g), (i) or (k) of subsection (1) shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Any person who, having been convicted of violating any provision thereof, thereafter violates any provision thereof shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The provisions of this section shall not apply to bingo or guest games as provided for in s. 849.093.

(4) Any person who is convicted of violating any of the provisions of paragraphs (h) or (j) of subsection (1) of this section shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083; provided, that any person who, having been convicted of violating any provision thereof, thereafter violates any provision thereof shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 1, ch. 4373, 1895; GS 3582; RGS 5509; CGL 7667; s. 1, ch. 26765, 1951; s. 1, ch. 67-72; s. 1, ch. 67-435; ss. 1, 2, ch. 69-91; s. 1064, ch. 71-136. cf.—s. 1.01 "Person" defined.

**849.091 Chain letters, pyramid clubs, etc., declared a lottery; prohibited; penalties.**—The organization of any chain letter club, pyramid club, or other group organized or brought together under any plan or device whereby fees or dues or anything of material value to be paid or given by members thereof are to be paid or given to any other member thereof, which plan or device includes any provision for the increase in such membership through a chain process of new members securing other new members and thereby advancing themselves in the group to a position where such members in turn receive fees, dues or things of material value from other members, is hereby declared to be a lottery, and whoever shall participate in any such lottery by becoming a member of, or affiliating with, any such group or organization or who shall solicit any person for membership or affiliation in any such group or organization shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 1, ch. 25096, 1949; s. 1065, ch. 71-136.

#### **849.0915 Referral selling.—**

(1) Referral selling, whereby the seller gives or offers a rebate or discount to the buyer as an inducement for a sale in consideration of the buyer's providing the seller with the names of prospective purchasers, is declared to be a lottery if earning the rebate or discount is contingent upon the occurrence of an event subsequent to the time the buyer agrees to buy.

(2) Any person conducting a lottery by referral selling is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) In addition to the penalty provided herein, the attorney general and his assistants, the state attorneys and their assistants, and the Division of Consumer Services of the Department of Agriculture and Consumer Services are authorized to apply

to the circuit court within their respective jurisdictions, and such court shall have jurisdiction, upon hearing and for cause shown, to grant a temporary or permanent injunction restraining any person from violating the provisions of this section, whether or not there exists an adequate remedy at law, and such injunction shall issue without bond.

**History.**—s. 1, ch. 72-110; s. 34, ch. 73-334.

**849.092 Retail merchandising business; certain activities permitted.**—The provisions of s. 849.09 shall not be construed to prohibit or prevent persons who are licensed to conduct business under s. 206.404, from giving away prizes to persons selected by lot, if such prizes are made on the following conditions:

(1) Such gifts are conducted as advertising and promotional undertakings, in good faith, solely for the purpose of advertising the goods, wares, merchandise and business of such licensee; and

(2) The principal business of such licensee is the business permitted to be licensed under s. 206.404; and

(3) No person to be eligible to receive such gift shall ever be required to:

(a) Pay any tangible consideration to such licensee in the form of money or other property or thing of value, or

(b) Purchase any goods, wares, merchandise or anything of value from such licensee.

(4) The person selected to receive any such gift or prize offered by any such licensee in connection with any such advertising or promotion is notified of his selection at his last known address. Newspapers, magazines, television and radio stations may, without violating any law, publish and broadcast advertising matter describing such advertising and promotional undertakings of such licensees which may contain instructions pursuant to which persons desiring to become eligible for such gifts or prizes may make their name and address known to such licensee.

(5) All brochures, advertisements, promotional material, and entry blanks promoting such undertakings shall contain a clause stating that residents of Florida are entitled to participate in such undertakings and are eligible to win gifts or prizes.

**History.**—s. 1, ch. 63-553; s. 1, ch. 65-261; s. 1, ch. 71-287; s. 244, ch. 77-104.

**849.093 Charitable, nonprofit organizations; certain endeavors permitted.—**

(1) As used in this section:

(a) "Bingo game" means and refers to the activity commonly known as "bingo" wherein participants pay a sum of money for the use of one or more cards. When the game commences, numbers are drawn by chance, one by one, and announced. The players cover or mark those numbers on the cards which they have purchased until a player receives a given order of numbers in sequence that has been preannounced for that particular game. This player calls out "bingo" and is declared the winner of a predetermined prize. More than one game may be played upon a bingo card, and numbers called for one game may be used for a succeeding game or games.

(b) "Bingo card" means and refers to the flat

piece of paper or thin pasteboard employed by players engaged in the game of bingo. More than one set of bingo numbers may be printed on any single piece of paper.

(2) None of the provisions of this chapter shall be construed to prohibit or prevent nonprofit or veterans' organizations engaged in charitable, civic, community, benevolent, religious, or scholastic works or other similar activities, which organizations have been in existence for a period of 3 years or more, from conducting bingo games or guest games, provided that the entire proceeds derived from the conduct of such games, less actual business expenses for articles designed for and essential to the operation, conduct, and playing of bingo, shall be donated by such organizations to the endeavors mentioned above. In no case shall the net proceeds from the conduct of such games be used for any other purpose whatsoever. The proceeds derived from the conduct of bingo games shall not be considered solicitation of public donations.

(3) If an organization is not engaged in efforts of the type set out above, its right to conduct bingo or guest games hereunder shall be conditioned upon the return of all the proceeds from such games to the players in the form of prizes. If at the conclusion of play on any day during which a bingo or guest game is allowed to be played under this section there remain proceeds which have not been paid out as prizes, the nonprofit organization conducting the game shall at the next scheduled day of play conduct bingo or guest games without any charge to the players and shall continue to do so until the proceeds carried over from the previous days played have been exhausted. This provision in no way extends the limitation on the number of prize or jackpot games allowed in one night as provided for in subsection (5).

(4) The number of days during which such organizations as are authorized hereunder may conduct bingo or guest games per week shall not exceed two.

(5) No jackpot shall exceed the value of \$100 in actual money or its equivalent, and there shall be no more than one jackpot in any one night.

(6) There shall be only one prize or jackpot on any one day of play of \$100. All other game prizes shall not exceed \$25.

(7) Each person involved in the conduct of any bingo or guest game must be a resident of the community where the organization is located and a bona fide member of the organization sponsoring such game and shall not be compensated in any way for operation of said bingo or guest game.

(8) No one under 18 years of age shall be allowed to play.

(9) Bingo or guest games shall be held only on the following premises:

(a) Property owned by the nonprofit organization;

(b) Property owned by the charity or organization that will benefit by the proceeds;

(c) Property leased full time for a period of not less than 1 year by the nonprofit organization or by the charity or organization that will benefit by the proceeds;

(d) Property owned by and leased from another

nonprofit organization qualified under this section; or

(e) Property owned by a municipality or a county when the governing authority has, by appropriate ordinance or resolution, specifically authorized the use of such property for the conduct of such games.

(10) Any organization or other person who willfully and knowingly violates any provision of this section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. For a second or subsequent offense, the organization or other person is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 1, ch. 67-178; s. 1, ch. 73-229; s. 69, ch. 77-121; s. 1, ch. 78-21; s. 1, ch. 79-318.

**Note.**—The word "game" was inserted by the editors.

#### **849.094 Game promotion in connection with sale of consumer products or services.—**

(1) As used in this section:

(a) "Game promotion" means, but is not limited to, "contest," "game of chance," and "gift enterprise," in which the elements of chance and prize are present. However, "game promotion" shall not be construed to apply to bingo games or guest games conducted pursuant to s. 849.093.

(b) "Operator" means any person, firm, corporation, or association or agent or employee thereof who promotes, operates, or conducts a game promotion, except charitable nonprofit organizations.

(2) It is unlawful for any operator:

(a) To design, engage in, promote, or conduct such a game promotion, in connection with the promotion or sale of consumer products or services, wherein the winner may be predetermined or said game may be manipulated or rigged so as to:

1. Allocate a winning game or any portion thereof to certain lessees, agents, or franchises; or

2. To allocate a winning game or part thereof to a particular period of the game promotion or to a particular geographic area;

(b) Arbitrarily to remove, disqualify, disallow, or reject any entry;

(c) To fail to award prizes offered; or

(d) To print, publish or circulate literature or advertising material used in connection with such game promotions which is false, deceptive or misleading.

(3) All rules and regulations promulgated by the operator of such game promotion must be filed with the Department of Legal Affairs at least 30 days in advance of the commencement of the game promotion and may not thereafter be changed, modified or altered. Such rules and regulations shall be conspicuously posted in each and every retail outlet or place where such game promotion may be played or participated in by the public and be published in all advertising copy used in connection therewith. Radio and television announcements may indicate that the rules and regulations are available at retail outlets or from the operator of the promotion.

(4)(a) Every operator of such a game promotion conducted in the state shall establish a trust account in a national or state-chartered financial institution, with a balance sufficient to pay or purchase the total value of all prizes offered. In lieu of establishing such



trust account, the operator may obtain a bond, with sufficient sureties, in amount equivalent to the total value of all prizes offered. A copy of a certificate of deposit indicating the balance of said trust account or of the bond shall be filed with the Department of Legal Affairs simultaneously with the filing of rules and regulations as herein provided, together with a list of all prizes and prize categories offered.

(b) The moneys so held in escrow or the bond shall at all times equal the total amount of the prizes offered. Moneys may be withdrawn, from time to time, in order to pay the prizes offered only upon certification to the Department of Legal Affairs of the name of the winner and the amount of the prize or the value thereof.

(5) Every operator of such a game promotion conducted in the state shall disclose to the public the names and addresses of all persons who have won prizes having a value of more than \$25, the value of such prizes, and the dates when the same were won, by publication in a newspaper of general circulation within the local geographic area wherein such game was played, maintained, or operated, within 30 days after such winners have been determined. A certified list thereof shall be simultaneously filed with the Department of Legal Affairs. All winning entries shall be held by the operator for a period of 60 days after the close or completion of such game.

(6) The Department of Legal Affairs shall keep the certified list of winners for a period of at least 6 months after receipt of said certified list. The department thereafter may dispose of all records and lists.

(7) No operator shall force, directly or indirectly, a lessee, agent, or franchise dealer to purchase or participate in any game promotion. For the purpose of this section, coercion or force shall be presumed in these circumstances in which a course of business extending over a period of 1 year or longer is materially changed coincident with a failure or refusal of a lessee, agent, or franchise dealer to participate in such game promotions. Such force or coercion shall further be presumed when an operator advertises generally that game promotions are available at its lessee dealers or agent dealers.

(8)(a) The Attorney General shall have the power to promulgate such rules and regulations respecting the operation of game promotions as he may deem advisable.

(b) Whenever the Department of Legal Affairs has reason to believe that such a game promotion is being operated in violation of this section, it may bring an action in the Supreme Court in the name and on behalf of the people of the state against any operator thereof to enjoin the continued operation of such game promotion.

(c) An action for violation of this section may be instituted by the Department of Legal Affairs in the name of the people of the state, and in any such action, the department shall exercise all of the powers and perform all the duties which any state attorney would otherwise be authorized to exercise or to perform therein.

(9)(a) Any person, firm, corporation, or association or agent or employee thereof who engages in any acts or practices stated in this section to be unlawful, or who violates any of the rules and regula-

tions of the Attorney General made pursuant to this section, is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Any person, firm, corporation, association, agent, or employee who violates any provision of this section or any of the rules and regulations of the Attorney General made pursuant to this section shall be liable to a civil penalty of not more than \$1,000 for each such violation, which shall accrue to the state and may be recovered in a civil action brought by the Department of Legal Affairs.

(10) This section shall not apply to a game promotion conducted in less than three retail outlets or at places where such game promotion may be played or participated in by the public. Nothing herein shall apply to actions or transactions regulated by the Department of Business Regulation.

*History.*—ss. 1-9, ch. 71-304; s. 1, ch. 73-292.

#### **849.10 Printing lottery tickets, etc., prohibited.—**

(1) It is unlawful for any person, in any house, office, shop or building in this state to write, type, write, print, or publish any lottery ticket or advertisement, circular, bill, poster, pamphlet, list or schedule, announcement or notice, of lottery prizes or drawings or any other matter or thing in any way connected with any lottery drawing, scheme or device, or to set up any type or plate for any such purpose, to be used or distributed in this state, or to be sent out of this state.

(2) It is unlawful for the owner or lessee of any such house, shop or building knowingly to permit the printing, typewriting, writing or publishing therein of any lottery ticket or advertisement, circular, bill, poster, pamphlet, list, schedule, announcement or notice of lottery prizes or drawings, or any other matter or thing in any way connected with any lottery drawing, scheme or device, or knowingly to permit therein the setting up of any type or plate for any such purpose to be used or distributed in this state, or to be sent out of the state.

(3) Any violation of this section shall be a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

*History.*—s. 2, ch. 4373, 1895; GS 3583; RGS 5510; CGL 7668; s. 1066, ch. 71-136.

**849.11 Plays at games of chance by lot.—**Whoever sets up, promotes or plays at any game of chance by lot or with dice, cards, numbers, hazards or any other gambling device whatever for, or for the disposal of money or other thing of value or under the pretext of a sale, gift or delivery thereof, or for any right, share or interest therein, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

*History.*—s. 3, ch. 4373, 1895; GS 3584; RGS 5511; CGL 7669; s. 1067, ch. 71-136.

**849.12 Money and prizes to be forfeited.—**All sums of money and every other valuable thing drawn and won as a prize, or as a share of a prize, or as a share, percentage or profit of the principal promoter or operator, in any lottery, and all money, currency or property of any kind to be disposed of, or

offered to be disposed of, by chance or device in any scheme or under any pretext by any person, and all sums of money or other thing of value received by any person by reason of his being the owner or holder of any ticket or share of a ticket in a lottery, or pretended lottery, or of a share or right in any such schemes of chance or device and all sums of money and other thing of value used in the setting up, conducting or operation of a lottery, and all money or other thing of value at stake, or used or displayed in or in connection with any illegal gambling or any illegal gambling device contrary to the laws of this state, shall be forfeited, and may be recovered by civil proceedings, filed, or by action for money had and received, to be brought by the Department of Legal Affairs or any state attorney, or other prosecuting officer, in the circuit courts in the name and on behalf of the state; the same to be applied when collected as all other penal forfeitures are disposed of.

**History.**—s. 4, ch. 4373, 1895; GS 3585; RGS 5512; CGL 7670; s. 1, ch. 28088, 1953; ss. 11, 35, ch. 69-106.

**849.13 Punishment on second conviction.**—Whoever, after being convicted of an offense forbidden by law in connection with lotteries, commits the like offense, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 4, sub-ch. 10, ch. 1637, 1868; RS 2655; GS 3586; RGS 5513; CGL 7671; s. 1068, ch. 71-136.

**849.14 Unlawful to bet on result of trial or contest of skill, etc.**—Whoever stakes, bets or wagers any money or other thing of value upon the result of any trial or contest of skill, speed or power or endurance of man or beast, or whoever receives in any manner whatsoever any money or other thing of value staked, bet or wagered, or offered for the purpose of being staked, bet or wagered, by or for any other person upon any such result, or whoever knowingly becomes the custodian or depository of any money or other thing of value so staked, bet, or wagered upon any such result, or whoever aids, or assists, or abets in any manner in any of such acts all of which are hereby forbidden, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 1, ch. 5959, 1909; s. 1, ch. 6188, 1911; RGS 5514; CGL 7672; s. 1069, ch. 71-136.

cf.—s. 550.16 Pari-mutuel pool authorized within enclosure of racetrack.  
s. 551.09 Pari-mutuel pool permitted within enclosure of fronton.

**849.15 Manufacture, sale, possession, etc., of coin-operated devices prohibited.**—It is unlawful:

(1) To manufacture, own, store, keep, possess, sell, rent, lease, let on shares, lend or give away, transport, or expose for sale or lease, or to offer to sell, rent, lease, let on shares, lend or give away, or permit the operation of, or for any person to permit to be placed, maintained, or used or kept in any room, space, or building owned, leased or occupied by him or under his management or control, any slot machine or device or any part thereof; or

(2) To make or to permit to be made with any person any agreement with reference to any slot machine or device, pursuant to which the user thereof,

as a result of any element of chance or other outcome unpredictable to him, may become entitled to receive any money, credit, allowance, or thing of value or additional chance or right to use such machine or device, or to receive any check, slug, token or memorandum entitling the holder to receive any money, credit, allowance or thing of value.

**History.**—s. 1, ch. 18143, 1937; CGL 1940 Supp. 4151(405-a).

**849.16 "Machines" or "devices," which come within provisions of law defined.**—

(1)(a) Any "machine" or "device" is a slot machine or device within the provisions of this chapter if it is one that is adapted for use in such a way that, as a result of the insertion of any piece of money, coin, or other object, such machine or device is caused to operate or may be operated and, by reason of any element of chance or of other outcome of such operation unpredictable by him, the user may receive or become entitled to receive any piece of money, credit, allowance, or thing of value, or any check, slug, token, or memorandum, whether of value or otherwise, which may be exchanged for any money, credit, allowance, or thing of value or which may be given in trade, or the user may secure additional chances or rights to use such machine, apparatus, or device, even though it may, in addition to any element of chance or unpredictable outcome of such operation, also sell, deliver, or present some merchandise, indication of weight, entertainment, or other thing of value.

(b) However, nothing herein contained shall be taken or construed as applicable to an arcade amusement center having amusement games or machines which operate by means of the insertion of a coin and which by application of skill may entitle the person playing or operating the game or machine to receive points or coupons which may be exchanged for merchandise only, excluding cash and alcoholic beverages, provided that the merchandise or prize awarded in exchange for said points or coupons shall not exceed the cost value of 75 cents on any game played. Nothing in this subsection shall be taken or construed as applicable to a coin-operated game or device designed and manufactured only for bona fide amusement purposes which game or device may by application of skill entitle the player to replay the game or device at no additional cost, if the game or device can accumulate and react to no more than 15 free replays; can be discharged of accumulated free replays only by reactivating the game or device for one additional play for each accumulated free replay; can make no permanent record, directly or indirectly, of free replays; and is not classified by the United States as requiring a federal gambling tax stamp under applicable provisions of the Internal Revenue Code.

(2) The term "arcade amusement center" as used in this section shall mean a place of business having at least 50 or more coin-operated amusement games or machines on the premises which are operated for the entertainment of the general public and tourists as a bona fide amusement facility.

**History.**—s. 2, ch. 18143, 1937; CGL 1940 Supp. 4151(405-b); s. 1, ch. 67-203; s. 1, ch. 77-275.

**849.17 Confiscation of machines by arresting officer.**—Upon the arrest of any person charged with the violation of any of the provisions of ss. 849.15-849.23 the arresting officer shall take into his custody any such machine, apparatus or device, and its contents, and the sheriff, at the place of seizure, shall make a complete and correct list and inventory of all such things so taken into his custody, and deliver to the person from whom such article or articles may have been seized, a true copy of the list of all such articles. Upon making such a seizure the sheriff shall, forthwith and without delay, deliver each and every item of the things taken into his custody to the clerk of the circuit court of the county in which such seizure is made, and upon delivery, deliver therewith to said clerk the original list and inventory so made by said sheriff at the time and place of such seizure; and upon such delivery the clerk shall verify said list and inventory and mark each item for identification and make a complete and correct list and inventory of the things delivered to him by the sheriff, in duplicate, duly certified by him officially, and deliver one copy thereof to the sheriff, and deposit one copy in proper safety files in his office. The clerk of the circuit court shall keep and preserve all things so delivered to him and have the same forthcoming at any investigation, prosecution or other proceedings, incident to charges of violation of any of the provisions of ss. 849.15-849.23.

**History.**—s. 4, ch. 18143, 1937; CGL 1940 Supp. 4151(405-c).

**849.18 Disposition of machines upon conviction.**—Upon conviction of the person arrested for the violation of any of the provisions of ss. 849.15-849.23, the judge of the court trying the case, after such notice to the person convicted, and any other person whom the judge may be of the opinion is entitled to such notice, and as the judge may deem reasonable, shall issue to the sheriff of the county a written order adjudging and declaring any such machine, apparatus or device forfeited, and directing such sheriff to destroy the same, with the exception of the money. The order of the court shall state the time and place and the manner in which such property shall be destroyed, and the sheriff shall destroy the same in the presence of the clerk of the circuit court of such county.

**History.**—s. 5, ch. 18143, 1937; CGL 1940 Supp. 4151(405-d).

**849.19 Property rights in confiscated machine.**—The right of property in and to any machine, apparatus or device as defined in s. 849.16 and to all money and other things of value therein, is declared not to exist in any person, and the same shall be forfeited and such money or other things of value shall be forfeited to the county in which the seizure was made and shall be delivered forthwith to the clerk of the circuit court and shall by him be placed in the fine and forfeiture fund of said county.

**History.**—s. 6, ch. 18143, 1937; CGL 1940 Supp. 4151(405-e).  
cf.—s. 1.01 "Person" defined.

**849.20 Machines and devices declared nuisance; place of operation subject to lien for fine.**—Any room, house, building, boat, vehicle, structure or place wherein any machine or device, or any part thereof, the possession, operation or use of which is

prohibited by ss. 849.15-849.23, shall be maintained or operated, and each of such machines or devices, is declared to be a common nuisance. If a person has knowledge, or reason to believe, that his room, house, building, boat, vehicle, structure or place is occupied or used in violation of the provisions of ss. 849.15-849.23 and by acquiescence or consent suffers the same to be used, such room, house, building, boat, vehicle, structure or place shall be subject to a lien for and may be sold to pay all fines or costs assessed against the person guilty of such nuisance, for such violation, and the several state attorneys shall enforce such lien in the courts of this state having jurisdiction.

**History.**—s. 7, ch. 18143, 1937; CGL 1940 Supp. 4151(405-f); s. 7, ch. 22858, 1945.

**849.21 Injunction to restrain violation.**—An action to enjoin any nuisance as herein defined may be brought by any person in the courts of equity in this state. If it is made to appear by affidavit or otherwise, to the satisfaction of the court, or judge in vacation, that such nuisance exists, a temporary writ of injunction shall forthwith issue restraining the defendant from conducting or permitting the continuance of such nuisance until the conclusion of the action. Upon application of the compliant in such a proceeding, the court or judge may also enter an order restraining the defendant and all other persons from removing, or in any way interfering with the machines or devices or other things used in connection with the violation of ss. 849.15-849.23 constituting such a nuisance. No bond shall be required in instituting such proceedings.

**History.**—s. 8, ch. 18143, 1937; CGL 1940 Supp. 4151 (405-g).

**849.22 Fees of clerk of circuit court and sheriff.**—The clerks of the courts and the sheriffs performing duties under the provisions of ss. 849.15-849.23 shall receive the same fees as prescribed by general law for the performance of similar duties, and such fees shall be paid out of the fine and forfeiture fund of the county as costs are paid upon conviction of an insolvent person.

**History.**—s. 9, ch. 18143, 1937; CGL 1940 Supp. 4151(405-h).

**849.23 Penalty for violations of ss. 849.15-849.22.**—Whoever shall violate any of the provisions of ss. 849.15-849.22 shall, upon conviction thereof, be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Any person convicted of violating any provision of ss. 849.15-849.22, a second time shall, upon conviction thereof, be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Any person violating any provision of ss. 849.15-849.22 after having been twice convicted already shall be deemed a "common offender," and shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 3, ch. 18143, 1937; CGL 1940 Supp. 8135(21); s. 1070, ch. 71-136.

**849.231 Gambling devices; manufacture, sale, purchase or possession unlawful.**—

(1) Except in instances when the following described implements or apparatus are being held or



transported by authorized persons for the purpose of destruction, as hereinafter provided, and except in instances when the following described instruments or apparatus are being held, sold, transported, or manufactured by persons who have registered with the United States Government pursuant to the provisions of Title 15 of the United States Code, ss. 1171 et seq., as amended, so long as the described implements or apparatus are not displayed to the general public, sold for use in Florida, or held or manufactured in contravention of the requirements of 15 U.S.C. ss. 1171 et seq., it shall be unlawful for any person to manufacture, sell, transport, offer for sale, purchase, own, or have in his possession any roulette wheel or table, faro layout, crap table or layout, chemin de fer table or layout, chuck-a-luck wheel, bird cage such as used for gambling, bolita balls, chips with house markings, or any other device, implement, apparatus, or paraphernalia ordinarily or commonly used or designed to be used in the operation of gambling houses or establishments, excepting ordinary dice and playing cards.

(2) In addition to any other penalties provided for the violation of this section, any occupational license held by a person found guilty of violating this section shall be suspended for a period not to exceed 5 years.

**History.**—s. 1, ch. 29665, 1955; s. 9, ch. 74-385; s. 1, ch. 77-174.

**849.232 Property right in gambling devices; confiscation.**—There shall be no right of property in any of the implements or devices enumerated or included in s. 849.231 and upon the seizure of any such implement, device, apparatus or paraphernalia by an authorized enforcement officer the same shall be delivered to and held by the clerk of the court having jurisdiction of such offenses and shall not be released by such clerk until he shall be advised by the prosecuting officer of such court that the said implement is no longer required as evidence and thereupon the said clerk shall deliver the said implement to the sheriff of the county who shall immediately cause the destruction of such implement in the presence of the said clerk or his authorized deputy.

**History.**—s. 2, ch. 29665, 1955.

**849.233 Penalty for violation of s. 849.231.**—Any person, including any enforcement officer, clerk or prosecuting official who shall violate the provisions of s. 849.231 shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 3, ch. 29665, 1955; s. 1071, ch. 71-136.

**849.235 Possession of certain gambling devices; defense.**—

(1) It is a defense to any action or prosecution under ss. 849.15-849.233 for the possession of any gambling device specified therein that the device is an antique slot machine and that it is not being used for gambling. For the purpose of this section, an antique slot machine is one which was manufactured prior to January 1, 1941.

(2) Notwithstanding any provision of this chapter to the contrary, upon a successful defense to a prosecution for the possession of a gambling device pursuant to the provisions of this section, the an-

tique slot machine shall be returned to the person from whom it was seized.

**History.**—s. 1, ch. 78-22.

**849.25 "Bookmaking" defined; penalties; exceptions.**—

(1) The term "bookmaking" means the act of taking or receiving any bet or wager upon the result of any trial or contest of skill, speed, power, or endurance of man or beast or between men, beasts, fowl, motor vehicles, or mechanical apparatus or upon the result of any chance, casualty, unknown, or contingent event whatsoever.

(2) Any person who engages in bookmaking shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Notwithstanding the provisions of s. 948.01, any person convicted under the provisions of this subsection shall not have adjudication of guilt suspended, deferred, or withheld.

(3) Any person who has been convicted of bookmaking and thereafter violates the provisions of this section shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Notwithstanding the provisions of s. 948.01, any person convicted under the provisions of this subsection shall not have adjudication of guilt suspended, deferred, or withheld.

(4) Notwithstanding the provisions of s. 777.04, any person who is guilty of conspiracy to commit bookmaking shall be subject to the penalties imposed by subsections (2) and (3).

(5) This section shall not apply to pari-mutuel wagering in Florida as authorized under chapters 550 and 551.

(6) This section shall not apply to any prosecutions filed and pending at the time of the passage hereof, but all such cases shall be disposed of under existing laws at the time of the institution of such prosecutions.

**History.**—ss. 1-3, ch. 26847, 1951; s. 1073, ch. 71-136; s. 47, ch. 75-298; s. 1, ch. 78-36.

**849.26 Gambling contracts declared void; exception.**—All promises, agreements, notes, bills, bonds or other contracts, mortgages or other securities, when the whole or part of the consideration is for money or other valuable thing won or lost, laid, staked, betted or wagered in any gambling transaction whatsoever, regardless of its name or nature, whether heretofore prohibited or not, or for the repayment of money lent or advanced at the time of a gambling transaction for the purpose of being laid, betted, staked or wagered, are void and of no effect; provided, that this act shall not apply to wagering on pari-mutuels or any gambling transaction expressly authorized by law.

**History.**—s. 1, ch. 26543, 1951.

**849.29 Persons against whom suits may be brought to recover on gambling contracts.**—The following persons shall be jointly and severally liable for the items which are authorized by this act to be sued for and recovered, and any suit brought under the authorization of this act may be brought against all or any of such persons, to wit: The winner of the money or property lost in the gambling trans-

action; every person who, having direct or indirect charge, control or management, either exclusively or with others, of the place where the gambling transaction occurs, procures, suffers or permits such place to be used for gambling purposes; whoever promotes, sets up or conducts the gambling transaction in which the loss occurs or has an interest in it as backer, vendor, owner or otherwise; and, as to anything of value other than money, the transferees and assignees, with notice, of the persons hereinabove specified in this section; and the personal representatives of the persons specified in this section.

History.—s. 4, ch. 26543, 1951.

**849.30 Plaintiff entitled to writs of attachment, garnishment and replevin.**—In any suit under ss. 849.26-849.34, the plaintiff shall be entitled to writs of attachment and garnishment for the sums of money, exclusive of attorney's fees, sued for the use and benefit of persons other than the state, in the same manner and to the same extent as in an action on contract; and, in any suit under this chapter for the recovery of a thing of value other than money, the plaintiff shall be entitled to a writ of replevin for the recovery of such thing of value, in the manner and to the extent provided by the replevin statutes of the state.

History.—s. 5, ch. 26543, 1951; s. 24, ch. 57-1.

**849.31 Loser's testimony not to be used against him.**—In the event that suit is brought under the authorization of ss. 849.26-849.34 by someone other than the loser of the money or thing of value involved in the suit, such loser shall not be excused from being required to attend and testify or produce any book, paper or other document or evidence in such suit, upon the ground or for the reason that the testimony or evidence required of him may tend to convict him of a crime or to subject him to a penalty or forfeiture, but he shall not be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may so be required to testify or produce evidence, and no testimony so given or produced shall be received against him upon any criminal investigation or prosecution. If the loser of money or thing of value involved in a suit brought under authorization of ss. 849.26-849.34, whether by him or by someone else, voluntarily attends or produces evidence in such suit, he shall not be prosecuted or subjected to any penalty for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence, and no testimony so given or produced shall be received against him upon any criminal investigation or prosecution. Also, neither the fact of the bringing of suit under this act by a loser nor any statement or admission in his pleadings which is material and relevant to the subject matter of the suit shall be received against him upon any criminal investigation or proceeding.

History.—s. 6, ch. 26543, 1951.

**849.32 Notice to state attorney; prosecution of suit.**—The summons in any such suit, and copies of all pleadings and notices of all hearings in the suit, and notice of the trial and of application for the entry of final judgment, shall be served on the state

attorney, whose duty it shall be to protect the interests of the state and, if the plaintiff fails to diligently prosecute the suit, to bring such failure to the attention of the court. If the plaintiff fails to effectively prosecute any such suit without collusion or deceit and without unnecessary delay, the court shall direct the state attorney to proceed with the action. No such suit shall be dismissed except upon a sworn statement filed by the plaintiff or the state attorney which satisfies the court that the suit should be dismissed.

History.—s. 7, ch. 26543, 1951.

**849.33 Judgment and collection of money; execution.**—Any judgment recovered in such a suit shall adjudge separately the amounts recovered for the use of the state, and the plaintiff shall not have execution therefor, and such amounts shall not be paid to the plaintiff, but shall be payable to the state attorney, who shall promptly transmit the sums collected by him to the state treasurer. The state attorney shall diligently seek the collection of such amounts and may cause a separate execution to issue for the collection thereof.

History.—s. 8, ch. 26543, 1951.

**849.34 Loser's judgment; recovery of property; writ of assistance.**—If the plaintiff in any such suit seek to recover property lost, and if he shall prevail as to any such property, he shall take judgment for the property itself and for the value thereof, the judgment as to such property to be satisfied by the recovery of the property or of the value thereof. The plaintiff may, at his option, sue out a separate writ of possession for the property and a separate execution for any other moneys and costs adjudged in his favor, or he may sue out an execution for the value of the property and any other moneys and costs adjudged in his favor. If he elect to sue out a writ of possession for the property, and if the officer shall return that he is unable to find the property, or any of it, the plaintiff may thereupon sue out execution for the value of the property not found. In any proceeding to ascertain the value of the property, the value of each article shall be found so that judgment for such value may be entered.

History.—s. 9, ch. 26543, 1951.

**849.35 Definitions.**—In construing ss. 849.36-849.46 and each and every word, phrase, or part thereof, where the context permits:

- (1) The singular includes the plural and vice versa.
- (2) The masculine includes the feminine and neuter and vice versa.
- (3) The term "vessel" includes every description of watercraft, vessel or contrivance used, or capable of being used, as a means of transportation in or on water, or in or on the water and in the air.
- (4) The term "vehicle" includes every description of vehicle, carriage, animal or contrivance used, or capable of being used, as a means of transportation on land, in the air, or on land and in the air.
- (5) The term "gambling paraphernalia" includes every description of apparatus, implement, machine, device or contrivance used in, or in connection with, any violation of the lottery, gaming and gam-

bling statutes, and laws of this state, except facilities and equipment furnished by a public utility in the regular course of business, and which remain the property of such utility while so furnished.

(6) The term "lottery ticket" shall include every ticket, token, emblem, card, paper or other evidence of a chance, interest, prize or share in, or in connection with any lottery, game of chance or hazard or other things in violation of the lottery and gambling statutes and laws of this state (including bolita, cuba, bond, New York bond, butter and eggs, night house and other like and similar operations, but not excluding others). The said term shall also include so-called rundown sheets, tally sheets, and all other papers, records, instruments, and things designed for use, either directly or indirectly, in, or in connection with, the violation of the statutes and laws of this state prohibiting lotteries and gambling in this state.

History.—s. 1, ch. 29712, 1955.

**849.36 Seizure and forfeiture of property used in the violation of lottery and gambling statutes.—**

(1) Every vessel or vehicle used for, or in connection with, the removal, transportation, storage, deposit or concealment of any lottery tickets, or used in connection with any lottery or game in violation of the statutes and laws of this state, shall be subject to seizure and forfeiture, as provided by the Florida Uniform Contraband Transportation Act.

(2) All gambling paraphernalia and lottery tickets as herein defined used in connection with a lottery, gambling, unlawful game of chance or hazard, in violation of the statutes and laws of this state, found by an officer in searching a vessel or vehicle used in the violation of the gambling laws shall be safely kept so long as it is necessary for the purpose of being used as evidence in any case, and as soon as may be afterwards, shall be destroyed by order of the court before whom the case is brought or certified to any other court having jurisdiction, either state or federal.

(3) The presence of any lottery ticket in any vessel or vehicle owned or being operated by any person charged with a violation of the gambling laws of the state, shall be prima facie evidence that such vessel or vehicle was or is being used in connection with a violation of the lottery and gambling statutes and laws of this state and as a means of removing, transporting, depositing or concealing lottery tickets and shall be sufficient evidence for the seizure of such vessel or vehicle.

(4) The presence of lottery tickets in any room or place, including vessels and vehicles, shall be prima facie evidence that such room, place, vessel or vehicle, and all apparatus, implements, machines, contrivances or devices therein, (herein referred to as "gambling paraphernalia") capable of being used in connection with a violation of the lottery and gambling statutes and laws of this state and shall be sufficient evidence for the seizure of such gambling paraphernalia.

(5) It shall be the duty of every peace officer in this state finding any vessel, vehicle or paraphernalia being used in violation of the statutes and laws of this state as aforesaid to seize and take possession of

such property for disposition as hereinafter provided. It shall also be the duty of every peace officer finding any such property being so used, in connection with any lawful search made by him, to seize and take possession of the same for disposition as hereinafter provided.

History.—s. 2, ch. 29712, 1955; s. 1, ch. 57-236; s. 8, ch. 74-385.

**849.37 Disposition and appraisal of property seized under this chapter.—**

(1) Every peace officer, other than the sheriff, seizing property pursuant to the provisions of ss. 849.36-849.46 shall forthwith make return of the seizure thereof and deliver the said property to the sheriff of the county wherein the same was seized. The said return to the sheriff shall describe the property seized and give in detail the facts and circumstances under which the same was seized and state in full the reason why the seizing officer knew, or was led to believe, that the said property was being used for or in connection with a violation of the statutes and laws of this state prohibiting lotteries and gambling in this state. The said return shall contain the names of all persons, firms and corporations known to the seizing officer to be interested in the seized property.

(2) When property is seized by the sheriff pursuant to this chapter, or when property seized by another is delivered to the sheriff as aforesaid, he shall forthwith fix the approximate value thereof and make return thereof to the clerk of the circuit court as hereinafter provided.

(3) The return of the sheriff aforesaid shall contain a schedule of the property seized describing the same in reasonable detail and give in detail the facts and circumstances under which it was seized and state in full the reason why the seizing officer knew or was led to believe that the property was being used for or in connection with a violation of the statutes and laws of this state prohibiting lotteries or gambling in this state; and a statement of the names of all persons, firms and corporations known to the sheriff to be interested in the seized property; and in cases where the said property was seized by another the sheriff shall attach to his said return, as an exhibit thereto, the return of the seizing officer to him.

(4) The sheriff shall hold the said property seized pending its disposal by the court as hereinafter provided.

History.—s. 3, ch. 29712, 1955.

**849.38 Proceedings for forfeiture; notice of seizure and order to show cause.—**

(1) The return of the sheriff aforesaid to the clerk of the circuit court shall be taken and considered as the state's petition or libel in rem for the forfeiture of the property therein described, of which the circuit court of the county shall have jurisdiction without regard to value. The said return shall be sufficient as said petition or libel notwithstanding the fact that it may contain no formal prayer or demand for forfeiture, it being the intention of the Legislature that forfeiture may be decreed without a formal prayer or demand therefor. The said return shall be subject to amendment at any time before final hearing, provided that copies thereof shall be served upon all persons, firms or corporations who may



have filed a claim prior to such amendment.

(2) Upon the filing of said return the clerk of the circuit court shall issue a citation, directed to all persons, firms and corporations owning, having or claiming an interest in or a lien upon the seized property, giving notice of the seizure and directing that all persons, firms or corporations owning, having or claiming an interest therein or lien thereon, to file their claim to, on, or in said property within the time fixed in said citation, as to persons, firms and corporations not personally served, and within 20 days from personal service of said citation, when personal service is had. Personal service shall be made on all parties, in Florida, having liens noted upon a certificate of title as shown by the records in the office of the Department of Highway Safety and Motor Vehicles.

(3) The said citation may be in, or substantially in, the following form:

IN THE CIRCUIT COURT OF THE ..... JUDICIAL  
CIRCUIT, IN AND FOR ..... COUNTY, FLORIDA.  
IN RE FORFEITURE OF THE FOLLOWING DE-  
SCRIBED PROPERTY:

(Here describe property)

THE STATE OF FLORIDA TO:

ALL PERSONS, FIRMS AND CORPORATIONS  
OWNING, HAVING OR CLAIMING AN INTER-  
EST IN OR LIEN ON THE ABOVE DESCRIBED  
PROPERTY.

YOU AND EACH OF YOU are hereby notified that the above described property has been seized, under and by virtue of chapter ....., Laws of Florida, and is now in the possession of the sheriff of this county, and you, and each of you, are hereby further notified that a petition, under said chapter, has been filed in the Circuit Court of the ..... Judicial Circuit, in and for ..... County, Florida, seeking the forfeiture of the said property, and you are hereby directed and required to file your claim, if any you have, and show cause, on or before ....., 19....., if not personally served with process herein, and within 20 days from personal service if personally served with process herein, why the said property should not be forfeited pursuant to said chapter ....., Laws of Florida, 1955. Should you fail to file claim as herein directed judgment will be entered herein against you in due course. Persons not personally served with process may obtain a copy of the petition for forfeiture filed herein from the undersigned clerk of court.

WITNESS my hand and the seal of the above men-  
tioned court, at ..... Florida, this ..... 19.....  
(COURT SEAL)

.....(Clerk of the above-mentioned Court).....

By .....(Deputy Clerk).....

(4) Such citation shall be returnable, as to persons served constructively, as therein directed, not less than 21 nor more than 30 days, from the posting or publication thereof, and as to personally served with process within 20 days from service thereof. A copy of the petition shall be served with the process when personally served. Personal service of process may be made in the same manner as a summons in chancery.

(5) If the value of the property seized is shown by the sheriff's return to have an appraised value of \$400 or less, the above citation shall be served by posting at three public places in the county, one of which shall be the front door of the courthouse; if the value of the property is shown by the sheriff's return to have an approximate value of more than \$400, the citation shall be published once a week for 3 consecutive weeks in some newspaper of general publication published in the county, if there be such a newspaper published in the county and if not, then said notice of such publication shall be made by certificate of the clerk if publication is made by posting, and by affidavit as provided in chapter 50, if made by publication in a newspaper, which affidavit or certificate shall be filed and become a part of the record in the cause. Failure of the record to show proof of such publication shall not affect any judgment made in the cause unless it shall affirmatively appear that no such publication was made.

History.—s. 4, ch. 29712, 1955; ss. 24, 35, ch. 69-106; s. 12, ch. 73-299.

#### 849.39 Delivery of property to claimant.—

Any person, firm or corporation filing a claim in the cause, which claim shall state fully his right, title, claim or interest, in and to the seized property, may, at any time after said claim is filed with the clerk of the court, obtain possession of the seized property by filing a petition therefor with the sheriff and posting with him, to be approved by him, a surety bond, payable to the Governor of the state in twice the amount of the value of the said property as fixed in the sheriff's return to the clerk of the circuit court, with a corporate surety duly authorized to transact business in this state as surety, conditioned upon his paying to the sheriff the value of the property together with costs of the proceeding, if judgment of forfeiture be entered by the court. Upon the posting of such bond with the sheriff and the release of the property to the applicant the cause shall proceed to final judgment in the same manner as it would have had no such bond been filed, except that any execution to be issued in the cause pursuant to judgment may run against and be enforced against the person posting said bond and his surety.

History.—s. 5, ch. 29712, 1955.

#### 849.40 Proceeding when no claim filed.—

When no claim is filed in the cause within the time required the clerk shall enter a default against all persons, firms and corporations owning, claiming or having an interest in and to the property seized and the cause may then proceed in the same manner as a common law cause after default, and final judgment shall be entered therein ex parte, except as may be herein otherwise provided.

History.—s. 6, ch. 29712, 1955.

#### 849.41 Proceeding when claim filed.—

When one or more claims are filed in the cause the cause shall be tried upon the issues made thereby with the petition for forfeiture with any affirmative defenses being deemed denied without further pleading. Judgment by default shall be entered against all other persons, firms and corporations owning, claiming or having an interest in and to the property seized, after which the cause shall proceed as in oth-

er common law cases; except any claimant shall prove to the satisfaction of the court that he did not know or have any reason to believe, at the time his right, title, interest, or lien arose, that the property was being used for or in connection with the violation of any of the statutes or laws of this state prohibiting lotteries and gambling and further that at said time there was no reasonable reason to believe that the said property might be used for such purpose. Where the owner of the property has been convicted of a violation of the statutes and laws of this state prohibiting lotteries or gambling such conviction shall be prima facie evidence that each claimant had reason to believe that the property might be used for or in connection with a violation of such statutes and laws, and it shall be incumbent upon such claimant to satisfy the court that he was without knowledge of such conviction. Trial of all such causes shall be without a jury, except in such cases as a trial by jury may be guaranteed by the state constitution and in such cases trial by jury shall be deemed waived unless demanded in the claim filed.

History.—s. 7, ch. 29712, 1955.

#### **849.42 State attorney to represent state.—**

Upon the filing of the sheriff's return with the clerk of the circuit court the said clerk shall furnish the state attorney with a copy thereof and the said state attorney shall represent the state in the forfeiture proceedings. The Department of Legal Affairs shall represent the state in all appeals from judgments of forfeiture to the appropriate district court of appeal or direct to the Supreme Court when authorized by s. 3, Art. V of the State Constitution. The state may appeal any judgment denying forfeiture in whole or in part or that may be otherwise adverse to the state.

History.—s. 8, ch. 29712, 1955; s. 34, ch. 63-559; ss. 11, 35, ch. 69-106; s. 13, ch. 73-299.

**849.43 Judgment of forfeiture.—**On final hearing the return of the sheriff to the clerk of the circuit court shall be taken as prima facie evidence that the property seized was or had been used in, or in connection with, the violation of the statutes and laws of this state prohibiting lotteries and gambling in this state and shall be sufficient predicate for a judgment of forfeiture in the absence of other proofs and evidence. The burden shall be upon the claimants to show that the property was not so used or if so used that they had no knowledge of such violation and no reason to believe that the seized property was or would be used for the violation of such statutes and laws. Where such property is encumbered by a lien or retained title agreement under circumstances wherein the lienholder had no knowledge that the property was or would be used in violating such statutes and laws, and no reasonable reason to believe that it might be so used, then the court may declare a forfeiture of all other rights, titles and interests, subject, however, to the lien of such innocent lienholder, or may direct the payment of such lien from

the proceeds of any sale of the said property. The proceedings and the judgment of forfeiture shall be in rem and shall be primarily against the property itself. Upon the entry of a judgment of forfeiture the court shall determine the disposition to be made of the property, which may include the destruction thereof, the sale thereof, the allocation thereof to some governmental function or use, or otherwise as the court may determine. Sales of such property shall be at public sale to the highest and best bidder therefor for cash after 2 weeks public notice as the court may direct. Where the property has been delivered to a claimant upon the posting of a bond the court shall determine the value of the property or portion thereof subject to forfeiture and shall enter judgment against the principal and surety of the bond in such amount for which execution shall issue in the usual manner. Upon the application of any claimant the court may fix the value of the forfeitable interest or interests in the seized property and permit such claimant to redeem the said property upon the payment of a sum equal to said value which sum shall be disposed of as would the proceeds of a sale of the said property under a judgment of forfeiture.

History.—s. 9, ch. 29712, 1955.

#### **849.44 Disposition of proceeds of forfeiture.—**

All sums received from a sale or other disposition of the seized property shall be paid into the county fine and forfeiture fund and shall become a part thereof; provided, however, that in instances where the seizure is by a municipal police officer within the limits of any municipality having an ordinance requiring such vehicles, vessels or conveyances to be forfeited, the city attorney shall act in behalf of the city in lieu of the state attorney and shall proceed to forfeit the property as herein provided, and all sums received therefrom shall go into the general operating fund of the city.

History.—s. 10, ch. 29712, 1955; s. 24, ch. 57-1.

**849.45 Fees for services.—**Fees for services required hereunder shall be the same as provided for sheriffs and clerks for like and similar services in other cases and matters.

History.—s. 11, ch. 29712, 1955.

**849.46 Exercise of police power.—**It is deemed by the Legislature that this chapter is necessary for the more efficient and proper enforcement of the statutes and laws of this state prohibiting lotteries and gambling, and a lawful exercise of the police power of the state for the protection of the public welfare, health, safety and morals of the people of the state. All the provisions of this chapter shall be liberally construed for the accomplishment of these purposes.

History.—s. 12, ch. 29712, 1955.

## CHAPTER 856

## DRUNKENNESS; VAGRANCY; DESERTION

- 856.011 Disorderly intoxication.  
 856.021 Loitering or prowling; penalty.  
 856.031 Arrest without warrant.  
 856.04 Desertion; withholding support; proviso.

**856.011 Disorderly intoxication.—**

(1) No person in the state shall be intoxicated and endanger the safety of another person or property, and no person in the state shall be intoxicated or drink any alcoholic beverage in a public place or in or upon any public conveyance and cause a public disturbance.

(2) Any person violating the provisions of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(3) Any person who shall have been convicted or have forfeited collateral under the provisions of subsection (1) 3 times in the preceding 12 months shall be deemed a habitual offender and may be committed by the court to an appropriate treatment resource for a period of not more than 60 days. Any peace officer, in lieu of incarcerating an intoxicated person for violation of subsection (1), may take or send the intoxicated person to his home or to a public or private health facility, and the law enforcement officer may take reasonable measures to ascertain the commercial transportation used for such purposes is paid for by such person in advance. Any law enforcement officers so acting shall be considered as carrying out their official duty.

History.—s. 16A, ch. 71-132.

**856.021 Loitering or prowling; penalty.—**

(1) It is unlawful for any person to loiter or prowl in a place, at a time or in a manner not usual for law-abiding individuals, under circumstances that warrant a justifiable and reasonable alarm or immediate concern for the safety of persons or property in the vicinity.

(2) Among the circumstances which may be considered in determining whether such alarm or immediate concern is warranted is the fact that the person takes flight upon appearance of a law enforcement officer, refuses to identify himself, or manifestly endeavors to conceal himself or any object. Unless flight by the person or other circumstance makes it impracticable, a law enforcement officer shall, prior to any arrest for an offense under this section, afford the person an opportunity to dis-

pel any alarm or immediate concern which would otherwise be warranted by requesting him to identify himself and explain his presence and conduct. No person shall be convicted of an offense under this section if the law enforcement officer did not comply with this procedure or if it appears at trial that the explanation given by the person is true and, if believed by the officer at the time, would have dispelled the alarm or immediate concern.

(3) Any person violating the provisions of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 1, ch. 72-133.

**856.031 Arrest without warrant.—**Any sheriff, policeman, or other law enforcement officer may arrest any suspected loiterer or prowler without a warrant in case delay in procuring one would probably enable such suspected loiterer or prowler to escape arrest.

History.—s. 2, ch. 72-133; s. 34, ch. 73-334.

**856.04 Desertion; withholding support; proviso.—**

(1) Any man who shall in this state desert his wife and children, or either of them, or his wife where there are no children or child, or who shall willfully withhold from them or either of them, the means of support, or any mother, who shall desert her child or children, or who shall willfully withhold from them the means of support, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. However, no husband shall be prosecuted under this section for the desertion of his wife, or for withholding from his wife the means of supporting her where there is existing, at the time of such desertion or withholding, such cause or causes as are recognized as ground or grounds for dissolution of marriage, by statute, in this state, if such person shall have provided for the support of his children, if there be any.

(2) For the purposes of subsection (1), a child born out of wedlock shall be deemed to be the child of a man who has been adjudged or decreed to be the father of such child by a court of competent jurisdiction of this state or of any other jurisdiction.

History.—s. 1, ch. 4553, 1897; GS 3569; s. 1, ch. 6483, 1913; RGS 5496; CGL 7654; s. 1, ch. 59-147; s. 1, ch. 61-335; s. 1, ch. 65-210; s. 1077, ch. 71-136; s. 9, ch. 75-166.



## CHAPTER 859

## POISONS; ADULTERATED DRUGS

- 859.01 Poisoning food or water.
- 859.02 Selling certain poisons by registered pharmacists and others.
- 859.03 Sale of morphine.
- 859.04 Provisions concerning poisons.
- 859.05 Narcotics not to be sold except on prescription.
- 859.06 Sale of cigarettes and wrappers to minors.
- 859.07 Duty of officers to enforce s. 859.06.
- 859.08 Penalty for selling adulterated drugs.

**859.01 Poisoning food or water.**—Whoever mingles any poison with food, drink, or medicine with intent to kill or injure another person, or willfully poisons any spring, well, or reservoir of water with such intent, shall be guilty of a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 4, ch. 1637, 1868; RS 2658; GS 3587; RGS 5515; CGL 7675; s. 1078, ch. 71-136.  
cf.—s. 500.24 Violation of food, drug and cosmetic law.  
s. 562.455 Adulterating liquor; penalty.

**859.02 Selling certain poisons by registered pharmacists and others.**—Any violation of the law, relative to sale of poisons, not specially provided for, shall constitute a misdemeanor of the second degree, punishable as provided in s. 775.083.

**History.**—s. 8, ch. 3880, 1889; GS 1906, 3604; RGS 5526; CGL 7692; s. 1079, ch. 71-136.

**859.03 Sale of morphine.**—Any druggist or other dealer in drugs and medicines who shall sell or offer for sale any sulphate or other preparations of morphine, without wrapping the same in a scarlet wrapper and plainly labeling it, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083; provided, this section shall not apply to regular practicing physicians putting up their own prescriptions in their ordinary practice of dispensing medicines.

**History.**—s. 2, ch. 1891, 1872; ss. 1, 2, ch. 3286, 1881; RS 2667, 826; GS 3605; RGS 5527; CGL 7693; s. 1080, ch. 71-136.

**859.04 Provisions concerning poisons.**—

(1) It is unlawful for any person not a registered pharmacist to retail any poisons enumerated below: Arsenic and all its preparations, corrosive sublimate, white and red precipitate, biniodide of mercury, cyanide of potassium, hydrocyanic acid, strychnine, and all other poisonous vegetable alkaloids and their salts, and the essential oil of almonds, opium, and its preparations of opium containing less than two grains to the ounce, aconite, belladonna, colchicum, conium, nux vomica, henbane, savin, ergot, cotton root, cantharides, creosote, veratrum digitalis, and their pharmaceutical preparations, croton oil, chloroform, chloral hydrate, sulphate of zinc, mineral acids, carbolic and oxalic acids; and he shall label the box, vessel, or paper in which said poison is contained with the name of the article, the word "poison," and the name and place of business of the seller.

(2) No person shall deliver or sell any poisons

enumerated above unless upon due inquiry it be found that the purchaser is aware of its poisonous character and represents that it is to be used for a legitimate purpose. The provisions of this section shall not apply to the dispensing of poisons in not unusual quantities or doses upon the prescriptions of practitioners of medicine.

(3) Any violation of this section shall render the principal of said store guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083. However, this section shall not apply to manufacturers making and selling at wholesale any of the above poisons. Each box, vessel, or paper in which said poison is contained shall be labeled with the name of the article, the word "poison," and the name and place of business of the seller.

**History.**—s. 8, ch. 3380, 1889; RS 822; GS 3606; RGS 5528; CGL 7694; s. 1081, ch. 71-136.

**859.05 Narcotics not to be sold except on prescription.**—No person shall sell, give away, or otherwise dispose of any opium, morphine, cocaine, or its salts, atropine, belladonna, or conium, to any person, except upon the written prescription of a licensed practicing physician, which prescription shall not be filled but once; provided, however, that this section shall not apply to manufacturers making and selling at wholesale to druggists, or to sales thereof, for the use of dentists, physicians, hospitals, or infirmaries. Any person who shall, for himself, or for any other person, violate any of the provisions of this section shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—ss. 1, 2, ch. 5957, 1909; RGS 5529; ss. 1, 2, ch. 10189, 1925; CGL 7695; s. 1082, ch. 71-136.  
cf.—s. 1.01 "Person" defined.

**859.06 Sale of cigarettes and wrappers to minors.**—No person shall sell, barter, furnish, or give away, directly or indirectly, to any minor, any cigarette, cigarette wrapper or any substitute for either; or procure for, or persuade, advise, counsel, or compel any child under said age to smoke any cigarette. Any person violating the provisions of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—ss. 1, 2, ch. 5716, 1907; RGS 5530; CGL 7696; s. 1083, ch. 71-136.  
cf.—s. 1.01 "Minor" defined.

**859.07 Duty of officers to enforce s. 859.06.**—Sheriffs, their deputies, or any police officer shall enforce the provisions of s. 859.06, and he may summon any minor who may have or have had in his possession any cigarettes or cigarette material, and compel him to testify before the county court judge as to where and from whom he obtained such cigarettes or cigarette material.

**History.**—s. 3, ch. 5716, 1907; RGS 5531; CGL 7697; s. 34, ch. 73-334.

**859.08 Penalty for selling adulterated drugs.**

—Every registered pharmacist, and the owner or proprietor of any store dealing in drugs or medicines, shall be held responsible for the quality of all drugs, chemicals, or medicines he may sell or dispense, with the exception of those sold in the original packages of the manufacturer and those known as proprietary; and any person who fraudulently adulterates, for the purpose of sale, any drug or medicine or sells any fraudulently adulterated drug or medicine,

knowing the same to be adulterated, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and such adulterated drugs and medicine shall be forfeited and destroyed under the direction of the court; and if the offender be a registered pharmacist, his name shall be stricken from the register.

**History.**—s. 8, ch. 6890, 1915; RGS 5532; CGL 7698; s. 1084, ch. 71-136. cf.—s. 500.30 Sale of lye regulated.

## CHAPTER 860

## OFFENSES CONCERNING AIRCRAFT, MOTOR VEHICLES, AND RAILROADS

- 860.01 Driving automobile while intoxicated; punishment.
- 860.02 Carelessness of common carrier.
- 860.03 Intoxicated servant of common carrier.
- 860.04 Persons beating their way on railroad trains.
- 860.05 Unauthorized person interfering with railroad train, cars, or engines.
- 860.07 Unauthorized persons giving signals to railroad trains or engines.
- 860.08 Interference with railroad signals prohibited; penalty.
- 860.09 Interference with railroad track and other equipment prohibited; penalties.
- 860.091 Violations of s. 860.05, s. 860.08, or s. 860.09 resulting in death; penalty.
- 860.10 Disposing of duplicate switch keys of railroad companies; penalty.
- 860.11 Injuring railroad structures; driving cattle on tracks.
- 860.121 Crimes against railroad vehicles; penalties.
- 860.13 Operation of aircraft while intoxicated or in careless or reckless manner; penalty.
- 860.14 Motor vehicle parts and accessories; records of certain purchases.
- 860.15 Overcharging for repairs and parts; penalty.
- 860.16 Aircraft piracy; penalty.
- 860.17 Tampering with or interfering with motor vehicles or trailers.

**860.01 Driving automobile while intoxicated; punishment.—**

(1) It is unlawful for any person, while in an intoxicated condition or under the influence of intoxicating liquor, model glue, as defined in s. 877.11, or any substance controlled under chapter 893 to such extent as to deprive him of full possession of his normal faculties, to drive or operate over the highways, streets, or thoroughfares of Florida any automobile, truck, motorcycle, or other vehicle. Any person convicted of a violation of this section shall be punished as provided in s. 316.193.

(2) If, however, damage to property or person of another, other than damage resulting in death of any person, is done by said intoxicated person under the influence of intoxicating liquor to such extent as to deprive him of full possession of his normal faculties, by reason of the operation of any of said vehicles mentioned herein, he shall be guilty of a misdemeanor or of the first degree, punishable as provided in s. 775.082 or s. 775.083, and if the death of any human being be caused by the operation of a motor vehicle by any person while intoxicated, such person shall be deemed guilty of manslaughter, and on conviction be punished as provided by existing law relating to manslaughter.

(3) Convictions under the provisions of this sec-

tion shall not be a bar to any civil suit for damages against the person so convicted.

**History.**—ss. 1, 2, ch. 6882, 1915; RGS 5563; s. 1, ch. 9269, 1923; s. 1, ch. 11809, 1927; CGL 7749; s. 7, ch. 22000, 1943; s. 1, ch. 67-156; s. 2, ch. 70-413; s. 1085, ch. 71-136; s. 31, ch. 73-331; s. 54, ch. 76-31.  
cf.—s. 782.07 Manslaughter.  
s. 782.071 Vehicular homicide.

**860.02 Carelessness of common carrier.—**

Whoever, having management or control of or over any railroad train, steamboat, or other public conveyance used for the common carriage of passengers is guilty of gross carelessness or neglect in or in relation to the conduct, management and control of such conveyance, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.083.

**History.**—s. 48, ch. 1637, 1868; RS 2692; GS 3637; RGS 5573; CGL 7759; s. 1086, ch. 71-136.  
cf.—s. 350.67 Penalty for violating provisions of Florida Public Service Commission.  
Ch. 352 Duties of railroad to passengers and freight.

**860.03 Intoxicated servant of common carrier.—**

If any person while in charge of a locomotive engine, acting as the conductor or superintendent of a car or train, on the car or train as a brakeman, employed to attend the switches, drawbridges or signal stations on any railway, or acting as captain or pilot on any steamboat shall be intoxicated, he shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—RS 2693; GS 3638; RGS 5574; CGL 7760; s. 1087, ch. 71-136.  
cf.—s. 352.37 Conductors, etc., violating regulations.

**860.04 Persons beating their way on railroad trains.—**

Any person who, without permission of those having authority, with the intention of being transported free, rides or attempts to ride on any railroad train in this state shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—ss. 1, 2, ch. 4703, 1899; GS 3643; RGS 5579; CGL 7765; s. 1088, ch. 71-136.

**860.05 Unauthorized person interfering with railroad train, cars, or engines.—**

Any person, other than an employee or authorized agent of the railroad company acting within the line of his duty, who shall knowingly or willfully detach or uncouple any train; put on, apply, or tamper with any brake, bell cord, or emergency valve; or otherwise interfere with any train, engine, car, or part thereof is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—ss. 1, 2, ch. 4704, 1899; GS 3654; RGS 5591; CGL 7777; s. 1089, ch. 71-136; s. 1, ch. 79-360.

**860.07 Unauthorized persons giving signals to railroad trains or engines.—**

Any person who wrongfully, recklessly, or wantonly and without authority, signals any train or engine in this state with a red light or with a red flag, or gives any signal calculated to affect the movement or operation of any train, engine, or cars on any railroad in this state shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. This section shall not apply to any person



giving signals to stop a train for the purpose of preventing an accident to such train, or at a regular station or flag station when the train is flagged for the purpose of taking passage on said train.

**History.**—s. 1, ch. 4708, 1899; GS 3656; RGS 5593; CGL 7779; s. 1091, ch. 71-136.

**860.08 Interference with railroad signals prohibited; penalty.**—Any person, other than an employee or authorized agent of a railroad company acting within the line of his duty, who knowingly or willfully interferes with or removes any railroad signal system used to control railroad operations, any railroad crossing warning devices, or any lantern, light, lamp, torch, flag, fuse, torpedo, or other signal used in connection with railroad operations is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—ss. 1, 2, ch. 4705, 1899; GS 3657; RGS 5594; CGL 7780; s. 1092, ch. 71-136; s. 1, ch. 79-360.

**860.09 Interference with railroad track and other equipment prohibited; penalties.**—Any person, other than an employee or authorized agent of a railroad company acting within the line of his duty, who knowingly or willfully moves, interferes with, removes, or obstructs any railroad switch, bridge, track, crossties, or other equipment located on the right-of-way or property of a railroad and used in railroad operations is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 1, ch. 3755, 1887; RS 2698; GS 3660; RGS 5597; CGL 7783; s. 1093, ch. 71-136; s. 1, ch. 79-360.

**860.091 Violations of s. 860.05, s. 860.08, or s. 860.09 resulting in death; penalty.**—Any person who violates the provisions of s. 860.05, s. 860.08, or s. 860.09 when such violation results in the death of another person is guilty of homicide as defined in chapter 782, punishable as provided in s. 775.082.

**History.**—s. 2, ch. 79-360.

**860.10 Disposing of duplicate switch keys of railroad companies; penalty.**—It is unlawful for any person to make, buy, sell, or give away any duplicate key to any lock belonging to or in use by any railroad company in this state on its switches or switch tracks, except on the written order of the officer of said railroad company whose duty it is to distribute and issue switch lock keys to the employees of such railroad company. Any person violating the provisions of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—ss. 1, 2, ch. 9307, 1923; CGL 7786; s. 1094, ch. 71-136.

**860.11 Injuring railroad structures; driving cattle on tracks.**—Whoever otherwise wantonly or maliciously injures any bridge, trestle, culvert, cattle guard, or other superstructure of any railroad company or salts the track of any railroad company for the purpose of attracting cattle thereto, or who shall drive cattle thereon, shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 3, ch. 3281, 1881; RS 2699; GS 3661; RGS 5598; CGL 7784; s. 1095, ch. 71-136.

## **860.121 Crimes against railroad vehicles; penalties.—**

(1) It shall be unlawful for any person to shoot at, throw any object capable of causing death or great bodily harm at, or place any object capable of causing death or great bodily harm in the path of any railroad train, locomotive, car, caboose, or other railroad vehicle.

(2)(a) Any person who violates subsection (1) with respect to an unoccupied railroad vehicle is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Any person who violates subsection (1) with respect to an occupied railroad vehicle or a railroad vehicle connected thereto is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Any person who violates subsection (1), if such violation results in great bodily harm, is guilty of a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) Any person who violates subsection (1), if such violation results in death, is guilty of homicide as defined in chapter 782, punishable as provided in s. 775.082.

**History.**—s. 3, ch. 79-360.

## **860.13 Operation of aircraft while intoxicated or in careless or reckless manner; penalty.—**

(1) It shall be unlawful for any person:

(a) To operate an aircraft in the air or on the ground or water while under the influence of:

1. Alcoholic beverages;
2. Any substance controlled under chapter 893;
3. Any chemical substance set forth in s. 877.11;

or

(b) To operate an aircraft in the air or on the ground or water in a careless or reckless manner so as to endanger the life or property of another.

(2) In any prosecution charging careless or reckless operation of aircraft in violation of this section, the court, in determining whether the operation was careless or reckless, shall consider the standards for safe operation of aircraft as prescribed by federal statutes or regulations governing aeronautics.

(3) Violation of this section shall constitute a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) It shall be the duty of any court in which there is a conviction for violation of this statute to report such conviction to the Civil Aeronautics Administration for its guidance and information with respect to the pilot's certificate.

**History.**—ss. 1-4, ch. 25259, 1949; s. 1096, ch. 71-136; ss. 1, 2A, ch. 71-282; s. 32, ch. 73-331.

**860.14 Motor vehicle parts and accessories; records of certain purchases.**—Every person engaged in the business of buying and selling parts and accessories for motor vehicles who purchases such parts and accessories from any person other than manufacturers, distributors, wholesalers, retailers, or other persons usually and regularly engaged in the business of selling such parts and accessories shall keep a daily record of all such parts and accessories so purchased, which record shall show the

date and time of each purchase of such parts and accessories, the name and address of each person from whom such parts and accessories were purchased, the number of the driver's license of such person or, if such person does not have a driver's license, adequate information to properly identify such person, and a detailed description of the parts and accessories purchased from such person, which description shall include all serial and other identifying numbers, if any. Such records shall be retained for not less than 1 year and shall at all times be subject to the inspection of all police or peace officers. Any person violating the provisions of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 1, ch. 61-420; s. 1097, ch. 71-136.

**860.15 Overcharging for repairs and parts; penalty.—**

(1) It is unlawful for a person to knowingly charge for any services on motor vehicles which are not actually performed, to knowingly and falsely charge for any parts and accessories for motor vehicles not actually furnished, or to knowingly and fraudulently substitute parts when such substitution has no relation to the repairing or servicing of the motor vehicle.

(2) Any person willfully violating the provisions of this section shall be guilty of a misdemeanor of the

second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 1, ch. 63-203; s. 1098, ch. 71-136.

**860.16 Aircraft piracy; penalty.—**Whoever without lawful authority seizes or exercises control, by force or violence and with wrongful intent, of any aircraft containing a nonconsenting person or persons within this state is guilty of the crime of aircraft piracy, a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 1, ch. 72-725.

**860.17 Tampering with or interfering with motor vehicles or trailers.—**Whoever, without authority, willfully, maliciously, or intentionally tampers with, attempts to tamper with, or otherwise interferes with any motor vehicle or trailer of another which results in the cargo or contents of such motor vehicle or trailer becoming unloaded or damaged, or which results in the mechanical functions of such motor vehicle or trailer becoming inoperative or impaired, is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A second or subsequent conviction of any person violating this section is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 1, ch. 73-181.

## CHAPTER 861

## OFFENSES CONCERNING PUBLIC ROADS AND NAVIGABLE WATERS

- 861.01 Obstructing highway.
- 861.02 Obstructing watercourse.
- 861.021 Obstructing channels; misdemeanor.
- 861.03 Injuries to dams.
- 861.04 Placing water hyacinths in any of the streams or waters of the state.
- 861.05 Obstruction to navigation by bridges.
- 861.06 Obstructing harbors, etc.
- 861.065 Divers; definitions; divers-down flag required; penalty.
- 861.07 Obstructing wagon roads.
- 861.08 Obstructing county and settlement roads.
- 861.09 Certain vehicles prohibited from using hard-surfaced roads.
- 861.11 Penalty for cutting or destroying shade trees along public roads.
- 861.12 Penalty for road official or overseer neglecting duty.

**861.01 Obstructing highway.**—Whoever obstructs any public road or established highway by fencing across or into the same or by willfully causing any other obstruction in or to such road or highway, or any part thereof, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, and the judgment of the court shall also be that the obstruction be removed.

**History.**—s. 68, Feb. 10, 1832; RS 2700; GS 3662; s. 1, ch. 6884, 1915; RGS 5604; CGL 7791; s. 1099, ch. 71-136.  
cf.—s. 339.31 Obstructing highway.

**861.02 Obstructing watercourse.**—Whoever erects or fixes on any navigable watercourse any dam, bridge, hedge, seine, drag, or other obstruction, whereby the navigation of boats drawing 3 feet of water or the passage of fish may be obstructed, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.083.

**History.**—s. 72, Feb. 10, 1832; RS 2701; GS 3665; RGS 5608; CGL 7797; s. 1100, ch. 71-136.

**861.021 Obstructing channels; misdemeanor.**—

(1) It is unlawful for any person to place any crawfish, crab, or fishtrap or set net or other similar device with a buoy or marker attached so that said buoy or marker obstructs the navigation of boats in channels of the waters of the state which are marked by, and which markers are continuously maintained by, the Coast Guard of the United States.

(2) Any person willfully violating the provision of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 1, ch. 69-64; s. 1101, ch. 71-136.

**861.03 Injuries to dams.**—Whoever willfully, maliciously, and unlawfully injures, removes or destroys any dam lawfully placed in or on any stream in this state for the purpose of propelling any kind of machinery, or willfully and maliciously makes

any aperture or breach in such dam with intent to destroy or injure the same, shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 1, ch. 4752, 1899; GS 3666; RGS 5609; CGL 7798; s. 1102, ch. 71-136.

**861.04 Placing water hyacinths in any of the streams or waters of the state.**—Whoever willfully places or causes to be placed any water hyacinths in any of the territorial waters of the state whether navigable or nonnavigable shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 1, ch. 4752, 1899; s. 1, ch. 5196, 1903; GS 3667; RGS 5610; CGL 7799; s. 1, ch. 28046, 1953; s. 1103, ch. 71-136.

**861.05 Obstruction to navigation by bridges.**—Any railway company, other corporation, or person which has heretofore constructed, and which shall hereafter construct, any bridge or other causeway across any of the navigable waters of the state, is required to build and maintain a suitable draw or other proper and necessary appliances so as to be able to remove such obstruction or to turn a sufficient section thereof as to allow boats or other watercraft to pass such bridge or other causeway without delay or hindrance, and any such company, corporation, or person failing to comply with such requirements shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.083.

**History.**—ss. 1, 2, ch. 3931, 1889; RS 2702; GS 3668; RGS 5611; CGL 7800; s. 1104, ch. 71-136.

**861.06 Obstructing harbors, etc.**—The master or other person in charge of any steamer, vessel, barge, or lighter, or any other person who violates the provisions of law relative to the protection of harbors, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 4, ch. 3142, 1879; RS 2703; GS 3669; RGS 5612; CGL 7801; s. 1105, ch. 71-136.

**861.065 Divers; definitions; divers-down flag required; penalty.**—

(1) "Diver" means any person who is wholly or partially submerged in the waters of the state and is equipped with a face mask and snorkel or "underwater breathing apparatus."

(2) "Underwater breathing apparatus" shall mean any apparatus, whether self-contained or connected to a distant source of air or other gas, whereby a person wholly or partially submerged in water is enabled to obtain or reuse air or any other gas or gases for breathing without returning to the surface of the water.

(3) "Divers-down flag" shall mean a flag that is either square or rectangular, to approximately 4 units high by 5 units long, with a 1-unit diagonal stripe. The divers-down flag shall have a white diagonal stripe on a red background. The stripe shall begin at the top staff-side of the flag and extend diagonally to the opposite lower corner. The flag



shall be free-flying and shall be lowered when all divers are aboard or ashore. The minimum size shall be 12 by 12 inches.

(4) All divers shall prominently display a divers-down flag in the area in which the diving occurs, other than when diving in an area customarily used for swimming only.

(5) Any violation of this section shall be a misdemeanor of the second degree punishable as provided by s. 775.082 or s. 775.083.

**History.**—ss. 1-3, ch. 74-344; s. 64, ch. 74-383; s. 1, ch. 77-174.

**861.07 Obstructing wagon roads.**—Whenever any tie cutter or log cutter cutting ties for a railroad or logs for milling purposes shall cut or fell any tree into or across any traveled road, whether it be a county road, a road regularly used by the public, or a neighborhood road, and shall fail to remove the same within 2 hours thereafter so as to free the road from all obstruction therefrom, such tie cutter or log cutter shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083; and such person and his employer shall be liable or responsible for any and all damages resulting from so obstructing a traveled road.

**History.**—s. 1, ch. 4780, 1899; GS 3673; RGS 5616; CGL 7805; s. 1106, ch. 71-136; s. 245, ch. 77-104.

**861.08 Obstructing county and settlement roads.**—

(1) Whoever shall fell, drag, or by any means place a tree, or other obstruction, in or across any county settlement or neighborhood road regularly used, or whoever causes such obstruction to be placed therein, shall remove the same from such road within 6 hours thereafter.

(2) Any person violating the provisions of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083; provided, that this law shall not apply to pasture fences, gates, nor the improvement of private property.

**History.**—ss. 1, 2, ch. 5238, 1903; GS 3676; s. 1, ch. 6538, 1913; RGS 5619; CGL 7808; s. 1107, ch. 71-136.

**861.09 Certain vehicles prohibited from using hard-surfaced roads.**—

(1) It is unlawful for any person to drive, propel, or operate, or to have driven, propelled or operated, over the hard-surfaced public roads or parts of roads of this state any vehicle or implement having wheels that will carry more than 200 pounds per wheel for every vehicle having tires of 1 inch in width, or 500 pounds per wheel for every vehicle having tires of 2 inches in width, or 800 pounds per wheel for every vehicle having tires of 3 inches in width, or 1200

pounds per wheel for every vehicle having tires of 4 inches in width, or 1500 pounds per wheel for every vehicle having tires 5 inches in width, or that will carry any load greater than 6,000 pounds without first providing 1 inch of tire width per wheel for each additional 2,000 pounds, or fraction thereof, or to permit any vehicle or implement or any load or portion of load thereof to drag upon the surface of any hard-surfaced public road or parts of roads; provided, that nothing in this section shall be construed as prohibiting the use of roughened surfaces on rubber tires or on the wheels of farm implements weighing less than 1,000 pounds.

(2) "Hard-surfaced public roads or parts of roads" as used in this section shall be construed to be brick, concrete, asphaltic, sand clay, sand, or bituminous surfaced roads which are maintained by county or state funds.

(3) Any person violating the provisions of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—ss. 1-3, ch. 7329, 1917; ss. 1, 2, ch. 7898, 1919; RGS 5617, 5618; CGL 7806, 7807; s. 1108, ch. 71-136.  
cf.—s. 1.01 "Person" defined.

**861.11 Penalty for cutting or destroying shade trees along public roads.**—

(1) The county commissioners of each county may prescribe that the public roads in their county shall not be less than 30 feet wide, and it shall be unlawful for any person to belt, cut, or destroy any shade trees on any public road or right-of-way without authority from the superintendent of public roads, supervisor, or overseer of the district in which said trees are situated.

(2) Each supervisor or overseer of each district in such counties shall enforce the provisions of this section by reporting the offenders to the nearest County Court Judge, and each offender shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—ss. 1-3, ch. 5005, 1901; GS 3677; RGS 5620; CGL 7809; s. 1110, ch. 71-136; s. 34, ch. 73-334.

cf.—s. 336.02 Width of county roads.

s. 336.04 Superintendent of county roads, etc.

s. 339.25 Trees and shrubbery; removal or damage; penalty.

**861.12 Penalty for road official or overseer neglecting duty.**—Any superintendent of public roads, supervisor, or overseer who willfully neglects to perform the duties prescribed in s. 861.11 shall be deemed guilty of, and made a party to, the offense and proceeded against as the original offender by any person.

**History.**—s. 4, ch. 5005, 1901; GS 3678; RGS 5621; CGL 7810.  
cf.—s. 336.04 Superintendent of county roads, etc.

## CHAPTER 865

## VIOLATIONS OF CERTAIN COMMERCIAL RESTRICTIONS

- 865.02 Falsely shipping oranges as Florida oranges.  
 865.04 False packing of provisions.  
 865.05 Selling trees, plants or vines under false name.  
 865.07 Adulterated syrup.  
 865.08 Purchase of cotton or leaf tobacco.  
 865.09 Fictitious Name Statute; definitions; etc.  
 865.10 Linen suppliers.

**865.02 Falsely shipping oranges as Florida oranges.**—Whoever ships foreign-grown fruit or oranges, representing by mark or otherwise that said fruit is the product of the state, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 2, ch. 3454, 1883; RS 2708; GS 3699; RGS 5647; CGL 7851; s. 1115, ch. 71-136.

**865.04 False packing of provisions.**—Whoever fraudulently puts into any barrel, bale of cotton, cask or other package of sugar, rice, or pork, or any other article of provisions any dirt, rubbish, or other thing, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.083.

**History.**—s. 54, Feb. 10, 1832; RS 2710; GS 3703; RGS 5655; CGL 7856; s. 1116, ch. 71-136.

**865.05 Selling trees, plants or vines under false name.**—All trees, plants, seeds, and vines sold, offered for sale, or exposed for sale in this state shall be properly named as to variety and kind, and any person knowingly selling, trading, exchanging, or offering or exposing for sale any trees, seeds, plants, or vines falsely named as to variety and kind, with the purpose to deceive or defraud the purchaser, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083.

**History.**—s. 1, ch. 5233, 1903; GS 3704; RGS 5656; CGL 7857; s. 1117, ch. 71-136.

**865.07 Adulterated syrup.**—

(1) Any person, or agent thereof, who shall sell, offer for sale, or advertise for sale in this state any adulterated or mixed syrups whatever, except at the time of such sale or offer for sale the percentage of such adulteration or mixture and the name and post-office address of the manufacturer is clearly stamped or labeled on the barrel, can, case, bottle, or other receptacle containing such syrup or mixture, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) The term "adulterated mixture" or "admixture," as used herein is understood to apply to all mixtures of two or more ingredients differing in their nature and quality, such as sugar cane syrup, sorghum syrup, maple syrup, molasses, or glucose.

**History.**—ss. 1, 2, 3, ch. 5231, 1903; GS 3706; RGS 5657; CGL 7860; s. 1119, ch. 71-136.

cf.—Ch. 500 Foods, drugs and cosmetics.

**865.08 Purchase of cotton or leaf tobacco.**—Whoever trades, traffics for, or buys, except from the producer or his authorized agent, any cotton or leaf tobacco, unless the same be baled or boxed in the usual manner, or unless upon some exhibition of evidence in writing that the producer has parted with his interest therein, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 11, ch. 1466, 1866; RS 2711; GS 3707; RGS 5658; CGL 7861; s. 1120, ch. 71-136.

**865.09 Fictitious Name Statute; definitions; etc.**—

(1) This section shall be known as the "Fictitious Name Statute."

(2)(a) "Persons" shall include every individual, whether natural or artificial, firm, or group or combination of individuals or partnerships, whether natural or representative.

(b) "Fictitious names" shall include any trade name, whether a single name or a group of names, other than the proper name or known called names of those persons engaged in such business or professions.

(c) "Business" shall include all enterprises or adventures wherein persons either sell, buy, exchange, barter, or deal, or any of these things, or represent the dealing in anything or article of value, or rendering services for compensation.

(3) It shall be unlawful for any person or persons, as defined herein, to engage in business as herein defined under a fictitious name as herein defined unless said fictitious name shall be registered with the Clerk of the Circuit Court of the county where the principal place of business is, which registration shall consist of recording with the clerk an affidavit signed by all interested persons, stating under oath the names of all those interested in the business enterprise, the extent of the interest of each, and the fictitious name under which said business is carried on. Said registration may not be made until the person or persons desiring to engage in business under a fictitious name shall have advertised his or their intention to register said fictitious name at least once a week for 4 consecutive weeks in some newspaper as defined by law in the county where said registration is to be made, and said registration shall not be accepted by the Clerk of the Circuit Court except upon receiving proof of such publication, which shall be recorded with the affidavit of those declaring an interest in the business enterprise.

(4) The Clerk of the Circuit Court shall receive a service charge as provided in s. 28.24 for receiving and recording said registration, to be paid by the person or persons engaged in doing business under a fictitious name, as herein defined.

(5) The penalty for failure to comply with this law shall be that neither the business nor the members nor those interested in doing such business may defend or maintain suit in any court of this state,

either as plaintiff or defendant, until this law is complied with, and further that any person violating this law may have information filed against him, by anyone aggrieved or believed to be aggrieved, before the proper court and charged with a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—ss. 1-5, ch. 20953, 1941; s. 1, ch. 26760, 1951; s. 1, ch. 67-209; s. 35, ch. 70-134; s. 1121, ch. 71-136.  
cf.—s. 28.24 Service charges by Clerk of Circuit Court.

#### **865.10 Linen suppliers.—**

(1) **REGISTRATION OF NAME.**—A person engaged in the business of supplying or furnishing for hire or compensation on a rental or lease basis clean laundered bed linen or table linen, garments, aprons, or towels who uses his name and the word "registered" on such articles or supplies may register such articles or supplies by filing in the office of the Clerk of the Circuit Court of the county where his principal place of business is situated, and also with the Department of State, a description of the name so used by him, and paying a fee of \$25 to each office for each filing, and shall publish such description once in each of 3 successive weeks in a newspaper of general circulation in the county where the

description has been filed.

(2) **UNAUTHORIZED USE OR DISPOSITION OF REGISTERED LINENS, ETC.**—No person shall without the written consent of the owner willfully take, detain, use, sell, traffic in or otherwise dispose of, or use for any purpose other than that for which such article was intended any registered bed linen or table linen, garment, apron, or towel; provided, however, that the use of such article or articles at the place where the same are placed or delivered by the owner or owners under an agreement, lease, or license from such owner shall not be unlawful; and provided, further, that nothing herein contained shall make it unlawful for any caterer, hotel, restaurant, cafe, or other public hostelry to permit and allow the use of such bed linen or table linen, garment, apron, or towel by any guest, boarder, or regularly hired employee thereof during the period of any lease, renting, or hiring agreement of said supplies with the owner thereof.

(3) **PENALTY.**—Anyone found guilty of violation of this section shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—ss. 1, 2, ch. 67-196; ss. 10, 35, ch. 69-106; s. 1122, ch. 71-136.



## CHAPTER 870

## AFFRAYS; RIOTS; ROUTS; UNLAWFUL ASSEMBLIES

- 870.01 Affrays and riots.
- 870.02 Unlawful assemblies.
- 870.03 Riots and routs.
- 870.04 Magistrate to disperse riotous assembly.
- 870.041 Preservation of the public peace by local authority.
- 870.042 Designation of local authority.
- 870.043 Declaration of emergency.
- 870.044 Automatic emergency measures.
- 870.045 Discretionary emergency measures.
- 870.046 Filing and publication.
- 870.047 Duration and termination of emergency.
- 870.048 Violations.
- 870.05 When killing excused.
- 870.06 Unauthorized military organizations.

**870.01 Affrays and riots.—**

(1) All persons guilty of an affray shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) All persons guilty of a riot, or of inciting or encouraging a riot, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 35, Feb. 10, 1832; RS 2406; GS 3239; RGS 5072; CGL 7174; s. 1, ch. 67-407; s. 1125, ch. 71-136.

**870.02 Unlawful assemblies.**—If three or more persons meet together to commit a breach of the peace, or to do any other unlawful act, each of them shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—RS 2407; GS 3240; RGS 5073; CGL 7175; s. 1126, ch. 71-136. cf.—ss. 876.03, 876.04 Anarchy, Communism, etc., unlawful assembly for purpose of.

**870.03 Riots and routs.**—If any persons unlawfully assembled demolish, pull down or destroy, or begin to demolish, pull down or destroy, any dwelling house or other building, or any ship or vessel, each of them shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 7, ch. 1637, 1868; RS 2408; GS 3241; RGS 5074; CGL 7176; s. 1127, ch. 71-136.

**870.04 Magistrate to disperse riotous assembly.**—If any number of persons, whether armed or not, are unlawfully, riotously or tumultuously assembled in any county, city or municipality, the sheriff or his deputies, or the mayor, or any commissioner, councilman, alderman or police officer of the said city or municipality, or any officer or member of the Florida Highway Patrol, or any officer or agent of the Game and Fresh Water Fish Commission, Department of Natural Resources, or beverage enforcement agent, any personnel or representatives of the Department of Law Enforcement or its successor, or any other peace officer, shall go among the persons so assembled, or as near to them as may be with safety, and shall in the name of the state command all the persons so assembled immediately and peaceably to disperse; and if such persons do not

thereupon immediately and peaceably disperse, said officers shall command the assistance of all such persons in seizing, arresting and securing such persons in custody; and if any person present being so commanded to aid and assist in seizing and securing such rioter or persons so unlawfully assembled, or in suppressing such riot or unlawful assembly, refuses or neglects to obey such command, or, when required by such officers to depart from the place, refuses and neglects to do so, he shall be deemed one of the rioters or persons unlawfully assembled, and may be prosecuted and punished accordingly.

**History.**—ss. 1, 2, ch. 1637, 1868; RS 2409; GS 3242; RGS 5075; CGL 7177; ss. 1, chs. 61-223 and 61-237; s. 1, ch. 67-2203; s. 3, ch. 67-2207; ss. 20, 25, 35, ch. 69-106; s. 34, ch. 73-334; s. 1, ch. 77-174; s. 29, ch. 79-8.

**870.041 Preservation of the public peace by local authority.**—In the event of overt acts of violence, or the imminent threat of such violence, within a county or municipality and the Governor has not declared a state of emergency to exist, local officers shall be empowered to declare such a state of emergency exists in accordance with the provisions of ss. 870.041-870.048.

**History.**—s. 1, ch. 70-990.

**870.042 Designation of local authority.—**

(1) The sheriff of each of the several counties of this state, or such other county official having the duties of a sheriff in counties operating under home rule charter, by whatever name known, shall be empowered to declare that a state of emergency exists within the unincorporated areas of the county and to exercise the emergency powers conferred in ss. 870.041-870.047.

(2) The governing body of any municipality within this state may designate by duly adopted ordinance a city official who shall be empowered to declare that a state of emergency exists within the boundaries of the municipality and to exercise the emergency powers conferred in ss. 870.041-870.047. The designated city official shall be either the mayor or chief of police or the person who performs the duties of a mayor or chief of police in such municipality. In the absence of a duly adopted ordinance so designating the official so to act, the chief of police of such municipality is designated as the city official to assume the duties and powers hereof.

**History.**—s. 2, ch. 70-990.

**870.043 Declaration of emergency.**—Whenever the sheriff or designated city official determines that there has been an act of violence or a flagrant and substantial defiance of, or resistance to, a lawful exercise of public authority and that, on account thereof, there is reason to believe that there exists a clear and present danger of a riot or other general public disorder, widespread disobedience of the law, and substantial injury to persons or to property, all of which constitute an imminent threat to public

peace or order and to the general welfare of the jurisdiction affected or a part or parts thereof, he may declare that a state of emergency exists within that jurisdiction or any part or parts thereof.

History.—s. 3, ch. 70-990.

**870.044 Automatic emergency measures.—**

Whenever the public official declares that a state of emergency exists, pursuant to s. 870.043, the following acts shall be prohibited during the period of said emergency throughout the jurisdiction:

(1) The sale of, or offer to sell, with or without consideration, any ammunition or gun or other firearm of any size or description.

(2) The intentional display, after the emergency is declared, by or in any store or shop of any ammunition or gun or other firearm of any size or description.

(3) The intentional possession in a public place of a firearm by any person, except a duly authorized law enforcement official or person in military service acting in the official performance of his duty.

History.—ss. 4, 5, ch. 70-990.

**870.045 Discretionary emergency measures.**

—Whenever the public official declares that a state of emergency exists, pursuant to s. 870.043, he may order and promulgate all or any of the following emergency measures, in whole or in part, with such limitations and conditions as he may deem appropriate:

(1) The establishment of curfews, including, but not limited to, the prohibition of or restrictions on pedestrian and vehicular movement, standing, and parking, except for the provision of designated essential services such as fire, police, and hospital services, including the transportation of patients thereto, utility emergency repairs, and emergency calls by physicians.

(2) The prohibition of the sale or distribution of any alcoholic beverage, with or without the payment or a consideration therefor.

(3) The prohibition of the possession on any person in a public place of any portable container containing any alcoholic beverage.

(4) The closing of places of public assemblage with designated exceptions.

(5) The prohibition of the sale or other transfer of possession, with or without consideration, of gasoline or any other flammable or combustible liquid altogether or except by delivery into a tank properly affixed to an operable motor-driven vehicle, bike, scooter, boat, or airplane and necessary for the propulsion thereof.

(6) The prohibition of the possession in a public place of any portable container containing gasoline or any other flammable or combustible liquid.

Any such emergency measure so ordered and promulgated shall be in effect during the period of said emergency in the area or areas for which the emergency has been declared.

History.—ss. 4, 6, ch. 70-990.

**870.046 Filing and publication.**—Any state of emergency or emergency measure declared or ordered and promulgated by virtue of the terms of ss. 870.041-870.045 shall, as promptly as practicable, be

filed in the office of the municipal clerk or Clerk of the Circuit Court and delivered to appropriate news media for publication and radio and television broadcast thereof. If practicable, such state of emergency declaration or emergency measure shall be published by other means such as by posting and loudspeakers.

History.—s. 7, ch. 70-990.

**870.047 Duration and termination of emergency.**—A state of emergency established under ss.

870.041-870.046 shall commence upon the declaration thereof by the public official and shall terminate at the end of a period of 72 consecutive hours thereafter unless, prior to the end of such 72-hour period, the public official, the Governor, county commission, or city council shall have terminated such state of emergency. Any extension of the 72-hour time limit must be accomplished by request from the public official and the concurrence of the county commission or city council by duly enacted ordinance or resolution in regular or special session.

History.—s. 8, ch. 70-990.

**870.048 Violations.**—Any violation of a provision of ss. 870.041-870.047 or of any emergency measure established pursuant thereto shall be a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 9, ch. 70-990; s. 1128, ch. 71-136.

**870.05 When killing excused.**—If, by reason of the efforts made by any of said officers or by their direction to disperse such assembly, or to seize and secure the persons composing the same, who have refused to disperse, any such person or other person present is killed or wounded, the said officers and all persons acting by their order or under their direction, shall be held guiltless and fully justified in law; and if any of said officers or any person acting under or by their direction is killed or wounded, all persons so assembled and all other persons present who when commanded refused to aid and assist said officer shall be held answerable therefor.

History.—s. 6, ch. 1637, 1868; RS 2410; GS 3243; RGS 5076; CGL 7178.

**870.06 Unauthorized military organizations.**

—No body of men, other than the regularly organized land and naval militia of this state, the troops of the United States, and the students of regularly chartered educational institutions where military science is a prescribed part of the course of instruction, shall associate themselves together as a military organization for drill or parade in public with firearms, in this state, without special license from the Governor for each occasion, and application for such license must be approved by the mayor and aldermen of the cities and towns where such organizations may propose to parade. Each person unlawfully engaging in the formation of such military organization, or participating in such drill or parade, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 15, ch. 1466, 1866; RS 2411; s. 10, ch. 5202, 1903; GS 3246; RGS 5077; CGL 7179; s. 1129, ch. 71-136.

cf.—s. 250.43 Uniform, etc., not to be worn by persons not in military service.

## CHAPTER 871

## DISTURBING RELIGIOUS AND OTHER ASSEMBLIES

- 871.01 Disturbing schools and religious and other assemblies.  
 871.02 Indictments or informations for disturbing assembly.  
 871.03 Peddling at camp meeting.  
 871.04 Advertising; religious discrimination; public places.

**871.01 Disturbing schools and religious and other assemblies.**—Whoever willfully interrupts or disturbs any school or any assembly of people met for the worship of God or for any lawful purpose shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—ss. 19, 21, 22, ch. 1637, 1868; RS 2627, 2629, 2630; GS 3547; s. 1, ch. 5719, 1907; RGS 5448; CGL 7591; s. 1130, ch. 71-136.

**871.02 Indictments or informations for disturbing assembly.**—The several grand juries of this state in their respective counties may return indictments or the several State Attorneys of the state in their respective circuits may file information against all persons violating s. 871.01, and such indictments or informations, when filed with the Clerk of the Circuit Court in the county where such offense is alleged to have been committed, shall be forthwith certified by him to some court in the county having jurisdiction to try and determine such charge, and said court to which such indictment or information is certified shall proceed to try and determine such charge upon such indictment or information, the same as if affidavit had been made before such court charging the said offense.

**History.**—ss. 2, 3, ch. 5719, 1907; RGS 5449; CGL 7592. cf.—s. 923.03 Form of indictment or information.

**871.03 Peddling at camp meeting.**—Whoever during the time of holding any camp or field meeting for religious purposes, and within 1 mile of the place of holding such meeting, hawks or peddles goods, wares, merchandise, or without permission from the authorities having charge of such meeting, establishes any tent or booth for vending of provisions or refreshments, or practices or engages in gaming or horseracing, or exhibits, or offers to exhibit, shows or plays shall be guilty of a misdemeanor of the second

degree, punishable as provided in s. 775.083; but a person having his usual and regular place of business within such limits is not hereby required to suspend his business.

**History.**—s. 20, ch. 1637, 1868; RS 2628; GS 3548; RGS 5450; CGL 7593; s. 1131, ch. 71-136.

**871.04 Advertising; religious discrimination; public places.**—

(1) Except where the context clearly requires a different meaning, the following terms shall have for the purposes of this section the meaning respectively ascribed to them:

(a) "Person" means any individual, partnership, association, corporation, or organized group of persons, whether incorporated or not.

(b) "Establishment" means any building or part thereof, including, without being limited to, public inns, hotels, motels, apartment hotels, any structure, enclosure, tract of land, and all improvements, appurtenances, and additions, bodies of water whether natural or artificial, and any other place of whatsoever nature to which the general public is or will be admitted, allowed, or invited on payment of a fee, free of charge, or otherwise.

(2) No person, directly or indirectly, for himself or for another, shall publish, post, broadcast by any means, maintain, circularize, issue, display, transmit, or otherwise disseminate or place in any manner before the public with reference to an establishment any advertisement that the patronage of any person is not welcome, or is objectionable, or is not acceptable because of his religion. No person shall cause or solicit another person to violate this section.

(3) This section shall not apply to any establishment which is private or limited to membership only, to any camp administered by any religious organization, group, or sect, admission to which is based on religious belief or affiliation, or to any gathering, meeting, or assembly held under the auspices of any religious organization, group, or sect.

(4) Any person or persons violating this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—ss. 1, 2, ch. 29845, 1955; s. 1132, ch. 71-136.



## CHAPTER 872

## OFFENSES CONCERNING DEAD BODIES AND GRAVES

- 872.01 Dealing in dead bodies.  
 872.02 Disfiguring tomb.  
 872.03 Cremating human bodies; limitation.  
 872.04 Autopsies; consent required, exception.

**872.01 Dealing in dead bodies.**—Whoever buys, sells, or has in his possession for the purpose of buying or selling or trafficking in the dead body of any human being shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083; provided, however, that nothing contained in this section shall be construed to prohibit the obtaining, dissecting, using, and disposing of dead bodies for the purpose of teaching or other appropriate university research by any medical school, dental school, school of nursing, or other university research or teaching unit which is a part of a regularly established or chartered institution of higher learning under the laws of the state.

**History.**—s. 26, ch. 1637, 1868; RS 2625; GS 3545; RGS 5446; CGL 7589; s. 1, ch. 22057, 1943; s. 1, ch. 26724, 1951; s. 1133, ch. 71-136.

**872.02 Disfiguring tomb.**—Whoever willfully destroys, mutilates, defaces, injures, or removes any tomb, monument, gravestone, or other structure or thing placed or designed for a memorial of the dead, or any fence, railing, curb, or other thing intended for the protection or ornamentation of any tomb, monument, gravestone, or other structure before mentioned, or for any enclosure for the burial of the dead, or willfully destroys, mutilates, removes, cuts, breaks, or injures any tree, shrub, or plant placed or being within any such enclosure, or wantonly and maliciously disturbs the contents of a tomb or grave, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 27, ch. 1637, 1868; RS 2626; GS 3546; RGS 5447; CGL 7590; s. 1134, ch. 71-136.

**872.03 Cremating human bodies; limitation.**—

(1) It shall be unlawful for any person, firm, or corporation to cremate any dead human body prior to the expiration of 48 hours after the death of such human body.

(2) Anyone convicted for the violation of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s.

775.083.

**History.**—ss. 1, 2, ch. 21780, 1943; s. 1135, ch. 71-136.

**872.04 Autopsies; consent required, exception.**—

(1) "Autopsy" means a post mortem dissection of a dead human body in order to determine the cause, seat, or nature of disease or injury and includes the retention of tissues customarily removed during the course of autopsy for evidentiary, identification, diagnostic, scientific, or therapeutic purposes.

(2) Unless otherwise authorized by statute, no autopsy shall be performed without the written consent of the spouse, nearest relative, or, if no such next of kin can be found, the person who has assumed custody of the body for purposes of burial. When two or more persons assume custody of the body for such purposes, then the consent of any one of them shall be sufficient to authorize the autopsy.

(3) Any such written consent may be given by telegram, and any telegram purporting to have been sent by a person authorized to give such consent will be presumed to have been sent by such person. A duly witnessed telephone permission is acceptable in lieu of written permission in those circumstances where obtaining written permission would result in undue delay.

(4) If after diligent search and inquiry it is established by the chief law enforcement officer having jurisdiction, through his examination of missing persons records and other inquiry, that no person can be found who can authorize an autopsy as herein provided, then after a reasonable time, any person licensed to practice medicine under chapter 458 or osteopathic medicine under chapter 459, and whose practice involves the usual performance of autopsies, may conduct an autopsy, without written consent, on the remains for purposes of confirming medical diagnosis and suspected communicable diseases; and no cause of action will be brought against such physician for performance of such autopsy. A reasonable time for purposes of this provision shall be not less than 48 hours or more than 72 hours after death.

**History.**—ss. 1-3, ch. 67-87; s. 1, ch. 70-367; s. 1, ch. 78-34; s. 182, ch. 79-164. cf.—s. 406.10 Medical examiners; autopsy facilities.  
 s. 406.11 Examinations, investigations, and autopsies.

## CHAPTER 876

CRIMINAL ANARCHY, TREASON, AND OTHER CRIMES  
AGAINST PUBLIC ORDER

- 876.01 Criminal anarchy, Communism, etc., prohibited.
- 876.02 Criminal anarchy, Communism, etc., defined and made a felony; penalty.
- 876.03 Unlawful assembly for purposes of anarchy, communism, etc.
- 876.04 Allowing unlawful assembly in building prohibited.
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- 876.47 Rights of labor.
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- 876.49 Construction.
- 876.50 Effective period of law.
- 876.51 Short title.
- 876.52 Public mutilation of flag.

**876.01 Criminal anarchy, Communism, etc., prohibited.**—"Criminal anarchy," "criminal Communism," "criminal Naziism," or "criminal Fascism" are doctrines that existing form of constitutional government should be overthrown by force or violence or by any other unlawful means, or by assassination of officials of the Government of the United States or of the several states. The advocacy of such doctrines either by word of mouth or writing or the promotion of such doctrines independently or in collaboration with or under the guidance of officials of a foreign state or an international revolutionary party or group is unlawful.

**History.**—s. 1, ch. 20216, 1941; s. 1136, ch. 71-136. cf.—ss. 870.02, 870.04 Unlawful assemblies generally.

**876.02 Criminal anarchy, Communism, etc., defined and made a felony; penalty.**—Any person who—

(1) By word of mouth or writing advocates, advises, or teaches the duty, necessity, or propriety of overthrowing or overturning existing forms of constitutional government by force or violence; of disobeying or sabotaging or hindering the carrying out of the laws, orders, or decrees of duly constituted civil, naval, or military authorities; or by the assassination of officials of the Government of the United States or of the state, or by any unlawful means or under the guidance of, or in collaboration with, officials, agents, or representatives of a foreign state or an international revolutionary party or group; or

(2) Prints, publishes, edits, issues, or knowingly circulates, sells, distributes, or publicly displays any book, paper, document, or written or printed matter in any form, containing or advocating, advising, or teaching the doctrine that constitutional government should be overthrown by force, violence, or any unlawful means; or

(3) Openly, willfully and deliberately urges, advocates, or justifies by word of mouth or writing the assassination or unlawful killing or assaulting of any official of the Government of the United States or of this state because of his official character, or any other crime, with intent to teach, spread, or advocate the propriety of the doctrines of criminal anarchy, criminal Communism, criminal Naziism, or criminal Fascism; or

(4) Organizes or helps to organize or becomes a member of any society, group, or assembly of persons formed to teach or advocate such doctrines; or

(5) Becomes a member of, associated with or promotes the interest of any criminal anarchistic, Communist, Naziistic or Fascistic organization, or

helps to organize or becomes a member of or affiliated with any subsidiary organization or associated group of persons who advocates, teaches, or advises the principles of criminal anarchy, criminal Communism, criminal Naziism or criminal Fascism;

shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

*History.*—s. 2, ch. 20216, 1941; s. 1137, ch. 71-136.

**876.03 Unlawful assembly for purposes of anarchy, communism, etc.**—Whenever two or more persons assemble for the purpose of promoting, advocating, or teaching the doctrine of criminal anarchy, criminal Communism, criminal Naziism or criminal Fascism, as defined in s. 876.01 of this law, such an assembly or organization is unlawful, and every person voluntarily participating therein by his presence, aid, or instigation shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

*History.*—s. 3, ch. 20216, 1941; s. 1138, ch. 71-136.

**876.04 Allowing unlawful assembly in building prohibited.**—No owner, agent, superintendent, janitor, caretaker, or occupant of any place, building, or room, shall willfully and knowingly permit therein any assemblage of persons prohibited by s. 876.03, and if such person after notification that the premises are so used permits such use to be continued he shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

*History.*—s. 4, ch. 20216, 1941; s. 1139, ch. 71-136.

**876.05 State employees; oath.**—

(1) All persons who now or hereafter are employed by or who now or hereafter are on the payroll of the state, or any of its departments and agencies, subdivisions, counties, cities, school boards and districts of the free public school system of the state or counties, or institutions of higher learning, and all candidates for public office, are hereby required to take an oath before any person duly authorized to take acknowledgments of instruments for public record in the state in the following form:

I, ....., a citizen of the State of Florida and of the United States of America, and being employed by or an officer of ..... and a recipient of public funds as such employee or officer, do hereby solemnly swear or affirm that I will support the Constitution of the United States and of the State of Florida; that I am not a member of the Communist Party; that I have not and will not lend my aid, support, advice, counsel, or influence to the Communist Party; that I do not believe in the overthrow of the Government of the United States or of the State of Florida by force or violence; that I am not a member of any organization or party which believes in or teaches, directly or indirectly, the overthrow of the Government of the United States or of Florida by force or violence.

(2) Said oath shall be filed with the records of the governing official or employing governmental agen-

cy prior to the approval of any voucher for the payment of salary, expenses, or other compensation.

*History.*—s. 1, ch. 25046, 1949.  
cf.—s. 92.50 Oaths, requirements.

**876.06 Discharged for refusal to execute.**—If any person required by ss. 876.05-876.10 to take the oath herein provided for fails to execute the same, the governing authority under which such person is employed shall cause said person to be immediately discharged, and his name removed from the payroll, and such person shall not be permitted to receive any payment as an employee or as an officer where he or she was serving.

*History.*—s. 2, ch. 25046, 1949.

**876.07 Persons giving aid, advice, etc., to Communist Party.**—Any person having taken the oath provided for in s. 876.05 and who thereafter should become a member of the Communist Party or who lends aid, support, advice, counsel, or influence to the Communist Party or who expresses any belief in or advocates the overthrow of the Government of the United States or of the state by violence or force or thereafter becomes a member of an organization or party which believes in or teaches, directly or indirectly, the overthrow of the Government of the United States or of the state by force or violence, shall immediately be discharged from his employment by the employing authority and his name shall be removed from the payroll, and thereafter such person shall not be permitted to receive any payment as an employee or an officer where he or she then was serving. Any person seeking to qualify for public office who fails or refuses to file the oath required by this act shall be held to have failed to qualify as a candidate for public office, and the name of such person shall not be printed on the ballot as a qualified candidate.

*History.*—s. 3, ch. 25046, 1949.

**876.08 Penalty for not discharging.**—Any governing authority or person, under whom any employee is serving or by whom employed who shall knowingly or carelessly permit any such employee to continue in employment after failing to comply with the provisions of ss. 876.05-876.10, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

*History.*—s. 4, ch. 25046, 1949; s. 1140, ch. 71-136.

**876.09 Scope of law.**—

(1) The provisions of ss. 876.05-876.10 shall apply to all employees and elected officers of the state, including the Governor and constitutional officers and all employees and elected officers of all cities, towns, counties, and political subdivisions, including the educational system.

(2) This act shall take precedence over all laws relating to merit, and of Civil Service Law.

*History.*—s. 5, 7, ch. 25046, 1949.

**876.10 False oath; penalty.**—If any person required by the provisions of ss. 876.05-876.10 to execute the oath herein required executes such oath, and it is subsequently proven that at the time of the execution of said oath said individual was guilty of



making a false statement in said oath, he shall be guilty of perjury.

History.—s. 6, ch. 25046, 1949; s. 1141, ch. 71-136.  
cf.—Ch. 837 Perjury.

**876.11 Public place defined.**—For the purpose of ss. 876.11-876.21 the term "public place" includes all walks, alleys, streets, boulevards, avenues, lanes, roads, highways, or other ways or thoroughfares dedicated to public use or owned or maintained by public authority; and all grounds and buildings owned, leased by, operated, or maintained by public authority.

History.—s. 1, ch. 26542, 1951.

**876.12 Unlawful to wear hood, etc.; on street, etc.**—No person or persons over 16 years of age shall, while wearing any mask, hood, or device whereby any portion of the face is so hidden, concealed, or covered as to conceal the identity of the wearer, enter upon, or be or appear upon any lane, walk, alley, street, road, highway, or other public way in this state.

History.—s. 2, ch. 26542, 1951.

**876.13 Same; on public property.**—No person or persons shall in this state, while wearing any mask, hood, or device whereby any portion of the face is so hidden, concealed, or covered as to conceal the identity of the wearer, enter upon, or be, or appear upon or within the public property of any municipality or county of the state.

History.—s. 3, ch. 26542, 1951.

**876.14 Same; on property of another.**—No person or persons over 16 years of age shall, while wearing a mask, hood, or device whereby any portion of the face is so hidden, concealed, or covered as to conceal the identity of the wearer, demand entrance or admission or enter or come upon or into the premises, enclosure, or house of any other person in any municipality or county of this state.

History.—s. 4, ch. 26542, 1951.

**876.15 Same; demonstration or meeting.**—No person or persons over 16 years of age, shall, while wearing a mask, hood, or device whereby any portion of the face is so hidden, concealed, or covered as to conceal the identity of the wearer, hold any manner of meeting, make any demonstration upon the private property of another unless such person or persons shall have first obtained from the owner or occupier of the property his or her written permission to do so.

History.—s. 5, ch. 26542, 1951.

**876.16 Certain exemptions.**—The following are exempted from the provisions of ss. 876.11-876.15:

(1) Any person or persons wearing traditional holiday costumes;

(2) Any person or persons engaged in trades and employment where a mask is worn for the purpose of ensuring the physical safety of the wearer, or because of the nature of the occupation, trade, or profession;

(3) Any person or persons using masks in theatrical productions including use in Gasparilla celebra-

tions and masquerade balls;

(4) Persons wearing gas masks prescribed in civil defense drills and exercises, or emergencies.

History.—s. 6, ch. 26542, 1951.

**876.17 Burning or flaming cross; in public.**—

It shall be unlawful for any person or persons to place or cause to be placed in a public place in the state a burning or flaming cross or any manner of exhibit in which a burning or flaming cross, real or simulated, is a whole or a part.

History.—s. 7, ch. 26542, 1951.

**876.18 Same; on property of another.**—It shall be unlawful for any person or persons to place or cause to be placed on the property of another in the state a burning or flaming cross or any manner of exhibit in which a burning or flaming cross, real or simulated, is a whole or part without first obtaining written permission of the owner or occupier of the premises to do so.

History.—s. 8, ch. 26542, 1951.

**876.19 Exhibits that intimidate.**—It shall be unlawful for any person or persons to place, or cause to be placed, anywhere in the state any exhibit of any kind whatsoever with the intention of intimidating any person or persons, to prevent them from doing any act which is lawful, or to cause them to do any act which is unlawful.

History.—s. 9, ch. 26542, 1951.

**876.20 Wearing mask and placing exhibit to intimidate.**—It shall be unlawful for any person or persons while wearing a mask or any device whereby the face is so covered as to conceal the identity of the wearer to place, or to cause to be placed, at, on, or in any place any exhibit of any kind whatsoever.

History.—s. 10, ch. 26542, 1951.

**876.21 Penalty.**—Any person or persons violating ss. 876.11-876.20 shall be guilty of a misdemeanor or of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 11, ch. 26542, 1951; s. 1142, ch. 71-136.

**876.22 Definitions.**—As used in ss. 876.23-876.31:

(1) "Organizations" means an organization, corporation, company, partnership, association, trust, foundation, fund, club, society, committee, political party, or any group of persons, whether or not incorporated, permanently or temporarily associated together for joint action or advancement of views on any subject or subjects.

(2) "Subversive organization" means any organization which engages in or advocates, abets, advises, or teaches, or a purpose of which is to engage in or advocate, abet, advise, or teach activities intended to overthrow, destroy, or to assist in the overthrow or destruction of the constitutional form of the Government of the United States, the constitution or government of the state, or of any political subdivision of either of them, by revolution, force, violence, or other unlawful means.

(3) "Foreign subversive organization" means any organization directed, dominated, or controlled, di-

rectly or indirectly, by a foreign government which engages in or advocates, abets, advises, or teaches, or a purpose of which is to engage in or to advocate, abet, advise, or teach, activities intended to overthrow, destroy, or to assist in the overthrow or destruction of the constitutional form of the Government of the United States, or of this state, or of any political subdivision of either of them, and to establish in place thereof any form of government the direction and control of which is to be vested in, or exercised by or under, the domination or control of any foreign government, organization, or individual.

(4) "Foreign government" means the government of any country, nation, or group of nations other than the Government of the United States or of one of the states thereof.

(5) "Subversive person" means any person who commits, attempts to commit, or aids in the commission, or advocates, abets, advises, or teaches by any means any person to commit, attempt to commit, or aid in the commission of any act intended to overthrow, destroy, or to assist in the overthrow or destruction of the constitutional form of the Government of the United States, or of this state, or any political subdivision of either of them, by revolution, force, violence, or other unlawful means; or who is a member of a subversive organization or a foreign subversive organization.

History.—s. 1, ch. 28221, 1953.

#### **876.23 Subversive activities unlawful; penalty.—**

(1) It shall be a felony for any person knowingly and willfully to:

(a) Commit, attempt to commit, or aid in the commission of any act intended to overthrow, destroy, to assist the overthrow or destruction of the constitutional form of the Government of the United States, or of the state, or any political subdivision of either of them, by revolution, force, violence, or other unlawful means; or

(b) Advocate, abet, advise, or teach by any means any person to commit, attempt to commit, or assist in the commission of any such act under such circumstances as to constitute a clear and present danger to the security of the United States, or of this state, or of any political subdivision of either of them; or

(c) Conspire with one or more persons to commit any such act; or

(d) Assist in the formation or participate in the management or to contribute to the support of any subversive organization or foreign subversive organization knowing said organization to be a subversive organization or a foreign subversive organization; or

(e) Destroy any books, records, or files, or secrete any funds in this state of a subversive organization or a foreign subversive organization, knowing said organization to be such.

(2) Any person who violates any of the provisions of this section shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 2, ch. 28221, 1953; s. 1143, ch. 71-136.

**876.24 Membership in subversive organization; penalty.—**It shall be unlawful for any person after the effective date of this law to become or after July 1, 1953, to remain a member of a subversive organization or a foreign subversive organization knowing said organization to be a subversive organization or foreign subversive organization. Any person convicted of violating this section shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 3, ch. 28221, 1953; s. 1144, ch. 71-136.

**876.25 Persons convicted under s. 876.23 or s. 876.24 not to hold office or vote.—**Any person convicted by a court of competent jurisdiction of violating any of the provisions of s. 876.23 or s. 876.24, in addition to all other penalties therein provided, shall from the date of such conviction be barred from:

(1) Holding any office, elective or appointive, or any other position of profit or trust in, or employment by, the government of the state or of any agency thereof, or of any county, municipal corporation, or other political subdivision of said state;

(2) Filing or offering for election to any public office in the state; or

(3) Voting in any election held in this state.

History.—s. 4, ch. 28221, 1953.

**876.26 Unlawful for subversive organizations to exist or function.—**It shall be unlawful for any subversive organization or foreign subversive organization to exist or function in the state and any organization which by a court of competent jurisdiction is found to have violated the provisions of this section shall be dissolved, and if it be a corporation organized and existing under the laws of the state, a finding by a court of competent jurisdiction that it has violated the provisions of this section shall constitute legal cause for forfeiture of its charter and its charter shall be forfeited, and all funds, books, records, and files of every kind and all other property of any organization found to have violated the provisions of this section shall be seized by and for the state, the funds to be deposited in the State Treasury, and the books, records, files, and other property to be turned over to the Attorney General of Florida.

History.—s. 5, ch. 28221, 1953.

**876.27 Enforcement of ss. 876.22-876.31.—**The Department of Legal Affairs, all State Attorneys, the Department of State, and all law enforcement officers of this state shall each be charged with the duty of enforcing the provisions of ss. 876.22-876.31.

History.—s. 6, ch. 28221, 1953; ss. 10, 11, 35, ch. 69-106; s. 34, ch. 73-334.

**876.28 Grand jury to investigate violations of ss. 876.22-876.31.—**The judge of any court exercising general criminal jurisdiction when in his discretion it appears appropriate, or when informed by the Department of Legal Affairs that there is information or evidence of the character described in s. 876.27 to be considered by the grand jury, shall charge the grand jury to inquire into violations of ss. 876.22-876.31 for the purpose of proper action, and further to inquire generally into the purposes, processes, activities, and any other matters affecting communism

or any related or other subversive organizations, associations, groups, or persons.

**History.**—s. 7, ch. 28221, 1953; ss. 11, 35, ch. 69-106.

**876.29 Subversive person prohibited from holding office or employment.**—No subversive person, as defined in s. 876.22, shall, after conviction, be eligible for employment in, or appointment to, any office or any position of trust or profit in the government of, or in the administration of the business of this state, or of any county, municipality, or other political subdivision of this state.

**History.**—s. 8, ch. 28221, 1953.

**876.30 Subversive person not to be candidate for election.**—No person shall become a candidate nor shall be certified by any political party as a candidate for election to any public office created by the Constitution or laws of this state if he has ever been tried and convicted as a subversive person as defined in s. 876.22.

**History.**—s. 9, ch. 28221, 1953.

**876.31 Short title; ss. 876.22-876.30.**—Sections 876.22-876.30 may be cited as the "Subversive Activities Law."

**History.**—s. 10, ch. 28221, 1953.

**876.32 Treason.**—Treason against the state shall consist only in levying war against the same, or in adhering to the enemies thereof, or giving them aid and comfort. Whoever commits treason against this state shall be guilty of a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—ss. 1, 2, ch. 1637, 1868; RS 2372; GS 3197; RGS 5027; CGL 7129; s. 702, ch. 71-136; s. 65, ch. 74-383.

**Note.**—Former s. 779.01.

**876.33 Misprision of treason.**—Whoever having knowledge of the commission of treason conceals the same and does not, as soon as may be, disclose and make known such treason to the Governor or one of the justices of the Supreme Court or a judge of the Circuit Court, shall be judged guilty of the offense of misprision of treason, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 2, sub-ch. 2, ch. 1637, 1868; RS 2373; GS 3198; RGS 5028; CGL 7130; s. 703, ch. 71-136; s. 65, ch. 74-383.

**Note.**—Former s. 779.02.

**876.34 Combination to usurp government.**—If two or more persons shall combine by force to usurp the government of this state, or to overturn the same, or interfere forcibly in the administration of the government or any department thereof, the person so offending shall be guilty of a felony of the second degree and punished as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 5, ch. 1637, 1868; RS 2374; GS 3199; RGS 5029; CGL 7131; s. 704, ch. 71-136; s. 65, ch. 74-383.

**Note.**—Former s. 779.03.

**876.35 Combination against part of the people of the state.**—If two or more persons shall combine to levy war against any part of the people of this state, or to remove them forcibly out of this state, or to remove them from their habitations to any other

part of the state by force, or shall assemble for that purpose, every person so offending shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 6, ch. 1637, 1868; RS 2375; GS 3200; RGS 5030; CGL 7132; s. 705, ch. 71-136; s. 65, ch. 74-383.

**Note.**—Former s. 779.04.

**876.36 Inciting insurrection.**—If any person shall incite an insurrection or sedition amongst any portion or class of the population of this state, or shall attempt by writing, speaking, or by any other means to incite such insurrection or sedition, the person so offending shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 3, ch. 1466, 1866; RS 2376; GS 3201; RGS 5031; CGL 7133; s. 706, ch. 71-136; s. 65, ch. 74-383.

**Note.**—Former s. 779.05.

**876.37 Definitions.**—As used in ss. 876.37-876.50:

(1) "Highway" includes any private or public street, way, or other place used for travel to or from property.

(2) "Highway commissioners" means any individual, board, or other body having authority under then existing law to discontinue the use of the highway which it is desired to restrict or close to public use and travel.

(3) "Public utility" includes any pipeline, gas, electric, heat, water, oil, sewer, telephone, telegraph, radio, railway, railroad, airplane, transportation, communication, or other system, by whomsoever owned or operated for public use.

**History.**—s. 1, ch. 20252, 1941; s. 65, ch. 74-383; s. 246, ch. 77-104.

**Note.**—Former s. 779.06.

**876.38 Intentional injury to or interference with property.**—Whoever intentionally destroys, impairs, or injures, or interferes or tampers with, real or personal property and such act hinders, delays, or interferes with the preparation of the United States, any country with which the United States shall then maintain friendly relations, or any of the states for defense or for war, or with the prosecution of war by the United States, is guilty of a life felony, punishable as provided in s. 775.082.

**History.**—s. 2, ch. 20252, 1941; s. 707, ch. 71-136; s. 4, ch. 72-724; s. 65, ch. 74-383.

**Note.**—Former s. 779.07.

**876.39 Intentionally defective workmanship.**—Whoever intentionally makes or causes to be made or omits to note on inspection any defect in any article or thing with reasonable grounds to believe that such article or thing is intended to be used in connection with the preparation of the United States or of any country with which the United States shall then maintain friendly relations, or any of the states for defense or for war, or for the prosecution of war by the United States, or that such article or thing is one of a number of similar articles or things, some of which are intended so to be used, shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084; provided, if such person so acts or so fails to act with the intent to hinder, delay or interfere with the preparation of the United States or of any country with which the



United States shall then maintain friendly relations, or of any of the states for defense or for war, or with the prosecution of war by the United States, the minimum punishment shall be imprisonment in the state prison for not less than 1 year.

**History.**—s. 3, ch. 20252, 1941; s. 708, ch. 71-136; s. 65, ch. 74-383.

**Note.**—Former s. 779.08.

**876.40 Attempts.**—Whoever attempts to commit any of the crimes defined by this law shall be liable to one-half the punishment by imprisonment, or by fine, or both, as prescribed in s. 876.39 hereof. In addition to the acts which constitute an attempt to commit a crime under the law of this state, the solicitation or incitement of another to commit any of the crimes defined by this law not followed by the commission of the crime, the collection or assemblage of any materials with the intent that the same are to be used then or at a later time in the commission of such crime, or the entry, with or without permission, of a building, enclosure, or other premises of another with the intent to commit any such crime therein or thereon shall constitute an attempt to commit such crime.

**History.**—s. 4, ch. 20252, 1941; s. 65, ch. 74-383; s. 246, ch. 77-104.

**Note.**—Former s. 779.09.

**876.41 Conspirators.**—If two or more persons conspire to commit any crime defined by this law, each of such persons is guilty of conspiracy and subject to the same punishment as if he had committed the crime which he conspired to commit, whether or not any act be done in furtherance of the conspiracy. It shall not constitute any defense or ground of suspension of judgment, sentence or punishment on behalf of any person prosecuted under this section, that any of his fellow conspirators has been acquitted, has not been arrested or convicted, is not amenable to justice or has been pardoned or otherwise discharged before or after conviction.

**History.**—s. 5, ch. 20252, 1941; s. 65, ch. 74-383.

**Note.**—Former s. 779.10.

**876.42 Witnesses' privileges.**—No person shall be excused from attending and testifying, or producing any books, papers, or other documents before any court, magistrate, referee or grand jury upon any investigation, proceeding or trial, for or relating to or concerned with a violation of any section of this law or attempt to commit such violation, upon the ground or for the reason that the testimony or evidence, documentary or otherwise required by the state may tend to convict him of a crime or to subject him to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be received against him, upon any criminal investigation, proceeding or trial, except upon a prosecution for perjury or contempt of court, based upon the giving or producing of such testimony.

**History.**—s. 6, ch. 20252, 1941; s. 65, ch. 74-383.

**Note.**—Former s. 779.11.

cf.—s. 12(e), Art. V, State Const. Access by Judicial Qualifications Commission

to Grand Jury information.

**876.43 Unlawful entry on property.**—Any individual, partnership, association, corporation, municipal corporation or state or any political subdivision thereof engaged in, or preparing to engage in, the manufacture, transportation or storage of any product to be used in the preparation of the United States, or of any country with which the United States shall then maintain friendly relations, or of any of the states for defense or for war or in the prosecution of war by the United States, or the manufacture, transportation, distribution or storage of gas, oil, coal, electricity or water, or any of said natural or artificial persons operating any public utility, whose property, except where it fronts on water or where there are entrances for railway cars, vehicles, persons or things, is surrounded by a fence or wall, or a fence or wall and buildings, may post around his or its property at each gate, entrance, dock or railway entrance and every 100 feet of waterfront a sign reading "No Entry Without Permission." Whoever without permission of such owner shall willfully enter upon premises so posted shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 7, ch. 20252, 1941; s. 709, ch. 71-136; s. 65, ch. 74-383.

**Note.**—Former s. 779.12.

**876.44 Questioning and detaining suspected persons.**—Any peace officer or any other person employed as watchman, guard, or in a supervisory capacity on premises posted as provided in s. 876.43 may stop any person found on any premises to which entry without permission is forbidden by s. 876.43 and may detain him for the purpose of demanding, and may demand, of him, his name, address and business in such place. If said peace officer or employee has reason to believe from the answers of the person so interrogated that such person has no right to be in such place, said peace officer shall forthwith release such person or he may arrest such person without a warrant on the charge of violating the provisions of s. 876.43; and said employee shall forthwith release such person or turn him over to a peace officer, who may arrest him without a warrant on the charge of violating the provisions of s. 876.43.

**History.**—s. 8, ch. 20252, 1941; s. 65, ch. 74-383; s. 246, ch. 77-104.

**Note.**—Former s. 779.13.

**876.45 Closing and restricting use of highway.**—

(1) Any individual, partnership, association, corporation, municipal corporation or state or any political subdivision thereof engaged in or preparing to engage in the manufacture, transportation or storage of any product to be used in the preparation of the United States, or of any country with which the United States shall then maintain friendly relations or any of the states for defense or for war or in the prosecution of war by the United States, or in the manufacture, transportation, distribution or storage of gas, oil, coal, electricity or water, or any of said natural or artificial persons operating any public utility, who has property so used which he or it believes will be endangered if public use and travel is not restricted or prohibited on one or more highways or parts thereof upon which such property abuts,

may petition the highway commissioners of any city, town or county to close one or more of said highways or parts thereof to public use and travel or to restrict by order the use and travel upon one or more of said highways or parts thereof.

(2) Upon receipt of such petition, the highway commissioners shall set a day for hearing and give notice thereof by publication in a newspaper having general circulation in the city, town or county in which such property is located, such notice to be at least 7 days prior to the date set for hearing. If after hearing the highway commissioners determine that the public safety and the safety of the property of the petitioner so require, they shall by suitable order close to public use and travel or reasonably restrict the use of and travel upon one or more of said highways or parts thereof; provided, the highway commissioners may issue written permits to travel over the highways so closed or restricted to responsible and reputable persons for such term, under such conditions and in such form as said commissioners may prescribe. Appropriate notices in letters at least 3 inches high shall be posted conspicuously at each end of any highway so closed or restricted by such order. The highway commissioners may at any time revoke or modify any order so made.

**History.**—s. 9, ch. 20252, 1941; s. 65, ch. 74-383.  
**Note.**—Former s. 779.14.

**876.46 Penalty for going upon closed or restricted highway.**—Whoever violates any order made under s. 876.45 shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 10, ch. 20252, 1941; s. 710, ch. 71-136; s. 65, ch. 74-383; s. 246, ch. 77-104.  
**Note.**—Former s. 779.15.

**876.47 Rights of labor.**—Nothing in this law shall be construed to impair, curtail, or destroy the rights of employees and their representatives to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining

or other mutual aid or protection.

**History.**—s. 11, ch. 20252, 1941; s. 65, ch. 74-383.  
**Note.**—Former s. 779.16.

**876.48 Relation to other statutes.**—All laws and parts of laws inconsistent with ss. 876.37-876.51 are hereby suspended in their application to any proceedings under said sections. If conduct prohibited by said sections is also made unlawful by another or other laws, the offender may be convicted for the violation of said sections or of any other law or laws.

**History.**—s. 14, ch. 20252, 1941; s. 65, ch. 74-383; s. 246, ch. 77-104.  
**Note.**—Former s. 779.17.

**876.49 Construction.**—Sections 876.37-876.51 shall be construed to the end that the greatest force and effect may be given to its provisions for the promotion of national and state safety.

**History.**—s. 15, ch. 20252, 1941; s. 65, ch. 74-383; s. 246, ch. 77-104.  
**Note.**—Former s. 779.18.

**876.50 Effective period of law.**—All orders made under the provision of ss. 876.37-876.51 shall be in full force whenever the United States is at war; provided, any violation of said sections, committed while they are in force, may be prosecuted and punished thereafter, whether or not said sections are in force at the time of such prosecution and punishment.

**History.**—s. 16, ch. 20252, 1941; s. 65, ch. 74-383; s. 183, ch. 79-164.  
**Note.**—Former s. 779.19.

**876.51 Short title.**—Sections 876.37-876.51 may be cited as the "Florida Sabotage Prevention Law."

**History.**—s. 13, ch. 20252, 1941; s. 65, ch. 74-383; s. 246, ch. 77-104.  
**Note.**—Former s. 779.20.

**876.52 Public mutilation of flag.**—Whoever publicly mutilates, defaces, or tramples upon or burns with intent to insult any flag, standard, colors, or ensign of the United States or of Florida shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 1, ch. 67-2200; s. 711, ch. 71-136; s. 65, ch. 74-383.  
**Note.**—Former s. 779.21.  
**cf.**—ss. 256.06, 256.09 Mutilation or disrespect of flag, and penalty.

## CHAPTER 877

## MISCELLANEOUS CRIMES

- 877.01 Instigation of litigation; penalty.
- 877.02 Solicitation of legal services or retainers therefor; penalty.
- 877.03 Breach of the peace; disorderly conduct.
- 877.04 Tattooing prohibited; penalty.
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- 877.06 Labeling of beef not slaughtered according to state or United States standards; enforcement; penalty.
- 877.061 Marketing establishments; maintenance of scales.
- 877.08 Coin-operated vending machines and parking meters; defined; prohibited acts, penalties.
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- 877.14 Merchandising of dogs; required records; penalty for violation.
- 877.15 Failure to control or report dangerous fire.
- 877.16 Exhibition of deformed animals prohibited; penalty.

**877.01 Instigation of litigation; penalty.—**

(1) Whoever gives, promises, offers or conspires to give, promise or offer, to anyone any bribe, money, goods, presents, reward or any valuable thing whatsoever with the intent and purpose of stirring up strife and litigation; or with intent and purpose of assisting, seeking out, influencing, or advising the accused, sick, injured, uninformed, or others to bring suit or seek professional legal services or advice, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Whoever, in any way, solicits, receives or accepts or agrees to receive or accept, or who conspires to receive or accept, any bribe, money, goods, presents, reward or any valuable thing whatsoever, with the intent and purpose of stirring up strife and litigation; or with the intent or purpose of seeking out, influencing, assisting or advising the accused, sick, injured, uninformed or others to bring suit, or seek professional legal services, counsel or advice, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) Any person violating the provisions of this section shall not be privileged from testifying, but if he does testify in response to a subpoena issued by the state attorney or court having jurisdiction of such offense, nothing said by him in his testimony shall be admissible in any civil or criminal action against him, nor shall he be subjected to any penalty or forfeiture for or on account of any such testimony or evidence so given or produced.

(4) Nothing herein shall apply to the division of

legal fees by and between attorneys at law.

(5) This section shall be taken to be cumulative and shall not be construed to amend or repeal any other valid law, code, ordinance, rule, or penalty now in effect.

**History.**—ss. 1-5, ch. 59-381; s. 1145, ch. 71-136; s. 34, ch. 73-334.

**877.02 Solicitation of legal services or retainers therefor; penalty.—**

(1) It shall be unlawful for any person or his agent, employee or any person acting on his behalf, to solicit or procure through solicitation either directly or indirectly legal business, or to solicit or procure through solicitation a retainer, written or oral, or any agreement authorizing an attorney to perform or render legal service, or to make it a business to solicit or procure such business, retainers or agreements; provided, however, that nothing herein shall prohibit or be applicable to banks, trust companies, lawyer reference services, legal aid associations, lay collection agencies, railroad companies, insurance companies and agencies, and real estate companies and agencies, in the conduct of their lawful businesses, and in connection therewith and incidental thereto forwarding legal matters to attorneys at law when such forwarding is authorized by the customers or clients of said businesses and is done pursuant to the canons of legal ethics as pronounced by the Supreme Court of Florida.

(2) It shall be unlawful for any person in the employ of or in any capacity attached to any hospital, sanitarium, police department, wrecker service or garage, prison or court, or for a person authorized to furnish bail bonds, investigators, photographers, insurance or public adjusters, to communicate directly or indirectly with any attorney or person acting on said attorney's behalf for the purpose of aiding, assisting or abetting such attorney in the solicitation of legal business or the procurement through solicitation of a retainer, written or oral, or any agreement authorizing the attorney to perform or render legal services.

(3) Any person violating any provision of this section shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(4) This section shall be taken to be cumulative and shall not be construed to amend or repeal any other valid law, code, ordinance, rule, or penalty now in effect.

**History.**—ss. 1-4, ch. 59-391; s. 1146, ch. 71-136.

**877.03 Breach of the peace; disorderly conduct.**—Whoever commits such acts as are of a nature to corrupt the public morals, or outrage the sense of public decency, or affect the peace and quiet of persons who may witness them, or engages in brawling or fighting, or engages in such conduct as to constitute a breach of the peace or disorderly conduct, shall be guilty of a misdemeanor of the second



degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 1, ch. 59-325; s. 1147, ch. 71-136.

**877.04 Tattooing prohibited; penalty.—**

(1) It is unlawful for any person to tattoo the body of any human being; except that tattooing may be performed by a person licensed to practice medicine or dentistry under chapters 458 and 459 or chapter 466, or by a person under his direction.

(2) Any person who violates the provisions of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—ss. 1, 2, ch. 59-439; s. 1, ch. 69-118; s. 1148, ch. 71-136; s. 1, ch. 77-174.

**877.05 Killing young veal for sale; penalty; exception.—**Whoever kills or causes to be killed for the purpose of sale, any calf less than four weeks old, and knowingly sells, or has in his possession with intent to sell, the meat of any calf killed when less than 4 weeks old, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083. This section shall not apply to calves slaughtered on the premises of meat packing or slaughtering establishments operating under state or federal meat inspection supervision.

**History.**—s. 2, ch. 1637, 1868; RS 2661; GS 3590; RGS 5519; CGL 7684; s. 1, ch. 59-150; s. 1149, ch. 71-136.

**Note.**—See former s. 585.42.

**877.06 Labeling of beef not slaughtered according to state or United States standards; enforcement; penalty.—**

(1) Every person, firm or corporation operating a restaurant or any other eating place, or retail or wholesale market or packinghouse, in this state, and who sells beef that has not been slaughtered and inspected according to standards established by either the Government of Florida or of the United States, shall mark, stamp, or describe the same by the following words, "slaughtered in" followed by the name of the state or country and the words "has not been slaughtered and inspected according to federal or state standards."

(2)(a) Packinghouses and wholesale and retail meat markets before sale of beef which is within the purview of subsection (1) shall plainly stamp on each carcass, each carton, each can and each container, the words prescribed in subsection (1) and all advertising as to the sale of such beef shall include such words; provided, however, that a conspicuous sign containing the words prescribed in subsection (1) visibly displayed near the display of such beef in retail markets may be used when the stamping of individual cuts of beef is impractical.

(b) It shall be the duty of the Department of Agriculture and Consumer Services through its agents or inspectors to enforce the provisions of this subsection.

(3)(a) Restaurants or other eating places advertising their meals or food, by menus or otherwise, shall set out plainly in such menus, advertisements or otherwise as to beef coming within the purview of the law the words prescribed in subsection (1).

(b) It shall be the duty of the Division of Hotels and Restaurants of the Department of Business Reg-

ulation through its agents or inspectors to enforce the provisions of this subsection.

(4) Any person willfully and knowingly violating any of the provisions of this section or any person who fails to comply with any of the requirements hereof shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and each day during which such a violation shall continue, shall be deemed a separate violation and a separate offense.

(5) Nothing herein shall be construed to prohibit the use of additional words in describing the grade, quality or kind of such beef.

**History.**—ss. 1-5, ch. 65-29; ss. 14, 16, 35, ch. 69-106; s. 1150, ch. 71-136.

**877.061 Marketing establishments; maintenance of scales.—**

(1) Any milk plant, meat-processing plant or any other marketing establishment which purchases dairy and agricultural products directly from the producer, his agent or employee on the basis of the weight of the product shall maintain scales in a location in the plant or other marketing establishment where the seller-producer and purchaser or their agent shall have the right and opportunity to attest to the weight thereof.

(2) The Department of Agriculture and Consumer Services shall designate agents to inspect such scales as often as it deems practical and necessary.

(3) Any person who willfully and knowingly violates the provisions of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 1, ch. 67-119; ss. 14, 35, ch. 69-106; s. 1151, ch. 71-136.

**877.08 Coin-operated vending machines and parking meters; defined; prohibited acts, penalties.—**

(1) A "coin-operated vending machine" or "parking meter," for the purposes of this act, is defined to be any machine, contrivance, or device that is adapted for use in such a way that, as the result of the insertion of any piece of money, coin or other object, the machine, contrivance, parking meter or device is caused to operate or may be operated and by reason of such operation the user may become entitled to receive any food, drink, telephone or telegraph service, insurance protection, parking privilege or any other personal property, service, protection, right or privilege of any kind or nature whatsoever.

(2) Whoever maliciously or mischievously molests, opens, breaks, injures, damages, or inserts any part of his body or any instrument into any coin-operated vending machine or parking meter of another, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(3) Whoever molests, opens, breaks, injures, damages, or inserts any part of his body or any instrument into any coin-operated vending machine or parking meter of another with intent to commit larceny is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(4) Whoever violates the provisions of subsection (3) a second time, and is convicted of such second separate offense, either at the same term or a subsequent term of court, shall be guilty of a felony of the

third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—ss. 1-3, ch. 65-165; s. 1153, ch. 71-136.

#### **877.09 Tampering with or damaging sewer systems.—**

(1) Whoever willfully or fraudulently, without the consent of any person, firm or corporation or lessee, trustee or receiver owning, leasing, operating or managing any sewer system, shall tap, make or cause to be made any connection with, injure or knowingly to suffer to be injured, tamper or meddle with, plug or in any way hinder, use without authorization, or interfere with any lines, mains, pipes, laterals, collectors, connections, interceptors, manholes, appliances or appurtenances used for or in connection with any sewer system and belonging to such person, firm or corporation or lessee, trustee, or receiver, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) The existence of any tap, connection to, unauthorized use of, or interference with any line, main, pipe, lateral, collector, connection, interceptor or other appliance or appurtenance used for or in connection with any sewer system and belonging to any person, firm or corporation or lessee, trustee or receiver owning, leasing, operating or managing any sewer system shall be prima facie evidence of intent to violate this law by the person receiving the direct benefit from such tap, connection or interference.

History.—ss. 1, 2, ch. 65-232; s. 1154, ch. 71-136.

#### **877.10 Real property; dual contracts prohibited.—**

(1) It is unlawful for any person to knowingly make, issue, deliver or receive dual contracts for the purchase or sale of real property. Dual contracts, either written or oral, are two contracts concerning the same parcel of real property, one of which states the true and actual purchase price and one of which states a purchase price in excess of the true and actual purchase price and is used as an inducement for mortgage investors to make a loan commitment on such real property in reliance upon the stated inflated value.

(2) Any violation of this section is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 1, ch. 65-531; s. 1155, ch. 71-136.

#### **877.11 Inhalation or possession of harmful chemical substances; penalties.—**

(1) DEFINITION.—As used in this section, the term "chemical substance" shall mean any natural, artificial, or pharmaceutical substance, including model glue, whether gaseous, liquid, or solid, the fumes of which, when inhaled by a human being, cause a condition of, or induce or produce symptoms of, intoxication, elation, euphoria, dizziness, excitement, irrational behavior, exhilaration, paralysis, stupefaction or dulling of the senses of the nervous system, or a distortion or disturbance of the auditory, visual, or mental processes.

(2) INHALATION PROHIBITED.—It shall be unlawful for any person intentionally to smell or inhale the fumes of any chemical substance, or to

induce any other person to do so, for the purpose of causing a condition of, or inducing symptoms of, intoxication, elation, euphoria, dizziness, excitement, irrational behavior, exhilaration, paralysis, stupefaction, or dulling of the senses of the nervous system or for the purpose of in any manner changing, distorting, or disturbing the auditory, visual, or mental processes. This section shall not apply to the inhalation of any anesthesia for medical or dental purposes.

(3) POSSESSION REGULATED.—It shall be unlawful for any person intentionally to possess any chemical substance for the purpose of using the same in the manner prohibited by subsection (2).

(4) INDUCING OTHER PERSONS.—It shall be unlawful for any person intentionally to possess, buy, sell, or otherwise transfer any chemical substance for the purpose of inducing or aiding any other person to violate the provisions of subsection (2).

(5) PENALTIES.—Any person who violates any of the provisions of this section shall upon conviction be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—ss. 1, 2, ch. 67-416; s. 1, ch. 70-165; s. 1156, ch. 71-136.

#### **877.13 Educational institutions, unlawful interruption or interference, school campus or school function disorders prohibited.—**

(1) It is unlawful for any person:

(a) Knowingly to disrupt or interfere with the lawful administration or functions of any educational institution in this state.

(b) Knowingly to advise, counsel or instruct any school pupil or school employee to disrupt any school function or classroom.

(c) Knowingly to interfere with the attendance of any other school pupil or school employee in a school or classroom.

(d) To conspire to riot or to engage in any school campus or school function disruption or disturbance which interferes with the educational processes.

(2) This section shall apply to all educational institutions.

(3) Any person who violates the provisions of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 1, ch. 69-274; s. 1158, ch. 71-136; s. 1, ch. 73-177.

#### **877.14 Merchandising of dogs; required records; penalty for violation.—**

(1) Every person engaged in the business of selling dogs shall keep a complete and true record of all transactions, showing the date of transaction and the name and address of the person from whom each dog was purchased or otherwise obtained and to whom it was sold. The record also should show a sufficient description of the dog such as breed, sex, color, markings, and distinguishing features. The record shall at all times be subject to the inspection of all police and peace officers.

(2) Any person violating the provisions of this section shall be guilty of a misdemeanor of the sec-

ond degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—ss. 1, 2, ch. 69-285; s. 1159, ch. 71-136.

**877.15 Failure to control or report dangerous fire.**—Any person who knows, or has reasonable grounds to believe, that a fire is endangering the life or property of another, and who fails to take reasonable measures to put out or control the fire when he can do so without substantial risk to himself, or who fails to give a prompt fire alarm, is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if:

(1) He knows that he is under an official, contractual, or other legal duty to control or combat the fire; or

(2) The fire was started lawfully by him or with his assent and was started on property in his custody

or control.

**History.**—s. 3, ch. 79-108.

**877.16 Exhibition of deformed animals prohibited; penalty.**—Whoever shall exhibit for pay or compensation any crippled or physically distorted, malformed, or disfigured beast, bird, or animal in any circus, show, or similar place, or any other place to which an admission fee is charged, whoever knowingly advertises or knowingly causes to be advertised any such exhibition, and whoever solicits or procures the attendance of others at such exhibition with knowledge of the nature thereof, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 2, ch. 8524, 1921; CGL 7674; s. 1124, ch. 71-136.

**Note.**—Former s. 867.02.



## CHAPTER 893

## DRUG ABUSE PREVENTION AND CONTROL

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**893.01 Short title.**—This chapter shall be cited and known as the "Florida Comprehensive Drug Abuse Prevention and Control Act."

History.—s. 1, ch. 73-331.

**893.02 Definitions.**—The following words and phrases as used in this chapter shall have the following meanings, unless the context otherwise requires:

(1) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a person or animal.

(2) "Cannabis" means all parts of any plant of the genus *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin.

(3) "Controlled substance" means any substance named or described in Schedules I through V of s. 893.03. Laws controlling the manufacture, distribution, preparation, dispensing, or administration of such substances are drug abuse laws.

(4) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

(5) "Dispense" means the transfer of possession of one or more doses of a medicinal drug by a pharmacist or other licensed practitioner to the ultimate consumer thereof or to one who represents that it is his intention not to consume or use the same but to transfer the same to the ultimate consumer or user for consumption by the ultimate consumer or user.

(6) "Distribute" means to deliver, other than by administering or dispensing, a controlled substance.

(7) "Distributor" means a person who distributes.

(8) "Department" means the Department of

Health and Rehabilitative Services.

(9) "Hospital" means an institution for the care and treatment of the sick and injured, licensed pursuant to the provisions of chapter 395 or owned or operated by the state or Federal Government.

(10) "Laboratory" means a laboratory approved by the Drug Enforcement Administration as proper to be entrusted with the custody of controlled substances for scientific, medical, or instructional purposes or to aid law enforcement officers and prosecuting attorneys in the enforcement of this chapter.

(11)(a) "Manufacture" means the production, preparation, propagation, compounding, cultivating, growing, conversion, or processing of a controlled substance, either directly or indirectly, by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation, compounding, packaging, or labeling of a controlled substance by:

1. A practitioner or pharmacist as an incident to his administering or delivering of a controlled substance in the course of his professional practice.

2. A practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis, and not for sale.

(b) "Manufacturer" means a drug manufacturer as defined by s. 500.03(23).

(12) "Patient" means an individual to whom a controlled substance is lawfully dispensed or administered pursuant to the provisions of this chapter.

(13) "Pharmacist" means a person who is licensed pursuant to chapter 465 to practice the profession of pharmacy in this state.

(14) "Practitioner" means a physician licensed pursuant to chapter 458, a dentist licensed pursuant to chapter 466, a veterinarian licensed pursuant to chapter 474, an osteopath licensed pursuant to chapter 459, a naturopath licensed pursuant to chapter 462, or a podiatrist licensed pursuant to chapter 461, provided such practitioner holds a valid federal controlled substance registry number.

(15) "Prescription" means and includes an order for drugs or medicinal supplies written, signed, or transmitted by word of mouth, telephone, telegram, or other means of communication by a duly licensed practitioner licensed by the laws of the state to prescribe such drugs or medicinal supplies, issued in good faith and in the course of professional practice, intended to be filled, compounded, or dispensed by another person licensed by the laws of the state to do so, and meeting the requirements of s. 893.04. The term shall also include an order for drugs or medicinal supplies so transmitted or written by a physician, dentist, veterinarian, or other practitioner licensed to practice in a state other than Florida, but only if the pharmacist called upon to fill such an order determines, in the exercise of his professional judgment, that the order was issued pursuant to a

valid patient-physician relationship, that it is authentic, and that the drugs or medicinal supplies so ordered are considered necessary for the continuation of treatment of a chronic or recurrent illness. However, if the physician writing the prescription is not known to the pharmacist, the pharmacist shall obtain proof to a reasonable certainty of the validity of said prescription. A prescription order for a controlled substance shall not be issued on the same prescription blank with another prescription order for a controlled substance which is named or described in a different schedule, nor shall any prescription order for a controlled substance be issued on the same prescription blank as a prescription order for a medicinal drug, as defined in subsection 465.031(5), which does not fall within the definition of a controlled substance as defined in this act.

(16) "Wholesaler" means a drug wholesaler as defined by s. 500.03(22).

**History.**—s. 2, ch. 73-331; s. 1, ch. 75-18; s. 470, ch. 77-147; s. 1, ch. 77-174; s. 184, ch. 79-164; s. 1, ch. 79-325.

**893.03 Standards and schedules.**—The substances enumerated herein are controlled by this chapter. The controlled substances listed or to be listed in Schedules I, II, III, IV, and V are included by whatever official, common, usual, chemical, or trade name designated. The provisions of this act shall not be construed to include within any of the schedules herein contained any Excepted Prescription Drugs listed within the purview of 21 C.F.R. s. 1308.32, styled "Excepted Compounds."

(1) **SCHEDULE I.**—A substance in Schedule I has a high potential for abuse and has no currently accepted medical use in treatment in the United States, and in its use under medical supervision does not meet accepted safety standards except for such uses provided for in s. 402.36. The following substances are controlled in Schedule I:

(a) Unless specifically excepted or unless listed in another schedule, any of the following substances, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

1. Acetylmethadol.
2. Allylprodine.
3. Alphacetylmethadol.
4. Alphaprodine.
5. Alphamethadol.
6. Benzethidine.
7. Betacetylmethadol.
8. Betameprodine.
9. Betamethadol.
10. Betaprodine.
11. Clonitazene.
12. Dextromoramide.
13. Diampromide.
14. Diethylthiambutene.
15. Difenoxin.
16. Dimenoxadol.
17. Dimepheptanol.
18. Dimethylthiambutene.
19. Dioxaphetyl butyrate.
20. Dipipanone.
21. Ethylmethylthiambutene.

22. Etonitazene.
23. Extoteridine.
24. Furethidine.
25. Hydroxypethidine.
26. Ketobemidone.
27. Levomoramide.
28. Levophenacymorphan.
29. Morpheridine.
30. Noracymethadol.
31. Norlevorphanol.
32. Normethadone.
33. Norpipanone.
34. Phenadoxone.
35. Phenampromide.
36. Phenomorphan.
37. Phenoperidine.
38. Piritramide.
39. Proheptazine.
40. Properidine.
41. Propiram.
42. Racemoramide.
43. Trimeperidine.

(b) Unless specifically excepted or unless listed in another schedule, any of the following substances, their salts, isomers, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

1. Acetorphine.
2. Acetyldihydrocodeine.
3. Benzylmorphine.
4. Codeine methylbromide.
5. Codeine-N-Oxide.
6. Cyprenorphine.
7. Desomorphine.
8. Dihydromorphine.
9. Drotebanol.
10. Etorphine (except hydrochloride salt).
11. Heroin.
12. Hydromorphanol.
13. Methyldesorphine.
14. Methyldihydromorphinone.
15. Monoacetylmorphine.
16. Morphine methylbromide.
17. Morphine methylsulfonate.
18. Morphine-N-Oxide.
19. Myrophine.
20. Nicocodine.
21. Nicomorphine.
22. Normorphine.
23. Pholcodine.
24. Thebacon.

(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances or which contains any of their salts, isomers, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

1. 4-Bromo-2, 5-dimethoxyamphetamine.
2. Bufotenine.
3. Cannabis.
4. Diethyltryptamine.
5. 2,5-Dimethoxyamphetamine.
6. Dimethyltryptamine.

7. N-Ethyl-3-piperidyl benzilate.
8. Ibogaine.
9. Lysergic acid diethylamide.
10. Mecloqualone.
11. Mescaline.
12. 4-methoxyamphetamine.
13. 5-Methoxy-3,4-methylenedioxyamphet-amine.
14. 4-Methyl-2,5-dimethoxyamphetamine.
15. 3,4-Methylenedioxyamphetamine.
16. N-Methyl-3-piperidyl benzilate.
17. Peyote.
18. Psilocybin.
19. Psilocyn.
20. Tetrahydrocannabinols.
21. Thiophene Analog of Phencyclidine.
22. 3,4,5-Trimethoxyamphetamine.

(2) SCHEDULE II.—A substance in Schedule II has a high potential for abuse and has a currently accepted but severely restricted medical use in treatment in the United States, and abuse of the substance may lead to severe psychological or physical dependence. The following substances are controlled in Schedule II:

(a) Unless specifically excepted or unless listed in another schedule, any of the following substances, whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis:

1. Opium and any salt, compound, derivative, or preparation of opium, except isoquinoline alkaloids of opium, including but not limited to the following:

- a. Raw opium.
- b. Opium extracts.
- c. Opium fluid extracts.
- d. Powdered opium.
- e. Granulated opium.
- f. Tincture of opium.
- g. Codeine.
- h. Ethylmorphine.
- i. Etorphine hydrochloride.
- j. Hydrocodone.
- k. Hydromorphone.
- l. Metopon.
- m. Morphine.
- n. Oxycodone.
- o. Oxymorphone.
- p. Thebaine.

2. Any salt, compound, derivative, or preparation of a substance which is chemically equivalent to or identical with any of the substances referred to in subparagraph 1., except that these substances shall not include the isoquinoline alkaloids of opium.

3. Any part of the plant of the species *Papaver somniferum*, L.

4. Coca leaves, cocaine, or ecgonine, and any salt, compound, derivative, or preparation of coca leaves, cocaine, or ecgonine, and any salt, compound, derivative, or preparation thereof which is chemically equivalent to or identical with any of these substances, except that the substances shall not include decocainized coca leaves or extractions which do not contain cocaine or ecgonine.

(b) Unless specifically excepted or unless listed in another schedule, any of the following substances, including their isomers, esters, ethers, salts, and

salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

1. Alphaprodine.
2. Anileridine.
3. Bezitramide.
4. Dihydrocodeine.
5. Diphenoxylate.
6. Fentanyl.
7. Isomethadone.
8. Levomethorphan.
9. Levorphanol.
10. Metazocine.
11. Methadone.
12. Methadone-Intermediate,4-cyano-2-dimethylamino-4,4-diphenylbutane.
13. Moramide-Intermediate,2-methyl-3-morpholino-1,1-diphenylpropane-carboxylic acid.
14. Pethidine (meperidine).
15. Pethidine-Intermediate-A,4-cyano-1-methyl-4-phenylpiperidine.
16. Pethidine-Intermediate-B,ethyl-4-phenylpiperidine-4-carboxylate.
17. Pethidine-Intermediate-C,1-methyl-4-phenylpiperidine-4-carboxylic acid.
18. Phenazocine.
19. Piminodine.
20. Racemethorphan.
21. Racemorphan.

(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including their salts, isomers, optical isomers, salts of their isomers, and salts of their optical isomers:

1. Amphetamine.
2. Methamphetamine.
3. Phenmetrazine.
4. Methylphenidate.
5. Methaqualone.
6. Amobarbital.
7. Secobarbital.
8. Pentobarbital.
9. Phencyclidine.

(3) SCHEDULE III.—A substance in Schedule III has a potential for abuse less than the substances contained in Schedules I and II and has a currently accepted medical use in treatment in the United States, and abuse of the substance may lead to moderate or low physical dependence or high psychological dependence. The following substances are controlled in Schedule III:

(a) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant or stimulant effect on the nervous system:

1. Any substance which contains any quantity of a derivative of barbituric acid, or any salt or a derivative of barbituric acid.
2. Benzphetamine.
3. Chlorhexadol.
4. Chlorphentermine.
5. Clortermine.
6. Gluthethimide.
7. Lysergic acid.



8. Lysergic acid amide.
9. Mazindol.
10. Methypylon.
11. Sulfonmethane.
12. Phendimetrazine.
13. Sulfondiethylmethane.
14. Sulfonethylmethane.

(b) Nalorphine.

(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following controlled substances or any salts thereof:

1. Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.

2. Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with recognized therapeutic amounts of one or more active ingredients which are not controlled substances.

3. Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.

4. Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with recognized therapeutic amounts of one or more active ingredients which are not controlled substances.

5. Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with recognized therapeutic amounts of one or more active ingredients which are not controlled substances.

6. Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts.

7. Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams, with recognized therapeutic amounts of one or more active ingredients which are not controlled substances.

(4) **SCHEDULE IV.**—A substance in Schedule IV has a low potential for abuse relative to the substances in Schedule III and has a currently accepted medical use in treatment in the United States, and abuse of the substance may lead to limited physical or psychological dependence relative to the substances in Schedule III. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation are controlled in Schedule IV:

- (a) Barbitol.
- (b) Chloral betaine.
- (c) Chloral hydrate.
- (d) Chlordiazepoxide.
- (e) Clonazepam.
- (f) Clorazepate.

- (g) Dextropropoxyphene.
- (h) Diazepam.
- (i) Diethylpropion.
- (j) Etchlorvynol.
- (k) Ethinamate.
- (l) Fenfluramine.
- (m) Flurazepam.
- (n) Mebutamate.
- (o) Meproamate.
- (p) Methohexital.
- (q) Methylphenobarbital.
- (r) Oxazepam.
- (s) Paraldehyde.
- (t) Pemoline.
- (u) Petrichloral.
- (v) Phenobarbital.
- (w) Phentermine.
- (x) Prazepam.

(5) **SCHEDULE V.**—A compound, mixture, or preparation of a substance in Schedule V has a low potential for abuse relative to the substances in Schedule IV and has a currently accepted medical use in treatment in the United States, and abuse of such compound, mixture, or preparation may lead to limited physical or psychological dependence relative to the substances in Schedule IV. Substances controlled in Schedule V include any compound, mixture, or preparation containing any of the following limited quantities of controlled substances, which shall include one or more active medicinal ingredients which are not controlled substances in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the controlled substance alone:

(a) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams.

(b) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams.

(c) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams.

(d) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.

(e) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

(f) Not more than 2 milligrams of loperamide per dosage unit.

**History.**—s. 3, ch. 73-331; s. 247, ch. 77-104; s. 1, ch. 77-174; ss. 1, 2, ch. 78-195; s. 2, ch. 79-325.

#### 893.04 Pharmacist and practitioner.—

(1) A pharmacist, in good faith and in the course of professional practice only, may dispense controlled substances upon a written or oral prescription of a practitioner, under the following conditions:

(a) Oral prescriptions must be promptly reduced to writing by the pharmacist.

(b) The written prescription must be dated and signed by the prescribing practitioner on the day when issued.

(c) There shall appear on the face of the prescription or written record thereof for the controlled substance the following information:

1. The full name and address of the person for whom, or the owner of the animal for which, the controlled substance is dispensed.

2. The full name and address of the prescribing practitioner and his federal-controlled substance registry number shall be printed thereon.

3. If the prescription is for an animal, the species of animal for which the controlled substance is prescribed.

4. The name of the controlled substance prescribed and the strength, quantity, and directions for use thereof.

5. The number of the prescription, as recorded in the prescription files of the pharmacy in which it is filled.

6. The initials of the pharmacist filling the prescription and the date filled.

(d) The prescription shall be retained on file by the proprietor of the pharmacy in which it is filled for a period of 2 years.

(e) Affixed to the original container in which a controlled substance is delivered upon a prescription or authorized refill thereof, as hereinafter provided, there shall be a label bearing the following information:

1. The name and address of the pharmacy from which such controlled substance was dispensed.

2. The date on which the prescription for such controlled substance was filled.

3. The number of such prescription, as recorded in the prescription files of the pharmacy in which it is filled.

4. The name of the prescribing practitioner.

5. The name of the patient for whom, or of the owner and species of the animal for which, the controlled substance is prescribed.

6. The directions for the use of the controlled substance prescribed in the prescription.

7. A clear, concise warning that it is a crime to transfer the controlled substance to any person other than the patient for whom prescribed.

(f) A prescription for a controlled substance listed in Schedule II may be dispensed only upon a written prescription of a practitioner, except that in an emergency situation, as defined by regulation of the Department of Health and Rehabilitative Services, such controlled substance may be dispensed upon oral prescription. No prescription for a controlled substance listed in Schedule II may be refilled.

(g) No prescription for a controlled substance listed in Schedules III, IV, or V may be filled or refilled more than five times within a period of 6 months after the date on which the prescription was written unless the prescription is renewed by a practitioner.

(2) The legal owner of any stock of controlled substances in a pharmacy, upon discontinuance of dealing in controlled substances, may sell said stock to a manufacturer, wholesaler, or pharmacy. Such controlled substances may be sold only upon an order form, when such an order form is required for sale by the drug abuse laws of the United States or this state, or regulations pursuant thereto.

History.—s. 4, ch. 73-331; s. 2, ch. 75-18; s. 12, ch. 79-12.

#### **893.05 Practitioners and persons administering controlled substances in their absence.—**

(1) A practitioner, in good faith and in the course of his professional practice only, may prescribe, administer, dispense, mix, or otherwise prepare a con-

trolled substance, or he may cause the same to be administered by a licensed nurse or an intern practitioner under his direction and supervision only. A veterinarian may so prescribe, administer, dispense, mix, or prepare a controlled substance for use on animals only, and may cause it to be administered by an assistant or orderly under his direction and supervision only.

(2) When any controlled substance is dispensed by a practitioner, there shall be affixed to the original container in which the controlled substance is delivered a label on which appears:

(a) The date of delivery.

(b) The directions for use of such controlled substance.

(c) The name and address of such practitioner.

(d) The name of the patient and, if such controlled substance is prescribed for an animal, a statement describing the species of the animal.

(e) A clear, concise warning that it is a crime to transfer the controlled substance to any person other than the patient for whom prescribed.

(3) Any person who obtains from a practitioner or his agent, or pursuant to prescription, any controlled substance for administration to a patient during the absence of such practitioner shall return to such practitioner any unused portion of such controlled substance when it is no longer required by the patient.

History.—s. 5, ch. 73-331.

#### **893.06 Distribution of controlled substances; order forms; labeling and packaging requirements.—**

(1) Controlled substances in Schedules I and II shall be distributed by a duly licensed manufacturer, distributor, or wholesaler to a duly licensed manufacturer, wholesaler, distributor, practitioner, pharmacy, as defined in chapter 465, hospital, or laboratory only pursuant to an order form. It shall be deemed a compliance with this subsection if the parties to the transaction have complied with federal law respecting the use of order forms.

(2) Possession or control of controlled substances obtained as authorized by this section shall be lawful if in the regular course of business, occupation, profession, employment, or duty.

(3) A person in charge of a hospital or laboratory or in the employ of this state or of any other state, or of any political subdivision thereof, and a master or other proper officer of a ship or aircraft, who obtains controlled substances under the provisions of this section or otherwise, shall not administer, dispense, or otherwise use such controlled substances within this state, except within the scope of his employment or official duty, and then only for scientific or medicinal purposes and subject to the provisions of this chapter.

(4) It shall be unlawful to distribute a controlled substance in a commercial container unless such container bears a label showing the name and address of the manufacturer, the quantity, kind, and form of controlled substance contained therein, and the identifying symbol for such substance, as required by federal law. No person except a pharmacist, for the purpose of dispensing a prescription, or a practitioner, for the purpose of dispensing a con-

trolled substance to a patient, shall alter, deface, or remove any labels so affixed.

History.—s. 6, ch. 73-331.

#### 893.07 Records.—

(1) Every person who engages in the manufacture, compounding, mixing, cultivating, growing, or by any other process producing or preparing, or in the dispensing, importation, or, as a wholesaler, distribution, of controlled substances shall:

(a) On January 1, 1974, or as soon thereafter as any person first engages in such activity, and every second year thereafter, make a complete and accurate record of all stocks of controlled substances on hand. The inventory may be prepared on the regular physical inventory date which is nearest to, and does not vary by more than 6 months from, the biennial date that would otherwise apply. As additional substances are designated for control under this chapter, they shall be inventoried as provided for in this subsection.

(b) On and after January 1, 1974, maintain, on a current basis, a complete and accurate record of each substance manufactured, received, sold, delivered, or otherwise disposed of by him, except that this subsection shall not require the maintenance of a perpetual inventory.

Compliance with the provisions of federal law pertaining to the keeping of records of controlled substances shall be deemed a compliance with the requirements of this subsection.

(2) The record of controlled substances received shall in every case show:

(a) The date of receipt.

(b) The name and address of the person from whom received.

(c) The kind and quantity of controlled substances received.

(3) The record of all controlled substances sold, administered, dispensed, or otherwise disposed of shall show:

(a) The date of selling, administering, or dispensing.

(b) The correct name and address of the person to whom or for whose use, or the owner and species of animal for which, sold, administered, or dispensed.

(c) The kind and quantity of controlled substances sold, administered, or dispensed.

(4) Every inventory or record required by this chapter, including prescription records, shall be maintained:

(a) Separately from all other records of the registrant, or

(b) Alternatively, in the case of Schedule III, IV, or V controlled substances, in such form that information required by this chapter is readily retrievable from the ordinary business records of the registrant.

In either case, records shall be kept and made available for a period of at least 2 years for inspection and copying by law enforcement officers whose duty it is to enforce the laws of this state relating to controlled substances.

(5) Each person shall maintain a record which shall contain a detailed list of controlled substances

lost, destroyed, or stolen, if any; the kind and quantity of such controlled substances; and the date of the discovering of such loss, destruction, or theft.

History.—s. 7, ch. 73-331.

#### 893.08 Exceptions.—

(1) The following may be distributed at retail without a prescription, but only by a registered pharmacist:

(a) Any compound, mixture, or preparation described in Schedule V.

(b) Any compound, mixture, or preparation containing any depressant or stimulant substance described in s. 893.03(2)(a) or (c), in s. 893.03(3)(a), or in Schedule IV, if:

1. The compound, mixture, or preparation contains one or more active medicinal ingredients not having depressant or stimulant effect on the central nervous system, and

2. Such ingredients are included therein in such combinations, quantity, proportion, or concentration as to vitiate the potential for abuse of the controlled substances which do have a depressant or stimulant effect on the central nervous system.

(2) No compound, mixture, or preparation may be dispensed under subsection (1) unless such substance may, under the Federal Food, Drug, and Cosmetic Act, be lawfully sold at retail without a prescription.

(3) The exemptions authorized by this section shall be subject to the following conditions:

(a) The compounds, mixtures, and preparations referred to in subsection (1) may be dispensed to persons under age 18 only on prescription. A bound volume must be maintained as a record of sale at retail of excepted compounds, mixtures, and preparations, and the pharmacist must require suitable identification from every unknown purchaser.

(b) Such compounds, mixtures, and preparations shall be sold by the pharmacist in good faith as a medicine and not for the purpose of evading the provisions of this chapter. The pharmacist may, in his discretion, withhold sale to any person whom he reasonably believes is attempting to purchase excepted compounds, mixtures, or preparations for the purpose of abuse.

(c) The total quantity of controlled substance listed in Schedule V which may be sold to any one purchaser within a given 48-hour period shall not exceed 120 milligrams of codeine, 60 milligrams dihydrocodeine, 30 milligrams of ethyl morphine, or 240 milligrams of opium.

(d) Nothing in this section shall be construed to limit the kind and quantity of any controlled substance that may be prescribed, administered, or dispensed to any person, or for the use of any person or animal, when it is prescribed, administered, or dispensed in compliance with the general provisions of this chapter.

(4) The dextrorotatory isomer of 3-methoxymethylmorphinan and its salts (dextromethorphan) shall not be deemed to be included in any schedule by reason of enactment of this chapter.

History.—s. 8, ch. 73-331; s. 1, ch. 77-174.



**893.09 Enforcement.—**

(1) The Department of Law Enforcement, all state agencies which regulate professions or institutions affected by the provisions of this chapter, and all peace officers of the state shall enforce all provisions of this chapter except those specifically delegated, and shall cooperate with all agencies charged with the enforcement of the laws of the United States, this state, and all other states relating to controlled substances.

(2) Any agency authorized to enforce this chapter shall have the right to institute an action in its own name to enjoin the violation of any of the provisions of this chapter. Said action for an injunction shall be in addition to any other action, proceeding, or remedy authorized by law.

(3) All law enforcement officers whose duty it is to enforce this chapter shall have authority to administer oaths in connection with their official duties, and any person making a material false statement under oath before such law enforcement officers shall be deemed guilty of perjury and subject to the same punishment as prescribed for perjury.

(4) It shall be unlawful and punishable as provided in chapter 843 for any person to interfere with any such law enforcement officer in the performance of his official duties. It shall also be unlawful for any person falsely to represent himself to be authorized to enforce the drug abuse laws of this state, the United States, or any other state.

(5) No civil or criminal liability shall be imposed by virtue of this chapter upon any person whose duty it is to enforce the provisions of this chapter, by reason of his being lawfully engaged in the enforcement of any law or municipal ordinance relating to controlled substances.

**History.**—s. 9, ch. 73-331; s. 1, ch. 77-174; s. 30, ch. 79-8. cf.—s. 500.46 Wholesale drug and drug manufacturer permits; renewal; inspections.

**893.10 Burden of proof.—**

(1) It shall not be necessary for the state to negate any exemption or exception set forth in this chapter in any indictment, information, or other pleading or in any trial, hearing, or other proceeding under this chapter, and the burden of going forward with the evidence with respect to any such exemption or exception shall be upon the person claiming its benefit.

(2) In the case of a person charged under s. 893.14(1) with the possession of a controlled substance, the label required under s. 893.04(1) or s. 893.05(2) shall be admissible in evidence and shall be prima facie evidence that such substance was obtained pursuant to a valid prescription form or dispensed by a practitioner while acting in the course of his professional practice.

**History.**—s. 10, ch. 73-331.

**893.11 Suspension, revocation, and reinstatement of business and professional licenses.—**

Upon the conviction in any court of competent jurisdiction of any practitioner, distributor, manufacturer, wholesaler, or pharmacist of a violation of any of the provisions of this chapter which constitutes a felony, the clerk of said court shall send a certified copy of the judgment of conviction to the board or

officer by whom the convicted defendant has been licensed to practice his profession or to carry on his business. Such board or officer may suspend or revoke the license or registration of the convicted defendant to practice his profession or to carry on his business. Upon application of any such convicted defendant whose license or registration has been suspended or revoked, and upon proper showing and for good cause, said board or officer may reinstate such license or registration. Any court of competent jurisdiction in which such a defendant is convicted of a violation of any of the provisions of this chapter shall have the power, in its discretion, to suspend or revoke the license or registration of the convicted defendant and may thereafter, upon proper showing and for good cause, reinstate such license or registration when the same shall have been suspended or revoked by a court of competent jurisdiction. However, no court shall reinstate any license of such a convicted defendant which has been revoked by the board or officer by whom the convicted defendant was licensed to practice his profession or to carry on his business, except upon a proceeding brought in a court of competent jurisdiction for the purpose of setting aside or restraining such suspension or revocation of license.

**History.**—s. 11, ch. 73-331; s. 1, ch. 77-117; s. 19, ch. 78-95. cf.—s. 112.011 Felons; removal of disqualifications for employment, exceptions.

**893.12 Contraband; seizure, forfeiture and sale of vessel, vehicle, or aircraft illegally used.—**

(1) All substances controlled by this chapter which may be handled, delivered, possessed, or distributed contrary to any provisions of this chapter and all such controlled substances the lawful possession of which is not established or the title to which cannot be ascertained are declared to be contraband, shall be subject to seizure and confiscation by any person whose duty it is to enforce the provisions of the chapter, and shall be disposed of as follows:

(a) Except as in this section otherwise provided, the court having jurisdiction shall order such controlled substances forfeited and destroyed. A record of the place where said controlled substances were seized, of the kinds and quantities of controlled substances destroyed, and of the time, place, and manner of destruction shall be kept, and a return under oath reporting said destruction shall be made to the court or magistrate and to the United States Drug Enforcement Administration by the officer who destroys them.

(b) Upon written application by the Department of Health and Rehabilitative Services, the court by whom the forfeiture of such controlled substances has been decreed may order the delivery of any of them to said department for distribution or destruction as hereinafter provided.

(c) Upon application by any hospital or laboratory within the state not operated for private gain, the department may, in its discretion, deliver any controlled substances that have come into its custody by authority of this section to the applicant for medical use. The department may from time to time deliver excess stocks of such controlled substances to the

United States Drug Enforcement Administration or destroy same.

(d) The department shall keep a full and complete record of all controlled substances received and of all controlled substances disposed of, showing:

1. The exact kinds, quantities, and forms of such controlled substances;
2. The persons from whom received and to whom delivered;
3. By whose authority received, delivered, and destroyed; and
4. The dates of the receipt, disposal, or destruction,

which record shall be open to inspection by all persons charged with the enforcement of federal and state drug abuse laws.

(2) Any vessel, vehicle, or aircraft which has been or is being used in violation of any provision of this chapter or in, upon, or by means of which any violation of this chapter has taken or is taking place may be seized and forfeited as provided by the Florida Uniform Contraband Transportation Act.

(3) Any law enforcement agency is empowered to authorize or designate officers, agents, or other persons to carry out the seizure provisions of this section. It shall be the duty of any officer, agent, or other person so authorized or designated, or authorized by law, whenever he shall discover any vessel, vehicle, or aircraft which has been or is being used in violation of any of the provisions of this chapter, or in, upon, or by means of which any violation of this chapter has taken or is taking place, to seize such vessel, vehicle, or aircraft and place it in the custody of such person as may be authorized or designated for that purpose by the respective law enforcement agency pursuant to these provisions.

(4) The rights of any bona fide holder of a duly recorded mortgage or duly recorded vendor's privilege on the property seized under this chapter shall not be affected by the seizure.

**History.**—s. 12, ch. 73-331; ss. 10, 11, ch. 74-385; s. 471, ch. 77-147; s. 185, ch. 79-164.

### 893.13 Prohibited acts; penalties.—

(1)(a) Except as authorized by this chapter and chapter 500, it is unlawful for any person to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance. Any person who violates this provision with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (2)(a), or (2)(b) is guilty of a felony of the second degree, punishable as provided in ss. 775.082, 775.083, and 775.084.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c), (3), or (4) is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084; except that the sale, delivery, or possession of in excess of 100 pounds of cannabis as controlled in s. 893.03(1)(c) shall be punishable as provided in s. 893.135.

3. A controlled substance named or described in s. 893.03(5) is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Except as provided in this chapter, it is un-

lawful to sell, deliver, or possess in excess of 10 grams of any substance named or described in s. 893.03(1)(a) or (1)(b), or any combination thereof. This paragraph, however shall not apply to any act proscribed by s. 893.135. Any person who violates this paragraph is guilty of a felony of the first degree, punishable as provided in ss. 775.082, 775.083, and 775.084.

(c) Except as authorized by this chapter, it is unlawful for any person over the age of 18 years to deliver any controlled substance to a person under the age of 18 years. Any person who violates this provision with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (2)(a), or (2)(b) is guilty of a felony of the first degree, punishable as provided in s. 775.082, s. 775.083 or s. 775.084.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c), (3), or (4) is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Imposition of sentence shall not be suspended or deferred, nor shall the person so convicted be placed on probation.

(d) It is unlawful for any person to bring into this state any controlled substance unless the possession of such controlled substance is authorized by this chapter or unless said person is licensed to do so by the appropriate federal agency. Any person who violates this provision with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (2)(a), or (2)(b) is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083 or s. 775.084.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c), (3), or (4) is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083 or s. 775.084.

3. A controlled substance named or described in s. 893.03(5) is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(e) It is unlawful for any person to be in actual or constructive possession of a controlled substance unless such controlled substance was lawfully obtained from a practitioner or pursuant to a valid prescription or order of a practitioner while acting in the course of his professional practice or to be in actual or constructive possession of a controlled substance except as otherwise authorized by this chapter. Any person who violates this provision is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(f) If the offense is the possession or delivery without consideration of not more than 20 grams of cannabis, as defined in this chapter, that person shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 and s. 775.083. For purposes of this subsection, "cannabis" shall not include the resin extracted from the plants of the genus *Cannabis*, or any compound manufacture, salt, derivative, mixture, or preparation of such resin.

(g) Notwithstanding any provision to the contrary of the laws of this state relating to arrest, a law

enforcement officer may arrest without warrant any person who he has probable cause to believe is violating the provisions of this chapter relating to possession of cannabis.

(2)(a) It is unlawful for any person:

1. To distribute or dispense a controlled substance in violation of the provisions of this chapter relating thereto.

2. To refuse or fail to make, keep, or furnish any record, notification, order form, statement, invoice, or information required under this chapter.

3. To refuse an entry into any premises for any inspection or to refuse to allow any inspection authorized by this chapter.

4. To distribute a controlled substance named or described in s. 893.03(1) or (2) except pursuant to an order form as required by s. 893.06.

5. To keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft, or other structure or place which is resorted to by persons using controlled substances in violation of this chapter for the purpose of using these substances, or which is used for keeping or selling them in violation of this chapter.

6. To use to his own personal advantage, or to reveal, any information obtained in enforcement of this chapter except in a prosecution or administrative hearing for a violation of this chapter.

7. To possess a controlled substance lawfully dispensed to him by a pharmacist or practitioner, in a container other than that in which the controlled substance was originally delivered.

(b) Any person who violates the provisions of paragraph (a) above shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3)(a) It is unlawful for any person:

1. To acquire or obtain, or attempt to acquire or obtain, possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge.

2. To affix any false or forged label to a package or receptacle containing a controlled substance.

3. To furnish false or fraudulent material information in, or omit any material information from, any report or other document required to be kept or filed under this chapter or any record required to be kept by this chapter.

4. To possess, have under his control, or deliver any device, contrivance, instrument, or paraphernalia with the intent that said device, contrivance, instrument, or paraphernalia be used for unlawfully administering any controlled substance.

(b) Any person who violates the provisions of paragraph (a) shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083 or s. 775.084, except that when the controlled substance is one that the penalty for possession of which is a misdemeanor, then the penalty under paragraph (a)4. shall be a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(4) The provisions of subsections (1), (2), and (3) of this section shall not be applicable to:

(a) The delivery for medical or scientific purpose only of controlled substances to persons included in

any of the classes hereinafter named, or to the agents or employees of such persons, for use in the usual course of their business or profession or in the performance of their official duties.

(b) The actual or constructive possession of controlled substances for such use by such persons or their agents or employees, to wit:

1. Pharmacists.

2. Practitioners.

3. Persons who procure controlled substances in good faith and in the course of professional practice only, by or under the supervision of pharmacists or practitioners employed by them, or for the purpose of lawful research, teaching, or testing, and not for resale.

4. Hospitals which procure controlled substances for lawful administration by practitioners, but only for use by or in the particular hospital.

5. Officers or employees of state, federal, or local governments acting in their official capacity only, or informers acting under their jurisdiction.

6. Common carriers.

7. Manufacturers, wholesalers, and distributors.

**History.**—s. 13, ch. 73-331; s. 1, ch. 76-200; s. 1, ch. 77-174; s. 2, ch. 79-1; s. 3, ch. 79-325.

### **893.135 Trafficking; mandatory sentences; suspension or reduction of sentences.—**

(1) Except as authorized in this chapter or in chapter 500:

(a) Any person who knowingly sells, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, in excess of 100 pounds of cannabis is guilty of a felony of the first degree, which felony shall be known as "trafficking in cannabis." If the quantity of cannabis involved:

1. Is in excess of 100 pounds, but less than 2,000 pounds, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 calendar years and to pay a fine of \$25,000.

2. Is 2,000 pounds or more, but less than 10,000 pounds, such person shall be sentenced to a mandatory minimum term of imprisonment of 5 calendar years and to pay a fine of \$50,000.

3. Is 10,000 pounds or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and to pay a fine of \$200,000.

(b) Any person who knowingly sells, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 28 grams or more of cocaine or of any mixture containing cocaine, as described in s. 893.03(2)(a), is guilty of a felony of the first degree, which felony shall be known as "trafficking in cocaine." If the quantity involved:

1. Is 28 grams or more, but less than 200 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 calendar years and to pay a fine of \$50,000.

2. Is 200 grams or more, but less than 400 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 5 calendar years and to pay a fine of \$100,000.

3. Is 400 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 10 calendar years and to pay a fine of \$200,000.



onment of 15 calendar years and to pay a fine of \$250,000.

(c) Any person who knowingly sells, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 4 grams or more of any morphine, opium, or any salt, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b) or (2)(a), or 4 grams or more of any mixture containing any such substance, is guilty of a felony of the first degree, which felony shall be known as "trafficking in illegal drugs." If the quantity involved:

1. Is 4 grams or more, but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 calendar years and to pay a fine of \$50,000.

2. Is 14 grams or more, but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 10 calendar years and to pay a fine of \$100,000.

3. Is 28 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 calendar years and to pay a fine of \$500,000.

(2) Notwithstanding the provisions of s. 948.01, with respect to any person who is found to have violated this section, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, nor shall such person be eligible for parole prior to serving the mandatory minimum term of imprisonment prescribed by this section.

(3) The state attorney may move the sentencing court to reduce or suspend the sentence of any person who is convicted of a violation of this section and who provides substantial assistance in the identification, arrest, or conviction of any of his accomplices, accessories, co-conspirators, or principals. The arresting agency shall be given an opportunity to be heard in aggravation or mitigation in reference to any such motion. Upon good cause shown, the motion may be filed and heard in camera. The judge hearing the motion may reduce or suspend the sentence if he finds that the defendant rendered such substantial assistance.

*History.*—s. 1, ch. 79-1.

#### **893.14 Conditional discharge and expunction of records for first offense possession.—**

(1) If a person who has not previously been convicted of a violation of the drug abuse laws of any state or the United States is convicted of a violation of s. 893.13(1)(e), (1)(f), (3)(a)4., or (3)(b), relating to possession, after trial or upon a plea of guilty, the court may, without entering a judgment of guilty, and with the consent of such person, defer further proceeding and place him on probation upon such

reasonable condition as may be required and for such period not to exceed 1 year as the court may prescribe. Discharge and dismissal under this section shall be without court adjudication of guilt, but a nonpublic record thereof shall be retained by the Department of Law Enforcement solely for the purpose of use by the courts in any subsequent criminal proceedings and in determining whether such person qualifies under this section. Discharge and dismissal hereunder shall not be deemed a conviction for purposes of disqualification or disabilities imposed by law upon conviction of a crime, but it shall be deemed a conviction for the purpose of determining whether a defendant in a subsequent criminal prosecution is a multiple offender. Discharge and dismissal under this section may occur only once with respect to any person.

(2) Upon the discharge and dismissal of an offender under subsection (1), or if a person is acquitted or released without being adjudicated guilty, the court shall issue an order to expunge from all official records other than the nonpublic records retained by the Department of Law Enforcement under subsection (1) all official recordation relating to his arrest, indictment or information, trial, finding of guilt, and dismissal and discharge pursuant to this section. The effect of such order shall be to restore such person, in contemplation of law, to the status he occupied before such arrest or indictment or information. Except in subsequent criminal prosecutions in which the person is a defendant, no person as to whom such order has been entered shall be held thereafter, under any provision of Florida law, to be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or acknowledge such arrest, indictment, information, or trial in response to any inquiry made of him for any purpose.

*History.*—s. 14, ch. 73-331; s. 1, ch. 77-174; s. 31, ch. 79-8.

**893.15 Rehabilitation.**—Any person who violates s. 893.13(1)(e) or (1)(f) relating to possession may, in the discretion of the trial judge, be required to participate in a drug rehabilitation program approved or regulated by the Department of Health and Rehabilitative Services pursuant to the provisions of chapter 397, provided the director of such program approves the placement of the defendant in such program. Such required participation may be imposed in addition to, or in lieu of, any penalty or probation otherwise prescribed by law. However, the total time of such penalty, probation, and program participation shall not exceed the maximum length of sentence possible for the offense.

*History.*—s. 15, ch. 73-331.

# TITLE XLVI

## CRIMINAL PROCEDURE AND CORRECTIONS

### CHAPTER 900

#### GENERAL PROVISIONS

- 900.01 Title.  
900.02 Effective date.  
900.03 Courts vested with criminal jurisdiction;  
process.  
900.04 Contempts.

**900.01 Title.**—Chapters 900-925 may be cited as the "Criminal Procedure Law."

**History.**—s. 320, ch. 19554, 1939; CGL 1940 Supp. 8663(333); s. 7, ch. 22858, 1945; s. 1, ch. 70-339.

**Note.**—Former s. 925.03.

**900.02 Effective date.**—The Criminal Procedure Law shall become effective at 12:01 a.m., January 1, 1971, and shall govern the procedure in all criminal cases instituted after that time.

**History.**—s. 321, ch. 19554, 1939; CGL 1940 Supp. 8663(334); s. 1, ch. 70-339.

**Note.**—Former s. 925.02.

**900.03 Courts vested with criminal jurisdiction; process.**—

(1) Original jurisdiction in criminal cases is vested in the circuit courts and county courts.

(2) Courts having criminal jurisdiction may issue writs and process necessary to the exercise of the criminal jurisdiction and the writs and process shall have effect through the state.

**History.**—RS 2792, 2793; GS 3842, 3843; RGS 5937, 5938; CGL 8203, 8204; s. 10, ch. 65-483; s. 2, ch. 70-339; s. 34, ch. 73-334.

**Note.**—Former ss. 932.01, 932.02.

cf.—s. 26.012 Jurisdiction of circuit court.

s. 34.01 County courts.

s. 914.001 Witnesses; subpoenas to run throughout state.

**900.04 Contempts.**—Said courts, in the exercise of their criminal jurisdiction may punish for contempts as in the exercise of their civil jurisdiction, and the county courts shall possess, in this respect, the same powers as the circuit courts.

**History.**—RS 2794; GS 3844; RGS 5939; CGL 8205; s. 3, ch. 70-339; s. 34, ch. 73-334.

**Note.**—Former s. 932.03.

## CHAPTER 901

## ARRESTS

- 901.01 Judicial officers to be committing magistrates.
- 901.02 When warrant of arrest to be issued.
- 901.04 Direction and execution of warrant.
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- 901.09 When summons shall be issued.
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- 901.15 When arrest by officer without warrant is lawful.
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- 901.16 Method of arrest by officer by a warrant.
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- 901.29 Authorization to take person to medical facility.
- 901.30 How notice to appear served.
- 901.31 Failure to obey written promise to appear.
- 901.32 Issuance of warrant on failure to appear.
- 901.33 Arrest records; expunging; exceptions.

**901.01 Judicial officers to be committing magistrates.**—Each state judicial officer is a conservator of the peace and a committing magistrate with authority to issue warrants of arrest, commit offenders to jail, and recognize them to appear to answer the charge. He may require sureties of the peace when the peace has been substantially threatened or disturbed.

**History.**—s. 1, ch. 19554, 1939; CGL 1940 Supp. 8663(1); s. 1, ch. 70-338; s. 4, ch. 70-339; s. 34, ch. 73-334.  
cf.—s. 925.07 Parent or guardian to be notified before trial of minor; service of notice.

**901.02 When warrant of arrest to be issued.**—A warrant may be issued for the arrest of the person complained against if the magistrate, from the ex-

amination of the complainant and other witnesses, reasonably believes that the person complained against has committed an offense within his jurisdiction.

**History.**—s. 2, ch. 19554, 1939; CGL 1940 Supp. 8663(2); s. 5, ch. 70-339.

**901.04 Direction and execution of warrant.**—Warrants shall be directed to all sheriffs of the state. A warrant shall be executed only by the sheriff of the county in which the arrest is made unless the arrest is made in fresh pursuit, in which event it may be executed by any sheriff who is advised of the existence of the warrant. An arrest may be made on any day and at any time of the day or night.

**History.**—s. 4, ch. 19554, 1939; CGL 1940 Supp. 8663(4); s. 6, ch. 70-339; s. 34, ch. 73-334.

**901.07 Admission to bail when arrest occurs in another county.**—

(1) When an arrest by a warrant occurs in a county other than the one in which the alleged offense was committed and the warrant issued, if the person arrested has a right to bail, the arresting officer shall inform him of his right and, upon request, shall take him before a magistrate or other official of the same county having authority to admit to bail. The official shall admit the person arrested to bail for his appearance before the magistrate who issued the warrant.

(2) If the person arrested does not have a right to bail or, when informed of his right to bail, does not furnish bail immediately, the officer who made the arrest or the officer having the warrant shall take him before the magistrate who issued the warrant.

**History.**—s. 7, ch. 19554, 1939; CGL 1940 Supp. 8663(7); s. 6, ch. 70-339.

**901.08 Issue of warrant when offense triable in another county.**—

(1) When a complaint before a magistrate charges the commission of an offense that is punishable by death or life imprisonment and is triable in another county of the state, but it appears that the person against whom the complaint is made is in the county where the complaint is made, the same proceedings for issuing a warrant shall be used as prescribed in this chapter, except that the warrant shall require the person against whom the complaint is made to be taken before a designated magistrate of the county in which the offense is triable.

(2) If the person arrested has a right to bail, the officer making the arrest shall inform him of his right to bail and, on request, shall take him before a magistrate or other official having authority to admit to bail in the county in which the arrest is made. The official shall admit him to bail for his appearance before the magistrate designated in the warrant.

(3) If the person arrested does not have a right to bail or, when informed of his right to bail, does not furnish bail immediately, he shall be taken before the magistrate designated in the warrant.

**History.**—s. 8, ch. 19554, 1939; CGL 1940 Supp. 8663(8); s. 6, ch. 70-339.



**901.09 When summons shall be issued.—**

(1) When the complaint is for an offense that the magistrate is empowered to try summarily, he shall issue a summons instead of a warrant, unless he reasonably believes that the person against whom the complaint was made will not appear upon a summons, in which event he shall issue a warrant.

(2) When the complaint is for a misdemeanor that the magistrate is not empowered to try summarily, he shall issue a summons instead of a warrant if he reasonably believes that the person against whom the complaint was made will appear upon a summons.

(3) The summons shall set forth substantially the nature of the offense and shall command the person against whom the complaint was made to appear before the magistrate at a stated time and place.

**History.**—s. 9, ch. 19554, 1939; CGL 1940 Supp. 8663(9); s. 6, ch. 70-339.

**901.10 How summons served.—**A summons shall be served in the same manner as a summons in a civil action.

**History.**—s. 10, ch. 19554, 1939; CGL 1940 Supp. 8663(10); s. 6, ch. 70-339. cf.—s. 48.031 Service of process generally.

**901.11 Effect of not answering summons.—**

Failure to appear as commanded by a summons without good cause is an indirect criminal contempt of court and may be punished by a fine of not more than \$100. When a person fails to appear as commanded by a summons, the magistrate shall issue a warrant. If the magistrate acquires reason to believe that the person summoned will not appear as commanded after issuing a summons, he may issue a warrant.

**History.**—s. 11, ch. 19554, 1939; CGL 1940 Supp. 8663(11); s. 6, ch. 70-339.

**901.12 Summons against corporation.—**

When a complaint of an offense is made against a corporation, the magistrate shall issue a summons that shall set forth substantially the nature of the offense and command the corporation to appear before him at a stated time and place.

**History.**—s. 12, ch. 19554, 1939; CGL 1940 Supp. 8663(12); s. 6, ch. 70-339.

**901.14 Effect of failure by corporation to answer summons.—**If, after being summoned, the corporation does not appear, a plea of not guilty shall be entered by the court having jurisdiction to try the offense for which the summons was issued, and the court shall proceed to trial and judgment without further process.

**History.**—s. 14, ch. 19554, 1939; CGL 1940 Supp. 8663(14); s. 6, ch. 70-339.

**901.15 When arrest by officer without warrant is lawful.—**A peace officer may arrest a person without a warrant when:

(1) The person has committed a felony or misdemeanor or violated a municipal ordinance in the presence of the officer. Arrest for the commission of a misdemeanor or violation of a municipal ordinance shall be made immediately or in fresh pursuit.

(2) A felony has been committed and he reasonably believes that the person committed it.

(3) He reasonably believes that a felony has been or is being committed and reasonably believes that

the person to be arrested has committed or is committing it.

(4) A warrant for the arrest has been issued and is held by another peace officer for execution.

(5) A violation of chapter 316 has been committed in the presence of the officer. Such arrest may be made immediately or on fresh pursuit.

(6) The officer has probable cause to believe that the person has committed a battery upon the person's spouse and the officer:

(a) Finds evidence of bodily harm; or

(b) The officer reasonably believes that there is danger of violence unless the person alleged to have committed the battery is arrested without delay.

**History.**—s. 15, ch. 19554, 1939; CGL 1940 Supp. 8663(15); s. 1, ch. 21782, 1943; s. 6, ch. 70-339; s. 4, ch. 71-982; s. 1, ch. 77-67. cf.—ss. 828.03, 828.17 Cruelty to children or animals; arrest without warrant.

**901.151 Stop and Frisk Law.—**

(1) This section may be known and cited as the "Florida Stop and Frisk law."

(2) Whenever any law enforcement officer of this state encounters any person under circumstances which reasonably indicate that such person has committed, is committing, or is about to commit a violation of the criminal laws of this state or the criminal ordinances of any municipality or county, he may temporarily detain such person for the purpose of ascertaining the identity of the person temporarily detained and the circumstances surrounding his presence abroad which led the officer to believe that he had committed, was committing, or was about to commit a criminal offense.

(3) No person shall be temporarily detained under the provisions of subsection (2) longer than is reasonably necessary to effect the purposes of that subsection. Such temporary detention shall not extend beyond the place where it was first effected or the immediate vicinity thereof.

(4) If at any time after the onset of the temporary detention authorized by subsection (2), probable cause for arrest of person shall appear, the person shall be arrested. If, after an inquiry into the circumstances which prompted the temporary detention, no probable cause for the arrest of the person shall appear, he shall be released.

(5) Whenever any law enforcement officer authorized to detain temporarily any person under the provisions of subsection (2) has probable cause to believe that any person whom he has temporarily detained, or is about to detain temporarily, is armed with a dangerous weapon and therefore offers a threat to the safety of the officer or any other person, he may search such person so temporarily detained only to the extent necessary to disclose, and for the purpose of disclosing, the presence of such weapon. If such a search discloses such a weapon or any evidence of a criminal offense it may be seized.

(6) No evidence seized by a law enforcement officer in any search under this section shall be admissible against any person in any court of this state or political subdivision thereof unless the search which disclosed its existence was authorized by and conducted in compliance with the provisions of subsections (2)-(5).

**History.**—ss. 1, 2, ch. 69-73.

**901.16 Method of arrest by officer by a warrant.**—A peace officer making an arrest by a warrant shall inform the person to be arrested of the cause of arrest and that a warrant has been issued, except when the person flees or forcibly resists before the officer has an opportunity to inform him, or when giving the information will imperil the arrest. The officer need not have the warrant in his possession at the time of arrest but on request of the person arrested shall show it to him as soon as practicable.

**History.**—s. 16, ch. 19554, 1939; CGL 1940 Supp. 8663(16); s. 6, ch. 70-339.

**901.17 Method of arrest by officer without warrant.**—A peace officer making an arrest without a warrant shall inform the person to be arrested of his authority and the cause of arrest except when the person flees or forcibly resists before the officer has an opportunity to inform him or when giving the information will imperil the arrest.

**History.**—s. 17, ch. 19554, 1939; CGL 1940 Supp. 8663(17); s. 6, ch. 70-339.

**901.18 Officer may summon assistance.**—A peace officer making a lawful arrest may command the aid of persons he deems necessary to make the arrest. A person commanded to aid shall render assistance as directed by the officer. A person commanded to aid a peace officer shall have the same authority to arrest as that peace officer and shall not be civilly liable for any reasonable conduct in rendering assistance to that officer.

**History.**—s. 18, ch. 19554, 1939; CGL 1940 Supp. 8663(18); s. 7, ch. 70-339. cf.—s. 843.04 Refusing to assist prison officers in arresting escaped convicts. s. 843.06 Neglect or refusal to aid peace officers.

**901.19 Right of officer to break into building.**—

(1) If a peace officer fails to gain admittance after he has announced his authority and purpose in order to make an arrest either by a warrant or when authorized to make an arrest for a felony without a warrant, he may use all necessary and reasonable force to enter any building or property where the person to be arrested is or is reasonably believed to be.

(2) When any of the implements, devices, or apparatus commonly used for gambling purposes are found in any house, room, booth, or other place used for the purpose of gambling, a peace officer shall seize and hold them subject to the discretion of the court, to be used as evidence, and afterwards they shall be publicly destroyed in the presence of witnesses under order of the court to that effect.

**History.**—s. 19, ch. 19554, 1939; CGL 1940 Supp. 8663(19); s. 8, ch. 70-339. cf.—s. 849.05 Finding of gambling implements prima facie evidence of gambling.

**901.20 Use of force to effect release of person making arrest detained in building.**—A peace officer may use any reasonable force to liberate himself or another person from detention in a building entered for the purpose of making a lawful arrest.

**History.**—s. 20, ch. 19554, 1939; CGL 1940 Supp. 8663(20); s. 9, ch. 70-339.

**901.21 Search of person arrested.**—

(1) When a lawful arrest is effected, a peace officer may search the person arrested and the area within the person's immediate presence for the purpose of:

- (a) Protecting the officer from attack;
  - (b) Preventing the person from escaping; or
  - (c) Discovering the fruits of a crime.
- (2) A peace officer making a lawful search without a warrant may seize all instruments, articles, or things discovered on the person arrested or within the person's immediate control, the seizure of which is reasonably necessary for the purpose of:
- (a) Protecting the officer from attack;
  - (b) Preventing the escape of the arrested person;

or

(c) Assuring subsequent lawful custody of the fruits of a crime or of the articles used in the commission of a crime.

**History.**—s. 21, ch. 19554, 1939; CGL 1940 Supp. 8663(21); s. 10, ch. 70-339.

**901.215 Search of person arrested for identifying device indicating a medical disability.**—

Every law enforcement officer, sheriff, deputy sheriff, or other arresting officer shall, when arresting any person who appears to be inebriated, intoxicated, or not in control of his physical functions, examine such person to ascertain whether or not the person is wearing a medic-alert bracelet or necklace or has upon his person some other visible identifying device which would specifically delineate a medical disability which would account for the actions of such person. Any arresting officer who does, in fact, discover such identifying device upon such person shall take immediate steps to aid the afflicted person in receiving medication or other treatment for his disability.

**History.**—s. 1, ch. 74-25.

**901.22 Arrest after escape or rescue.**—If a person lawfully arrested escapes or is rescued, the person from whose custody he escapes or was rescued or any other officer may immediately pursue and retake the person arrested without a warrant at any time and in any place.

**History.**—s. 22, ch. 19554, 1939; CGL 1940 Supp. 8663(22); s. 11, ch. 70-339.

**901.24 Right of person arrested to consult attorney.**—A person arrested shall be allowed to consult with any attorney entitled to practice in this state, alone and in private at the place of custody, as often and for such periods of time as is reasonable.

**History.**—s. 24, ch. 19554, 1939; CGL 1940 Supp. 8663(24); s. 13, ch. 70-339.

**901.25 Fresh pursuit; arrest outside jurisdiction.**—

(1) The term "fresh pursuit" as used in this act shall include fresh pursuit as defined by the common law and also the pursuit of a person who has committed a felony or who is reasonably suspected of having committed a felony. It shall also include the pursuit of a person suspected of having committed a supposed felony, though no felony has actually been committed, if there is reasonable ground for believing that a felony has been committed. It shall also include the pursuit of a person who has violated a city ordinance or committed a misdemeanor.

(2) Any duly authorized state, county, or municipal arresting officer is authorized to arrest a person outside his jurisdiction when in fresh pursuit. Said officer shall have the same authority to arrest and hold such person in custody outside his jurisdiction,

subject to the limitations hereafter set forth, as has any authorized arresting state, county, or municipal officer of this state to arrest and hold in custody a person not arrested in fresh pursuit.

(3) If an arrest is made in this state by an officer outside his jurisdiction, he shall immediately notify the officer in charge of the jurisdiction in which the arrest is made. Said officer in charge of the jurisdiction shall, along with the officer making the arrest, take the person so arrested before a county court judge or other committing magistrate of the county in which the arrest was made without unnecessary delay.

(4) The employing agency of the state, county, or municipal officer making an arrest on fresh pursuit shall be liable for all actions of said officer in the same fashion that it is liable for his acts made while making an arrest within his jurisdiction.

(5) The officer making an arrest on fresh pursuit shall be fully protected with respect to pension, retirement, workers' compensation, and other such benefits just as if he had made an arrest in his own jurisdiction.

History.—s. 1, ch. 63-515; s. 14, ch. 70-339; s. 1, ch. 78-246; s. 120, ch. 79-40.

**901.26 Recognition of International Treaties Act; identification certificate; notification upon arrest.—**

(1) The following shall be known as the "Recognition Of International Treaties Act."

(2) The Department of State may, upon application, issue identification certificates to those official representatives of sovereign nations that are on official business within the boundaries of Florida.

(3) Wherever in the state a citizen of any sovereign nation to which the United States extends diplomatic recognition shall be arrested or detained for any reason whatsoever, the official who makes the arrest or detention shall immediately notify the nearest consul or other officer of the nation concerned or, if unknown, the Embassy in Washington, D.C., of the nation concerned or, if unknown, the nearest state judicial officer who shall in turn notify either of the above. Failure to give notice shall not be a defense in any criminal proceedings against any citizen of a sovereign nation and shall not be cause for his discharge from custody.

History.—ss. 1-3, ch. 65-523; ss. 10, 35, ch. 69-106; s. 15, ch. 70-339.

**901.27 Definition.—**As used in ss. 901.27-901.32, unless the context clearly indicates otherwise, "notice to appear" means a written order issued by a law enforcement officer in lieu of physical arrest, requiring a person accused of violating the law to appear in a designated court or governmental office at a specified date and time.

History.—s. 1, ch. 73-27.

**901.28 Notice to appear for misdemeanors or violations of municipal or county ordinances; forms and requisites.—**

(1) If a person is arrested for an offense declared to be a misdemeanor of the first or second degree or for a violation of a municipal or county ordinance triable in the county court and does not demand to be taken before a magistrate, the arresting officer or

booking officer may issue such person a notice to appear unless:

(a) The accused fails to identify himself sufficiently or supply the required information;

(b) The accused refuses to sign the notice to appear;

(c) The officer has reason to believe that the continued liberty of the accused constitutes an unreasonable risk of bodily injury to himself or others;

(d) The accused has no ties with the jurisdiction reasonably sufficient to assure his appearance or there is substantial risk that he will refuse to respond to the notice;

(e) The officer has any suspicion that the accused may be wanted in any jurisdiction; or

(f) It appears that the accused has previously failed to respond to a notice or a summons or has violated the conditions of any pretrial release program.

(2) If a notice to appear is issued pursuant to subsection (1) for a misdemeanor or violation of a municipal or county ordinance, the notice shall be issued immediately upon arrest or after the person has been taken to police headquarters.

(3) If the arresting officer, in lieu of issuance of a notice to appear, determines that the accused person should be taken to police headquarters, the booking officer may issue a notice to appear if he determines that there is a likelihood that the accused will appear as directed, based on a reasonable investigation of the following:

(a) Residence and length of residence in the community;

(b) Family ties;

(c) Employment record;

(d) Character and mental condition;

(e) Past record of convictions; and

(f) Past history of appearance at court proceedings.

(4) The arresting officer shall prepare in quadruplicate a written notice to appear in court containing the name and address of the person, the offense charged, the time and place where the person shall appear in court, the name and address of the court, the name of the arresting officer, and the signature of the person. The court specified in the notice shall be the trial court having jurisdiction to try the offense charged.

(5) The issuance of a notice to appear shall not be construed to affect a law enforcement officer's authority to conduct an otherwise lawful search, as provided by law.

(6) Rules and regulations of procedure governing the exercise of authority to issue notices to appear shall be established by the chiefs of the respective law enforcement agencies having jurisdiction in order effectively to implement the provisions of ss. 901.27-901.32.

(7) Nothing contained herein shall prevent the operation of a traffic violations bureau, the issuance of citations for traffic violations, or any procedure pursuant to chapter 316.

History.—s. 1, ch. 73-27.



**901.29 Authorization to take person to medical facility.**—Even though a notice to appear is issued, a law enforcement officer shall be authorized to take a person to a medical facility for such care as appropriate.

History.—s. 1, ch. 73-27.

**901.30 How notice to appear served.**—The officer shall deliver one copy of the notice to appear to the arrested person, and such person, in order to secure release, shall give his written promise to appear in court by signing the two notice copies to be retained by the officer. The arresting officer or other duly authorized official shall then release the person arrested from custody.

History.—s. 1, ch. 73-27.

**901.31 Failure to obey written promise to appear.**—Any person who willfully fails to appear before any court or judicial officer as required by a written notice to appear shall be fined not more than the fine of the principal charge or imprisoned up to the maximum sentence of imprisonment of the principal charge, or both, regardless of the disposition of the charge upon which he was originally arrested. Nothing in this section shall interfere with or prevent the court from exercising its power to punish for contempt.

History.—s. 1, ch. 73-27.

**901.32 Issuance of warrant on failure to appear.**—When a person signs a written notice to appear and fails to respond to the notice to appear, a warrant of arrest shall be issued.

History.—s. 1, ch. 73-27.

**901.33 Arrest records; expunging; exceptions.**—If a person who has never previously been convicted of a criminal offense or municipal ordinance violation is charged with a violation of a mu-

nicipal ordinance or a felony or misdemeanor, but is acquitted or released without being adjudicated guilty, he may file a motion with the court wherein the charge was brought to expunge the record of arrest from the official records of the arresting authority. Notice of such motion shall be served upon the prosecuting authority charged with the duty of prosecuting the offense and upon the arresting authority. The court shall issue an order to expunge all official records relating to such arrest, indictment or information, trial, and dismissal or discharge. However, the court shall require that nonpublic records be retained by the Department of Law Enforcement and be made available by said department only to law enforcement agencies in the event of a future investigation of said person relative to a pending charge, indictment, or information against or upon said person for an act which, if committed, would be an offense similar in nature to the offense for which said person had been charged and not found guilty. The court shall not enter an order expunging the records as above provided when there are several acts, or said person has been charged with several offenses originating out of or related to the offense or offenses for which such person had been charged and not found guilty, and when the charge and adjudication of nonguilt did not include all such charges or all such several acts. The effect of such order shall be to restore such person, in the contemplation of the law, to the status he occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of Florida law to be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or acknowledge such arrest in response to any nonjudicial inquiry made of him for any purpose.

History.—s. 1, ch. 74-206; s. 1, ch. 77-174; s. 32, ch. 79-8.  
cf.—s. 30.31 Fingerprinting persons charged with crime.

## CHAPTER 902

## PRELIMINARY HEARINGS

- 902.15 Undertaking by witness.  
 902.17 Procedure when witness does not give security.  
 902.19 When prosecutor liable for costs.  
 902.20 Contempts before committing magistrate.  
 902.21 Commitment to jail in another county.

**902.15 Undertaking by witness.**—When a defendant is held to answer on a charge for a crime punishable by death or life imprisonment, the magistrate at the preliminary hearing may require each material witness to enter into a written recognizance to appear at the trial or forfeit a sum fixed by the magistrate. Additional security may be required in the discretion of the magistrate.

**History.**—ss. 39, 40, ch. 19554, 1939; CGL 1940 Supp. 8663(39), (40); s. 16, ch. 70-339.

**Note.**—Former s. 902.16.

**902.17 Procedure when witness does not give security.**—

(1) If a witness required to enter into a recognizance to appear refuses to comply with the order, the magistrate shall commit him to custody until he complies or he is legally discharged.

(2) If the magistrate requires a witness to give security for his appearance and the witness is unable to give the security, the witness may apply to the court having jurisdiction to try the defendant for a reduction of the security.

(3) If it appears from examination on oath of the witness or any other person that the witness is unable to give security, the magistrate or the court having jurisdiction to try the defendant shall make an order finding that fact, and the witness shall be detained pending application for his conditional examination. Within 3 days from the entry of the order, the witness shall be conditionally examined on application of the state or the defendant. The examination shall be by question and answer in the presence of the other party and counsel, and shall be transcribed by a court reporter or stenographer selected by the parties. At the completion of the examination the witness shall be discharged. The deposition of the witness may be introduced in evidence at the trial by the defendant, or, if the prosecuting attorney and the defendant and his counsel agree, it may be admitted in evidence by stipulation. The deposition

shall not be admitted on behalf of the state without the consent of the defendant.

(4) If a conditional examination is not made within 3 days, the witness shall be discharged.

(5) A witness detained for conditional examination shall be entitled to fees as a witness for the period of his commitment.

**History.**—s. 41, ch. 19554, 1939; CGL 1940 Supp. 8663(41); s. 17, ch. 70-339.

**902.19 When prosecutor liable for costs.**—

(1) When a person makes a complaint before a county court judge that a crime has been committed and is recognized by the county court judge to appear at the next term of the court having jurisdiction to give evidence of the crime and fails to appear, he shall be liable for all costs occasioned by his complaint, and the county court judge may obtain a judgment and execution for the costs as in other cases.

(2) A person who voluntarily appears before a grand jury, state attorney, or county court judge shall not be paid per diem or mileage as a witness unless the grand jury finds a true bill, the state attorney files an information, or the county court judge holds the party charged for trial.

(3) A person who voluntarily appears or has himself summoned before a county court judge as a witness on the trial of a misdemeanor shall not be paid per diem or mileage as a witness unless the trial results in a conviction of the defendant.

**History.**—s. 43, ch. 19554, 1939; CGL 1940 Supp. 8663(43); s. 2, ch. 67-427; s. 18, ch. 70-339; s. 34, ch. 73-334.

**902.20 Contempts before committing magistrate.**—A committing magistrate holding a preliminary hearing shall have the same power to punish for contempts that he has while presiding at the trial of criminal cases.

**History.**—RS 2795; GS 3845; RGS 5940; CGL 8206; s. 19, ch. 70-339.

**Note.**—Former s. 932.04.

**902.21 Commitment to jail in another county.**

—If a person is committed in a county where there is no jail, the committing magistrate shall direct the sheriff to deliver the accused to a jail in another county.

**History.**—s. 7, ch. 6213, 1911; RS 2879; GS 3938; RGS 6039; CGL 8340; s. 20, ch. 70-339.

**Note.**—Former s. 932.39.

## CHAPTER 903

## BAIL

- 903.02 Application for bail denied; "court" defined.
- 903.03 Jurisdiction of trial court to admit to bail; duties and responsibilities of Department of Corrections.
- 903.05 Qualification of sureties.
- 903.06 Validity of undertaking by minor.
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- 903.09 Justification of sureties.
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- 903.31 Canceling the bond.
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- 903.33 Bail not discharged for certain defects.
- 903.34 Who may admit to bail.
- 903.36 Guaranteed arrest bond certificates as cash bail.

**903.02 Application for bail denied; "court" defined.—**

(1) If application for bail is made to an authorized court and denied, no court of inferior jurisdiction shall admit applicant to bail unless such court of inferior jurisdiction is the court having jurisdiction to try the defendant.

(2) "Court" as used in this chapter includes all state courts.

*History.*—s. 45, ch. 19554, 1939; CGL 1940 Supp. 8663(45); s. 1, ch. 70-86; s. 1, ch. 77-119.

**903.03 Jurisdiction of trial court to admit to bail; duties and responsibilities of Department of Corrections.—**

(1) After a person is held to answer by a magistrate, the court having jurisdiction to try the defendant shall, before indictment, affidavit, or information is filed, have jurisdiction to hear and decide all preliminary motions regarding bail and production or impounding of all articles, writings, moneys, or other exhibits expected to be used at the trial by either the state or the defendant.

(2)(a) The Department of Corrections shall have the authority on the request of a circuit court when a person charged with a noncapital crime or bailable

offense is held, to make an investigation and report to the court, including:

1. The circumstances of the accused's family, employment, financial resources, character, mental condition, and length of residence in the community;

2. His record of convictions, of appearance at court proceedings, of flight to avoid prosecution, or failure to appear at court proceedings; and

3. Other facts that may be needed to assist the court in its determination of the indigency of the accused and whether he should be released on his own recognizance.

(b) The court shall not be bound by the recommendations.

*History.*—s. 46, ch. 19554, 1939; CGL 1940 Supp. 8663(46); s. 1, ch. 67-151; s. 21, ch. 70-339; s. 1, ch. 70-439; s. 5, ch. 75-301; s. 13, ch. 77-120; s. 22, ch. 79-3.

**903.05 Qualification of sureties.**—A surety for the release of a person on bail, other than a company authorized by law to act as a surety, shall be a resident of the state or own real estate within the state.

*History.*—s. 48, ch. 19554, 1939; CGL 1940 Supp. 8663(48); s. 21, ch. 70-339.

**903.06 Validity of undertaking by minor.**—Minors may bind themselves by a bond to secure their release on bail in the same manner as persons sui juris.

*History.*—s. 49, ch. 19554, 1939; CGL 1940 Supp. 8663(49); s. 21, ch. 70-339.

**903.08 Sufficiency of sureties.**—The combined net worth of the sureties, exclusive of any other bonds on which they may be principal, or surety and property exempt from execution, shall be at least equal to the amount specified in the undertaking.

*History.*—s. 51, ch. 19554, 1939; CGL 1940 Supp. 8663(51); s. 22, ch. 70-339.

**903.09 Justification of sureties.—**

(1) A surety shall execute an affidavit stating that he possesses the qualifications and net worth required to become a surety. The affidavit shall describe his property and any encumbrances, and shall state the number and amount of any bonds entered into by him at any court that remain undischarged.

(2) A bondsman, as defined in s. 648.25(3), shall justify his suretyship by attaching a copy of the power of attorney issued by the company to the bond or by attaching to the bond United States currency, a United States postal money order, or a cashier's check in the amount of the bond; but the United States currency, United States postal money order, or cashier's check cannot be used to secure more than one bond.

*History.*—s. 52, ch. 19554, 1939; CGL 1940 Supp. 8663(52); s. 1, ch. 57-63; s. 23, ch. 70-339.

cf.—s. 837.012 Perjury not in an official proceeding.  
s. 837.02 Perjury in official proceedings.

**903.101 Sureties; licensed persons; to have equal access.**—Subject to regulations promulgated by the Department of Insurance, every surety who meets the requirements of ss. 903.05, 903.06, 903.08, and 903.09, and every person who is currently licensed by the Department of Insurance and registered as required by s. 648.42 shall have equal access



to the jails of this state for the purpose of making bonds.

**History.**—s. 1, ch. 61-406; ss. 13, 35, ch. 69-106; s. 24, ch. 70-339; s. 1, ch. 70-439.

**903.131 Bail on appeal, revocation; recommendation.**—If a person admitted to bail on appeal commits and is convicted of a separate felony while free on appeal, the bail on appeal shall be revoked and the defendant committed forthwith.

**History.**—s. 1, ch. 69-2.

**903.132 Bail on appeal; conditions for granting; appellate review.**—

(1) No person may be admitted to bail upon appeal from a conviction of a felony unless the defendant establishes that the appeal is taken in good faith, on grounds fairly debatable, and not frivolous. However, in no case shall bail be granted if such person has previously been convicted of a felony, the commission of which occurred prior to the commission of the subsequent felony, and such person's civil rights have not been restored or if other felony charges are pending against him and probable cause has been found that the person has committed the felony or felonies at the time the request for bail is made.

(2) An order by a trial court denying bail to a person pursuant to the provisions of subsection (1) may be appealed as a matter of right to an appellate court, and such appeal shall be advanced on the calendar of the appellate court for expeditious review.

**History.**—s. 1, ch. 69-307; s. 1, ch. 76-138.

**903.14 Contracts to indemnify sureties.**—

(1) A surety shall file with the bond an affidavit stating the amount and source of any security or consideration which he or anyone for his use has received or been promised for the bond.

(2) A surety may maintain an action against the indemnitor only on agreements set forth in the affidavit. In an action by the indemnitor to recover security or collateral, the surety shall have the right to retain only the security or collateral stated in the affidavit.

(3) A limited surety or licensed bondsman may file a statement in lieu of the affidavit required in subsection (1). Such statement must be filed within 30 days from the execution of the undertaking.

**History.**—s. 57, ch. 19554, 1939; CGL 1940 Supp. 8663(57); s. 1, ch. 65-492; s. 1, ch. 69-151; s. 25, ch. 70-339.  
cf.—s. 837.012 Perjury not in an official proceeding.  
s. 837.02 Perjury in official proceedings.

**903.16 Deposit of money or bonds as bail.**—

(1) A defendant who has been admitted to bail, or another person in his behalf, may deposit with the official authorized to take bail money or nonregistered bonds of the United States, the state, or a city, town, or county in the state, equal in market value to the amount set in the order and the personal bond of the defendant and an undertaking by the depositor if the money or bonds are deposited by another.

(2) Consent is conclusively presumed for the clerk of the circuit court to sell bonds deposited as bail after forfeiture of the bond.

**History.**—s. 59, ch. 19554, 1939; CGL 1940 Supp. 8663(59); s. 1, ch. 59-353; s. 26, ch. 70-339.

**903.17 Substitution of cash bail for other bail.**—When bail other than a deposit of money or bonds has been given, the defendant or the surety may deposit money or bonds as provided in s. 903.16 and have the original bond canceled.

**History.**—s. 60, ch. 19554, 1939; CGL 1940 Supp. 8663(60); s. 27, ch. 70-339.

**903.18 Bail after deposit of money or bonds.**—Bail by sureties may be substituted for a deposit of money or bonds as bail any time before a breach of the bond.

**History.**—s. 61, ch. 19554, 1939; CGL 1940 Supp. 8663(61); s. 28, ch. 70-339.

**903.20 Surrender of defendant.**—The defendant may surrender himself or a surety may surrender him any time before a breach of the bond.

**History.**—s. 63, ch. 19554, 1939; CGL 1940 Supp. 8663(63); s. 29, ch. 70-339.

**903.21 Method of surrender; exoneration of obligors.**—

(1) A surety desiring to surrender a defendant shall deliver a certified copy of the bond and the defendant to the official who had custody of the defendant at the time bail was taken or to the official into whose custody he would have been placed if he had been committed. The official shall take the defendant into custody, as on a commitment, and issue a certificate acknowledging the surrender.

(2) When a surety presents the certificate and a certified copy of the bond to the court having jurisdiction, the court shall order the obligors exonerated and any money or bonds deposited as bail refunded. The surety shall give the State Attorney 3 days' notice of application for an order of exoneration and furnish him a copy of the certificate and bond.

**History.**—s. 64, ch. 19554, 1939; CGL 1940 Supp. 8663(64); s. 30, ch. 70-339; s. 34, ch. 73-334.

**903.22 Arrest of principal by surety before forfeiture.**—A surety may arrest the defendant before a forfeiture of the bond for the purpose of surrendering him or he may authorize a peace officer to make the arrest by indorsing the authorization on a certified copy of the bond.

**History.**—s. 65, ch. 19554, 1939; CGL 1940 Supp. 8663(65); s. 31, ch. 70-339.

**903.26 Forfeiture of the bond; when and how directed; discharge; how and when made; effect of payment.**—

(1) A bail bond shall not be forfeited unless:

(a) The information, indictment, or affidavit was filed within 6 months from the date of arrest, and  
(b) The clerk of court gave the surety at least 72 hours' notice, exclusive of Saturdays, Sundays, and holidays, before the time of the required appearance of the defendant. Notice shall not be necessary if the time for appearance is within 72 hours from the time of arrest, or if the time is stated on the bond.

(2) If there is a breach of the bond, the court shall declare the bond and any bonds or money deposited as bail forfeited and shall notify the surety agent and surety company in writing within 72 hours of said forfeiture. The forfeiture shall be paid within 30 days.

(3) Thirty days after the forfeiture:

(a) State and county officials having custody of forfeited money shall deposit the money in the coun-

ty fine and forfeiture fund;

(b) Municipal officials having custody of forfeited money shall deposit the money in a designated municipal fund;

(c) Officials having custody of bonds as authorized by s. 903.16 shall transmit the bonds to the Clerk of the Circuit Court who shall sell them at market value and disburse the proceeds as provided in paragraphs (a) and (b).

(4)(a) When a bond is forfeited, the clerk shall transmit the bond and any affidavits to the Clerk of the Circuit Court in which the bond and affidavits are filed. The Clerk of the Circuit Court shall record the forfeiture in the deed or official records book. If the undertakings and affidavits describe real property in another county, the clerk shall transmit the bond and affidavits to the Clerk of the Circuit Court of the county where the property is located who shall record and return them.

(b) The bond and affidavits shall be a lien on the real property they describe from the time of recording in the county where the property is located for 2 years or until the final determination of an action instituted thereon within a 2-year period. If an action is not instituted within 2 years from the date of recording, the lien shall be discharged. The lien will be discharged 2 years after the recording even if an action was instituted within 2 years unless a lis pendens notice is recorded in the action.

(5) The court may discharge a forfeiture within 30 days upon:

(a) A satisfactory explanation of the breach of the bond;

(b) A determination that at the time of the required appearance the defendant was adjudicated insane and confined in an institution or hospital;

(c) A determination that, at the time of the required appearance, the defendant was adjudicated insane and confined in an institution or hospital or was confined in a jail or prison;

(d) Surrender of the defendant, unless the delay has thwarted the proper prosecution of the defendant. If the forfeiture has been before discharge, the court shall direct remission of the forfeiture to the surety. The court may condition a discharge or remission on the payment of costs and the expenses incurred by an official in returning the defendant to the jurisdiction of the court.

(6) The payment by a surety of a forfeiture under the provisions of this law shall have the same effect on the bond as payment of a judgment.

**History.**—s. 69, ch. 19554, 1939; CGL 1940 Supp. 8663(69); s. 1, ch. 59-354; s. 2, ch. 61-406; s. 2, ch. 65-492; s. 1, ch. 69-150; s. 32, ch. 70-339; s. 1, ch. 77-388. cf.—s. 843.15 Failure of defendant on bail to appear.  
s. 932.45 Calling of sureties upon breach of undertaking.  
s. 932.46 Certificate of judge setting forth breach of conditions, etc.

#### 903.27 Forfeiture to judgment.—

(1) If the forfeiture is not paid or discharged within 30 days and the bond is secured other than by money and bonds authorized in s. 903.16, the state attorney shall file a certified copy of the order of forfeiture with the Clerk of the Circuit Court for the county where the order was made. The clerk shall enter a judgment against the surety for the amount of the penalty and issue execution. The clerk shall furnish the surety company at its home office a certified copy of the judgment within 10 days. If the judgment

is not paid within 60 days, the clerk shall furnish the Department of Insurance two certified copies of the judgment and a certificate stating that the judgment remains unsatisfied.

(2) After notice of judgment against the surety given by the clerk of the circuit court, the surety or bail bondsman may within 45 days file a motion to set aside the judgment. The court entering the judgment may at any time set aside the judgment in whole or in part for reasonable cause shown. During the pendency of such motion the court may stay execution on judgment or other process.

**History.**—s. 70, ch. 19554, 1939; CGL 1940 Supp. 8663(70); ss. 3, 24, ch. 61-406; s. 3, ch. 65-492; ss. 13, 35, ch. 69-106; s. 1, ch. 69-149; s. 33, ch. 70-339; s. 1, ch. 70-439; s. 173, ch. 71-355; s. 34, ch. 73-334.

#### 903.28 Remission of forfeiture; conditions.—

(1) Within 1 year after forfeiture, the court may direct a partial or complete remission for reasonable cause. On application within 1 year from forfeiture, the court shall order remission if it determines that there was no breach of the bond. If the surety apprehends and surrenders the defendant within 1 year from forfeiture, the court shall order the forfeiture remitted unless the delay has thwarted the proper prosecution of the defendant.

(2) Application for remission must be accompanied by affidavits setting forth the facts on which it is founded. The State Attorney must be given 5 days' notice before a hearing on an application and be furnished copies of all papers. Remission shall be granted on the condition of payment of costs unless the ground for remission is that there was no breach of the bond.

**History.**—ss. 71, 73, ch. 19554, 1939; CGL 1940 Supp. 8663(71), (73); s. 2, ch. 59-354; ss. 4, 6, ch. 61-406; s. 4, ch. 65-492; s. 34, ch. 70-339; s. 34, ch. 73-334.

#### 903.29 Arrest of principal by surety after forfeiture.—

Within 1 year from the date of forfeiture of a bond that has been paid, the surety may arrest the principal for the purpose of surrendering him to the official in whose custody he was at the time bail was taken or in whose custody he would have been placed had he been committed.

**History.**—s. 72, ch. 19554, 1939; CGL 1940 Supp. 8663(72); s. 1, ch. 59-192; s. 5, ch. 61-406; s. 5, ch. 65-492; s. 35, ch. 70-339.

**903.31 Canceling the bond.**—When the conditions of a bond have been satisfied or the forfeiture discharged or remitted, the court shall order the bond canceled. Conviction or acquittal of the defendant will satisfy a bond unless the court otherwise provides in the judgment.

**History.**—s. 74, ch. 19554, 1939; CGL 1940 Supp. 8663(74); s. 2, ch. 59-192; s. 36, ch. 70-339.

#### 903.32 Defects in bond.—

(1) A bond shall not be held invalid because of any irregularity if it was taken by a legally authorized official and states the place of appearance and the amount of bail.

(2) If no day, or an impossible day, is stated in a bond for the defendant's appearance before a magistrate for a hearing, the defendant shall be bound to appear 10 days after receipt of notice to appear by the defendant, his counsel, or any surety on the undertaking. If no day, or an impossible day, is stated in a bond for the defendant's appearance for trial, he shall be bound to appear on the first day of the next

term of court that will commence more than 3 days after the undertaking is given.

**History.**—s. 75, ch. 19554, 1939; CGL 1940 Supp. 8663(75); s. 37, ch. 70-339.

**903.33 Bail not discharged for certain defects.**—The liability of a surety shall not be affected by his lack of any qualifications required by law, any agreement not expressed in the undertakings, or the failure of the defendant to join in the bond.

**History.**—s. 76, ch. 19554, 1939; CGL 1940 Supp. 8663(76); s. 38, ch. 70-339.

**903.34 Who may admit to bail.**—In criminal actions instituted or pending in any state court, bonds given by defendants before trial until appeal shall be approved by a committing magistrate or the

sheriff. Appeal bonds shall be approved as provided in s. 924.15.

**History.**—s. 77, ch. 19554, 1939; CGL 1940 Supp. 8663(77); s. 39, ch. 70-339.

**903.36 Guaranteed arrest bond certificates as cash bail.**—A guaranteed arrest bond certificate provided for in s. 627.758 shall be accepted as bail in an amount not to exceed \$200 for the appearance of the person named in the certificate in any court to answer for the violation of a motor vehicle law or ordinance, except driving while under the influence of intoxicants, or any felony.

**History.**—s. 2, ch. 26897, 1951; s. 40, ch. 70-339; s. 1, ch. 77-119.



## CHAPTER 905

## GRAND JURY

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#### 905.01 Number and procurement of grand jury.—

<sup>1</sup>(1) The grand jury shall consist of not less than 15 or more than 18 persons. The provisions of law governing the qualifications, disqualifications, excusals, drawing, summoning, supplying deficiencies, compensation, and procurement of petit jurors shall

apply to grand jurors. In addition, no elected public official shall be eligible for service on a grand jury.

(2) The judge of any circuit court may dispense with the convening of the grand jury at any term of court by filing a written order with the clerk of court directing that a grand jury not be summoned.

**History.**—s. 80, ch. 19554, 1939; CGL 1940 Supp. 8663(80); s. 41, ch. 70-339; s. 1, ch. 72-68; s. 19, ch. 79-235.

<sup>1</sup>**Note.**—As amended, effective January 1, 1980.  
cf.—s. 40.01 Qualifications of jurors.

**905.02 Who may challenge.**—The state or a person who has been held to answer may challenge the panel or individual grand jurors.

**History.**—s. 81, ch. 19554, 1939; CGL 1940 Supp. 8663(81); s. 42, ch. 70-339.

**905.03 Ground for challenge to panel.**—A challenge to the panel may be made only on the ground that the grand jurors were not selected according to law.

**History.**—s. 82, ch. 19554, 1939; CGL 1940 Supp. 8663(82); s. 42, ch. 70-339.

**905.04 Grounds for challenge to individual prospective grand juror.**—

(1) The state or a person who has been held to answer may challenge an individual prospective grand juror on the ground that the juror:

(a) Does not have the qualifications required by law;

(b) Has a state of mind that will prevent him from acting impartially and without prejudice to the substantial rights of the party challenging;

(c) Is related by blood or marriage within the third degree to the defendant, to the person alleged to be injured by the offense charged, or to the person on whose complaint the prosecution was instituted.

(2) The state may challenge an individual prospective grand juror on the ground that the prospective juror is surety on the bail undertaking of any person whose case will come before the grand jury.

**History.**—s. 83, ch. 19554, 1939; CGL 1940 Supp. 8663(83); s. 43, ch. 70-339.  
cf.—ss. 40.01, 40.013 Qualifications of jurors.

**905.05 When challenge or objection to be made.**—A challenge or objection to the grand jury may not be made after it has been empaneled and sworn. This section shall not apply to a person who did not know or have reasonable ground to believe, at the time the grand jury was empaneled and sworn, that cases in which he was or might be involved would be investigated by the grand jury.

**History.**—s. 84, ch. 19554, 1939; CGL 1940 Supp. 8663(84); s. 44, ch. 70-339.

**905.06 How challenge made and tried.**—Challenges to an individual grand juror or to the panel shall be tried by the court. A challenge to an individual grand juror may be oral, but a challenge to the panel shall be in writing.

**History.**—s. 85, ch. 19554, 1939; CGL 1940 Supp. 8663(85); s. 45, ch. 70-339.

**905.07 Effect of sustaining challenge to pan-**

el.—If a challenge to the panel is sustained, the grand jury shall be discharged.

**History.**—s. 86, ch. 19554, 1939; CGL 1940 Supp. 8663(86).

**905.075 Excusing grand juror related to person being investigated.**—A grand juror may excuse himself, be excused by a majority vote of the other grand jurors, or be excused by order of the court on its own motion or on motion of the state attorney, and be relieved from deliberating and voting in any case being investigated by the grand jury in which the party being investigated is related by blood or marriage to the grand juror. When excused or relieved, the grand juror shall retire from the grand jury room during the investigation and voting on a true bill against his relative. The failure of a grand juror to excuse himself or be relieved from participation in the investigation and voting shall not invalidate an indictment found or returned against the relative.

**History.**—s. 1, ch. 17058, 1935; CGL 1936 Supp. 4452(1); s. 46, ch. 70-339.

**Note.**—Former s. 932.16.

**905.08 Appointment of foreman.**—After the grand jury has been impaneled, the court shall appoint one of the grand jurors as foreman and another to act as foreman during absence of the foreman.

**History.**—s. 87, ch. 19554, 1939; CGL 1940 Supp. 8663(87); s. 47, ch. 70-339.

**905.09 Discharge and recall of grand jury.**—A grand jury that has been dismissed may be recalled at any time during the same term of court.

**History.**—s. 88, ch. 19554, 1939; CGL 1940 Supp. 8663(88); s. 48, ch. 70-339.

**905.095 Extension of grand jury term.**—Upon petition of the state attorney or the foreman of the grand jury acting on behalf of a majority of the grand jurors, the circuit court may extend the term of a grand jury impaneled under this chapter beyond the term of court in which it was originally impaneled. A grand jury whose term has been extended as provided herein shall have the same composition and the same powers and duties it had during its original term. In the event the term of the grand jury is extended under this section, it shall be extended for a time certain, not to exceed a total of 90 days, and only for the purpose of concluding one or more specified investigative matters initiated during its original term.

**History.**—s. 1, ch. 73-1.

**905.10 Oath of grand jurors.**—The clerk shall prepare a list of the names of the grand jurors. After the jury is impaneled, the following oath shall be administered to the jurors:

"You, as grand jurors for ..... County do solemnly swear (or affirm) that you will diligently inquire into all matters put in your charge and you will make true presentments of your findings; unless ordered by a court, you will not disclose the nature or substance of the deliberations of the grand jury, the nature or substance of any testimony or other evidence, the vote of the grand jury, or the statements of the state attorney; you shall not make a present-

ment against a person because of envy, hatred, or malice, and you shall not fail to make a presentment against a person because of love, fear, or reward. So help you God."

**History.**—s. 89, ch. 19554, 1939; CGL 1940 Supp. 8663(89); s. 49, ch. 70-339.

**905.11 Charge of court.**—After the grand jurors are sworn the court shall charge them concerning their duties.

**History.**—s. 90, ch. 19554, 1939; CGL 1940 Supp. 8663(90).

**905.12 Retirement of grand jurors.**—After being charged by the court, the grand jury shall retire to a private place and perform their duties.

**History.**—s. 91, ch. 19554, 1939; CGL 1940 Supp. 8663(91); s. 50, ch. 70-339.

**905.13 Appointment of clerk.**—The foreman shall appoint one of the grand jurors as clerk to keep minutes of the proceedings.

**History.**—s. 92, ch. 19554, 1939; CGL 1940 Supp. 8663(92); s. 50, ch. 70-339.

**905.15 Appointment of interpreter.**—The foreman shall appoint an interpreter to interpret the testimony of any witness who does not speak the English language well enough to be readily understood. The interpreter must take an oath not to disclose any information coming to his knowledge, except on order of the court.

**History.**—s. 94, ch. 19554, 1939; CGL 1940 Supp. 8663(94); s. 51, ch. 70-339.

**905.16 Duties of grand jury.**—The grand jury shall inquire into every offense triable within the county for which any person has been held to answer, if an indictment has not been found or an information or affidavit filed for the offense, and all other indictable offenses triable within the county that are presented to it by the state attorney or his designated assistant or otherwise come to its knowledge.

**History.**—s. 95, ch. 19554, 1939; CGL 1940 Supp. 8663(95); s. 52, ch. 70-339.

**905.165 Grand jury to make presentments.**—The grand jury may make presentments for offenses against the criminal laws, whether or not specific punishment is provided for the offense.

**History.**—s. 16, Nov. 19, 1828; RS 2805; GS 3854; RGS 5949; CGL 8215; s. 53, ch. 70-339.

**Note.**—Former s. 932.15.

**905.17 Who may be present during session of grand jury.**—

(1) No person shall be present at the sessions of the grand jury except the witness under examination, the state attorney and his assistant state attorneys, designated assistants as provided for in s. 27.18, the court reporter or stenographer, and the interpreter. The stenographic records, notes, and transcriptions made by the court reporter or stenographer shall be filed with the clerk who shall keep them in a sealed container not subject to public inspection. The notes, records, and transcriptions shall be released by the clerk only on request by a grand jury for use by the grand jury or on order of the court pursuant to s. 905.27.

(2) No person shall be present while the grand jurors are deliberating or voting.

(3) An intentional violation of the provisions of

this section shall constitute indirect criminal contempt of court.

**History.**—s. 96, ch. 19554, 1939; CGL 1940 Supp. 8663(96); s. 1, ch. 26584, 1951; s. 54, ch. 70-339; s. 2, ch. 74-627.

**905.18 Duty of court.**—When requested, the court shall advise the grand jury about its legal duties. In its original charge or thereafter the court shall not restrict an investigation of any matter into which the grand jury is by law entitled to inquire.

**History.**—s. 97, ch. 19554, 1939; CGL 1940 Supp. 8663(97); s. 55, ch. 70-339.

**905.185 State attorney to issue process.**—When requested by the grand jury, the state attorney or his designated assistant shall issue process to secure the attendance of witnesses.

**History.**—s. 20, ch. 1628, 1868; RS 2807; GS 3856; RGS 5951; CGL 8217; s. 56, ch. 70-339.

**Note.**—Former s. 932.17.

**905.19 Duty of state attorney.**—The state attorney or an assistant state attorney shall attend sessions of the grand jury to examine witnesses and give legal advice about any matter cognizable by the grand jury. The state attorney may designate one or more assistant state attorneys to accompany and assist him in the performance of his duties, or he may designate one or more assistant state attorneys to attend sessions, examine witnesses, and give legal advice to the grand jury. The state attorney or an assistant state attorney shall draft indictments.

**History.**—s. 98, ch. 19554, 1939; CGL 1940 Supp. 8663(98); s. 57, ch. 70-339; s. 3, ch. 74-627.

**905.195 List of witnesses; minutes.**—

(1) The foreman of the grand jury shall return to the court a list under his hand of all witnesses who have been sworn by the grand jury during the term. The list shall be filed by the clerk of the court.

(2) When directed by the grand jury, the clerk shall deliver the minutes of the proceedings to the state attorney.

**History.**—ss. 14, 15, ch. 1628, 1868; RS 2806, 2809; GS 3855, 3858; RGS 5950, 5953; CGL 8216, 8219; s. 58, ch. 70-339.

**Note.**—Former s. 932.18.

**905.20 Duty of grand juror having knowledge of offense.**—A grand juror who knows or has reason to believe that an indictable offense triable within the county has been committed shall report the information to the grand jury and may be sworn as a witness in the investigation.

**History.**—s. 99, ch. 19554, 1939; CGL 1940 Supp. 8663(99); s. 59, ch. 70-339.

**905.21 When grand jury of another county may indict in other cases.**—When an offense has been committed in a county and the circuit court has determined that conditions in that county make it impractical to convene a grand jury, any grand jury within the circuit or in any circuit to which the judge of the circuit court refers the matter may inquire into the offense. If an indictment is returned, it shall be certified and transferred for trial to the county where the offense was committed.

**History.**—s. 100, ch. 19554, 1939; CGL 1940 Supp. 8663(100); s. 60, ch. 70-339.

**905.22 Swearing of witnesses.**—The foreman, state attorney, or assistant state attorney shall administer an oath or affirmation in the manner prescribed by law to any witness who testifies before the grand jury.

**History.**—s. 101, ch. 19554, 1939; CGL 1940 Supp. 8663(101); s. 61, ch. 70-339.

**905.23 Number of grand jurors required to return indictment.**—An indictment shall not be found without the concurrence of 12 grand jurors.

**History.**—s. 102, ch. 19554, 1939; CGL 1940 Supp. 8663(102); s. 62, ch. 70-339.

**905.24 Proceedings of grand jury to be kept secret.**—Grand jury proceedings are secret, and a grand juror shall not disclose the nature or substance of the deliberations or vote of the grand jury.

**History.**—s. 103, ch. 19554, 1939; CGL 1940 Supp. 8663(103); s. 63, ch. 70-339.

cf.—s. 12(e), Art. V, State Const. Access by Judicial Qualifications Commission to Grand Jury information.

**905.25 Grand juror not permitted to state or testify.**—A grand juror shall not be permitted to state or testify in any court how he or any other grand juror voted on any matter before them or what opinion was expressed by himself or any other grand juror about the matter.

**History.**—s. 104, ch. 19554, 1939; CGL 1940 Supp. 8663(104); s. 64, ch. 70-339.

**905.26 Not to disclose finding of indictment.**—Unless ordered by the court, a grand juror, reporter, stenographer, interpreter, or officer of the court shall not disclose that an indictment for a felony has been found against a person not in custody or under recognizance, except by issuing or executing process on the indictment, until the person has been arrested.

**History.**—s. 105, ch. 19554, 1939; CGL 1940 Supp. 8663(105); s. 65, ch. 70-339.

**905.27 Testimony not to be disclosed; exceptions.**—

(1) A grand juror, state attorney, assistant state attorney, reporter, stenographer, interpreter, or any other person appearing before the grand jury shall not disclose the testimony of a witness examined before the grand jury or other evidence received by it except when required by a court to disclose the testimony for the purpose of:

(a) Ascertaining whether it is consistent with the testimony given by the witness before the court;

(b) Determining whether the witness is guilty of perjury; or

(c) Furthering justice.

(2) It is unlawful for any person knowingly to publish, broadcast, disclose, divulge, or communicate to any other person, or knowingly to cause or permit to be published, broadcast, disclosed, divulged, or communicated to any other person, in any manner whatsoever, any testimony of a witness examined before the grand jury, or the content, gist, or import thereof, except when such testimony is or has been disclosed in a court proceeding. When a court orders the disclosure of such testimony pursuant to subsection (1) for use in a criminal case, it may be disclosed to the prosecuting attorney of the court in



which such criminal case is pending, and by him to his assistants, legal associates, and employees, and to the defendant and his attorney, and by the latter to his legal associates and employees. When such disclosure is ordered by a court pursuant to subsection (1) for use in a civil case, it may be disclosed to all parties to the case and to their attorneys and by the latter to their legal associates and employees. However, the grand jury testimony afforded such persons by the court can only be used in the defense or prosecution of the civil or criminal case and for no other purpose whatsoever.

(3) Nothing in this section shall affect the attorney-client relationship. A client shall have the right to communicate to his attorney any testimony given by the client to the grand jury, any matters involving the client discussed in the client's presence before the grand jury, and any evidence involving the client received by or proffered to the grand jury in the client's presence.

(4) Persons convicted of violating this section shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.083, or by fine not exceeding \$5,000, or both.

(5) A violation of this section shall constitute criminal contempt of court.

**History.**—s. 106, ch. 19554, 1939; CGL 1940 Supp. 8663(106); s. 1, ch. 26940, 1951; s. 66, ch. 70-339; ss. 1, 1A, ch. 71-66. cf.—s. 12(e), Art. V, State Const. Access by Judicial Qualifications Commission to Grand Jury information.

#### **905.28 Publication of report or presentment; motion to repress.—**

(1) No report or presentment of the grand jury relating to an individual which is not accompanied by a true bill or indictment shall be made public or be published until the individual concerned has been furnished a copy thereof and given 15 days to file with the Circuit Court a motion to repress or expunge the report or that portion which is improper and unlawful.

(2) Any such motion, whether granted or denied, shall automatically act as a stay of public announcement of such report, or portion thereof, until the Circuit Court's ruling on the motion is either affirmed or denied by the District Court of Appeal or, if no appeal is taken, until expiration of the period within which an appeal could have been taken.

**History.**—s. 1, ch. 73-132; s. 1, ch. 73-194; s. 1, ch. 77-174.

**905.31 Short title.**—Sections 905.31-905.40 shall be known and may be cited as the "Statewide Grand Jury Act."

**History.**—s. 1, ch. 73-132.

**905.32 Legislative intent.**—It is the intent of the Legislature in enacting this act to strengthen the grand jury system and enhance the ability of the state to detect and eliminate organized criminal activity by improving the evidence-gathering process in matters which transpire or have significance in more than one county.

**History.**—s. 1, ch. 73-132.

#### **905.33 Petition to Supreme Court by Governor; order.—**

(1) Whenever the Governor, for good and sufficient reason, deems it to be in the public interest to

impanel a statewide grand jury, he may petition in writing to the Supreme Court for an order impaneling a statewide grand jury. The petition shall state the general crimes or wrongs to be inquired into and shall state that said crimes or wrongs are of multi-county nature. The Supreme Court may order the impaneling of a statewide grand jury, in accordance with the petition, for a term of 12 calendar months. Upon petition by a majority of the statewide grand jury or by the legal advisor to the statewide grand jury, the Supreme Court, by order, may extend the term of the statewide grand jury for a period of up to 6 months.

(2) The Chief Justice of the Supreme Court shall designate a Judge of a Circuit Court to preside over the statewide grand jury; such judge shall be referred to herein as the presiding judge.

**History.**—s. 1, ch. 73-132; s. 3, ch. 77-403.

#### **905.34 Powers and duties; law applicable.—**

The jurisdiction of a statewide grand jury impaneled under this chapter shall extend throughout the state. The subject matter jurisdiction of the statewide grand jury shall be limited to the offenses of bribery, burglary, criminal fraud, criminal usury, extortion, gambling, kidnapping, larceny, murder, prostitution, perjury, and robbery; crimes involving narcotic or other dangerous drugs; any violation of the provisions of the Florida RICO (Racketeer-Influenced and Corrupt Organization) Act; any violation of the provisions of the Florida Anti-Fencing Act; or any attempt, solicitation, or conspiracy to commit any violation of the crimes specifically enumerated above, when any such offense is occurring, or has occurred, in two or more counties as part of a related transaction, or when any such offense is connected with an organized criminal conspiracy affecting two or more counties. The statewide grand jury may return indictments and presentments irrespective of the county or judicial circuit where the offense is committed or triable. If an indictment is returned, it shall be certified and transferred for trial to the county where the offense was committed. The powers and duties of, and law applicable to, county grand juries shall apply to a statewide grand jury except when such powers, duties, and law are inconsistent with the provisions of ss. 905.31-905.40.

**History.**—s. 1, ch. 73-132; s. 6, ch. 77-334; s. 14, ch. 77-342.

**905.35 Appointment of foreman and deputy foreman.**—The statewide grand jury shall elect, by majority vote, a foreman and deputy foreman from among its members.

**History.**—s. 1, ch. 73-132.

#### **905.36 Duty of State Attorney or other legal advisor; presentation of evidence.—**

The State Attorney designated by the Governor shall attend sessions of the statewide grand jury and serve as its legal advisor. The State Attorney, the State Attorney and one or more of his assistant state attorneys, or one or more assistant state attorneys shall examine witnesses; present evidence; and draft indictments, presentments, and reports upon the direction of the statewide grand jury. The State Attorney may designate one or more assistant state attorneys to accompany and assist him in the performance of his

duties, or he may designate one or more assistant state attorneys to attend sessions of the statewide grand jury and perform such duties. The State Attorney who advises the statewide grand jury when an indictment is returned shall be empowered to prosecute such indictment in the judicial circuit where the proper venue lies.

History.—s. 1, ch. 73-132; s. 4, ch. 74-627; s. 4, ch. 77-403.

**905.37 List of prospective jurors; impanelment; composition of jury; compensation.—**

(1) On or before July 15, 1973, and not later than the first week in December of each year thereafter, the chief judge of each judicial circuit shall cause to be compiled a list of persons called and certified for jury duty in each of the several counties in the circuit. From the lists of persons certified for jury duty in each of the several counties in his judicial circuit, the chief judge shall select by lot and at random a list of eligible prospective grand jurors from each county. The number of prospective statewide grand jurors to be selected from each county shall be determined on the basis of three such jurors for each 3,000 residents, or fraction thereof, in each county. When such lists are compiled, the Chief Judge of each judicial circuit shall cause the lists to be submitted to the state courts administrator on or before August 15, 1973, and not later than February 15 of each year thereafter.

(2) The state courts administrator, upon receipt of the order of the Supreme Court granting a petition to impanel a statewide grand jury, shall certify and submit to the presiding judge the lists submitted by the chief judge of each judicial circuit. The Supreme Court shall provide in its order impaneling the statewide grand jury whether the prospective jurors are to be drawn from the jury lists, as selected, certified, and submitted pursuant to this section, from a designated circuit or circuits or from a statewide list containing the names of all persons who are named in the certified jury lists submitted by the chief judge of each judicial circuit. If the Supreme Court determines, based upon the facts set forth in the Governor's petition, that the principal scope of the investigation to be conducted by the statewide grand jury is limited to a particular region or section of the state, or if, in the interest of convenience to the prospective grand jury witnesses, law enforcement officers, or others, the investigation could more appropriately operate within a particular region or section of the state, then, in either such event, the Supreme Court may designate the judicial circuits within said region of the state which shall be the base operating area for the statewide grand jury, from which designated circuits the prospective jurors of the statewide grand jury shall be selected. The presiding judge shall, by lot and at random, select and impanel the statewide grand jury from the jury lists of the desig-

nated circuits certified and submitted through state courts administrator, or of the composite statewide list, in accordance with the order of the Supreme Court. In selecting and impaneling the statewide grand jury in the manner prescribed herein the presiding judge shall select no less than one statewide grand juror from each congressional district in the state. Each such prospective juror may be excused by the presiding judge upon a showing that service on the statewide grand jury will result in an unreasonable personal or financial hardship by virtue of the location or projected length of the grand jury investigation.

<sup>1</sup>(3) A statewide grand jury shall be composed of 18 members, of which 15 members shall constitute a quorum. Each member of the statewide grand jury shall be a registered elector in the county in which he resides. In all other respects a statewide grand juror shall have the same qualifications as provided in this chapter in the case of a county grand jury.

(4) While serving on the statewide grand jury, each grand juror shall receive mileage and a per diem allowance of \$25 per day. Upon receiving a summons to report for jury duty, any employee shall, on the next day he is engaged in his employment, exhibit the summons to his immediate superior, and the employee shall thereupon be excused from his employment for the period that he is actually required to be in court attendance, plus reasonable travel time.

History.—s. 1, ch. 73-132; s. 20, ch. 79-235.

<sup>1</sup>Note.—As amended, effective January 1, 1980.

**905.38 Summoning of jurors.**—The Clerk of the Supreme Court, upon receipt of the venire for the statewide grand jury from the presiding judge, shall issue and cause to be delivered to the sheriff of the county in which a member of the statewide grand jury resides, a venire of the grand jury commanding the sheriff to summon, in accordance with the venire, the persons named in the venire who reside in the county.

History.—s. 1, ch. 73-132.

**905.39 Judicial supervision; returns.**—Judicial supervision of the statewide grand jury shall be maintained by the presiding judge, and all indictments, presentments, and formal returns of any kind made by such grand jury shall be returned to the presiding judge.

History.—s. 1, ch. 73-132.

**905.40 Payment of costs and expenses.**—The costs and expenses incurred by the statewide grand jury in the performance of its functions and duties shall be paid by the state out of funds appropriated to the circuit courts.

History.—s. 1, ch. 73-132.

## CHAPTER 907

## PROCEDURE AFTER ARREST

- 907.04 Disposition of defendant upon arrest.  
907.045 Habeas corpus; motion to dismiss; preliminary hearing.  
907.05 Criminal cases in Circuit Court to be tried first.  
907.055 Trial of persons in custody.

**907.04 Disposition of defendant upon arrest.**

—If a person who is arrested does not have a right to bail for the offense charged, he shall be delivered immediately into the custody of the sheriff of the county in which the indictment, information, or affidavit is filed. If the person who is arrested has a right to bail, he shall be released after giving bond on the amount specified in the warrant.

**History.**—s. 133a, ch. 19554, 1939; CGL 1940 Supp. 8663(139); s. 67, ch. 70-339.

**907.045 Habeas corpus; motion to dismiss; preliminary hearing.**—A defendant who is in custody when an indictment, information, or affidavit on which he can be tried is filed may apply for a writ of habeas corpus attacking the indictment, information, or affidavit, or he may move to dismiss the indictment, information, or affidavit. A defendant

who has been confined for 30 days after his arrest without a trial shall be allowed a preliminary hearing upon application.

**History.**—s. 140, ch. 19554, 1939; CGL 1940 Supp. 8663(147); s. 1, ch. 26767, 1951; s. 69, ch. 70-339.

**Note.**—Former s. 909.04.

**907.05 Criminal cases in Circuit Court to be tried first.**—Cases on the criminal docket shall be tried first at each term of the Circuit Court, if they can be tried without injury to the interests of the state or defendant. Cases presented by the grand jury during a term may be tried during the term.

**History.**—s. 133b, ch. 19554, 1939; CGL 1940 Supp. 8663(140); s. 68, ch. 70-339.

**907.055 Trial of persons in custody.**—A defendant who is in custody when an indictment or information for a felony is filed shall be arraigned and tried during the term when the indictment or information is filed unless good cause is shown for a continuance.

**History.**—s. 159, ch. 19554, 1939; CGL 1940 Supp. 8663(166); s. 71, ch. 70-339.

**Note.**—Former s. 909.23.



## CHAPTER 910

## JURISDICTION AND VENUE

- 910.005 State criminal jurisdiction.
- 910.01 Offenses committed partly in this state.
- 910.02 Offense committed while in transit.
- 910.03 Place of trial generally.
- 910.035 Transfer from county for plea and sentence.
- 910.04 Where aider in one county and offense committed in another.
- 910.05 Where acts constituting one offense are committed in two or more counties.
- 910.06 Where person in one county commits offense in another.
- 910.09 Cause of death inflicted in one county and death occurs in another.
- 910.10 Where stolen property brought into another county.
- 910.11 Conviction or acquittal bar to prosecution.
- 910.12 Trial of aider.
- 910.13 Accessory after the fact.
- 910.14 Kidnapping.

**910.005 State criminal jurisdiction.—**

(1) A person is subject to prosecution in this state for an offense that he commits, while either within or outside the state, by his own conduct or that of another for which he is legally accountable, if:

(a) The offense is committed wholly or partly within the state;

(b) The conduct outside the state constitutes an attempt to commit an offense within the state;

(c) The conduct outside the state constitutes a conspiracy to commit an offense within the state, and an act in furtherance of the conspiracy occurs in the state; or

(d) The conduct within the state constitutes an attempt or conspiracy to commit in another jurisdiction an offense under the laws of both this state and the other jurisdiction.

(2) An offense is committed partly within this state if either the conduct that is an element of the offense or the result that is an element, occurs within the state. In homicide, the "result" is either the physical contact that causes death, or the death itself; and if the body of a homicide victim is found within the state, the death is presumed to have occurred within the state.

(3) An offense that is based on an omission to perform a duty imposed by the law of this state is committed within the state, regardless of the location of the offender at the time of the omission.

*History.*—s. 72, ch. 70-339.

**910.01 Offenses committed partly in this state.—**

(1) If the commission of an offense commenced outside the state is consummated within this state, the offender shall be tried in the county where the offense is consummated.

(2) If the commission of an offense commenced within this state is consummated outside the state,

the offender shall be tried in the county where the offense is commenced.

*History.*—RS 2360; GS 3185; RGS 5015; CGL 7117; s. 160, ch. 19554, 1939; CGL 1940 Supp. 8663(167); s. 73, ch. 70-339.

*Note.*—Former s. 932.07.

**910.02 Offense committed while in transit.—**

If an offense is committed on a railroad car, vehicle, watercraft, or aircraft traveling within this state and it is not known in which county the offense was committed, the accused may be tried in any county through which the railroad car, vehicle, watercraft, or aircraft has traveled. The accused is entitled to elect the county in which he will be tried, as provided in s. 910.03.

*History.*—ss. 161, 166, 167, ch. 19554, 1939; CGL 1940 Supp. 8663(168), (173), (174); s. 74, ch. 70-339.

*Note.*—Former ss. 910.07 and 910.08.

**910.03 Place of trial generally.**—Except as provided in s. 910.035 criminal prosecutions shall be tried in the county where the offense was committed; but if the county is not known, the accused may be charged in two or more counties conjunctively, and before trial the accused may elect the county in which he will be tried. By his election, the accused waives the right to trial in the county in which the crime was committed. Such election shall have the force and effect of the granting of an application of the accused for change of venue from the county in which the offense was committed to the county in which the case is tried.

*History.*—s. 162, ch. 19554, 1939; CGL 1940 Supp. 8663(169); s. 75, ch. 70-339; s. 2, ch. 72-45.

*cf.*—s. 817.04 Prosecution for making false statement to obtain goods on credit.

**910.035 Transfer from county for plea and sentence.—**

(1) **INDICTMENT OR INFORMATION PENDING.**—A defendant arrested or held in a county other than that in which an indictment or information is pending against him may state in writing that he wishes to plead guilty or nolo contendere, to waive trial in the county in which the indictment or information is pending, and to consent to disposition of the case in the county in which he was arrested or is held, subject to the approval of the prosecuting attorney of the court in which the indictment or information is pending. Upon receipt of the defendant's statement and the written approval of the prosecuting attorney, the clerk of the court in which the indictment or information is pending shall transmit the papers in the proceeding, or certified copies thereof, to the clerk of the court of competent jurisdiction for the county in which the defendant is held, and the prosecution shall continue in that county upon the information or indictment originally filed. In the event a fine is imposed upon the defendant in that county, two-thirds thereof shall be returned to the county in which the indictment or information was originally filed.

(2) **INDICTMENT OR INFORMATION NOT PENDING.**—A defendant arrested on a warrant issued upon a complaint in a county other than the county of arrest may state in writing that he wishes

to plead guilty or nolo contendere, to waive trial in the county in which the warrant was issued, and to consent to disposition of the case in the county in which he was arrested, subject to the approval of the prosecuting attorney of the court in which the indictment or information is pending. Upon receipt of the defendant's statement and the written approval of the prosecuting attorney, and upon the filing of an information or the return of an indictment, the clerk of the court from which the warrant was issued shall transmit the papers in the proceeding, or certified copies thereof, to the clerk of the court of competent jurisdiction in the county in which the defendant was arrested, and the prosecution shall continue in that county upon the information or indictment originally filed.

(3) **EFFECT OF NOT GUILTY PLEA.**—If, after the proceeding has been transferred pursuant to subsections (1) or (2), the defendant pleads not guilty, the clerk shall return the papers to the court in which the prosecution was commenced, and the proceeding shall be restored to the docket of that court. The defendant's statement that he wishes to plead guilty or nolo contendere shall not be used against him.

(4) **APPEARANCE IN RESPONSE TO A SUMMONS.**—For the purpose of initiating a transfer under this section, a person who appears in response to a summons shall be treated as if he had been arrested on a warrant in the county of such appearance.

*History.*—s. 1, ch. 72-45.

**910.04 Where aider in one county and offense committed in another.**—If a person in one county aids, abets, or procures the commission of an offense in another county, he may be tried in either county.

*History.*—s. 163, ch. 19554, 1939; CGL 1940 Supp. 8663(170); s. 76, ch. 70-339.

**910.05 Where acts constituting one offense are committed in two or more counties.**—If the acts constituting one offense are committed in two or more counties, the offender may be tried in any county in which any of the acts occurred.

*History.*—s. 164, ch. 19554, 1939; CGL 1940 Supp. 8663(171); s. 77, ch. 70-339.

**910.06 Where person in one county commits offense in another.**—If a person in one county commits an offense in another county, the offender may be tried in either county.

*History.*—s. 165, ch. 19554, 1939; CGL 1940 Supp. 8663(172); s. 78, ch. 70-339.

**910.09 Cause of death inflicted in one county and death occurs in another.**—If the cause of death is inflicted in one county and death occurs in

another county, the offender may be tried in either county.

*History.*—s. 168, ch. 19554, 1939; CGL 1940 Supp. 8663(175); s. 79, ch. 70-339.

**910.10 Where stolen property brought into another county.**—A person who obtains property by larceny, robbery, or embezzlement may be tried in any county in which he exercises control over the property.

*History.*—s. 169, ch. 19554, 1939; CGL 1940 Supp. 8663(176); s. 80, ch. 70-339.

**910.11 Conviction or acquittal bar to prosecution.**—

(1) No person shall be held to answer on a second indictment, information, or affidavit for an offense for which he has been acquitted. The acquittal shall be a bar to a subsequent prosecution for the same offense, notwithstanding any defect in the form or circumstances of the indictment, information, or affidavit.

(2) When a person may be tried for an offense in two or more counties, a conviction or acquittal in one county shall be a bar to prosecution for the same offense in another county.

*History.*—s. 170, ch. 19554, 1939; CGL 1940 Supp. 8663(177); s. 81, ch. 70-339.

**910.12 Trial of aider.**—A person, within or outside this state, who counsels, hires, or procures a felony to be committed may be tried in the same county in which the principal felon might be tried.

*History.*—s. 5, ch. 1637, 1868; RS 2366; GS 3191; RGS 5021; CGL 7123; s. 82, ch. 70-339.

*Note.*—Former s. 932.12.

**910.13 Accessory after the fact.**—A person who becomes an accessory after the fact to a felony may be tried in the county in which he became an accessory or in any county in which the principal in the first degree might be tried. Prosecution of a person who is an accessory after the fact to a felony shall not be contingent on prosecution or conviction of the principal in the first degree.

*History.*—s. 7, ch. 1637, 1868; RS 2367; GS 3192; RGS 5022; CGL 7124; s. 83, ch. 70-339.

*Note.*—Former s. 932.13.

*cf.*—s. 777.03 Accessory after the fact.  
s. 806.10 Obstructing extinguishment of fire.

**910.14 Kidnapping.**—A person who commits an offense provided for in ss. 805.01 and 805.02 may be tried in any county in which his victim has been taken or confined during the course of the offense.

*History.*—s. 44, ch. 1637, 1868; RS 2368; GS 3193; RGS 5023; CGL 7125; s. 84, ch. 70-339.

*Note.*—Former s. 932.14.

## CHAPTER 913

## TRIAL JURY

- 913.03 Grounds for challenge to individual jurors for cause.  
 913.08 Number of peremptory challenges.  
 913.10 Number of jurors.  
 913.12 Qualifications of jurors.  
 913.13 Jurors in capital cases.  
 913.15 Special jurors.

**913.03 Grounds for challenge to individual jurors for cause.**—A challenge for cause to an individual juror may be made only on the following grounds:

- (1) The juror does not have the qualifications required by law;
- (2) The juror is of unsound mind or has a bodily defect that renders him incapable of performing the duties of a juror;
- (3) The juror has conscientious beliefs that would preclude him from finding the defendant guilty;
- (4) The juror served on the grand jury that found the indictment or on a coroner's jury that inquired into the death of a person whose death is the subject of the indictment or information;
- (5) The juror served on a jury formerly sworn to try the defendant for the same offense;
- (6) The juror served on a jury that tried another person for the offense charged in the indictment, information, or affidavit;
- (7) The juror served as a juror in a civil action brought against the defendant for the act charged as an offense;
- (8) The juror is an adverse party to the defendant in a civil action, or has complained against or been accused by him in a criminal prosecution;
- (9) The juror is related by blood or marriage within the third degree to the defendant, the attorneys of either party, the person alleged to be injured by the offense charged, or the person on whose complaint the prosecution was instituted;
- (10) The juror has a state of mind regarding the defendant, the case, the person alleged to have been injured by the offense charged, or the person on whose complaint the prosecution was instituted that will prevent him from acting with impartiality, but the formation of an opinion or impression regarding the guilt or innocence of the defendant shall not be a sufficient ground for challenge to a juror if he declares and the court determines that he can render an impartial verdict according to the evidence;

(11) The juror was a witness for the state or the defendant at the preliminary hearing or before the grand jury or is to be a witness for either party at the trial;

(12) The juror is a surety on defendant's bail bond in the case.

**History.**—s. 184, ch. 19554, 1939; CGL 1940 Supp. 8663(191); s. 85, ch. 70-339.

**cf.**—s. 40.01 Qualifications of jurors.

**913.08 Number of peremptory challenges.**—

(1) The state and the defendant shall each be allowed the following number of peremptory challenges:

(a) Ten, if the offense charged is punishable by death or imprisonment for life;

(b) Six, if the offense charged is punishable by imprisonment for more than 12 months but is not punishable by death or imprisonment for life;

(c) Three, for all other offenses.

(2) If two or more defendants are tried jointly, each defendant shall be allowed the number of peremptory challenges specified in subsection (1), and the state shall be allowed as many challenges as are allowed to all of the defendants.

**History.**—s. 189, ch. 19554, 1939; CGL 1940 Supp. 8663(196); s. 86, ch. 70-339.

**913.10 Number of jurors.**—Twelve persons shall constitute a jury to try all capital cases, and six persons shall constitute a jury to try all other criminal cases.

**History.**—s. 191, ch. 19554, 1939; CGL 1940 Supp. 8663(198); s. 87, ch. 70-339.

**913.12 Qualifications of jurors.**—The qualifications of jurors in criminal cases shall be the same as their qualifications in civil cases.

**History.**—RS 2849; GS 3905; RGS 6003; CGL 8297; s. 88, ch. 70-339.

**Note.**—Former s. 932.19.

**913.13 Jurors in capital cases.**—A person who has beliefs which preclude him from finding a defendant guilty of an offense punishable by death shall not be qualified as a juror in a capital case.

**History.**—s. 12, ch. 1637, 1868; RS 2850; GS 3906; RGS 6004; CGL 8298; s. 89, ch. 70-339.

**Note.**—Former s. 932.20.

**913.15 Special jurors.**—The court may summon jurors in addition to the regular panel.

**History.**—RS 2853; GS 3909; RGS 6007; CGL 8301; s. 91, ch. 70-339.

**Note.**—Former s. 932.22.



## CHAPTER 914

## WITNESSES; CRIMINAL PROCEEDINGS

- 914.001 Witnesses; subpoenas to run throughout the state; all names to be included in one subpoena.
- 914.03 Attendance of witnesses.
- 914.04 Witnesses; person not excused from testifying in certain prosecutions on ground testimony might incriminate him; immunity from prosecution.
- 914.05 Compelled testimony tending to incriminate witness; immunity.
- 914.06 Compensation of expert witnesses in felony cases.
- 914.07 Competency of evidence.
- 914.09 Compensation of witness summoned in two or more cases.
- 914.11 Indigent defendants.
- 914.12 Memorandum of recognizance of witness; removal for violation.
- 914.13 Commitment for perjury.
- 914.14 Witnesses accepting bribes.
- 914.15 Law enforcement officers; nondisclosure of personal information.

**914.001 Witnesses; subpoenas to run throughout the state; all names to be included in one subpoena.—**

(1) Subpoenas for witnesses in criminal cases shall run throughout the state and be directed to all of the sheriffs of the state.

(2) When possible, the names of all witnesses summoned for, or at the cost of, the state in a criminal case shall be included in one subpoena, and the prosecuting officer shall, when possible, include the names of all such witnesses in one praecipe for such subpoena.

**History.**—s. 2, ch. 871, 1859; ss. 2, 4, 6, ch. 3702, 1887; RS 2859, 2860; GS 3915, 3916; RGS 6013, 6014; CGL 8307, 8308; s. 94, ch. 70-339.

**914.03 Attendance of witnesses.—**A witness summoned by a grand jury or in a criminal case shall remain in attendance until excused by the court. A witness who departs without permission of the court shall be in criminal contempt of court. A witness shall attend each succeeding term of court until the case is terminated.

**History.**—s. 4, ch. 159, 1843; s. 2, ch. 2094, 1877; RS 2862; GS 3918; RGS 6016; CGL 8310; s. 96, ch. 70-339.

**Note.**—Former s. 932.28.

**914.04 Witnesses; person not excused from testifying in certain prosecutions on ground testimony might incriminate him; immunity from prosecution.—**No person, having been duly served with a subpoena or subpoena duces tecum, shall be excused from attending and testifying or producing any book, paper, or other document before any court having felony trial jurisdiction, grand jury, or state attorney, upon investigation, proceeding, or trial for a violation of any of the criminal statutes of this state upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to convict him of a crime or to subject him to a penalty or forfeiture, but no person shall be prosecuted or subjected to any penal-

ty or forfeiture for or on account of any transaction, matter, or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be received against him upon any criminal investigation or proceeding.

**History.**—s. 1, ch. 5400, 1905; s. 1, ch. 7850, 1919; RGS 6017; CGL 8311; s. 1, ch. 69-316; s. 97, ch. 70-339; s. 1, ch. 71-99; s. 36, ch. 73-334.

**Note.**—Former s. 932.29.

cf.—s. 12(e), Art. V, State Const. Access by Judicial Qualifications Commission to Grand Jury information.

**914.05 Compelled testimony tending to incriminate witness; immunity.—**The testimony or evidence of a witness who has been ordered by a court of the United States to testify or produce evidence regarding treason, sabotage, espionage, or seditious conspiracy against the United States, after claiming his privilege against self-incrimination, shall not subsequently be used against him in a criminal prosecution in this state. A witness shall not be exempt from prosecution for perjury committed while giving testimony or producing evidence under compulsion as provided in this section.

**History.**—s. 1, ch. 29987, 1955; s. 98, ch. 70-339.

**Note.**—Former s. 932.291.

**914.06 Compensation of expert witnesses in felony cases.—**In a felony case, on motion of the state or an indigent defendant, the court may require the attendance of an expert witness whose opinion is relevant to the issues of the case. The court shall award reasonable compensation to the expert witness that shall be taxed as costs in the same manner as other costs.

**History.**—s. 1, ch. 18412, 1937; CGL 1940 Supp. 8311(1); s. 1, ch. 28202, 1953; s. 99, ch. 70-339.

**Note.**—Former s. 932.30.

cf.—s. 92.231 Expert witnesses; fee.

**914.07 Competency of evidence.—**Except as otherwise provided, the law regarding competency of evidence and witnesses in civil cases shall apply in criminal cases.

**History.**—RS 2863; GS 3919; RGS 6018; CGL 8312; s. 100, ch. 70-339.

**Note.**—Former s. 932.31.

**914.09 Compensation of witness summoned in two or more cases.—**A witness subpoenaed in two or more cases pending at the same time shall be paid one charge for per diem and mileage, but when the costs are taxed against the defendant, a witness may charge the full amount in each case.

**History.**—s. 4, ch. 159, 1848; RS 2865; s. 1, ch. 5133, 1903; GS 3921; RGS 6020; CGL 8314; s. 102, ch. 70-339.

**Note.**—Former s. 932.34.

**914.11 Indigent defendants.—**If a court decides, on the basis of an affidavit, that a defendant in a preliminary hearing or trial is indigent and unable to pay the cost of procuring the attendance of witnesses and that certain witnesses are necessary to the defense, the court shall order the witnesses

subpoenaed, and the costs shall be paid by the county.

**History.**—ss. 2, 4, ch. 3702, 1887; s. 1, ch. 3719, 1887; RS 2867, 2868; s. 1, ch. 5133, 1903; GS 3923, 3924; RGS 6022, 6023; CGL 8316, 8317; s. 104, ch. 70-339.

**Note.**—Former ss. 932.36, 932.37.

cf.—s. 92.142 Witnesses; pay.

**914.12 Memorandum of recognizance of witness; removal for violation.**—When a county court judge recognizes a witness to appear before the grand jury, he shall give the witness a written memorandum stating that the witness is required to appear before the grand jury and the date when the grand jury will meet. An intentional failure of a county court judge to comply with this section, on recommendation of the grand jury, shall subject him to suspension from office by the Governor.

**History.**—s. 1, ch. 2096, 1877; RS 2880; ss. 1-3, ch. 5401, 1905; GS 3939; RGS 6041; CGL 8342; s. 105, ch. 70-339; s. 38, ch. 73-334.

**Note.**—Former s. 932.40.

**914.13 Commitment for perjury.**—When a court of record has reason to believe that a witness or party who has been legally sworn and examined or has made an affidavit in a proceeding has committed perjury, the court may immediately commit the person or take a recognizance with sureties for his appearance to answer the charge of perjury. Witnesses who are present may be recognized to the proper court, and the state attorney shall be given notice of the proceedings.

**History.**—s. 15, ch. 1637, 1868; RS 2882; GS 3941; RGS 6043; CGL 8344; s. 106, ch. 70-339; s. 38, ch. 73-334.

**Note.**—Former s. 932.41.

#### **914.14 Witnesses accepting bribes.**—

(1) It is unlawful for any person who is a witness in a proceeding instituted by a duly constituted prosecuting authority of this state to solicit, request, accept, or agree to accept any money or anything of value as an inducement to:

(a) Testify or inform falsely; or

(b) Withhold any testimony, information, document, or thing.

(2) Any person violating any provision of this section shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 4, ch. 72-315.

**914.15 Law enforcement officers; nondisclosure of personal information.**—Any law enforcement officer of the state or of any political subdivision thereof who provides information relative to a criminal investigation or in proceedings preliminary to a criminal case may refuse, unless ordered by the court, to disclose his residence address, home telephone number, or any personal information concerning his family. Any law enforcement officer who testifies as a witness in a criminal case may refuse to disclose personal information concerning his family unless it is determined by the court that such evidence is relevant to the case.

**History.**—s. 1, ch. 79-60.

## CHAPTER 917

## MENTALLY DISORDERED SEX OFFENDERS

- 917.011 Mentally disordered sex offenders committed to Department of Health and Rehabilitative Services before July 1, 1979; disposition.
- 917.012 Mentally disordered sex offenders; procedures for handling and treatment.
- 917.014 Credit for time spent in treatment program.
- 917.016 Probation; revocation; treatment programs.
- 917.018 Escape from treatment program; penalties.
- 917.019 Training in postdischarge treatment of mentally disordered sex offenders.

**917.011 Mentally disordered sex offenders committed to Department of Health and Rehabilitative Services before July 1, 1979; disposition.—**

(1) Upon completion of the treatment program, the Department of Health and Rehabilitative Services shall return those mentally disordered sex offenders committed to its custody pursuant to this chapter, as this chapter existed prior to July 1, 1979, to the committing court for recommencement of criminal proceedings. The court shall have the following alternatives for disposition of such offenders:

(a) The court may suspend the sentence of the offender and place the offender on probation subject to such terms and conditions as provided in s. 917.016.

(b) The court may sentence the offender and commit him to the custody of the Department of Corrections.

(c) The court may make any other suitable disposition of the offender as provided by law.

(2) The provisions of this section shall stand repealed on July 1, 1981.

*History.—ss. 2, 10, ch. 79-341.*

**917.012 Mentally disordered sex offenders; procedures for handling and treatment.—**

(1) On July 1, 1979, and thereafter, the following procedures shall apply to the handling and treatment of mentally disordered sex offenders:

(a) The Department of Corrections shall establish, for each offender who has been sentenced for a violation of law involving a sex offense and placed in its custody, procedures for the classification of the offender based on the type of offense he committed. Such classification shall include the following sex offenses:

1. Sexual battery or attempted sexual battery.
2. Incest or attempted incest.
3. An unnatural and lascivious act or an attempted unnatural and lascivious act.
4. Lewd and lascivious behavior.
5. Assault or aggravated assault when a sexual act is completed or attempted.
6. Battery or aggravated battery when a sexual act is completed or attempted.

(b) The Department of Corrections, jointly with the Department of Health and Rehabilitative Ser-

vices, shall by rule establish procedures to identify those offenders who have been sentenced for the commission of a crime involving a sex offense, who are not psychotic, and who suffer from a psychosexual disorder, 'but are competent and amenable to treatment. From such group of offenders, the Department of Corrections and the Department of Health and Rehabilitative Services, jointly, shall also identify those offenders who may be treated by the Department of Corrections and those offenders who require the specialized services of the Department of Health and Rehabilitative Services, using professional psychiatric and psychological teams of the respective agencies.

(c) Each offender who is identified as needing the specialized services of the Department of Health and Rehabilitative Services shall be evaluated at a Department of Corrections facility and may be transferred to the Department of Health and Rehabilitative Services pursuant to the provisions of s. 945.12.

(d) An offender transferred from the Department of Corrections to the Department of Health and Rehabilitative Services under s. 945.12 shall be evaluated by the treatment facility during the first 90 days after admission as to his amenability to treatment. If the Department of Health and Rehabilitative Services determines at any time that the offender does not meet the definition of an offender identified in paragraph (b), or that the treatment program to which the offender was assigned by the department has exhausted all appropriate treatment for the offender, a written report to that effect shall be furnished by the Department of Health and Rehabilitative Services to the Department of Corrections, which shall be responsible for the immediate transportation of the offender to an appropriate corrections facility.

(e) The Department of Health and Rehabilitative Services shall determine, for each offender transferred pursuant to paragraph (c), the manner and sequence of treatment based on his length of sentence and his presumptive parole eligibility date; however, no such offender shall participate in a community furlough or work-release program while he is in a formal treatment program of the department.

(f) No person previously committed to the Department of Health and Rehabilitative Services as a sex offender under this act who commits a subsequent offense shall be again committed for treatment pursuant to this act.

(g) The Department of Health and Rehabilitative Services shall determine which facility shall provide necessary care, treatment, and rehabilitation for an offender committed to the department under this act. Decisions on treatment modalities for all offenders committed or transferred to the Department of Health and Rehabilitative Services under this act shall be made by the Department of Health and Rehabilitative Services.

(h) The Department of Health and Rehabilitative Services shall cause each offender transferred



pursuant to paragraph (c) to be examined at least once annually to determine the progress of the treatment and shall file a written report of each examination with the Department of Corrections not less than once a year.

(2) The provisions of this section shall stand repealed on July 1, 1981.

History.—ss. 3, 10, ch. 79-341.

Note.—The word "but" was substituted for "yet" by the editors.

**917.014 Credit for time spent in treatment program.—**

(1) Time spent in the treatment programs of the Department of Health and Rehabilitative Services shall be considered time served on the sentence imposed upon the offender by the court.

(2) The provisions of this section shall stand repealed on July 1, 1981.

History.—ss. 4, 10, ch. 79-341.

**917.016 Probation; revocation; treatment programs.—**

(1) A judge who suspends the sentence of an offender convicted of a crime involving a sex offense and places the offender on probation:

(a) May at any time, for cause, revoke the order placing such offender on probation and impose such sentence of commitment as might have been imposed at the time of conviction.

(b) May require that such sex offender who is placed on probation be provided regular treatment in a community-based mental health program approved or operated by the Department of Health and Rehabilitative Services. The agency or person treating the offender shall make written reports at least every 6 months to the court and to the probation officer supervising the offender. If the agency or person providing treatment exhausts treatment for the

offender, or if such agency or person determines that the offender will make no progress in the treatment program, the court, upon notification of such fact, shall terminate mandatory probation visits by the offender to that treatment program. The court may require the offender to be provided further treatment in another suitable community-based program approved by the Department of Health and Rehabilitative Services or may make such other disposition as provided by law.

(2) The provisions of this section shall stand repealed on July 1, 1981.

History.—ss. 5, 10, ch. 79-341.

**917.018 Escape from treatment program; penalties.—**

(1) An offender transferred to the Department of Health and Rehabilitative Services under the provisions of this act who escapes or attempts to escape from the department is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) The provisions of this section shall stand repealed on July 1, 1981.

History.—ss. 3, 10, ch. 79-341.

**917.019 Training in postdischarge treatment of mentally disordered sex offenders.—**

(1) The Department of Health and Rehabilitative Services may establish, within available appropriations, a program to train persons to provide postdischarge treatment for mentally disordered sex offenders.

(2) The provisions of this section shall stand repealed on July 1, 1981.

History.—ss. 6, 10, ch. 79-341.

## CHAPTER 918

## CONDUCT OF TRIAL

- 918.015 Right to speedy trial.
- 918.016 Trial of remaining defendants after grant of continuance to others.
- 918.03 Procedure when offense committed outside state.
- 918.04 Procedure when offense committed in another county.
- 918.05 View by jury.
- 918.06 Separation and detention of jurors; admonition by court.
- 918.07 Admonition to officer in charge of jurors.
- 918.10 Charge to jury; request for instructions.
- 918.12 Tampering with jurors.
- 918.13 Tampering with or fabricating physical evidence.
- 918.14 Tampering with witnesses.
- 918.15 Mental competence to stand trial.
- 918.16 Sex offenses; testimony of person under age 16; courtroom cleared; exceptions.
- 918.17 Sexual battery or child abuse cases; videotaping of testimony of victims under age 12 permitted.

**918.015 Right to speedy trial.—**

(1) In all criminal prosecutions the state and the defendant shall each have the right to a speedy trial.

(2) The Supreme Court shall, by rule of said court, provide procedures through which the right to a speedy trial as guaranteed by subsection (1) and by s. 16, Art. I of the State Constitution shall be realized.

**History.**—s. 195, ch. 19554, 1939; CGL 1940 Supp. 8663(202); s. 6, ch. 71-1(B).  
**Note.**—Former s. 916.01.

**918.016 Trial of remaining defendants after grant of continuance to others.**—When a continuance is granted to one or more of several defendants, the court may proceed with the trial of the defendants who have not been granted a continuance.

**History.**—s. 202, ch. 19554, 1939; CGL 1940 Supp. 8663(210); s. 110, ch. 70-339.  
**Note.**—Former s. 916.09.

**918.03 Procedure when offense committed outside state.**—When a court determines that it does not have jurisdiction because the offense charged was committed outside this state, the court may discharge the defendant or direct the clerk to communicate the location of the defendant to the chief executive of the state, territory, or district where the offense was committed. The court may commit the defendant to custody or admit him to bail for a reasonable period of time to await a requisition for his extradition. If a requisition is not received within the time set by the court, the defendant shall be discharged. If the defendant has been admitted to bail, the court shall order the bond canceled and any deposit of money or bonds returned.

**History.**—s. 208, ch. 19554, 1939; CGL 1940 Supp. 8663(216); s. 112, ch. 70-339.

**918.04 Procedure when offense committed in another county.**—When a court determines that it does not have jurisdiction because the offense

charged was committed in another county of this state, the defendant shall be committed to custody or admitted to bail for a reasonable time to await a warrant for his arrest from the proper county. The clerk shall notify the prosecuting attorney of the proper county of the location of the defendant. If the defendant is not arrested on a warrant from the proper county within the time set by the court, he shall be discharged. If the defendant has been admitted to bail, the court shall order the bond canceled and any deposit of money or bonds returned.

**History.**—s. 209, ch. 19554, 1939; CGL 1940 Supp. 8663(217); s. 113, ch. 70-339.

**918.05 View by jury.**—When a court determines that it is proper for the jury to view a place where the offense may have been committed or other material events may have occurred, it may order the jury to be conducted in a body to the place, in custody of a proper officer. The court shall admonish the officer that no person, including the officer, shall be allowed to communicate with the jury about any subject connected with the trial. The jury shall be returned to the courtroom in accordance with the directions of the court. The judge and defendant, unless the defendant absents himself without permission of court, shall be present, and the prosecuting attorney and defense counsel may be present at the view.

**History.**—s. 210, ch. 19554, 1939; CGL 1940 Supp. 8663(218); s. 114, ch. 70-339.

**918.06 Separation and detention of jurors; admonition by court.**—The court shall admonish the jury that it is their duty not to converse among themselves or with anyone else on a subject connected with the trial or to form or express an opinion on a subject connected with the trial until the cause is submitted to them. When the jurors leave the jury box, the court may direct that the jury be kept together in the charge of a proper officer or allow them to separate. If the court permits the jurors to separate, it shall admonish them not to view the place where the offense appears to have been committed.

**History.**—s. 211, ch. 19554, 1939; CGL 1940 Supp. 8663(219); s. 115, ch. 70-339.

**918.07 Admonition to officer in charge of jurors.**—When the jury is committed to the charge of an officer, he shall be admonished by the court to keep the jurors together in the place specified and not to permit any person to communicate with them on any subject except with the permission of the court given in open court in the presence of the defendant or his counsel. The officer shall not communicate with the jurors on any subject connected with the trial and shall return the jurors to court as directed by the court.

**History.**—s. 212, ch. 19554, 1939; CGL 1940 Supp. 8663(220); s. 116, ch. 70-339.

**918.10 Charge to jury; request for instructions.**—

(1) At the conclusion of argument of counsel, the

court shall charge the jury. The charge shall be only on the law of the case and must include the penalty for the offense for which the accused is being charged.

(2) All charges to the jury shall be delivered orally and shall be taken by the court reporter, transcribed, and filed.

(3) At or after the close of the evidence, a party may file written requests that the court instruct the jury on the law as stated in the requests. The court shall inform counsel of its proposed action on the requests before their arguments to the jury.

**History.**—s. 215, ch. 19554, 1939; CGL 1940 Supp. 8663(223); s. 1, ch. 22775, 1945; s. 117, ch. 70-339.

**918.12 Tampering with jurors.**—Any person who influences the judgment or decision of any grand or petit juror on any matter, question, cause, or proceeding which may be pending, or which may by law be brought, before him as such juror, with intent to obstruct the administration of justice, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 1, ch. 72-315.

**918.13 Tampering with or fabricating physical evidence.**—

(1) No person, knowing that a criminal trial or proceeding or an investigation by a duly constituted prosecuting authority, law enforcement agency, grand jury or legislative committee of this state is pending or is about to be instituted, shall:

(a) Alter, destroy, conceal, or remove any record, document, or thing with the purpose to impair its verity or availability in such proceeding or investigation; or

(b) Make, present, or use any record, document, or thing, knowing it to be false.

(2) Any person who violates any provision of this section shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083 or s. 775.084.

**History.**—s. 2, ch. 72-315.

**918.14 Tampering with witnesses.**—

(1) It is unlawful for any person, knowing that a criminal trial, an official proceeding, or an investigation by a duly constituted prosecuting authority, a law enforcement agency, a grand jury or legislative committee, or the Judicial Qualifications Commission of this state is pending, or knowing that such is about to be instituted, to endeavor or attempt to induce or otherwise cause a witness to:

(a) Testify or inform falsely; or

(b) Withhold any testimony, information, document, or thing.

(2) If any person violates the provisions of this section by the use of force, deception, threat, or offer of pecuniary benefit to induce any conduct described in subsection (1), the violation shall constitute a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. In all other cases, a violation shall constitute a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3)(a) It is unlawful for any person:

1. To cause a witness to be placed in fear by force or threats of force;

2. To make an assault upon any witness or informant; or

3. To harm a witness by any unlawful act in retaliation against the said witness for anything lawfully done in the capacity of witness or informant.

(b) Any person violating the provisions of this subsection shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 3, ch. 72-315; s. 44, ch. 75-298.

**918.15 Mental competence to stand trial.**—

(1) A person accused of a crime who is incompetent to stand trial shall not be proceeded against while he is incompetent. A person is incompetent to stand trial within the meaning of this act if he does not have sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding or if he does not have rational, as well as factual, understanding of the proceedings against him.

(2) If, before or during trial, the court, of its own motion or upon motion of counsel for the defendant or for the state, has reasonable ground to believe that the defendant is not mentally competent to stand trial, the court shall immediately initiate proceedings pursuant to s. 925.10.

(3) If a motion under subsection (2) is filed or made, the court may order the defendant taken into custody, if he is not already in custody, until the determination of his competency can be made. If the defendant has been released from custody on bail or other pretrial release provision, and the court is satisfied that evaluation is necessary but that the defendant need not be taken into custody for such evaluation, the court may order the defendant to appear at a designated place for evaluation at a specific time.

(4)(a) A defendant who, because of psychotropic medication, is able to understand the nature of the proceedings against him and to assist in his defense shall not automatically be deemed incompetent to stand trial simply because his satisfactory mental functioning is dependent upon the medication.

(b) As used in this subsection, the term "psychotropic medication" means any drug or compound affecting the mind, behavior, intellectual functions, perception, moods, and emotion and includes antipsychotic, antidepressant, antimanic, and antianxiety drugs.

**History.**—s. 4, ch. 77-312; s. 1, ch. 79-336; s. 295, ch. 79-400.

**Note.**—The words "against him" were inserted by the editors.

**918.16 Sex offenses; testimony of person under age 16; courtroom cleared; exceptions.**—In the trial of any case, civil or criminal, when any person under the age of 16 is testifying concerning any sex offense, the court shall clear the courtroom of all persons except parties to the cause and their immediate families or guardians, attorneys and their secretaries, officers of the court, jurors, newspaper reporters or broadcasters, and court reporters.

**History.**—s. 28, ch. 77-312.



**'918.17 Sexual battery or child abuse cases; videotaping of testimony of victims under age 12 permitted.—**

(1) Upon application to the court and reasonable notice to the defendant, the state may apply for an order to videotape out of open court the testimony of a child 11 years of age or younger who has been the victim of a sexual battery under s. 794.011 or to videotape the testimony of a child 11 years of age or younger who has been the victim of aggravated child abuse under s. 827.03 or child abuse under s. 827.04. The court may grant an order to videotape testimony as provided herein only if it finds that:

(a) The victim of the offense is a child 11 years of age or younger; and

(b) There is a substantial likelihood that such child will suffer severe emotional or mental strain if required to testify in open court.

(2) The trial judge shall preside at such proceeding and shall rule on all questions as if at trial.

(3) The application referred to in subsection (1) shall be made prior to trial, and the videotaping of the testimony shall be made only after the trial has commenced. The videotaped testimony shall be admissible as evidence in the trial of the cause.

**History.**—ss. 1, 2, ch. 79-69.

**Note.**—Section 3, ch. 79-69, repeals Rule 3.190(j), Florida Rules of Criminal Procedure, " . . . insofar as it is inconsistent with the provisions of this. . . ." section.

## CHAPTER 921

## SENTENCE

- 921.09 Fees of physicians who determine sanity at time of sentence.
- 921.12 Fees of physicians when pregnancy is alleged as cause for not pronouncing sentence.
- 921.141 Sentence of death or life imprisonment for capital felonies; further proceedings to determine sentence.
- 921.143 Appearance of victim to make statement at sentencing hearing; submission of written statement.
- 921.15 Stay of execution of sentence to fine; bond and proceedings.
- 921.16 When sentences to be concurrent and when consecutive.
- 921.161 Sentence not to run until imposed; credit for county jail time after sentence; certificate of sheriff.
- 921.18 Sentence for indeterminate period for non-capital felony.
- 921.185 Sentence; restitution a mitigation in certain crimes.
- 921.20 Classification summary; Parole and Probation Commission.
- 921.21 Progress reports to Parole and Probation Commission.
- 921.22 Determination of exact period of imprisonment by Parole and Probation Commission.
- 921.231 Presentence investigation reports.
- 921.241 Felony judgments; fingerprints required in record.

**921.09 Fees of physicians who determine sanity at time of sentence.**—The court shall allow reasonable fees to physicians appointed by the court to determine the mental condition of a defendant who has alleged insanity as a cause for not pronouncing sentence. The fees shall be paid by the county in which the indictment was found or the information or affidavit filed.

**History.**—s. 255, ch. 19554, 1939; CGL 1940 Supp. 8663(264); s. 121, ch. 70-339.

**921.12 Fees of physicians when pregnancy is alleged as cause for not pronouncing sentence.**—The court shall allow reasonable fees to the physicians appointed to examine a defendant who has alleged her pregnancy as a cause for not pronouncing sentence. The fees shall be paid by the county in which the indictment was found or the information or affidavit filed.

**History.**—s. 258, ch. 19554, 1939; CGL 1940 Supp. 8663(267); s. 122, ch. 70-339.

**921.141 Sentence of death or life imprisonment for capital felonies; further proceedings to determine sentence.**—

(1) **SEPARATE PROCEEDINGS ON ISSUE OF PENALTY.**—Upon conviction or adjudication of guilt of a defendant of a capital felony, the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sen-

tenced to death or life imprisonment as authorized by s. 775.082. The proceeding shall be conducted by the trial judge before the trial jury as soon as practicable. If, through impossibility or inability, the trial jury is unable to reconvene for a hearing on the issue of penalty, having determined the guilt of the accused, the trial judge may summon a special juror or jurors as provided in chapter 913 to determine the issue of the imposition of the penalty. If the trial jury has been waived, or if the defendant pleaded guilty, the sentencing proceeding shall be conducted before a jury impaneled for that purpose, unless waived by the defendant. In the proceeding, evidence may be presented as to any matter that the court deems relevant to the nature of the crime and the character of the defendant and shall include matters relating to any of the aggravating or mitigating circumstances enumerated in subsections (5) and (6). Any such evidence which the court deems to have probative value may be received, regardless of its admissibility under the exclusionary rules of evidence, provided the defendant is accorded a fair opportunity to rebut any hearsay statements. However, this subsection shall not be construed to authorize the introduction of any evidence secured in violation of the Constitution of the United States or the Constitution of the State of Florida. The state and the defendant or his counsel shall be permitted to present argument for or against sentence of death.

(2) **ADVISORY SENTENCE BY THE JURY.**—After hearing all the evidence, the jury shall deliberate and render an advisory sentence to the court, based upon the following matters:

(a) Whether sufficient aggravating circumstances exist as enumerated in subsection (5);

(b) Whether sufficient mitigating circumstances exist which outweigh the aggravating circumstances found to exist; and

(c) Based on these considerations, whether the defendant should be sentenced to life imprisonment or death.

(3) **FINDINGS IN SUPPORT OF SENTENCE OF DEATH.**—Notwithstanding the recommendation of a majority of the jury, the court, after weighing the aggravating and mitigating circumstances, shall enter a sentence of life imprisonment or death, but if the court imposes a sentence of death, it shall set forth in writing its findings upon which the sentence of death is based as to the facts:

(a) That sufficient aggravating circumstances exist as enumerated in subsection (5), and

(b) That there are insufficient mitigating circumstances to outweigh the aggravating circumstances.

In each case in which the court imposes the death sentence, the determination of the court shall be supported by specific written findings of fact based upon the circumstances in subsections (5) and (6) and upon the records of the trial and the sentencing proceedings. If the court does not make the findings requiring the death sentence, the court shall impose

sentence of life imprisonment in accordance with s. 775.082.

(4) **REVIEW OF JUDGMENT AND SENTENCE.**—The judgment of conviction and sentence of death shall be subject to automatic review by the Supreme Court of Florida within 60 days after certification by the sentencing court of the entire record, unless the time is extended for an additional period not to exceed 30 days by the Supreme Court for good cause shown. Such review by the Supreme Court shall have priority over all other cases and shall be heard in accordance with rules promulgated by the supreme court.

(5) **AGGRAVATING CIRCUMSTANCES.**—Aggravating circumstances shall be limited to the following:

(a) The capital felony was committed by a person under sentence of imprisonment.

(b) The defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person.

(c) The defendant knowingly created a great risk of death to many persons.

(d) The capital felony was committed while the defendant was engaged, or was an accomplice, in the commission of, or an attempt to commit, or flight after committing or attempting to commit, any robbery, rape, arson, burglary, kidnapping, or aircraft piracy or the unlawful throwing, placing, or discharging of a destructive device or bomb.

(e) The capital felony was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.

(f) The capital felony was committed for pecuniary gain.

(g) The capital felony was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.

(h) The capital felony was especially heinous, atrocious, or cruel.

(i) The capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification.

(6) **MITIGATING CIRCUMSTANCES.**—Mitigating circumstances shall be the following:

(a) The defendant has no significant history of prior criminal activity.

(b) The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance.

(c) The victim was a participant in the defendant's conduct or consented to the act.

(d) The defendant was an accomplice in the capital felony committed by another person and his participation was relatively minor.

(e) The defendant acted under extreme duress or under the substantial domination of another person.

(f) The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired.

(g) The age of the defendant at the time of the crime.

**History.**—s. 237a, ch. 19554, 1939; CGL 1940 Supp. 8663(246); s. 119, ch. 70-339; s. 1, ch. 72-72; s. 9, ch. 72-724; s. 1, ch. 74-379; s. 248, ch. 77-104; s. 1, ch. 77-174; s. 1, ch. 79-353.

**Note.**—Former s. 919.23.

#### **921.143 Appearance of victim to make statement at sentencing hearing; submission of written statement.—**

(1) At the sentencing hearing, and prior to the imposition of sentence upon any defendant who has pleaded guilty or nolo contendere to any crime, the sentencing court shall permit the victim of the crime for which the defendant is being sentenced to:

(a) Appear before the sentencing court for the purpose of making a statement under oath for the record; or

(b) Submit a written statement under oath to the office of the state attorney, which shall be filed with the sentencing court.

(2) The state attorney or any assistant state attorney shall advise all victims that statements, whether oral or written, shall relate solely to the facts of the case and the extent of any injuries, financial losses, and loss of earnings directly resulting from the crime for which the defendant is being sentenced.

(3) The court may refuse to accept a negotiated plea and order the defendant to stand trial.

**History.**—ss. 9, 10, ch. 76-274.

#### **921.15 Stay of execution of sentence to fine; bond and proceedings.—**

(1) When a defendant is sentenced to pay a fine, he shall have the right to give bail for payment of the fine and the costs of prosecution. The bond shall be executed by the defendant and two sureties approved by the sheriff or the officer charged with execution of the judgment.

(2) The bond shall be made payable in 90 days to the governor and his successors in office.

(3) If the bond is not paid at the expiration of 90 days, the sheriff or the officer charged with execution of the judgment shall indorse the default on the bond and file it with the clerk of the court in which the judgment was rendered. The clerk shall issue an execution as if there had been a judgment at law on the bond, and the same proceedings shall be followed as in other executions. After default of the bond, the convicted person may be proceeded against as if bond had not been given.

**History.**—s. 260a, ch. 19554, 1939; CGL 8426, 8427; CGL 1940 Supp. 8663(270); s. 123, ch. 70-339.

#### **921.16 When sentences to be concurrent and when consecutive.—**

(1) A defendant convicted of two or more offenses charged in the same indictment, information, or affidavit or in consolidated indictments, informations, or affidavits shall serve the sentences of imprisonment concurrently unless the court directs that two or more of the sentences be served consecutively. Sentences of imprisonment for offenses not charged in the same indictment, information, or affidavit shall be served consecutively unless the court directs that two or more of the sentences be served concurrently.

(2) A county court or circuit court of this state may direct that the sentence imposed by such court be served concurrently with a sentence imposed by a court of another state or of the United States. In



such case, the Department of Corrections may designate the correctional institution of the other jurisdiction as the place for reception and confinement of such person and may also designate the place in Florida for reception and confinement of such person in the event that confinement in the other jurisdiction terminates before the expiration of the Florida sentence. Upon imposing such a sentence, the court shall notify the Florida Parole and Probation Commission as to the jurisdiction in which the sentence is to be served. Any prisoner so released to another jurisdiction shall be eligible for consideration for parole by the Florida Parole and Probation Commission pursuant to the provisions of chapter 947, except that the commission shall determine the presumptive parole release date and the effective parole release date by requesting such person's file from the receiving jurisdiction. Upon receiving such records, the commission shall determine these release dates based on the relevant information in that file and shall give credit toward reduction of the Florida sentence for gain-time granted by the jurisdiction where the inmate is serving the sentence. The Parole and Probation Commission may concur with the parole release decision of the jurisdiction granting parole and accepting supervision.

**History.**—s. 261, ch. 19554, 1939; CGL 1940 Supp. 8663(271); s. 124, ch. 70-339; s. 1, ch. 78-219; s. 24, ch. 79-3; s. 12, ch. 79-42; s. 1, ch. 79-310.

**921.161 Sentence not to run until imposed; credit for county jail time after sentence; certificate of sheriff.—**

(1) A sentence of imprisonment shall not begin to run before the date it is imposed, but the court imposing a sentence shall allow a defendant credit for all of the time he spent in the county jail before sentence. The credit must be for a specified period of time and shall be provided for in the sentence.

(2) In addition to other credits, a person sentenced to imprisonment in custody of the Department of Corrections shall receive credit on his sentence for all time spent between sentencing and being placed in custody of the department. When delivering a prisoner to the department, the sheriff shall certify to it in writing:

(a) The date the sentence was imposed and the date the prisoner was delivered to the department.

(b) The dates of any periods after sentence the prisoner was at liberty on bond.

(c) The dates and reasons for any other times the prisoner was at liberty after sentence.

The certificate shall be prima facie evidence of the facts certified.

**History.**—s. 1, ch. 63-457; ss. 19, 35, ch. 69-106; s. 125, ch. 70-339; s. 1, ch. 70-441; s. 1, ch. 73-71; s. 14, ch. 77-120; s. 25, ch. 79-3.

**921.18 Sentence for indeterminate period for noncapital felony.**—The court in its discretion may sentence a defendant convicted of a noncapital felony to the custody of the Department of Corrections for an indeterminate period of 6 months to a maximum period of imprisonment. The maximum sentence may be less than the maximum prescribed by law, but shall not be less than the minimum, if any, prescribed for the offense. This section shall not apply to sentences imposed under s. 775.084 or any

other statute providing for punishment of habitual criminals.

**History.**—ss. 2, 7-11, ch. 57-366; s. 1, ch. 59-109; s. 18, ch. 61-530; s. 1, ch. 63-306; ss. 19, 35, ch. 69-106; s. 126, ch. 70-339; s. 1, ch. 70-441; s. 15, ch. 77-120; s. 26, ch. 79-3.

**921.185 Sentence; restitution a mitigation in certain crimes.**—In the imposition of a sentence for any felony or misdemeanor involving property, but not injury or opportunity for injury to persons, the court, in its discretion, shall consider any degree of restitution a mitigation of the severity of an otherwise appropriate sentence.

**History.**—s. 1, ch. 74-125.

**921.20 Classification summary; Parole and Probation Commission.**—As soon as possible after a prisoner has been placed in the custody of the Department of Corrections, the classification board shall furnish a classification summary to the Parole and Probation Commission for use as provided in s. 947.14. The summary shall include the criminal, personal, social, and environmental background and other relevant factors considered in classifying the prisoner for a penal environment best suited for his rapid rehabilitation.

**History.**—ss. 3, 4, ch. 57-366; s. 18, ch. 61-530; s. 127, ch. 70-339; s. 1, ch. 70-441; s. 16, ch. 77-120; s. 27, ch. 79-3.

**921.21 Progress reports to Parole and Probation Commission.**—From time to time the Department of Corrections shall submit to the Parole and Probation Commission progress reports and recommendations regarding prisoners sentenced under s. 921.18. When the classification board of the Department of Corrections determines that justice and the public welfare will best be served by paroling or discharging a prisoner, it shall transmit its finding to the Parole and Probation Commission. The commission shall have the authority to place the prisoner on parole as provided by law or give him a full discharge from custody. The period of a parole granted by the Parole and Probation Commission shall be in its discretion, but the parole period shall not exceed the maximum term for which the prisoner was sentenced.

**History.**—s. 5, ch. 57-366; s. 18, ch. 61-530; s. 128, ch. 70-339; s. 1, ch. 70-441; s. 28, ch. 79-3.

**921.22 Determination of exact period of imprisonment by Parole and Probation Commission.**—Upon the recommendation of the Department of Corrections, the Parole and Probation Commission shall have the authority to determine the exact period of imprisonment to be served by defendants sentenced under the provisions of s. 921.18, but a prisoner shall not be held in custody longer than the maximum sentence provided for the offense.

**History.**—s. 6, ch. 57-366; s. 18, ch. 61-530; s. 129, ch. 70-339; s. 1, ch. 70-441; s. 17, ch. 77-120; s. 29, ch. 79-3.

**921.231 Presentence investigation reports.—**

(1) Any circuit court of the state, when the defendant in a criminal felony case has been found guilty or has entered a plea of nolo contendere or guilty, shall, and in misdemeanor cases in its discretion may, refer the case to the Department of Corrections for investigation and recommendation. It shall be the duty of the department to make a report in

writing to the circuit court at a specified time prior to sentencing, depending upon the circumstances of the offender and the offense. Said report shall include:

(a) A complete description of the situation surrounding the criminal activity with which the offender has been charged, including a synopsis of the trial transcript, if one has been made, and, at the offender's discretion, his version and explanation of the act.

(b) The offender's educational background.

(c) The offender's employment background, including any military record, his present employment status, and his occupational capabilities.

(d) The social history of the offender, including his family relationships, marital status, interests, and related activities.

(e) The residence history of the offender.

(f) The offender's medical history and, as appropriate, a psychological or psychiatric evaluation.

(g) Information about the environments to which the offender might return or to which he could be sent should a sentence of nonincarceration or community supervision be imposed by the court.

(h) Information about any resources available to assist the offender, such as:

1. Treatment centers.
2. Residential facilities.
3. Vocational training programs.
4. Special education programs.
5. Services that may preclude or supplement commitment to the department.

(i) The views of the person preparing the report as to the offender's motivations and ambitions and an assessment of the offender's explanations for his criminal activity.

(j) An explanation of the offender's criminal record, if any, including his version and explanation of any previous offenses.

(k) A recommendation as to disposition by the court. It shall be the duty of the department to make a written determination as to the reasons for its recommendation. The department shall include an evaluation of the following factors:

1. The appropriateness or inappropriateness of community facilities, programs, or services for treatment or supervision.

2. The ability or inability of the department to provide an adequate level of supervision for the offender in the community and a statement of what constitutes an adequate level of supervision.

3. The existence of other treatment modalities which the offender could use but which do not exist at present in the community.

(2) In those instances in which a presentence investigation report has been previously compiled, the department may elect to complete a short-form report updating the above information.

(3) All information in the presentence investigation report should be factually presented and verified if reasonably possible by the preparer of the report. On examination at the sentencing hearing, the preparer of the report, if challenged on the issue of verification, shall bear the burden of explaining why it was not possible to verify the challenged information.

(4) The nonconfidential portion of the presentence investigation shall constitute the basic classification and evaluation document of the Department of Corrections and shall contain a recommendation to the court on the treatment program most appropriate to the diagnosed needs of the offender, based upon the offender's custody classification, rehabilitative requirements, and the utilization of treatment resources in proximity to the offender's home environment.

**History.**—s. 8, ch. 74-112; s. 12, ch. 75-49; s. 2, ch. 75-301; s. 18, ch. 77-120; s. 30, ch. 79-3.

#### **921.241 Felony judgments; fingerprints required in record.—**

(1) Every judgment of guilty or not guilty of a felony shall be in writing, signed by the judge, and recorded by the clerk of the court. The judge shall cause to be affixed to every written judgment of guilty of a felony, in open court and in the presence of such judge, the fingerprints of the defendant against whom such judgment is rendered. Such fingerprints shall be affixed beneath the judge's signature to such judgment. Beneath such fingerprints shall be appended a certificate to the following effect:

"I hereby certify that the above and foregoing fingerprints on this judgment are the fingerprints of the defendant, ....., and that they were placed thereon by said defendant in my presence, in open court, this the ..... day of ....., 19....."

Such certificate shall be signed by the judge, whose signature thereto shall be followed by the word "Judge."

(2) Any such written judgment of guilty of a felony, or a certified copy thereof, shall be admissible in evidence in the several courts of this state as prima facie evidence that the fingerprints appearing thereon and certified by the judge as aforesaid are the fingerprints of the defendant against whom such judgment of guilty of a felony was rendered.

**History.**—s. 1, ch. 75-23.

cf.—s. 30.31 Fingerprinting persons charged with crime.  
s. 901.33 Arrest records; expunging; exception.

## CHAPTER 922

## EXECUTION

- 922.02 Execution of sentence imposing fine.
- 922.04 Discharge of prisoner unable to pay fine.
- 922.051 Imprisonment in county jail, term of 1 year or less.
- 922.06 Stay of execution of death sentence.
- 922.07 Proceedings when person under sentence of death appears to be insane.
- 922.08 Proceedings when person under sentence of death appears to be pregnant.
- 922.09 Capital cases.
- 922.10 Execution of death sentence.
- 922.11 Regulation of execution.
- 922.111 Transfer to state prison for safekeeping before death warrant issued.
- 922.12 Return of warrant of execution issued by Governor.
- 922.14 Sentence of death unexecuted for unjustifiable reasons.
- 922.15 Return of warrant of execution issued by Supreme Court.

**922.02 Execution of sentence imposing fine.**—Execution on a sentence imposing a fine may be issued in the same manner as execution on a judgment in a civil action, whether or not the sentence also imposes imprisonment.

**History.**—s. 263, ch. 19554, 1939; CGL 1940 Supp. 8663(273); s. 7, ch. 22000, 1943; s. 130, ch. 70-339.

**922.04 Discharge of prisoner unable to pay fine.**—When the court determines on the written application of a prisoner that he has been imprisoned for 60 days solely for failure to pay a fine or costs which total not more than \$300 and that the prisoner is indigent and unable to pay the fine or costs, the court shall order the prisoner discharged from custody.

**History.**—s. 265, ch. 19554, 1939; CGL 1940 Supp. 8663(275); s. 1, ch. 29661, 1955; s. 131, ch. 70-339.

**922.051 Imprisonment in county jail, term of 1 year or less.**—When a statute expressly directs that imprisonment be in a state prison, the court may impose a sentence of imprisonment in the county jail if the total of the prisoner's cumulative sentences is not more than 1 year.

**History.**—s. 1, ch. 59-72; s. 1, ch. 61-168; s. 1, ch. 67-241; s. 132, ch. 70-339.

**922.06 Stay of execution of death sentence.**—The execution of a death sentence may be stayed only by the Governor or incident to an appeal.

**History.**—s. 267, ch. 19554, 1939; CGL 1940 Supp. 8663(277); s. 133, ch. 70-339.

**922.07 Proceedings when person under sentence of death appears to be insane.**—

(1) When the Governor is informed that a person under sentence of death may be insane, he shall stay execution of the sentence and appoint a commission of three psychiatrists to examine the convicted person. The Governor shall notify the psychiatrists in writing that they are to examine the convicted person to determine whether he understands the nature and effect of the death penalty and why it is to be

imposed upon him. The examination of the convicted person shall take place with all three psychiatrists present at the same time. Counsel for the convicted person and the State Attorney may be present at the examination. If the convicted person does not have counsel, the court that imposed the sentence shall appoint counsel to represent him.

(2) After receiving the report of the commission, if the Governor decides that the convicted person has the mental capacity to understand the nature of the death penalty and the reasons why it was imposed upon him, he shall issue a warrant to the warden directing him to execute the sentence at a time designated in the warrant.

(3) If the Governor decides that the convicted person does not have the mental capacity to understand the nature of the death penalty and why it was imposed on him, he shall have him committed to the state hospital for the insane.

(4) When a person under sentence of death has been committed to the state hospital for the insane, he shall be kept there until the proper official of the hospital determines that he has been restored to sanity. The hospital official shall notify the Governor of his determination, and the Governor shall appoint another commission to proceed as provided in subsection (1).

(5) The Governor shall allow reasonable fees to psychiatrists appointed under the provisions of this section which shall be paid by the state.

**History.**—s. 268, ch. 19554, 1939; CGL 1940 Supp. 8663(278); s. 134, ch. 70-339.

**922.08 Proceedings when person under sentence of death appears to be pregnant.**—

(1) When the Governor is informed that a person under sentence of death may be pregnant, he shall stay execution of the sentence and appoint a qualified physician to examine the convicted person and determine if she is pregnant.

(2) After receiving the report of the physician, if the Governor determines that the convicted person is not pregnant, he shall issue a warrant to the warden directing him to execute the sentence at a time designated in the warrant.

(3) If the Governor determines that a convicted person whose execution has been stayed because of pregnancy is no longer pregnant, he shall issue a warrant to the warden directing him to execute the sentence at a time designated in the warrant.

(4) The Governor shall allow a reasonable fee to the physician appointed under the provisions of this section which shall be paid by the state.

**History.**—s. 269, ch. 19554, 1939; CGL 1940 Supp. 8663(279); s. 135, ch. 70-339.

**922.09 Capital cases.**—When a person is sentenced to death, the clerk of the court shall prepare a certified copy of the record of the conviction and sentence, and the sheriff shall send the record to the Governor. The sentence shall not be executed until the Governor issues a warrant, attaches it to the copy of the record, and transmits it to the warden,



directing him to execute the sentence at a time designated in the warrant.

**History.**—s. 270, ch. 19554, 1939; CGL 1940 Supp. 8663(280); s. 136, ch. 70-339.

**922.10 Execution of death sentence.**—A death sentence shall be executed by electrocution. The warden of the state prison shall designate the executioner. The warrant authorizing the execution shall be read to the convicted person immediately before execution.

**History.**—s. 271, ch. 19554, 1939; CGL 1940 Supp. 8663(281); ss. 19, 22, 35, ch. 69-106; s. 137, ch. 70-339.

**922.11 Regulation of execution.**—

(1) The superintendent of the state prison or a deputy designated by him shall be present at the execution. The superintendent shall set the day for execution within the week designated by the Governor in the warrant.

(2) Twelve citizens selected by the superintendent shall witness the execution. A qualified physician shall be present and announce when death has been inflicted. Counsel for the convicted person and ministers of religion requested by the convicted person may be present. Representatives of news media may be present under rules approved by the Secretary of Corrections. All other persons, except prison officers and guards, shall be excluded during the execution.

(3) The body of the executed person shall be prepared for burial and, if requested, delivered at the prison gates to relatives of the deceased. If a coffin has not been provided by relatives, the body shall be delivered in a plain coffin. If the body is not claimed by relatives, it shall be given to physicians who have requested it for dissection or to be disposed of in the same manner as are bodies of prisoners dying in the state prison.

**History.**—s. 272, ch. 19554, 1939; CGL 1940 Supp. 8663(282); s. 1, ch. 20520, 1941; s. 1, ch. 59-90; ss. 19, 35, ch. 69-106; s. 138, ch. 70-339; s. 1, ch. 77-189; s. 31, ch. 79-3.

**922.111 Transfer to state prison for safekeep-**

**ing before death warrant issued.**—The sheriff shall deliver a person sentenced to death to the state prison to await the death warrant. A circuit judge of the circuit in which a death sentence was imposed may order the convicted person transferred to the state prison before the issuance of a warrant of execution if he determines that the transfer is necessary for the safekeeping of the prisoner.

**History.**—s. 1, ch. 59-215; s. 139, ch. 70-339.

**922.12 Return of warrant of execution issued by Governor.**—After the death sentence has been executed, the warden of the state prison shall return to the Governor the warrant and a signed statement of the execution. The warden shall file an attested copy of the warrant and statement with the clerk of the court that imposed the sentence.

**History.**—s. 273, ch. 19554, 1939; CGL 1940 Supp. 8663(283); s. 140, ch. 70-339.

**922.14 Sentence of death unexecuted for unjustifiable reasons.**—If a death sentence is not executed because of unjustified failure of the Governor to issue a warrant, or for any other unjustifiable reason, on application of the Department of Legal Affairs, the Supreme Court shall issue a warrant directing the sentence to be executed during a week designated in the warrant.

**History.**—s. 275, ch. 19554, 1939; CGL 1940 Supp. 8663(285); ss. 11, 35, ch. 69-106; s. 141, ch. 70-339; s. 1, ch. 70-439.

**922.15 Return of warrant of execution issued by Supreme Court.**—After the sentence has been executed pursuant to a warrant issued by the Supreme Court, the warden of the state prison shall return to the Supreme Court the warrant and a signed statement of the execution. The warden shall file an attested copy of the warrant and statement with the clerk of the court that imposed the sentence. The warden shall send to the Governor an attested copy of the warrant and statement.

**History.**—s. 276, ch. 19554, 1939; CGL 1940 Supp. 8663(286); s. 142, ch. 70-339.

## CHAPTER 923

## FORM OF INDICTMENT AND OTHER FORMS

- 923.01 Criminal report.  
 923.02 Notice of setting case for trial.  
 923.03 Indictment and information.

**923.01 Criminal report.**—Each committing magistrate at the time commitment papers are sent by him to the proper trial court, and the sheriff when an arrest is made, other than on a *capias*, shall transmit to the prosecuting attorney of the trial court having jurisdiction, a report in the following form:

## CRIMINAL REPORT

Date: ..... Name and address of defendant: ..... Age: ..... If under 18, give name and address of parent, next friend, or guardian: ..... Name of offense, such as murder, assault, robbery, etc.: ..... Date and place where committed: ..... Value of property stolen: ..... Kind of property stolen: ..... Kind of building robbed: ..... Name and address of owner of property stolen or building robbed: ..... Name and address of occupant of building robbed: ..... Name of party assaulted or murdered: ..... Weapon used in assault or murder: ..... Exhibits taken at scene of crime or from defendant: ..... Name of custodian of such exhibits: ..... Location of building or place where offense committed: ..... Previous prison record of defendant: ..... Has defendant been arrested: ..... Does defendant desire to plead guilty: ..... Names and addresses of state witnesses: ..... Name of defendant's lawyer: ..... If defendant is released on bond, names and addresses of sureties: ..... Brief statement of facts: ..... Name of committing magistrate: ..... If additional space required, use reverse side of this sheet.

.....  
 (Signature of party making this report.)

**History.**—s. 277, ch. 19554, 1939; CGL 1940 Supp. 8663(287); s. 70, ch. 77-121.

**923.02 Notice of setting case for trial.**—The judge of any trial court may adopt as a rule of his court a rule requiring that at least 4 days before the sounding of the docket in criminal cases in any trial court, the clerk of said court shall send by United States mail, to the defendant, his sureties, and his attorney, if known, a notice in postcard form, reading as follows:

THE STATE OF FLORIDA

vs.

## NOTICE OF FILING INFORMATION

TO: .....  
 You are hereby notified that an information (indictment) charging you with the offense of ..... has been filed in the office of ..... in and for ..... County; and you are required to appear in the ..... court in and for ..... County at the Courthouse in ..... on ..... (date) for arraignment, plea and trial, or setting for trial in default of which your bond will be estreated, for failure to appear.

.....  
 (Prosecuting Officer)

If such rule is adopted by any court and the rule is not complied with by the clerk the failure so to comply with the rule shall not constitute reversible error nor affect the obligations of the bond.

**History.**—s. 278, ch. 19554, 1939; CGL 1940 Supp. 8663(288).

**923.03 Indictment and information.**—

(1) The following forms of indictment and information, in all cases to which they are applicable, shall be deemed sufficient, as a charge of the offense to which they relate as defined by the laws of this state, and analogous forms may be used in all other cases:

(a) As to first degree murder:

In the name and by the authority of the State of Florida: The Grand Jurors of the County of ..... charge that A. B. unlawfully and from a premeditated design to effect the death of ..... (or while robbing the house of ..... as the case may be) did murder ..... in said county, by shooting him with a gun or pistol (or by striking him with a club—or by giving him poison to drink—or by pushing him into the water whereby he was drowned).

(b) As to second degree murder:

Unlawfully by an act imminently dangerous to another, and evincing a depraved mind, regardless of human life; that is to say, by firing his shotgun into the store of ..... (or by striking ..... with an adz, as the case may be) but without a premeditated design to effect the death of any particular person, did kill ..... in said county.

(c) As to third degree murder:

Unlawfully, and while feloniously stealing cattle (or timber, or while feloniously assaulting ..... as the case may be), but without any design to effect death, did kill ..... in said county, by sinking his boat (or by running over him with an automobile—or by shooting him with a gun or pistol, as the case may be).

(d) As to manslaughter:

Unlawfully and by culpable negligence, in driving an automobile (or firing a boiler—or by performing a surgical operation) or (in the heat of passion—omitting in this latter case the allegation of culpable negligence), but without intent to murder, did kill ..... in said county, by running over him with said automobile (or by causing said boiler to explode—or by infecting him with a deadly infection—or by striking him with a hammer).

(e) As to perjury:

In the hearing of a cause in the ..... court of ..... County, Florida, in which ..... and others were plaintiffs and ..... others were defendants, after being duly sworn to speak the truth, falsely swore, etc. (stating the substance of the false testimony) such matter being material in said cause, and the said ..... then and there knowing that he swore falsely.

(2) An information shall be in the same form and signed by the State Attorney who shall also append thereto the oath of the State Attorney to the effect following:

Personally appeared before me ..... (official title of state attorney) who, being first duly sworn, says that the allegations as set forth in the foregoing information

are based upon facts that have been sworn to as true and which, if true, would constitute the offense therein charged.

The affidavit shall be made by the State Attorney before some person qualified to administer an oath.

**History.**—s. 279(1-2), ch. 19554, 1939; CGL 1940 Supp. 8663(289); s. 38, ch. 73-334.

cf.—s. 932.49 Failure of motor vehicle operator to stop and assist person injured; form of information.



## CHAPTER 924

## APPEALS

- 924.02 Who may appeal.
- 924.04 Appeal by one of several defendants.
- 924.05 Appeal as matter of right.
- 924.06 Appeal by defendant.
- 924.065 Denial of motion for new trial or arrest of judgment; appeal bond; supersedeas.
- 924.07 Appeal by state.
- 924.071 Additional grounds for appeal by the state; time for taking; stay of cause.
- 924.08 Courts of appeal.
- 924.09 When appeal to be taken by defendant.
- 924.14 Stay of execution when defendant appeals.
- 924.15 Approval of appeal bonds.
- 924.16 Discharge pending appeal.
- 924.17 Costs when appellant is indigent.
- 924.18 Bail when state appeals.
- 924.19 When operation of order in favor of defendant not stayed.
- 924.20 Duty of court upon breach of undertaking.
- 924.22 Stay when execution of sentence already commenced.
- 924.28 Failure of clerk to transmit appeal papers as required.
- 924.31 When argument necessary.
- 924.33 When judgment not to be reversed or modified.
- 924.34 When evidence sustains only conviction of lesser offense.
- 924.35 Enforcement of judgment on affirmance.
- 924.37 Order or decision when state appeals.
- 924.38 When removal shall be allowed on new trial.

**924.02 Who may appeal.**—The defendant or the state may appeal in criminal cases.

**History.**—s. 281, ch. 19554, 1939; CGL 1940 Supp. 8663(291); s. 143, ch. 70-339.

**924.04 Appeal by one of several defendants.**—One or more defendants who are tried jointly may appeal, but those who do not join shall not be affected by the appeal except by express provision of the appellate court.

**History.**—s. 283, ch. 19554, 1939; CGL 1940 Supp. 8663(293); s. 145, ch. 70-339.

**924.05 Appeal as matter of right.**—Appeals provided for in this chapter are a matter of right.

**History.**—s. 284, ch. 19554, 1939; CGL 1940 Supp. 8663(294); s. 146, ch. 70-339.

**924.06 Appeal by defendant.**—

- (1) A defendant may appeal from:
  - (a) A final judgment of conviction when probation has not been granted under chapter 948, except as provided in subsection (3);
  - (b) An order granting probation under chapter 948;
  - (c) An order revoking probation under chapter 948; or
  - (d) A sentence, on the ground that it is illegal.
- (2) An appeal of an order granting probation shall proceed in the same manner and have the same effect as an appeal of a judgment of conviction. An

appeal of an order revoking probation may review only proceedings after the order of probation. If a judgment of conviction preceded an order of probation, the defendant may appeal from the order or the judgment or both.

(3) A defendant who pleads guilty or nolo contendere with no express reservation of the right to appeal shall have no right to a direct appeal. Such a defendant shall obtain review by means of collateral attack.

**History.**—s. 285, ch. 19554, 1939; CGL 1940 Supp. 8663(295); s. 22, ch. 20519, 1941; s. 3, ch. 59-130; s. 147, ch. 70-339; s. 7, ch. 76-274.

**924.065 Denial of motion for new trial or arrest of judgment; appeal bond; supersedeas.**—

(1) Immediately after denial of a motion for a new trial or a motion in arrest of judgment, the court shall dictate the denial to the court reporter and sentence the defendant. The defendant may file notice of appeal following denial of the motion and sentencing. Upon filing of notice of appeal, the court shall set the amount of the appeal bond if the defendant is entitled to bail. The clerk shall prepare a certificate setting forth the filing and approval of the supersedeas bond, and the certificate shall be sufficient authority for release of the defendant.

(2) An appeal shall not be a supersedeas to the execution of the judgment, sentence, or order until the appellant has entered into a bond with at least two sureties to secure the payment of the judgment, fine, and any future costs that may be adjudged by the appellate court. The bond shall be conditioned on the appellant's personally answering and abiding by the final order, sentence, or judgment of the appellate court and, if the action is remanded, on the appellant's appearing at the next term of the court in which the case was originally determined and not departing without leave of court.

(3) An appellant who has been sentenced to death shall not be released on bail.

**History.**—s. 239, ch. 19554, 1939; CGL 1940 Supp. 8663(248); s. 120, ch. 70-339.

**Note.**—Former s. 920.02.

**924.07 Appeal by state.**—The state may appeal from:

- (1) An order dismissing an indictment or information or any count thereof;
- (2) An order granting a new trial;
- (3) An order arresting judgment;
- (4) A ruling on a question of law when the defendant is convicted and appeals from the judgment;
- (5) The sentence, on the ground that it is illegal;
- (6) A judgment discharging a prisoner on habeas corpus;
- (7) An order adjudicating a defendant insane under the Florida Rules of Criminal Procedure; or
- (8) All other pretrial orders, except that it may not take more than one appeal under this subsection

in any case.

Such appeal shall embody all assignments of error in each pretrial order that the state seeks to have reviewed. The state shall pay all costs of such appeal except for the defendant's attorney's fee.

**History.**—s. 286, ch. 19554, 1939; CGL 1940 Supp. 8663(296); s. 1, ch. 69-15; s. 148, ch. 70-339.

**924.071 Additional grounds for appeal by the state; time for taking; stay of cause.—**

(1) The state may appeal from a pretrial order dismissing a search warrant, suppressing evidence obtained by search and seizure, or suppressing a confession or admission made by a defendant. The appeal must be taken before the trial.

(2) An appeal by the state from a pretrial order shall stay the case against each defendant upon whose application the order was made until the appeal is determined. If the trial court determines that the evidence, confession, or admission that is the subject of the order would materially assist the state in proving its case against another defendant and that the prosecuting attorney intends to use it for that purpose, the court shall stay the case of that defendant until the appeal is determined. A defendant in custody whose case is stayed either automatically or by order of the court shall be released on his own recognizance pending the appeal if he is charged with a bailable offense.

**History.**—ss. 1, 2, ch. 67-123; s. 1, ch. 69-267; s. 149, ch. 70-339.

**924.08 Courts of appeal.—**

(1) Appeals from final judgments imposing the death penalty, passing upon the validity of a state or federal statute, or construing a controlling provision of the State or Federal Constitution shall be to the supreme court.

(2) Appeals from final judgments in all other cases in which the Circuit Court has original jurisdiction and from all other final judgments except those which may be appealed directly to the Supreme Court or a Circuit Court shall be to the District Court of Appeal.

(3) Appeals from final judgments in misdemeanor cases tried by County Courts shall be to the Circuit Court.

**History.**—s. 287, ch. 19554, 1939; CGL 1940 Supp. 8663(297); s. 35, ch. 63-559; s. 150, ch. 70-339; s. 40, ch. 73-334.

**924.09 When appeal to be taken by defendant.—**An appeal may be taken by the defendant only within the time provided by the Florida Appellate Rules after the judgment, sentence, or order appealed from is entered, except that an appeal by a person who has not been granted probation may be taken from both judgment and sentence within the time provided by said rules after the sentence is entered.

**History.**—s. 288, ch. 19554, 1939; CGL 1940 Supp. 8663(298); s. 4, ch. 59-130; s. 1, ch. 69-267.

**924.14 Stay of execution when defendant appeals.—**An appeal by a defendant from either the

judgment or sentence shall stay execution of the sentence, subject to the provisions of s. 924.065.

**History.**—s. 293a, ch. 19554, 1939; CGL 1940 Supp. 8663(303); s. 151, ch. 70-339.

**924.15 Approval of appeal bonds.—**Appeal bonds shall be approved by the court which originally determined the action and shall be filed with the clerk of that court.

**History.**—s. 293b, ch. 19554, 1939; CGL 1940 Supp. 8663(304); s. 152, ch. 70-339.

**924.16 Discharge pending appeal.—**If a defendant is in custody after judgment of conviction at the time of appeal, the appeal and supersedeas shall not discharge him from custody. The court appealed from or a judge of the appellate court may order the defendant released on bail in cases that are bailable.

**History.**—s. 293c, ch. 19554, 1939; CGL 1940 Supp. 8663(305); s. 153, ch. 70-339.

**924.17 Costs when appellant is indigent.—**If the court determines that the defendant is indigent and unable to pay costs, the appeal shall be a supersedeas without payment of costs.

**History.**—s. 293d, ch. 19554, 1939; CGL 1940 Supp. 8663(306); s. 1, ch. 28009, 1953; s. 154, ch. 70-339.

**924.18 Bail when state appeals.—**If the state appeals after a conviction of the defendant, a justice or judge of the appellate or trial court may in his discretion admit the defendant to bail.

**History.**—s. 294, ch. 19554, 1939; CGL 1940 Supp. 8663(307); s. 155, ch. 70-339.

**924.19 When operation of order in favor of defendant not stayed.—**An appeal by the state shall not stay the operation of an order in favor of the defendant except as provided in s. 924.071(2), or when the appeal is from an order granting a new trial.

**History.**—s. 295, ch. 19554, 1939; CGL 1940 Supp. 8663(308); s. 155, ch. 70-339.

**924.20 Duty of court upon breach of undertaking.—**When an appellant at liberty on bail fails to prosecute the appeal as required by the undertaking, the appellate court, in addition to declaring the bond forfeited, may dismiss the appeal and remand the case for further proceedings.

**History.**—s. 296, ch. 19554, 1939; CGL 1940 Supp. 8663(309); s. 156, ch. 70-339.

**924.22 Stay when execution of sentence already commenced.—**A defendant who is in custody and has started serving a sentence before an appeal may elect to continue to serve the sentence during the pendency of the appeal even though he may be eligible for bail.

**History.**—s. 298, ch. 19554, 1939; CGL 1940 Supp. 8663(311); s. 157, ch. 70-339.

**924.28 Failure of clerk to transmit appeal papers as required.—**Failure of the clerk to transmit appeal papers within the time provided shall not prejudice the rights of the parties. The appellate court or trial court may direct the clerk to transmit

the papers on its own motion and shall do so on the motion of either party.

**History.**—s. 304, ch. 19554, 1939; CGL 1940 Supp. 8663(317); s. 158, ch. 70-339.

**924.31 When argument necessary.**—A judgment may be affirmed if the appellant fails to argue, but it shall not be reversed unless the appellant submits a written brief or makes oral argument.

**History.**—s. 307, ch. 19554, 1939; CGL 1940 Supp. 8663(320); s. 159, ch. 70-339.

**924.33 When judgment not to be reversed or modified.**—No judgment shall be reversed unless the appellate court is of the opinion, after an examination of all the appeal papers, that error was committed that injuriously affected the substantial rights of the appellant. It shall not be presumed that error injuriously affected the substantial rights of the appellant.

**History.**—s. 309, ch. 19554, 1939; CGL 1940 Supp. 8663(322); s. 160, ch. 70-339.

**924.34 When evidence sustains only conviction of lesser offense.**—When the appellate court determines that the evidence does not prove the offense for which the defendant was found guilty but does establish his guilt of a lesser statutory degree of the offense or a lesser offense necessarily included in the offense charged, the appellate court shall reverse the judgment and direct the trial court to enter judgment for the lesser degree of the offense or for the lesser included offense.

**History.**—s. 310, ch. 19554, 1939; CGL 1940 Supp. 8663(323); s. 161, ch. 70-339.

**924.35 Enforcement of judgment on affirm-**

**ance.**—When the judgment against the defendant is affirmed, the judgment shall be enforced by the trial court.

**History.**—s. 311, ch. 19554, 1939; CGL 1940 Supp. 8663(324); s. 162, ch. 70-339.

**924.37 Order or decision when state appeals.**—

(1) When the state appeals from an order dismissing an indictment, information, or affidavit, or a count of it, or an order granting a new trial and the order is affirmed, the appellate court shall direct the trial court to implement the order. If an order dismissing an indictment, information, or affidavit, or a count of it, is reversed, the appellate court shall direct the trial court to permit the defendant to be tried on the reinstated indictment, information, or affidavit. If an order granting a new trial is reversed, the appellate court shall direct that judgment of conviction be entered against the defendant.

(2) When the state appeals from a ruling on a question of law adverse to the state, the appellate court shall decide the question.

**History.**—s. 313, ch. 19554, 1939; CGL 1940 Supp. 8663(326); s. 163, ch. 70-339.

**924.38 When removal shall be allowed on new trial.**—When the appellate court orders a new trial, it shall be held in the court from which the appeal was taken unless the appellate court determines that the trial court improperly denied the defendant's application for removal of the original trial. If the appellate court determines that removal is proper, it shall designate the court for the new trial.

**History.**—s. 314, ch. 19554, 1939; CGL 1940 Supp. 8663(327); s. 164, ch. 70-339.



## CHAPTER 925

## MISCELLANEOUS PROVISIONS OF CRIMINAL PROCEDURE

- 925.035 Appointment and compensation of an attorney in capital cases; appeals from judgments imposing the death penalty.
- 925.036 Appointed counsel; compensation.
- 925.05 Statements or confessions; availability to defendant.
- 925.06 Sale or destruction of unclaimed personal property in criminal proceedings.
- 925.07 Parent or guardian to be notified before trial of minor; service of notice.
- 925.08 Prisoners awaiting trial may be worked on roads.
- 925.09 Authority of state attorney to order autopsies.
- 925.10 Procedure when court has reasonable ground to believe defendant is incompetent to stand trial.

**925.035 Appointment and compensation of an attorney in capital cases; appeals from judgments imposing the death penalty.—**

(1) If the court determines that the defendant in a capital case is insolvent and desires counsel, it shall appoint an attorney to represent the defendant. If the court appoints an attorney other than the public defender, the attorney shall be allowed reasonable compensation for representing the defendant, as determined by the court. In addition to such compensation, a reasonable amount shall be allowed for the cost of investigation and preparation of the case.

(2) If the defendant is convicted and the death sentence imposed, the appointed attorney shall prosecute an appeal to the Supreme Court. The attorney shall be allowed reasonable compensation for the appeal, as determined by the court. If the attorney first appointed is unable to prosecute the appeal, the court shall appoint another attorney and allow reasonable compensation therefor, as determined by the court.

(3) If there is a second trial of the same case, the appointed attorney shall be allowed reasonable compensation for the defense at the trial.

(4) If the death sentence is imposed, and affirmed on appeal to the Supreme Court, the appointed attorney shall be allowed reasonable compensation, not to exceed \$1,000, for attorney's fees and costs incurred in representing the defendant as to an application for executive clemency, such compensation to be paid out of general revenue from funds budgeted to the Department of Offender Rehabilitation. The public defender or an attorney appointed pursuant to this section may be appointed by the trial court that rendered the judgment imposing the death penalty, to represent an indigent defendant who has applied for executive clemency as relief from the execution of the judgment imposing the death penalty.

(5) When the appointed attorney in capital cases has completed the duties imposed by this section, he shall file a written report in the trial court stating

the duties performed by him and apply for discharge.

(6) All compensation and costs provided for in this section, except as provided in subsection (4), shall be paid by the county in which the trial is held unless the trial was moved to that county on the ground that a fair and impartial trial could not be held in another county, in which event the compensation and costs shall be paid by the original county from which the cause was removed.

**History.**—s. 157, ch. 19554, 1939; CGL 1940 Supp. 8663(164); s. 1, ch. 29656, 1955; s. 1, ch. 67-502; s. 70, ch. 70-339; ss. 2, 4, ch. 76-287; s. 1, ch. 77-243.

**Note.**—Former s. 909.21.  
cf.—s. 925.036 Appointed counsel; compensation.

**925.036 Appointed counsel; compensation.—**

An attorney appointed pursuant to s. 925.035 or s. 27.53 shall, at the conclusion of the representation, be compensated at an hourly rate fixed by the chief judge or senior judge of the circuit in an amount not to exceed the prevailing hourly rate for similar representation rendered in the circuit. Such attorney shall be reimbursed for expenses reasonably incurred, including the costs of transcripts authorized by the court. The compensation for representation shall not exceed the following per case per defendant:

(1) For misdemeanors and juveniles represented at the trial level: \$500.

(2) For noncapital, nonlife felonies represented at the trial level: \$1,500.

(3) For life felonies represented at the trial level: \$2,000.

(4) For capital cases represented at the trial level: \$2,500.

(5) For representation on appeal: \$1,000.

**History.**—s. 2, ch. 78-344.

**925.05 Statements or confessions; availability to defendant.**—On motion of the defendant after an indictment, information, or affidavit has been filed, the court shall order the prosecuting attorney to permit the defendant to photograph or copy any written or recorded statements or confessions of the defendant, whether they are signed or not. The order shall specify the time, place, and manner of taking the photographs or copies and any other conditions.

**History.**—s. 1, ch. 63-263; s. 170, ch. 70-339.

**925.06 Sale or destruction of unclaimed personal property in criminal proceedings.—**

(1) Unclaimed personal property in custody of the court from a criminal proceeding, if of appreciable value, shall either be sold at public sale by the appropriate city or county law enforcement department or be retained by the appropriate department for departmental use, if such use is approved by the appropriate governmental authority having budgetary control over the department. If the property is to be sold, the notice, procedure, and department's fees for the sale shall be the same as provided for sales under execution by the sheriff. The proceeds shall be paid to any person making proper claim or, if unclaimed for 60 days, to the general fund of the governmental agency having budgetary control over the

law enforcement department that originally took into its possession the personal property. If the property is retained by the law enforcement department for official use and is not claimed within 60 days after the conclusion of said criminal proceeding, title to said property shall permanently vest in the respective city, county, or state. If the property is not of appreciable value, the court may order the sheriff to destroy it.

(2) Nothing in this section shall be construed to repeal or supersede the provisions of s. 790.08 relating to the disposition of weapons and firearms.

**History.**—ss. 1, 2, ch. 63-180; s. 171, ch. 70-339; s. 3, ch. 78-150.

**925.07 Parent or guardian to be notified before trial of minor; service of notice.—**

(1) When an unmarried minor is charged with an offense before any court in this state, notice of the charge shall be given before trial to the parent or guardian of the minor if the name and address is known. If the name and address is not known, notice shall be given to any friend or relative designated by the minor.

(2) Notice required by this section may be made in the same manner as the service of summons. If the person to be notified is beyond the jurisdiction of the court, notice may be given by registered mail or telegram, and return of the service shall be made in the same manner as the return on a summons.

**History.**—ss. 1, 2, ch. 62-21, 1911; RGS 6028; CGL 8322; s. 172, ch. 70-339; s. 1, ch. 77-119.

**Note.**—Former s. 932.38.  
cf.—s. 1.01 Defines registered mail to include certified mail with return receipt requested.

s. 48.031 Service of process generally.

**925.08 Prisoners awaiting trial may be worked on roads.—**

(1) When the county commissioners decide it will be for the benefit of a prisoner and in the public interest, they may employ at labor on the streets of incorporated cities or towns, or on the roads, bridges, or other public works in the county, a person charged with a misdemeanor and confined in the county jail for failure to give bail.

(2) No person shall be employed under this section without his written consent.

(3) No person shall work more than 10 hours in a 24-hour period.

(4) If a person employed under this section is acquitted or discharged from further prosecution, he shall be paid by the county at the rate of \$5 for each day he was employed.

(5) If a person employed under this section is convicted, the time he was actually employed may be credited on any sentence of imprisonment, and if he is fined, the value of the labor at \$5 per day shall be credited to his fine and costs.

(6) No charge for food and lodging shall be made against a prisoner employed under this section.

(7) The county commissioners shall cause records to be kept of employment under this section, and a copy of the record shall be furnished to the court having jurisdiction of the prisoner.

**History.**—ss. 1-3, ch. 5260, 1903; GS 3945-3947; RGS 6047-6049; CGL 8348-8350; s. 173, ch. 70-339.

**Note.**—Former ss. 932.42-932.44.

**925.09 Authority of state attorney to order autopsies.**—The state attorney may have an autopsy performed, before or after interment, on a dead body found in the county when he decides it is necessary in determining whether or not death was the result of a crime. Physicians performing the autopsy shall be paid reasonable fees from the county fine and forfeiture fund upon the approval of the county commission and the state attorney ordering the autopsy.

**History.**—s. 1, ch. 28019, 1953; s. 1, ch. 57-311; s. 174, ch. 70-339; s. 42, ch. 73-334.

**Note.**—Former s. 932.57.

**925.10 Procedure when court has reasonable ground to believe defendant is incompetent to stand trial.**—If the court has reasonable ground to believe the defendant is incompetent to stand trial, pursuant to the provisions of s. 918.15, the court shall proceed as follows:

(1)(a) The court shall issue an order for the defendant to be examined by at least three expert witnesses to determine whether the defendant does or does not meet the criteria for involuntary hospitalization pursuant to s. 394.467(1) or the criteria for involuntary retardation residential services pursuant to s. 393.11. To the extent possible, at least one of the appointed experts shall be a state-employed psychiatrist, psychologist, or physician, if in the local vicinity; a psychiatrist, psychologist, or physician as designated by the district mental health board; or a community mental health center psychiatrist, psychologist, or physician. The examination shall be conducted prior to the transmittal of the defendant to a forensic unit of a state treatment facility. If the defendant requires security which the receiving facility cannot provide, the panel of experts may evaluate the defendant in jail or in another appropriate secure local facility. The receiving facility shall complete its court-ordered evaluation of the defendant within 5 days of receipt of the order.

(b) The court shall conduct a hearing to determine whether the defendant meets the criteria for involuntary hospitalization or residential services.

1. If the court finds the defendant meets the criteria for involuntary hospitalization or residential services, the court shall order the defendant committed to a Department of Health and Rehabilitative Services intake facility. The defendant shall be diagnosed and examined within 30 days of his admission to such facility to evaluate his competency to participate in his own defense. Appropriate treatment shall be provided to the defendant. Within the 30-day period, a hearing shall be held by the court of criminal jurisdiction to determine if the defendant is competent to participate in his own defense. The staff of the treatment facility may present testimony at the hearing on the defendant's competency to participate in his own defense. Other evidence concerning the defendant's mental condition for participating in his own defense may be introduced at the hearing by either party; provided that if the court orders an additional examination of the defendant prior to the hearing, it shall appoint at least three expert witnesses to evaluate and diagnose the competence of the defendant, and, to the extent possible, at least one of the experts shall be a psychiatrist or psycholo-

gist specified in paragraph (a).

a. If, at the hearing, the court determines the defendant competent to stand trial, the court shall proceed to trial.

b. If, at the hearing, the court determines the defendant incompetent to stand trial, the defendant shall be returned to the treatment facility for an additional stay not to exceed 60 days. Within the 60-day stay, another competency hearing shall be held. If, after three consecutive 60-day treatment periods, the defendant remains incompetent, the court may dismiss all charges and order an involuntary admission hearing as provided in s. 393.11 or s. 394.467. If the defendant is involuntarily admitted, prior to releasing the defendant, the administrator of the facility shall notify the state attorney's office which was involved in the adjudication of the original criminal case.

2. If the court finds the defendant does not meet the criteria for hospitalization, the court shall appoint at least three expert witnesses for the purpose of evaluating and diagnosing the competence of the defendant. At least one of the experts shall be a psychiatrist or psychologist specified in paragraph (a). The court may utilize the experts who examined the defendant pursuant to paragraph (a) or the staff of the local mental health receiving facility as expert witnesses whenever possible. The clerk shall notify the prosecuting attorney and counsel for the defendant of such appointments and shall give the names and addresses of experts so appointed. Other evidence concerning the defendant's competence may be introduced at the hearing by either party. The hearing shall be held within 5 days of the appointment of the experts. If the defendant is not in custody, the court may order that he be taken into custody until a determination of his competency can be made. If the court is satisfied that evaluation is necessary but that the defendant need not be taken into custody for such evaluation, the court may order the defendant to appear at a designated place for evaluation at a specific time.

a. If, at the hearing, the court determines the

defendant competent to stand trial, the court shall proceed to trial.

b. If, at the hearing, the court determines the defendant incompetent to stand trial, the defendant may be released on reasonable bail or on other appropriate release conditions for a period not to exceed 6 months. The court may order that the defendant receive outpatient treatment at an appropriate local facility to restore the defendant's competency. The court shall conduct a hearing to determine whether the defendant has regained his competency within 30 days of the initial commitment and every 60 days thereafter until the defendant either regains his competency to proceed with trial or until the defendant has received outpatient services for 6 months. If at the end of the 6-month period the defendant remains incompetent, the court may dismiss all charges against the defendant.

(c) If the defendant is declared incompetent to stand trial and the criminal charges are dismissed, and he is later declared competent to stand trial, his other incompleted trial shall not constitute former jeopardy. The statute of limitations applicable to the criminal charges which are dismissed shall be tolled during the period the person is declared incompetent to stand trial.

(2) An adjudication of incompetency to stand trial shall not operate as an adjudication of incompetency for purposes of civil proceedings unless such adjudication is specifically set forth in the order, in which case a guardian of the person shall be appointed.

(3) Expert witnesses appointed by the court pursuant to this section to determine the mental condition of a defendant in a criminal case shall be allowed reasonable fees for services rendered as witnesses, which shall be paid by the county where the indictment was found or the information or affidavit was filed. State employees shall be paid expenses pursuant to s. 112.061. The fees shall be taxed as costs in the case.

History.—s. 5, ch. 77-312; s. 1, ch. 79-336; s. 296, ch. 79-400.



## CHAPTER 932

## PROVISIONS SUPPLEMENTAL TO CRIMINAL PROCEDURE LAW

- 932.45 Proceedings on estreat of bond; sureties to be called.
- 932.46 Same; certificate of judge.
- 932.47 Indictments and informations; informations filed by prosecuting attorney.
- 932.48 Same; duties of clerks of courts.
- 932.49 Same; failure of motor vehicle operators to stop and assist persons injured; form of information.
- 932.50 Evidence necessary in treason.
- 932.51 Execution on affirmance of judgment.
- 932.58 Forfeiture of charter and revocation of permit.
- 932.59 Enjoining operation of a business.
- 932.60 Institution and conduct of proceedings.
- 932.61 Transfer of county or municipal charge to court providing trial by jury.
- 932.62 Date for arraignment upon transfer; petitioner not incarcerated.
- 932.63 Filing of charges; petitioner not incarcerated.
- 932.64 Transfer of surety bond.
- 932.65 Filing formal charges; petitioner incarcerated.
- 932.66 Suggested forms for transfer.

**932.45 Proceedings on estreat of bond; sureties to be called.**—When any bond is taken for the appearance of any person charged with a criminal offense before any court in this state, and such person fails to attend said court as prescribed in the bond, the presiding judge of said court shall cause the sureties on the bond to be called upon to produce the body of the person for whose appearance they have given bond.

**History.**—s. 1, ch. 4403, 1895; GS 3949; RGS 6051; CGL 8352. cf.—s. 903.26 Directing forfeiture of bond.

**932.46 Same; certificate of judge.**—When the sureties have been called as required in this chapter, and have failed to produce the body of the person for whose appearance the bond has been given, the presiding judge of the court shall, during said term of court, or as soon thereafter as possible make and sign a certificate setting forth the facts of the giving of the bond, the breach of its conditions, and the failure of the sureties thereon to produce the body of the defendant, which certificate, under the hand of the judge of said court, shall, in any court in this state, have all the force and validity of other record evidence, and shall be prima facie proof of all the facts set forth therein, and shall be substantially as follows:

In ..... Court for ..... County

State of Florida  
vs.  
A ..... B .....  
(Affidavit) or  
(Information) or  
(Indictment) as the case may be.  
This is to certify that the said A ..... B ..... together

with C ..... D ....., and E ..... F ....., agreed to pay the State of Florida ..... dollars unless the said A ..... B ..... should appear at this term of the ..... Court, for ..... County, to answer the charge in this case; that the said A ..... B ..... has failed to appear in this court to answer said charge, and that the sureties have been called upon and have failed to produce the body of said A ..... B ..... in this court, as their bond requires. In witness whereof, I have on this the ..... day of ..... A. D. 19..... made and signed this certificate.

(Signed) G ..... H .....  
Judge ..... Court  
For ..... County.

The certificate, together with the bond shall be by the judge of said court forthwith transmitted to the Clerk of the Circuit Court of the county, where said bond is made payable, who shall give his receipt for the same.

**History.**—s. 2, ch. 4403, 1895; GS 3950; RGS 6052; CGL 8353; s. 42, ch. 73-334.

**932.47 Indictments and informations; informations filed by prosecuting attorney.**—Informations may be filed by the prosecuting attorney of the Circuit Court with the Clerk of the Circuit Court in vacation or in term without leave of the court first being obtained.

**History.**—s. 1, ch. 17172, 1935; CGL 1936 Supp. 8363(1).

**932.48 Same; duties of clerks of courts.**—Upon the filing of an information, the Clerk of the Circuit Court shall docket the information and shall, without leave or order of the court first being had and obtained, issue a capias for the arrest of the person charged; and the clerk shall likewise issue any and all other necessary process incident to the information.

**History.**—s. 2, ch. 17172, 1935; CGL 1936 Supp. 8363(1).

**932.49 Same; failure of motor vehicle operators to stop and assist persons injured; form of information.**—Informations and indictments under ss. 316.062 and 316.063 shall be deemed sufficient if made in substantially the following form:

"That one A. B. while operating or being in charge of a motor vehicle then and there being driven along the ..... thoroughfare in ..... County, Florida, did strike and injure or put in jeopardy the person or property (as the case may be, giving details sufficient to identify the occurrence) of one ..... (or unknown as the case may be) and without stopping to render aid to the persons injured or put in jeopardy thereby or (without making known to the persons present his full, true and correct name and address as the case may be) did unlawfully depart from the scene of such accident contrary to the statute in such case made and provided."

**History.**—s. 3, ch. 13699, 1929; CGL 1936 Supp. 8374(1); s. 182, ch. 73-333.

**932.50 Evidence necessary in treason.**—No person shall be convicted of treason except by the testimony of two lawful witnesses to the same overt act of treason for which he is prosecuted, unless he confess the same in open court.

**History.**—s. 4, ch. 1637, 1868; RS 2909; GS 3980; RGS 6082; CGL 8387.  
cf.—Ch. 876 Criminal anarchy, treason, and other crimes against the public order.

**932.51 Execution on affirmance of judgment.**—Upon the affirmance of a judgment, sentence or order, the appellate court shall order and direct the court in which the case was originally determined to carry into effect the original judgment, sentence or order, or the appellate court shall itself proceed to pass such judgment, sentence or order as to it shall seem proper.

**History.**—s. 5, ch. 138, 1848; RS 2978; GS 4051; RGS 6155; CGL 8469.  
cf.—s. 924.35 Enforcement of judgment on affirmance.

**932.58 Forfeiture of charter and revocation of permit.**—The Department of Legal Affairs is authorized to institute civil proceedings in the circuit court to forfeit the charter of a corporation organized under the laws of this state or to revoke the permit authorizing a foreign corporation to conduct business in this state, when:

(1) Any of the corporation officers or any other person controlling the management or operation of such corporation, with the knowledge of the president and a majority of the board of directors or under such circumstances wherein the president and a majority of the board of directors should have knowledge, is a person or persons engaged in activities such as organized violent revolutionary or unlawful activity aimed at the overthrow of the government of the state or any of its political subdivisions, institutions, or agencies, organized homosexuality, organized crimes against nature, organized prostitution, organized gambling, organized narcotics, organized extortion, or organized embezzlement, or who is connected, directly or indirectly, with organizations, syndicates, or criminal societies engaging in such activities; or

(2) A director, officer, employee, agent, or stockholder, acting for, through or on behalf of such corporation, has, in conducting the corporation's affairs, purposely engaged in a persistent course of violent revolutionary or unlawful activity aimed at the overthrow of the government of the state or any of its political subdivisions, institutions or agencies, homosexuality, crimes against nature, intimidation and coercion, bribery, prostitution, gambling, extortion, embezzlement, unlawful sale of narcotics, or other such illegal conduct, with the knowledge of the president and a majority of the board of directors or under such circumstances wherein the president and a majority of the board of directors should have knowledge, with the intent to compel or induce other persons, firms or corporations to deal with such corporation or engage in any such illegal conduct,

and for the prevention of future illegal conduct of the same character, the public interest requires the charter of the corporation to be forfeited and the

corporation to be dissolved or the permit to be revoked.

**History.**—s. 1, ch. 69-272; ss. 11, 35, ch. 69-106.

**932.59 Enjoining operation of a business.**—The Department of Legal Affairs is authorized to institute civil proceedings in the circuit court to enjoin the operation of any business other than a corporation, including a partnership, joint venture, or sole proprietorship, when:

(1) Any person in control of any such business, who may be a partner in a partnership, a participant in a joint venture, the owner of a sole proprietorship, an employee or agent of any such business, or a person who, in fact, exercises control over the operations of any such business, has, in conducting its business affairs, purposely engaged in a persistent course of violent revolutionary or unlawful activity aimed at the overthrow of the government of the state or any of its political subdivisions, institutions or agencies, homosexuality, crimes against nature, intimidation, coercion, bribery, prostitution, gambling, extortion, embezzlement, unlawful sale of narcotics, or other such illegal conduct with the intent to compel or induce other persons, firms, or corporations to deal with such business or engage in any such illegal conduct, and

(2) For the prevention of future illegal conduct of the same character, the public interest requires the operation of the business to be enjoined.

**History.**—s. 1, ch. 69-272; ss. 11, 35, ch. 69-106.

**932.60 Institution and conduct of proceedings.**—

(1) The proceedings authorized by s. 932.58, may be instituted against a corporation in any county in which it is doing business, and the proceedings shall be conducted in accordance with the Florida Rules of Civil Procedure and the applicable rules of court. Such proceedings shall be deemed additional to any other proceeding authorized by law for the purpose of forfeiting the charter of a corporation or revoking the permit of a foreign corporation.

(2) The proceedings authorized by s. 932.59, may be instituted against a business other than a corporation in any county in which it is doing business and the proceedings shall be conducted in accordance with the Florida Rules of Civil Procedure and the applicable rules of court.

**History.**—s. 1, ch. 69-272.

**932.61 Transfer of county or municipal charge to court providing trial by jury.**—A person charged in a court with a violation of a county or municipal ordinance for which no jury trial is provided may, when the violation of a county or municipal ordinance is also a violation of a state law, cause the transfer of the violation to the appropriate court in which a trial by jury is provided, in the following manner:

(1) Prior to the commencement of the trial in the court not providing trial by jury, the person charged, or his attorney, shall file a petition requesting transfer to the appropriate court providing trial by jury. The original petition shall be filed with the court where the charge is docketed and pending, and copies shall be furnished to the court where jury trial is

provided and to the prosecuting authority of both courts.

(2) The petition shall be signed by the defendant or his attorney and shall contain:

- (a) The defendant's name, age, and address;
- (b) A description and citation of the charges filed against the defendant;
- (c) A citation indicating that these charges also constitute a violation of state law;
- (d) The date and amount of bond set, if any;
- (e) An agreement to appear, answer, and attend the court to which the charge may be transferred;
- (f) The date of incarceration, if incarcerated at the time of the making of the petition; and
- (g) The demand for trial by jury.

(3) The judge of the court in which the person is charged shall entertain defendant's petition forthwith and shall, upon finding the petition to be correct in all its allegations of fact, order by written endorsement on the petition the transfer of defendant's cause to the appropriate court providing criminal jury trial jurisdiction.

(4) The clerk of the court not providing trial by jury, upon receipt of the judge's order directing transfer, shall within 3 days transmit to the clerk of the court providing criminal jury trial jurisdiction all the original record materials, including bond and the petition to transfer, filed in the petitioner's cause, certifying that they are all the original papers filed in the cause and kept by the clerk. The clerk of the court not providing trial by jury shall also transmit copies of all the record materials to the prosecuting attorney of the court providing jury trial jurisdiction to which defendant's cause is being transferred. The clerk shall also furnish notice of transfer to the surety or bail bondsman, if there is one. Upon the entry of the order transferring the cause, it shall be the duty of the police authority of the court from which the cause is being transferred to transfer a complete and exact duplicate of all reports, records, and other papers relating to the cause to the prosecuting attorney of the court to which the cause is transferred.

History.—s. 1, ch. 70-372.

**932.62 Date for arraignment upon transfer; petitioner not incarcerated.**—If the person whose case is transferred is at liberty on bond or on his own recognizance, his appearance date for arraignment to the court to which the cause has been transferred shall be within 45 days from the date of transfer, and, if the defendant is on his own recognizance, he shall sign an agreement to appear before the court to which his case is transferred as a part of his petition to transfer. If the defendant is at liberty on a cash or property bond, the clerk of the transferring court shall endorse the new returnable date on its face prior to transfer.

History.—s. 1, ch. 70-372.

**932.63 Filing of charges; petitioner not incarcerated.**—If the petitioner is not incarcerated, the prosecuting attorney shall, within 30 days of receipt of the petition, after due and diligent consideration and investigation of defendant's cause, file charges on behalf of the state against the defendant in the court providing criminal jury trial jurisdiction, or

shall decline to file charges against the defendant, and the cause shall be dismissed upon the filing of a no true bill by the prosecuting attorney with the clerk. Upon failure of the prosecuting attorney to take action within 30 days, the cause shall be dismissed by the clerk of the court in which the cause is pending.

History.—s. 1, ch. 70-372.

**932.64 Transfer of surety bond.**—With the written consent of the bondsman, surety bonds shall be transferred and made returnable to the court in which trial by jury is provided.

History.—s. 1, ch. 70-372.

**932.65 Filing formal charges; petitioner incarcerated.**—When a person is incarcerated for a violation of a county or municipal ordinance and fails, or is otherwise unable, to be released on bond and requests a trial by jury, the person shall be transferred within 5 days to the jail facilities of the criminal court providing trial by jury. The prosecuting authority shall file formal charges within 3 days of the transfer of the person who fails, or is unable to post bond. Upon the failure or inability of the prosecuting authority to file charges, the person incarcerated shall be released and the provisions of s. 932.62, shall apply. It shall be the responsibility of the jailer releasing the prisoner to have him execute and sign an agreement to appear before the court to which his case has been transferred in accordance with s. 932.62.

History.—s. 1, ch. 70-372.

**932.66 Suggested forms for transfer.**—The petition for transfer, order of transfer, and agreement of bail bondsman to transfer bond shall be substantially as follows:

#### PETITION FOR TRANSFER TO COURT PROVIDING TRIAL BY JURY

IN THE .... COURT, .... FLORIDA

I, (Name)...., am (Age).... years of age and I reside at (Address).... I was arrested on (Date).... 19.... and am charged in this court with (Description and number of each county or municipal ordinance).... I am presently incarcerated in the (Jail).... awaiting trial on the charge(s) listed above.

—OR—

I am at liberty on (surety bond) (cash bond) (my own recognizance). My bail bondsman is

(Name)....

(Address)....

I am due to appear in this court on (Date).... for (Type of appearance)....

My charge(s) in this court constitute a violation of the criminal laws of the state as follows: .....

I desire a trial by jury and seek a transfer of the following charge(s)..... to a court of this county providing criminal trial by jury.

I agree to appear in the court to which my case is transferred on .... the .... day of .... 19....

(Signature of petitioner)....



.....  
(Attorney for petitioner).....

ORDER OF TRANSFER

This cause is hereby transferred to the ..... court at  
....., Florida.

DONE AND ORDERED this ..... day  
of ..... 19.....

.....  
(Judge).....

AGREEMENT OF BAIL BONDSMAN TO  
TRANSFER BOND TO COURT  
PROVIDING TRIAL BY JURY

I, ....., a duly licensed bail bondsman agree to the  
transfer of that certain bond ..... to ..... Court at .....,  
Florida.

.....  
(Signature of bail bondsman).....

History.—s. 1, ch. 70-372.

## CHAPTER 933

## SEARCH WARRANTS

- 933.01 Persons competent to issue search warrant.
- 933.02 Grounds for issuance of search warrant.
- 933.03 Destruction of obscene prints and literature.
- 933.04 Affidavits.
- 933.05 Issuance in blank prohibited.
- 933.06 Sworn application required before issuance.
- 933.07 Issuance of search warrants.
- 933.08 Search warrants to be served by officers mentioned therein.
- 933.09 Officer may break open door, etc., to execute warrant.
- 933.10 Execution of search warrant during day or night.
- 933.101 Service on Sunday.
- 933.11 Duplicate to be delivered when warrant served.
- 933.12 Return and inventory.
- 933.13 Copy of inventory shall be delivered upon request.
- 933.14 Return of property taken under search warrant.
- 933.15 Obstruction of service or execution of search warrant; penalty.
- 933.16 Maliciously procuring search warrant to be issued; penalty.
- 933.17 Exceeding authority in executing search warrant; penalty.
- 933.18 When warrant may be issued for search of private dwelling.
- 933.19 Searches and seizures of vehicles carrying contraband or illegal intoxicating liquors or merchandise.

**933.01 Persons competent to issue search warrant.**—A search warrant authorized by law may be issued by any judge, including the judge of any circuit court of this state or county court judge, or committing magistrate having jurisdiction where the place, vehicle or thing to be searched may be.

**History.**—RS 3006; GS 4082; RGS 6186; s. 3, ch. 9321, 1923; CGL 8500, 8505; s. 42, ch. 73-334.

**933.02 Grounds for issuance of search warrant.**—Upon proper affidavits being made a search warrant may be issued under the provisions of this chapter upon any of the following grounds:

- (1) When the property shall have been stolen or embezzled in violation of law;
- (2) When any property shall have been used:
  - (a) As a means to commit any crime,
  - (b) In connection with gambling, gambling implements and appliances, or
- (c) In violation of s. 847.011 or other laws in reference to obscene prints and literature;
- (3) When any property constitutes evidence relevant to proving that a felony has been committed;
- (4) When any property is being held or possessed:
  - (a) In violation of any of the laws prohibiting the manufacture, sale, and transportation of intoxicating liquors, or

- (b) In violation of the fish and game laws, or
- (c) In violation of the laws relative to food and drug;

(5) When the laws in relation to cruelty to animals have been or are violated in any particular building or place, but no search shall be made in such building or place after sunset, unless specially authorized by the officer issuing the warrant upon satisfactory cause shown; in which case such property may be taken on the warrant so issued from any house or place in which it is concealed, or from any vehicle, aircraft, or watercraft in which it may be found, or from the possession of any person by whom it shall have been used in the commission of any offense or from any person in whose possession it may be.

The provisions of this section shall apply also to any papers or documents used as a means of or in aid of the commission of any offense against the laws of the state.

**History.**—s. 16, sub-ch. 8, ch. 1637, 1868; s. 6, ch. 3921, 1889; RS 3007, 3008; GS 4083, 4084; RGS 6187, 6188; s. 4, ch. 9321, 1923; CGL 8501, 8502, 8506; s. 2, ch. 74-318; s. 1, ch. 77-174.  
cf.—s. 506.03 Issuance of search warrant to discover stamped or marked bottles and boxes.

**933.03 Destruction of obscene prints and literature.**—All obscene prints and literature, or other things mentioned in s. 847.011 found by an officer in executing a search warrant, or produced or brought into court, shall be safely kept so long as is necessary for the purpose of being used as evidence in any case, and as soon as may be afterwards, shall be destroyed by order of the court before whom the case is brought.

**History.**—s. 16, ch. 1637, 1868; RS 3007; GS 4083; RGS 6187; CGL 8501.

**933.04 Affidavits.**—The right of the people to be secure in their persons, houses, papers and effects against unreasonable seizures and searches shall not be violated and no search warrant shall be issued except upon probable cause, supported by oath or affirmation particularly describing the place to be searched and the person and thing to be seized.

**History.**—s. 2, ch. 9321, 1923; CGL 8504.

**933.05 Issuance in blank prohibited.**—A search warrant cannot be issued except upon probable cause supported by affidavit or affidavits, naming or describing the person, place or thing to be searched and particularly describing the property or thing to be seized; no search warrant shall be issued in blank and any such warrant shall be returned within ten days after issuance thereof.

**History.**—s. 5, ch. 9321, 1923; CGL 8507.

**933.06 Sworn application required before issuance.**—The judge or magistrate must, before issuing the warrant, have the application of some person for said warrant duly sworn to and subscribed, and may receive further testimony from witnesses or supporting affidavits, or depositions in writing, to support the application. The affidavit and further

proof, if same be had or required, must set forth the facts tending to establish the grounds of the application or probable cause for believing that they exist.

**History.**—s. 6, ch. 9321, 1923; CGL 8508.

**933.07 Issuance of search warrants.**—The judge, upon examination of the application and proofs submitted, if satisfied that probable cause exists for the issuing of the search warrant, shall thereupon issue a search warrant signed by him with his name of office, to any sheriff and his deputies or any police officer or other person authorized by law to execute process, commanding the officer or person forthwith to search the property described in the warrant or the person named, for the property specified, and to bring the property and any person arrested in connection therewith before the magistrate or some other court having jurisdiction of the offense.

**History.**—s. 7, ch. 9321, 1923; CGL 8509; s. 42, ch. 73-334; s. 1, ch. 79-131.

**933.08 Search warrants to be served by officers mentioned therein.**—The search warrant shall in all cases be served by any of the officers mentioned in its direction, but by no other person except in aid of the officer requiring it, said officer being present and acting in its execution.

**History.**—s. 8, ch. 9321, 1923; CGL 8510.

**933.09 Officer may break open door, etc., to execute warrant.**—The officer may break open any outer door, inner door or window of a house, or any part of a house or anything therein, to execute the warrant, if after due notice of his authority and purpose he is refused admittance to said house or access to anything therein.

**History.**—s. 9, ch. 9321, 1923; s. 1, ch. 10273, 1925; CGL 8511.  
cf.—s. 901.19 Right of officer to break into building.

**933.10 Execution of search warrant during day or night.**—A search warrant issued under the provisions of this chapter may, if expressly authorized in such warrant by the judge or magistrate issuing the same, be executed by being served either in the daytime or in the nighttime, as the exigencies of the occasion may demand or require.

**History.**—s. 10, ch. 9321, 1923; CGL 8512.  
cf.—s. 901.04 Execution of warrant of arrest.

**933.101 Service on Sunday.**—A search warrant may be executed by being served on Sunday, if expressly authorized in such warrant by the judge or magistrate issuing the same.

**History.**—s. 1, ch. 57-289.

**933.11 Duplicate to be delivered when warrant served.**—All search warrants shall be issued in duplicate. The duplicate shall be delivered to the officer with the original warrant, and when the officer serves the warrant, he shall deliver a copy to the person named in the warrant, or in his absence to some person in charge of, or living on the premises. When property is taken under the warrant the officer shall deliver to such person a written inventory of the property taken and receipt for the same, specifying

the same in detail, and if no person is found in possession of the premises where such property is found, shall leave the said receipt on the premises.

**History.**—s. 11, ch. 9321, 1923; CGL 8513.  
cf.—s. 901.21 Search of person arrested.

**933.12 Return and inventory.**—Upon the return of the warrant the officer shall attach thereto or thereon a true inventory of the property taken under the warrant, and at the foot of the inventory shall verify the same by affidavit taken before some officer authorized to administer oaths, or before the issuing officer, said verification to be to the following effect:

I, A. B., the officer by whom the warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on said warrant.

**History.**—s. 12, ch. 9321, 1923; CGL 8514.

**933.13 Copy of inventory shall be delivered upon request.**—The judge or magistrate to whom the warrant is returned, upon the request of any claimant or any person from whom said property is taken, or the officer who executed the search warrant, shall deliver to said applicant a true copy of the inventory of the property mentioned in the return on said warrant.

**History.**—s. 13, ch. 9321, 1923; CGL 8515.

**933.14 Return of property taken under search warrant.**—

(1) If it appears to the magistrate or judge before whom the warrant is returned that the property or papers taken are not the same as that described in the warrant, or that there is no probable cause for believing the existence of the grounds upon which the warrant was issued, or if it appears to the magistrate before whom any property is returned that the property was secured by an "unreasonable" search, the judge or magistrate may order a return of the property taken; provided, however, that in no instance shall contraband such as slot machines, gambling tables, lottery tickets, tally sheets, rundown sheets, or other gambling devices, paraphernalia and equipment, or narcotic drugs, obscene prints and literature be returned to anyone claiming an interest therein, it being the specific intent of the Legislature that no one has any property rights subject to be protected by any constitutional provision in such contraband; provided, further, that the claimant of said contraband may upon sworn petition and proof submitted by him in the circuit court of the county where seized, show that said contraband articles so seized were held, used or possessed in a lawful manner, for a lawful purpose, and in a lawful place, the burden of proof in all cases being upon the claimant. The sworn affidavit or complaint upon which the search warrant was issued or the testimony of the officers showing probable cause to search without a warrant or incident to a legal arrest, and the finding of such slot machines, gambling tables, lottery tickets, tally sheets, rundown sheets, scratch sheets, or other gambling devices, paraphernalia, and equipment, including money used in gambling or in furtherance of gambling, or narcotic drugs, obscene prints and literature, or any of them,



shall constitute prima facie evidence of the illegal possession of such contraband and the burden shall be upon the claimant for the return thereof, to show that such contraband was lawfully acquired, possessed, held, and used.

(2) No intoxicating liquor seized on any warrant from any place other than a private dwelling house shall be returned, but the same may be held for such other and further proceedings which may arise upon a trial of the cause, unless it shall appear by the sworn petition of the claimant and proof submitted by him that said liquors so seized were held, used or possessed in a lawful manner, and in lawful place, or by a permit from the proper federal or state authority, the burden of proof in all cases being upon the claimant. The sworn affidavit or complaint upon which the search warrant was issued and the finding of such intoxicating liquor shall constitute prima facie evidence of the illegal possession of such liquor, and the burden shall be upon the claimant for the return thereof, to show that such liquor was lawfully acquired, possessed, held, and used.

(3) No pistol or firearm taken by any officer with a search warrant or without a search warrant upon a view by the officer of a breach of the peace shall be returned except pursuant to an order of a circuit judge or a county court judge.

(4) If no cause is shown for the return of any property seized or taken under a search warrant, the judge or magistrate shall order that the same be impounded for use as evidence at any trial of any criminal or penal cause growing out of the having or possession of said property, but perishable property held or possessed in violation of law may be sold where the same is not prohibited, as may be directed by the court, or returned to the person from whom taken. The judge or magistrate to whom said search warrant is returned shall file the same with the inventory and sworn return in the proper office, and if the original affidavit and proofs upon which the warrant was issued are in his possession, he shall apply to the officer having the same and the officer shall transmit and deliver all of the papers, proofs, and certificates to the proper office where the proceedings are lodged.

**History.**—s. 14, ch. 9321, 1923; CGL 8516; s. 1, ch. 29676, 1955; s. 42, ch. 73-334.

**933.15 Obstruction of service or execution of search warrant; penalty.**—Whoever shall knowingly and willfully obstruct, resist, or oppose any officer or person aiding such officer, in serving or attempting to serve or execute any search warrant, or shall assault, beat or wound any person or officer, or his deputies or assistants, knowing him to be such an officer or person so authorized, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 15, ch. 9321, 1923; CGL 7534; s. 1160, ch. 71-136.

**933.16 Maliciously procuring search warrant to be issued; penalty.**—Any person who maliciously and without probable cause procures a search warrant to be issued and executed shall be

guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 16, ch. 9321, 1923; CGL 7434; s. 1161, ch. 71-136.

**933.17 Exceeding authority in executing search warrant; penalty.**—Any officer who in executing a search warrant willfully exceeds his authority or exercises it with unnecessary severity, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 17, ch. 9321, 1923; CGL 7519; s. 1162, ch. 71-136.

**933.18 When warrant may be issued for search of private dwelling.**—No search warrant shall issue under this chapter or under any other law of this state to search any private dwelling occupied as such unless:

(1) It is being used for the unlawful sale, possession, or manufacture of intoxicating liquor;

(2) Stolen or embezzled property is contained therein;

(3) It is being used to carry on gambling;

(4) It is being used to perpetrate frauds and swindles;

(5) The law relating to narcotics or drug abuse is being violated therein;

(6) A weapon, instrumentality, or means by which a felony has been committed, or evidence relevant to proving said felony has been committed, is contained therein;

(7) It is in part used for some business purpose such as a store, shop, saloon, restaurant, hotel, or boarding, or lodging house;

(8) It is being used for the unlawful sale, possession, or purchase of wildlife or freshwater fish being unlawfully kept therein; or

(9) The laws in relation to cruelty to animals have been or are being violated therein, except that no search pursuant to such a warrant shall be made in any private dwelling after sunset and before sunrise unless specially authorized by the judge issuing the warrant, upon a showing of probable cause. Property relating to the violation of such laws may be taken on a warrant so issued from any private dwelling in which it is concealed or from the possession of any person therein by whom it shall have been used in the commission of such offense or from any person therein in whose possession it may be.

The term "private dwelling" shall be construed to include the room or rooms used and occupied, not transiently but solely as a residence, in an apartment house, hotel, boardinghouse, or lodging house. No warrant shall be issued for the search of any private dwelling under any of the conditions hereinabove mentioned except on sworn proof by affidavit of some creditable witness that he has reason to believe that one of said conditions exists, which affidavit shall set forth the facts on which such reason for belief is based.

**History.**—s. 19, ch. 9321, 1923; s. 2, ch. 10273, 1925; CGL 8518; s. 1, ch. 57-418; s. 1, ch. 67-348; s. 1, ch. 69-18; s. 1, ch. 74-318; s. 1, ch. 78-126; s. 1, ch. 78-345.

**933.19 Searches and seizures of vehicles carrying contraband or illegal intoxicating liquors or merchandise.**—

(1) The provisions of the opinion rendered by the Supreme Court of the United States on March 2, 1925, in that certain cause wherein George Carroll and John Kiro were plaintiffs in error and the United States was defendant in error, reported in 267 United States Reports, beginning at page 132, relative to searches and seizures of vehicles carrying contraband or illegal intoxicating liquors or merchandise, and construing the Fourth Amendment to the Constitution of the United States, are adopted as the statute law of the state applicable to searches and seizures under s. 12, Art. I of the State Constitution, when searches and seizures shall be made by any duly authorized and constituted bonded officer of this state exercising police authority in the enforcement of any law of the state relative to the unlawful transportation or hauling of intoxicating liquors or other contraband or illegal drugs or merchandise prohibited or made unlawful or contraband

by the laws of the state.

(2) The same rules as to admissibility of evidence and liability of officers for illegal or unreasonable searches and seizures as were laid down in said case by the Supreme Court of the United States shall apply to and govern the rights, duties and liabilities of officers and citizens in the state under the like provisions of the Florida Constitution relating to searches and seizures.

(3) All points of law decided in the aforesaid case relating to the construction or interpretation of the provisions of the Constitution of the United States relative to searches and seizures of vehicles carrying contraband or illegal intoxicating liquors or merchandise shall be taken to be the law of the state enacted by the Legislature to govern and control such subject.

**History.**—s. 1, ch. 12257, 1927; CGL 7644; s. 2, ch. 69-216.

## CHAPTER 934

## SECURITY OF COMMUNICATIONS

- 934.01 Legislative findings.
- 934.02 Definitions.
- 934.03 Interception and disclosure of wire or oral communications prohibited.
- 934.04 Manufacture, distribution, possession, and advertising or wire or oral communication intercepting devices prohibited.
- 934.05 Confiscation of wire or oral communication intercepting devices.
- 934.06 Prohibition of use as evidence of intercepted wire or oral communications.
- 934.07 Authorization for interception of wire or oral communications.
- 934.08 Authorization for disclosure and use of intercepted wire or oral communications.
- 934.09 Procedure for interception of wire or oral communications.
- 934.091 Unlawful to publish names of parties to intercepted communications; penalty.
- 934.10 Recovery of civil damages authorized.

**934.01 Legislative findings.**—On the basis of its own investigations and of published studies, the Legislature makes the following findings:

(1) Wire communications are normally conducted through the use of facilities which form part of an intrastate network. The same facilities are used for intrastate and intrastate communications.

(2) In order to protect effectively the privacy of wire and oral communications, to protect the integrity of court and administrative proceedings, and to prevent the obstruction of intrastate commerce, it is necessary for the Legislature to define the circumstances and conditions under which the interception of wire and oral communications may be authorized and to prohibit any unauthorized interception of such communications and the use of the contents thereof in evidence in courts and administrative proceedings.

(3) Organized criminals make extensive use of wire and oral communications in their criminal activities. The interception of such communications to obtain evidence of the commission of crimes or to prevent their commission is an indispensable aid to law enforcement and the administration of justice.

(4) To safeguard the privacy of innocent persons, the interception of wire or oral communications when none of the parties to the communication has consented to the interception should be allowed only when authorized by a court of competent jurisdiction and should remain under the control and supervision of the authorizing court. Interception of wire and oral communications should further be limited to certain major types of offenses and specific categories of crime with assurance that the interception is justified and that the information obtained thereby will not be misused.

**History.**—s. 1, ch. 69-17.

**934.02 Definitions.**—As used in this chapter:

(1) "Wire communication" means any communication made in whole or in part through the use of facilities for the transmission of communications by

the aid of wire, cable, or other like connection between the point of origin and the point of reception, furnished or operated by any person engaged as a common carrier in providing or operating such facilities for the transmission of intrastate, interstate, or foreign communications;

(2) "Oral communication" means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation and does not mean any public oral communication uttered at a public meeting;

(3) "Intercept" means the aural acquisition of the contents of any wire or oral communication through the use of any electronic, mechanical, or other device;

(4) "Electronic, mechanical, or other device" means any device or apparatus which can be used to intercept a wire or oral communication other than:

(a) Any telephone or telegraph instrument, equipment or facility or any component thereof furnished to the subscriber or user by a communications common carrier in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business, or being used by a communications common carrier in the ordinary course of its business, or by an investigative or law enforcement officer in the ordinary course of his duties;

(b) A hearing aid or similar device being used to correct subnormal hearing to not better than normal;

(5) "Person" means any employee or agent of the state or political subdivision thereof and any individual, partnership, association, joint stock company, trust, or corporation;

(6) "Investigative or law enforcement officer" means any officer of the state or political subdivision thereof or of the United States who is empowered by law to conduct investigations of, or to make arrests for, offenses enumerated in this chapter or similar federal offenses and any attorney authorized by law to prosecute or participate in the prosecution of such offenses;

(7) "Contents," when used with respect to any wire or oral communication, includes any information concerning the identity of the parties to such communication or the existence, substance, purport, or meaning of that communication;

(8) "Judge of competent jurisdiction" means Justice of the Supreme Court, Judge of a District Court of Appeal, Circuit Judge, or judge of any court of record having felony jurisdiction of the state;

(9) "Aggrieved person" means a person who was a party to any intercepted wire or oral communication or a person against whom the interception was directed.

**History.**—s. 2, ch. 69-17; s. 1, ch. 72-294; s. 1, ch. 74-249.

**934.03 Interception and disclosure of wire or oral communications prohibited.**—

(1) Except as otherwise specifically provided in this chapter, any person who:



(a) Willfully intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept any wire or oral communication;

(b) Willfully uses, endeavors to use, or procures any other person to use or endeavor to use any electronic, mechanical, or other device to intercept any oral communication when:

1. Such device is affixed to, or otherwise transmits a signal through, a wire, cable, or other like connection used in wire communication; or

2. Such device transmits communications by radio or interferes with the transmission of such communication;

(c) Willfully discloses, or endeavors to disclose, to any other person the contents of any wire or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire or oral communication in violation of this subsection; or

(d) Willfully uses, or endeavors to use, the contents of any wire or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire or oral communication in violation of this subsection;

shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2)(a)1. It is lawful under this chapter for an operator of a switchboard, or an officer, employee, or agent of any communication common carrier whose facilities are used in the transmission of a wire communication, to intercept, disclose, or use that communication in the normal course of his employment while engaged in any activity which is a necessary incident to the rendition of his service or to the protection of the rights or property of the carrier of such communication; provided, that said communication common carriers shall not utilize service observing or random monitoring except for mechanical or service quality control checks.

2. It shall not be unlawful under this chapter for an officer, employee, or agent of any communication common carrier to provide information, facilities, or technical assistance to an investigative or law enforcement officer who, pursuant to this chapter, is authorized to intercept a wire or oral communication.

(b) It is lawful under this chapter for an officer, employee, or agent of the Federal Communications Commission, in the normal course of his employment and in discharge of the monitoring responsibilities exercised by the commission in the enforcement of 47 U.S.C. Ch. 5, to intercept a wire communication or oral communication transmitted by radio or to disclose or use the information thereby obtained.

(c) It is lawful under this chapter for a law enforcement officer or a person acting under the direction of a law enforcement officer to intercept a wire or oral communication when such person is a party to the communication or one of the parties to the communication has given prior consent to such interception and the purpose of such interception is to obtain evidence of a criminal act.

(d) It is lawful under this chapter for a person to intercept a wire or oral communication when all of

the parties to the communication have given prior consent to such interception.

(e) It is unlawful to intercept any communication for the purpose of committing any criminal act.

(f) It is lawful under this chapter for an employee of a telephone company to intercept a wire communication for the sole purpose of tracing the origin of such communication when the interception is requested by the recipient of the communication and the recipient alleges that the communication is obscene, harassing, or threatening in nature. The individual conducting the interception shall notify local police authorities within 48 hours after the time of the interception.

(g) It is lawful under this chapter for an employee of:

1. An ambulance service licensed pursuant to s. 401.25, a fire station employing firefighters as defined by s. 633.30, a public utility as defined by ss. 365.01 and 366.02, or any other entity with published emergency telephone numbers, or

2. An agency operating an emergency telephone number "911" system established pursuant to s. 365.171,

to intercept and record incoming wire communications; however, such public utility may intercept and record incoming wire communications on published emergency telephone numbers only.

**History.**—s. 3, ch. 69-17; s. 1163, ch. 71-136; ss. 2, 3, ch. 74-249; s. 249, ch. 77-104; s. 1, ch. 78-376; s. 187, ch. 79-164.

#### **934.04 Manufacture, distribution, possession, and advertising or wire or oral communication intercepting devices prohibited.—**

(1) Except as otherwise specifically provided in this chapter, any person who willfully:

(a) Sends through the mail or sends or carries any electronic, mechanical, or other device, with the intention of rendering it primarily useful for the purpose of the illegal interception of wire or oral communications as specifically defined by this chapter; or

(b) Manufactures, assembles, possesses, or sells any electronic, mechanical, or other device, with the intention of rendering it primarily useful for the purpose of the illegal interception of wire or oral communications as specifically defined by this chapter;

shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) It is not unlawful under this section for:

(a) A communication common carrier or an officer, agent, or employee of, or a person under contract with, a communication common carrier, in the normal course of the communication common carrier's business; or

(b) An officer, agent, or employee of, or a person under contract with, bidding upon contracts with, or in the course of doing business with, the United States, a state, or a political subdivision thereof, in the normal course of the activities of the United

States, a state, or a political subdivision thereof,

to send through the mail, send or carry in interstate or foreign commerce, or manufacture, assemble, possess, or sell any electronic, mechanical, or other device, knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire or oral communications.

**History.**—s. 4, ch. 69-17; s. 1164, ch. 71-136.

**934.05 Confiscation of wire or oral communication intercepting devices.**—Any electronic, mechanical, or other device used, sent, carried, manufactured, assembled, possessed, or sold in violation of this chapter may be seized and forfeited to the state.

**History.**—s. 5, ch. 69-17.

**934.06 Prohibition of use as evidence of intercepted wire or oral communications.**—Whenever any wire or oral communication has been intercepted, no part of the contents of such communication and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the state, or a political subdivision thereof, if the disclosure of that information would be in violation of this chapter.

**History.**—s. 6, ch. 69-17.

**934.07 Authorization for interception of wire or oral communications.**—The Governor, the Attorney General, or any State Attorney may authorize an application to a judge of competent jurisdiction for, and such judge may grant in conformity with this chapter, an order authorizing or approving the interception of wire or oral communications by the Department of Law Enforcement or any law enforcement agency of this state or any political subdivision thereof having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of the commission of the offense of murder, kidnapping, gambling, robbery, burglary, theft, dealing in stolen property, prostitution, criminal usury, bribery, extortion, or dealing in narcotic drugs or other dangerous drugs; any violation of the provisions of the Florida Anti-Fencing Act; or any conspiracy to commit any violation of the laws of this state relating to the crimes specifically enumerated above.

**History.**—s. 7, ch. 69-17; ss. 11, 20, 35, ch. 69-106; s. 42, ch. 73-334; s. 1, ch. 77-174; s. 15, ch. 77-342; s. 33, ch. 79-8.

**934.08 Authorization for disclosure and use of intercepted wire or oral communications.**—

(1) Any investigative or law enforcement officer who, by any means authorized by this chapter, has obtained knowledge of the contents of any wire or oral communication or evidence derived therefrom may disclose such contents to another investigative or law enforcement officer to the extent that such disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure.

(2) Any investigative or law enforcement officer

who, by any means authorized by this chapter, has obtained knowledge of the contents of any wire or oral communication or evidence derived therefrom may use such contents to the extent such use is appropriate to the proper performance of his official duties.

(3) Any person who has received, by any means authorized by this chapter, any information concerning a wire or oral communication or evidence derived therefrom intercepted in accordance with the provisions of this chapter may disclose the contents of that communication or such derivative evidence while giving testimony under oath or affirmation in any criminal proceeding in any court of the state or of the United States in any grand jury proceedings, or in any investigation or proceeding in connection with the Judicial Qualifications Commission, if such testimony is otherwise admissible.

(4) No otherwise privileged wire or oral communication intercepted in accordance with, or in violation of, the provisions of this chapter shall lose its privileged character.

(5) When an investigative or law enforcement officer, while engaged in intercepting wire or oral communications in the manner authorized herein, intercepts wire or oral communications relating to offenses for which an order or authorization or approval could have been secured pursuant to s. 934.07, other than those specified in the order of authorization or approval, the contents thereof and evidence derived therefrom may be disclosed or used as provided in subsections (1) and (2) of this section. Such contents and any evidence derived therefrom may be used under subsection (3) of this section when authorized or approved by a judge of competent jurisdiction when such judge finds on subsequent application that the contents were otherwise intercepted in accordance with the provisions of this chapter. Such application shall be made as soon as practicable.

**History.**—s. 8, ch. 69-17; s. 2, ch. 72-294; s. 1, ch. 73-361.

**934.09 Procedure for interception of wire or oral communications.**—

(1) Each application for an order authorizing or approving the interception of a wire or oral communication shall be made in writing upon oath or affirmation to a judge of competent jurisdiction and shall state the applicant's authority to make such application. Each application shall include the following information:

(a) The identity of the investigative or law enforcement officer making the application and the officer authorizing the application;

(b) A full and complete statement of the facts and circumstances relied upon by the applicant to justify his belief that an order should be issued, including details as to the particular offense that has been, is being, or is about to be committed, a particular description of the nature and location of the facilities from which, or the place where, the communications are to be intercepted, a particular description of the type of communications sought to be intercepted, and the identity of the person, if known, committing the offense and whose communications are to be intercepted;

(c) A full and complete statement as to whether or not other investigative procedures have been tried

and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous;

(d) A statement of the period of time for which the interception is required to be maintained and, if the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter;

(e) A full and complete statement of the facts concerning all previous applications known to the individual authorizing and making the application, made to any judge for authorization to intercept, or for approval of interceptions of, wire or oral communications involving any of the same persons, facilities, or places specified in the application, and the action taken by the judge on each such application; and

(f) When the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception or a reasonable explanation of the failure to obtain such results.

(2) The judge may require the applicant to furnish additional testimony or documentary evidence in support of the application.

(3) Upon such application, the judge may enter an ex parte order, as requested or as modified, authorizing or approving interception of wire or oral communications within the territorial jurisdiction of the court in which the judge is sitting if the judge determines on the basis of the facts submitted by the applicant that:

(a) There is probable cause for belief that an individual is committing, has committed, or is about to commit a particular offense enumerated in s. 934.07;

(b) There is probable cause for belief that particular communications concerning that offense will be obtained through such interception;

(c) Normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous;

(d) There is probable cause for belief that the facilities from which, or the place where, the wire or oral communications are to be intercepted are being used, or are about to be used, in connection with the commission of such offense, or are leased to, listed in the name of, or commonly used by such person.

(4) Each order authorizing or approving the interception of any wire or oral communication shall specify:

(a) The identity of the person, if known, whose communications are to be intercepted;

(b) The nature and location of the communications facilities as to which, or the place where, authority to intercept is granted;

(c) A particular description of the type of communication sought to be intercepted and a statement of the particular offense to which it relates;

(d) The identity of the agency authorized to intercept the communications and of the person authorizing the application; and

(e) The period of time during which such interception is authorized, including a statement as to whether or not the interception shall automatically

terminate when the described communication has been first obtained.

An order authorizing the interception of a wire or oral communication shall, upon the request of the applicant, direct that a communication common carrier, landlord, custodian, or other person shall furnish the applicant forthwith all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such carrier, landlord, custodian, or person is according the person whose communications are to be intercepted. Any communication common carrier, landlord, custodian, or other person furnishing such facilities or technical assistance shall be compensated therefor by the applicant at prevailing rates.

(5) No order entered under this section may authorize or approve the interception of any wire or oral communication for any period longer than is necessary to achieve the objective of the authorization, or in any event longer than 30 days. Extensions of an order may be granted, but only upon application for an extension made in accordance with subsection (1) and upon the court making the findings required by subsection (3). The period of extension shall be no longer than the authorizing judge deems necessary to achieve the purposes for which it was granted and in no event for longer than 30 days. Every order and extension thereof shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under this chapter, and must terminate upon attainment of the authorized objective or in any event in 30 days.

(6) Whenever an order authorizing interception is entered pursuant to this chapter, the order may require reports to be made to the judge who issued the order showing what progress has been made toward achievement of the authorized objective and the need for continued interception. Such reports shall be made at such intervals as the judge may require.

(7)(a) The contents of any wire or oral communication intercepted by any means authorized by this chapter shall, if possible, be recorded on tape or wire or other comparable device. The recording of the contents of any wire or oral communication under this subsection shall be kept in such a way as will protect the recording from editing or other alterations. Immediately upon the expiration of the period of the order, or extensions thereof, such recordings shall be made available to the judge issuing such order and sealed under his directions. Custody of the recordings shall be wherever the judge orders. They shall not be destroyed except upon an order of the issuing or denying judge and in any event shall be kept for 10 years. Duplicate recordings may be made for use or disclosure pursuant to the provisions of s. 934.08(1) and (2) for investigations.

(b) The presence of the seal provided for by this subsection, or a satisfactory explanation for the absence thereof, shall be a prerequisite for the use or disclosure of the contents of any wire or oral commu-



nication or evidence derived therefrom under s. 934.08(3).

(c) Applications made and orders granted under this chapter shall be sealed by the judge. Custody of the applications and orders shall be wherever the judge directs. Such applications and orders shall be disclosed only upon a showing of good cause before a judge of competent jurisdiction and shall not be destroyed except on order of the issuing or denying judge, and in any event shall be kept for 10 years.

(d) Any violation of the provisions of this subsection may be punished as contempt of the issuing or denying judge.

(e) Within a reasonable time but not later than 90 days after the termination of the period of an order or extension thereof, the issuing or denying judge shall cause to be served on the persons named in the order or the application, and such other parties to intercepted communications as the judge may determine in his discretion that is in the interest of justice, an inventory which shall include notice of:

1. The fact of the entry of the order or the application;
2. The date of the entry and the period of authorized, approved, or disapproved interception, or the denial of the application; and
3. The fact that during the period wire or oral communications were or were not intercepted.

The judge, upon the filing of a motion, may make available to such person or his counsel for inspection such portions of the intercepted communications, applications, and orders as the judge determines to be in the interest of justice. On an ex parte showing of good cause to a judge of competent jurisdiction, the serving of the inventory required by this paragraph may be postponed.

(8) The contents of any intercepted wire or oral communication or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding unless each party, not less than 10 days before the trial, hearing, or proceeding, has been furnished with a copy of the court order and accompanying application under which the interception was authorized or approved. This 10-day period may be waived by the judge if he finds that it was not possible to furnish the party with the above information 10 days before the trial, hearing, or proceeding and that the party will not be prejudiced by the delay in receiving such information.

(9)(a) Any aggrieved person in any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority may move to suppress the contents of any intercepted wire or oral communication, or evidence derived therefrom, on the grounds that:

1. The communication was unlawfully intercepted;
2. The order of authorization or approval under which it was intercepted is insufficient on its face; or
3. The interception was not made in conformity with the order of authorization or approval.

Such motion shall be made before the trial, hearing, or proceeding unless there was no opportunity to make such motion or the person was not aware of the grounds of the motion. If the motion is granted, the contents of the intercepted wire or oral communication, or evidence derived therefrom, shall be treated as having been obtained in violation of this chapter. The judge, upon the filing of such motion by the aggrieved person, may make available to the aggrieved person or his counsel for inspection such portions of the intercepted communication or evidence derived therefrom as the judge determines to be in the interests of justice.

(b) In addition to any other right to appeal, the state shall have the right to appeal from an order granting a motion to suppress made under paragraph (a) or the denial of an application for an order of approval if the attorney shall certify to the judge or other official granting such motion or denying such application that the appeal is not taken for purposes of delay. Such appeal shall be taken within 30 days after the date the order was entered and shall be diligently prosecuted.

**History.**—s. 9, ch. 69-17; s. 2, ch. 78-376.

#### **934.091 Unlawful to publish names of parties to intercepted communications; penalty.—**

(1) No person shall print, publish, or broadcast, or cause to be printed, published, or broadcasted, in any newspaper, magazine, periodical, or other publication, or from any television or radio broadcasting station, the name or identity of any person served with, or to be served with, an inventory or notification of interception of wire or oral communications pursuant to s. 934.09(7)(e) until said person has been indicted or informed against by the appropriate prosecuting authority.

(2) Whoever is convicted of the violation of the provisions of this section is guilty of a felony of the third degree, punishable as provided in s. 775.082, by a fine not to exceed \$10,000, or as provided in s. 775.084.

**History.**—s. 1, ch. 74-95.

#### **934.10 Recovery of civil damages authorized.**

—Any person whose wire or oral communication is intercepted, disclosed, or used in violation of this chapter shall have a civil cause of action against any person who intercepts, discloses, or uses, or procures any other person to intercept, disclose, or use, such communications and shall be entitled to recover from any such person:

- (1) Actual damages, but not less than liquidated damages computed at the rate of \$100 a day for each day of violation or \$1,000, whichever is higher;
- (2) Punitive damages; and
- (3) A reasonable attorney's fee and other litigation costs reasonably incurred.

A good faith reliance on a court order or legislative authorization as provided in this chapter shall constitute a complete defense to any civil or criminal action under the laws of this state.

**History.**—s. 10, ch. 69-17; s. 3, ch. 78-376.

## CHAPTER 936

## INQUESTS OF THE DEAD

- 936.001 Purpose.  
936.002 Inquest defined.  
936.003 Procedure.

**936.001 Purpose.**—The purpose of this chapter is to provide a procedure whereby a public inquest may be made into a death for which an autopsy is required, when there is a question of the occurrence of a criminal act, criminal negligence, or foul play associated with the death.

**History.**—s. 1, ch. 77-294.

**936.002 Inquest defined.**—As used in this chapter, the term "inquest" means a formal, nonadversary, nonjury presentation of evidence concerning a death, discovered by the medical examiner, State Attorney, and law enforcement agency during their respective examinations and investigations into the death.

**History.**—s. 1, ch. 77-294.

**936.003 Procedure.**—

(1) The State Attorney may petition the county court in the county in which the body was found to hold an inquest into any death for which an examination, investigation, or autopsy is required to be performed by the medical examiner pursuant to the provisions of s. 406.11 when there is a question of the involvement of a criminal act, criminal negligence,

or foul play in the death. The county court judge presiding at the inquest shall be deemed coroner only insofar as he is empowered to thus preside. Except as provided in this subsection, all duties and responsibilities of a coroner provided by law shall be vested in a medical examiner regulated pursuant to the provisions of chapter 406.

(2) Upon receipt of the petition of the State Attorney, the county court judge shall schedule the time and place of the inquest. The county court judge shall send his warrant for witnesses, to be served by a sheriff, commanding the witnesses to come to the inquest to be examined and to declare their knowledge concerning the death. Any witness appearing at, or summoned to appear at, an inquest shall be entitled to the same compensation as that provided by law for witnesses in any criminal proceeding held in the county.

(3) After the evidence has been presented, the court shall deliver a verdict stating whether or not there exists probable cause to believe that the death was the result of a criminal act, criminal negligence, or foul play. The verdict shall also state the name of the person or persons believed to be responsible for the death, if reasonably known.

(4) All inquests shall be open to the public.

**History.**—ss. 1, 2, ch. 77-294; s. 297, ch. 79-400.

## CHAPTER 939

## COSTS

- 939.01 Judgment for costs on conviction.
- 939.02 Costs before committing magistrate.
- 939.03 Execution for costs in capital cases.
- 939.04 Execution for costs in other cases.
- 939.05 Insolvent defendant discharged without payment of costs.
- 939.06 Acquitted defendant not liable for costs.
- 939.07 Pay of defendant's witnesses.
- 939.08 Costs to be certified by county commissioners before audit.
- 939.09 Sheriff's mileage.
- 939.10 Duty of board of county commissioners.
- 939.11 Unnecessary charge for confining prisoner not to be allowed.
- 939.12 Cost against state in supreme court.
- 939.13 Power of comptroller.
- 939.14 County not to pay costs in cases where information is not filed or indictment found.
- 939.15 Costs paid by county in cases of insolvency.
- 939.17 Application of cash deposit to fine and costs.

**939.01 Judgment for costs on conviction.**—In all cases of conviction for crime the costs of prosecution shall be included and entered up in the judgment rendered against the convicted person.

**History.**—s. 1, ch. 76, 1846; RS 2983; GS 4057; RGS 6161; CGL 8475.  
cf.—s. 57.091 Refund of costs to counties in certain proceedings relating to state prisoners.

- s. 142.16 Change of venue, county payable.
- s. 902.19 When prosecutor liable for costs.

**939.02 Costs before committing magistrate.**—All costs accruing before a committing magistrate shall be taxed against the defendant on conviction or estreat of recognizance.

**History.**—s. 3, ch. 1949, 1873; RS 2984; GS 4058; RGS 6162; CGL 8476.

**939.03 Execution for costs in capital cases.**—In all capital cases the costs in case of conviction shall be entered up against the prisoner, and the bill of costs, when taxed by the clerk and certified in the manner required by law to give a bill of costs the force of an execution, shall have the force of an execution, and may be levied upon any property of the prisoner found in the state. If the sheriff shall return said bill to the office of the clerk and make affidavit thereon that sufficient property cannot be found to pay the same, and shall state in the affidavit the amount left unpaid after exhausting all the property found, the bill, or the balance unpaid thereon, shall then be audited according to law and such amount shall be paid out of the county treasury.

**History.**—s. 7, ch. 159, 1848; RS 2985; GS 4059; RGS 6163; CGL 8477.

**939.04 Execution for costs in other cases.**—In all cases less than capital, wherein the defendant may be adjudged to pay costs, a capias may be issued, as is provided for the collection of fines and forfeitures.

**History.**—s. 5, ch. 217, 1849; RS 2986; GS 4060; RGS 6164; CGL 8478.

**939.05 Insolvent defendant discharged without payment of costs.**—In all cases less than capital, when it appears from due proof made in open court that the person convicted is wholly unable to pay costs, and that the judgment has in other respects been complied with, the court before which such person was convicted may discharge him without the payment of costs.

**History.**—s. 2, ch. 76, 1846; RS 2987; GS 4061; RGS 6165; CGL 8479.

**939.06 Acquitted defendant not liable for costs.**—No defendant in a criminal prosecution who is acquitted or discharged shall be liable for any costs or fees of the court or any ministerial office, or for any charge of subsistence while detained in custody. If he shall have paid any taxable costs in the case, the clerk or judge shall give him a certificate of the payment of such costs, with the items thereof, which, when audited and approved according to law, shall be refunded to him by the county.

**History.**—s. 3, ch. 76-1846; RS 2988; GS 4062; RGS 6166; CGL 8480; s. 44, ch. 73-334.

**939.07 Pay of defendant's witnesses.**—In all criminal cases prosecuted in the name of the state in the circuit courts or county courts in this state where the defendant is insolvent or discharged, the county shall pay the legal expenses and costs, as is prescribed for the payment of costs incurred by the county in the prosecution of such cases; provided, that there shall not be more than two witnesses summoned and paid to prove the same fact; and provided further, that before any witness is subpoenaed on behalf of a defendant in the circuit or county court an application shall be made to the judge, in writing, on behalf of the defendant, setting forth the substance of the facts sought to be proved by the witness or witnesses, making affidavit that the defendant is insolvent, and if upon such showing the judge is satisfied that the witness or witnesses are necessary for the proper defense of the defendant, he shall order that subpoena issue, and that the costs as herein provided shall be paid by the county, and not otherwise.

**History.**—s. 1, chs. 5131 and 5132, 1903; GS 4063; RGS 6167; CGL 8481; s. 44, ch. 73-334.  
cf.—s. 914.11 Indigent defendants.

**939.08 Costs to be certified by county commissioners before audit.**—In all cases wherein is claimed the payment of bills of costs, fees or expenses, other than juror and witness fees, in the prosecution of any criminal case which are payable by the county, an itemized bill or statement thereof shall be submitted to the county commissioners of the county in which such cases are prosecuted, and the same shall not be paid until the board of county commissioners shall have approved it and certified thereon that the same is just, correct and reasonable, and that no unnecessary or illegal item is contained therein.

**History.**—ss. 3, 5, ch. 3702, 1887; RS 2989; GS 4064; RGS 6168; CGL 8482; s. 44, ch. 73-334.

cf.—s. 142.10 Officer to make out accounts as directed.



**939.09 Sheriff's mileage.**—Every sheriff, in presenting a bill for mileage against the state or county, shall certify that no constructive mileage is charged therein.

**History.**—s. 7, ch. 3702, 1887; RS 2990; GS 4065; RGS 6169; CGL 8483. cf.—s. 902.19 When prosecutor liable for costs.

**939.10 Duty of board of county commissioners.**—The board of county commissioners, before approving any bill against the state or county, shall ascertain that no constructive mileage, or charge for anything but actual miles necessarily traveled by the nearest route, or actual and necessary services, or actual and necessary expenses which may be chargeable against the state or county, is contained therein.

**History.**—s. 7, ch. 3702, 1887; RS 2991; GS 4066; RGS 6170; CGL 8484.

**939.11 Unnecessary charge for confining prisoner not to be allowed.**—No charge for rent of any house for confining a prisoner, or for guarding a prisoner, any longer than may be necessary for transferring such prisoner to jail or place of safekeeping, or during the session of court at which such prisoner shall be arraigned, or to which he may be brought for trial, shall be allowed against the state or county.

**History.**—s. 6, ch. 159, 1848; RS 2992; GS 4067; RGS 6171; CGL 8485.

**939.12 Cost against state in supreme court.**—The clerk of the supreme court shall give, upon application, a certified copy of any judgment against the state upon appeal in criminal cases, and the county commissioners of the county from the court of which such appeal was taken shall pay the same to the appellant, or his agent or attorney, on demand.

**History.**—s. 1, ch. 3266, 1881; RS 2993; GS 4068; RGS 6172; CGL 8486.

**939.13 Power of comptroller.**—The comptroller may audit and approve or disapprove any claim or any item thereof against the state for costs, fees or expenses of criminal cases prosecuted in the name of the state, and for which the state is liable, if he is satisfied that the same is legal, just, necessary and correct or otherwise, and may prescribe forms and

methods for the same. The comptroller shall not dispend with any of the requirements of law relative to the auditing and payment of such accounts, but he may prescribe additional requirements.

**History.**—s. 8, ch. 3702, 1887; RS 2995; GS 4069; RGS 6173; CGL 8487.

**939.14 County not to pay costs in cases where information is not filed or indictment found.**—When a committing magistrate holds to bail or commits any person to answer a criminal charge in a county court or a circuit court, and an information is not filed nor an indictment found against such person, the costs of such committing trial shall not be paid by the county, except the costs for executing the warrant.

**History.**—s. 1, ch. 4123, 1893; GS 4070; RGS 6174; CGL 8488; s. 44, ch. 73-334.

cf.—s. 142.09 Defendant not convicted, or dies.

**939.15 Costs paid by county in cases of insolvency.**—When the defendant in any criminal case pending in any circuit or county court, a district court of appeal or the supreme court of this state has been adjudged insolvent by the circuit judge or the judge of the county court, upon affidavit and proof as required by s. 924.17 in cases of appeal, or when the defendant is discharged or the judgment reversed, the costs allowed by law shall be paid by the county in which the crime was committed, upon presentation to the county commissioners of a certified copy of the judgment of the court against such county for such costs.

**History.**—Ch. 4401, 1895; GS 4071; RGS 6175; CGL 8489; s. 44, ch. 73-334. cf.—s. 57.091 Refunding costs paid by county in certain proceedings affecting state prisoners.

**939.17 Application of cash deposit to fine and costs.**—In any prosecution for an offense against the state or any political subdivision thereof, when money has been deposited by or on behalf of the defendant upon a judgment for the payment of a fine and costs, the clerk shall, under the direction of the court, apply the money deposited in satisfaction of such fine and costs and return the remainder to the depositor.

**History.**—s. 1, ch. 72-235.

## CHAPTER 940

## EXECUTIVE CLEMENCY

- 940.01 Clemency; suspension of fines, pardons, restoration of civil rights, etc.
- 940.02 Notice to be given.
- 940.03 Application for executive clemency.
- 940.04 Copy of information or indictment to be furnished without charge.
- 940.05 Restoration of civil rights.
- 940.06 Submission of names of qualified persons.

**940.01 Clemency; suspension of fines, pardons, restoration of civil rights, etc.—**

(1) Except in cases of treason and in cases when impeachment results in conviction, the Governor may, by executive order filed with the Department of State, suspend collection of fines and forfeitures, grant reprieves not exceeding 60 days and, with the approval of three members of the cabinet, grant full or conditional pardons, restore civil rights, commute punishment, and remit fines and forfeitures for offenses.

(2) In cases of treason, the Governor may grant reprieves until adjournment of the regular session of the Legislature convening next after the conviction, at which session the legislature may grant a pardon or further reprieve; otherwise the sentence shall be executed.

(3) The Governor shall communicate to the Legislature, at the beginning of every session, every case of fine and forfeiture remitted or reprieved, pardon or commutation granted, stating the name of the convict, the crime for which he was convicted, the sentence, its date, and the date of its remission, commutation, pardon or reprieve.

**History.**—RS 2997; GS 4073; RGS 6177; CGL 8491; s. 1, ch. 69-29; ss. 10, 35, ch. 69-106.

**940.02 Notice to be given.—**

(1) When any person intends to apply for the remission of any fine or forfeiture, or the commutation of any punishment, or for a pardon, he shall cause to be posted for the period of 10 days, at the courthouse door and in two or more other places in the county where the offense for which the fine, forfeiture, punishment, penalty or sentence sought to be remitted, commuted or pardoned shall have been committed, or to be published for such period in a newspaper in said county, a notice that he will make application, one copy of which shall, except when published in a newspaper, be posted in the neighborhood or settlement where the same was committed. Such notice shall state the nature of the charge or offense of which he was convicted, and the time or term of the court when convicted. At the time of such posting or

publication, the applicant shall cause a copy of such notice to be furnished by mail to each of the following: The prosecuting attorney of the court in which the applicant was convicted and the judge of said court.

(2) Subsection (1) shall not apply to any proceedings for restoration of civil rights.

**History.**—s. 1, ch. 3018, 1877; RS 2998; GS 4074; RGS 6178; CGL 8492; s. 1, ch. 67-75; s. 5, ch. 69-29.

**940.03 Application for executive clemency.—**

When any person intends to apply for remission of any fine or forfeiture or the commutation of any punishment, he shall submit an application to the board of pardons. The application shall be in writing accompanied by a copy of the indictment or information upon which the conviction was had, a statement of the facts testified to at the trial, and such other information as shall be required by the board of pardons. A copy of the application complete with all attachments shall be furnished to the prosecuting attorney of the court in which the applicant was convicted and to the presiding judge of said court.

**History.**—s. 2, ch. 3018, 1877; RS 2999; GS 4075; RGS 6179; CGL 8493; s. 2, ch. 67-75; s. 2, ch. 69-29.

**940.04 Copy of information or indictment to be furnished without charge.—**The clerk shall furnish said copy of indictment or information to any applicant for the same, free of charge and without delay.

**History.**—s. 3, ch. 3018, 1877; RS 3000; GS 4076; RGS 6180; CGL 8494; s. 44, ch. 73-334.

**940.05 Restoration of civil rights.—**Any person who has been convicted of a felony may be entitled to the restoration of all the rights of citizenship enjoyed by him prior to his conviction if he complied with one of the following criteria:

(1) Has received a full pardon from the board of pardons, or

(2) Has served the maximum term of the sentence imposed upon him, or

(3) Has been granted his final release by the Parole and Probation Commission.

**History.**—s. 1, ch. 3467, 1883; RS 3001; GS 4077; RGS 6181; CGL 8495; s. 3, ch. 69-29.

**940.06 Submission of names of qualified persons.—**The Parole and Probation Commission shall submit to the Governor and cabinet the names of persons who qualify for the restoration of civil rights in accordance with s. 940.05.

**History.**—s. 4, ch. 69-29.

## CHAPTER 941

## CORRECTIONS: INTERSTATE COOPERATION

## PART I UNIFORM INTERSTATE EXTRADITION (ss. 941.01-941.42)

## PART II INTERSTATE AGREEMENT ON DETAINERS (ss. 941.45-941.50)

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## PART I

## UNIFORM INTERSTATE EXTRADITION

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**941.01 Definition.**—Where appearing in this chapter, the term "Governor" includes any person performing the functions of Governor by authority of the law of this state. The term "executive authority" includes the Governor and any person performing the functions of Governor in a state other than this state. The term "state," referring to a state other than this state, includes any other state or territory, organized or unorganized, of the United States.

*History.*—s. 1, ch. 20460, 1941.

**941.02 Fugitives from justice; duty of Governor.**—Subject to the provisions of this chapter, the provisions of the Constitution of the United States controlling, and any and all Acts of Congress enacted in pursuance thereof, it is the duty of the Governor of this state to have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony, or other crime, who has fled from justice and is found in this state.

*History.*—s. 2, ch. 20460, 1941.  
cf.—s. 88.061 Interstate rendition.

**941.03 Form of demand.**—No demand for the extradition of a person charged with crime in another state shall be recognized by the Governor unless in writing alleging, except in cases arising under s. 941.06, that the accused was present in the demanding state at the time of the commission of the alleged crime, and that thereafter he fled from the state, and accompanied by an authenticated copy of an indictment found or by information supported by affidavit in the state having jurisdiction of the crime, or by a copy of a warrant supported by an affidavit made before a committing magistrate of the demanding state; or by a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his bail, probation, or parole. The indictment, information, or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state; and the copy of indictment, information, affidavit, judgment of conviction, or sentence must be



authenticated by the executive authority making the demand.

History.—s. 3, ch. 20460, 1941.

**941.04 Governor may investigate case.—**

When a demand shall be made upon the Governor of this state by the executive authority of another state for the surrender of a person so charged with crime, the Governor may call upon the Department of Legal Affairs or any prosecuting officer in this state to investigate or assist in investigating the demand, and to report to him the situation and circumstances of the person so demanded, and whether he ought to be surrendered.

History.—s. 4, ch. 20460, 1941; ss. 11, 35, ch. 69-106.

**941.05 Extradition of persons imprisoned or awaiting trial in another state or who have left the demanding state under compulsion.—**

(1) When it is desired to have returned to this state a person charged in this state with a crime, and such person is imprisoned or is held under criminal proceedings then pending against him in another state, the Governor of this state may agree with the executive authority of such other state for the extradition of such person before the conclusion of such proceedings or his term of sentence in such other state, upon condition that such person be returned to such other state at the expense of this state as soon as the prosecution in this state is terminated.

(2) The Governor of this state may also surrender on demand of the executive authority of any other state any person in this state who is charged in the manner provided in s. 941.23 with having violated the laws of the state whose executive authority is making the demand, even though such person left the demanding state involuntarily.

History.—s. 5, ch. 20460, 1941.

**941.06 Extradition of persons not present in demanding state at time of commission of crime.—**

The Governor of this state may also surrender, on demand of the executive authority of any other state, any person in this state charged in such other state in the manner provided in s. 941.03 with committing an act in this state, or in a third state, intentionally resulting in a crime in the state whose executive authority is making the demand, and the provisions of this chapter not otherwise inconsistent, shall apply to such cases, even though the accused was not in that state at the time of the commission of the crime, and has not fled therefrom.

History.—s. 6, ch. 20460, 1941.

**941.07 Issue of Governor's warrant of arrest; its recitals.—**If the Governor decides that the demand should be complied with, he shall sign a warrant of arrest, which shall be sealed with the state seal, and be directed to any peace officer or other person whom he may think fit to entrust with the execution thereof. The warrant shall be sufficient if it substantially recites facts to show that an extraditable crime has been committed under the laws of the demanding state.

History.—s. 7, ch. 20460, 1941.

**941.08 Manner and place of execution.—**Such warrant shall authorize the peace officer or other person to whom directed to arrest the accused at any time and any place where he may be found within the state and to command the aid of all peace officers or other persons in the execution of the warrant, and to deliver the accused, subject to the provisions of this chapter, to the duly authorized agent of the demanding state.

History.—s. 8, ch. 20460, 1941.

**941.09 Authority of arresting officer.—**Every such peace officer or other person empowered to make the arrest, shall have the same authority, in arresting the accused, to command assistance therein, as peace officers have by law in the execution of any criminal process directed to them, with like penalties against those who refuse their assistance.

History.—s. 9, ch. 20460, 1941.

**941.10 Rights of accused person; application for writ of habeas corpus.—**

(1) No person arrested upon such warrant shall be delivered over to the agent whom the executive authority demanding him shall have appointed to receive him unless he shall first be taken forthwith before a judge of a court of record in this state, who shall inform him of the demand made for his surrender and of the crime with which he is charged, and that he has the right to demand and procure legal counsel; and if the prisoner or his counsel shall state that he or they desire to test the legality of his arrest, the judge of such court of record shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus. When such writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the State Attorney for the county in which the arrest is made, and in which the accused is in custody, and to the said agent of the demanding state.

(2) Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, a judge of a court of record in this state before whom the prisoner has been taken, or any other judicial officer having power of commitment in this state, including the judge before whom an application may be filed for a writ of habeas corpus, may, in his discretion, admit the person arrested to bail by bond, with sufficient sureties, and in such sum as he deems proper, conditioned for his appearance before him or before the judge to whom a writ of habeas corpus may be returnable, to abide the outcome of habeas corpus proceedings and any consequent appeal therefrom.

(3) The admission of a prisoner to bail by bond shall not be construed as depriving the prisoner from custody of those who have arrested him upon the warrant of arrest of the Governor, and for purposes of any application for a writ of habeas corpus, the prisoner shall be considered in the custody of the arresting agent or agents.

History.—s. 10, ch. 20460, 1941; s. 7, ch. 22858, 1945; s. 1, ch. 65-518; s. 44, ch. 73-334.

**941.11 Penalty for noncompliance with preceding section.**—Any officer who shall deliver to the agent for extradition of the demanding state a person in his custody under the Governor's warrant, in willful disobedience to the last section, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 11, ch. 20460, 1941; s. 1165, ch. 71-136.

**941.12 Confinement in jail when necessary.**—

(1) The officer or persons executing the Governor's warrant of arrest, or the agent of the demanding state to whom the prisoner may have been delivered, may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the legal sufficiency of his arrest has been determined by the court and the officer or person having charge of him is ready to proceed on his route; such officer or person shall pay the jailer holding the prisoner the costs of his jailing and keeping.

(2) The officer or agent of a demanding state to whom a prisoner may have been delivered following extradition proceedings in another state, or to whom a prisoner may have been delivered after waiving extradition in such other state, and who is passing through this state with such a prisoner for the purpose of immediately returning such prisoner to the demanding state may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or agent having charge of him is ready to proceed on his route, such officer or agent, however, being chargeable with the expense of keeping; provided, however, that such officer or agent shall produce and show to the keeper of such jail satisfactory written evidence of the fact that he is actually transporting such prisoner to the demanding state after a requisition by the executive authority of such demanding state. Such prisoner shall not be entitled to demand a new requisition while in this state.

History.—s. 12, ch. 20460, 1941; s. 24, ch. 57-1.

**941.13 Arrest prior to requisition.**—Whenever any person within this state shall be charged on the oath of any credible person before any judge or magistrate of this state with the commission of any crime in any other state, and except in cases arising under s. 941.06 with having fled from justice or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail, probation, or parole, or whenever complaint shall have been made before any judge or magistrate in this state setting forth on the affidavit of any credible person in another state that a crime has been committed in such other state and that the accused has been charged in such state with the commission of the crime, and, except in cases arising under s. 941.06, has fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail, probation, or parole, and is believed to be in this state, the judge or magistrate shall issue a warrant directed to any peace officer commanding him to apprehend the person named therein, wher-

ever he may be found in this state, and to bring him before the same or any other judge, magistrate, or court who or which may be available in, or convenient of, access to the place where the arrest may be made, to answer the charge or complaint and affidavit, and a certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant.

History.—s. 13, ch. 20460, 1941.

**941.14 Arrest without a warrant.**—The arrest of a person may be lawfully made also by any peace officer or a private person, without a warrant upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term exceeding 1 year, but when so arrested the accused must be taken before a judge or magistrate with all practicable speed and complaint must be made against him under oath setting forth the ground for the arrest as in the preceding section; and thereafter his answer shall be heard as if he had been arrested on a warrant.

History.—s. 14, ch. 20460, 1941.

**941.15 Commitment to await requisition; bail.**—If from the examination before the judge or magistrate it appears that the person held is the person charged with having committed the crime alleged and, except in cases arising under s. 941.06, that he has fled from justice, the judge or magistrate must, by a warrant reciting the accusation, commit him to the county jail for such a time not exceeding 30 days and specified in the warrant, as will enable the arrest of the accused to be made under a warrant of the Governor on a requisition of the executive authority of the state having jurisdiction of the offense, unless the accused give bail as provided in the next section, or until he shall be legally discharged.

History.—s. 15, ch. 20460, 1941; s. 7, ch. 22858, 1945.

**941.16 Bail; in what cases; conditions of bond.**—Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, a judge or other judicial officer having power of commitment in this state may admit the person arrested to bail by bond, with sufficient sureties, and in such sum as he deems proper, conditioned for his appearance before him at a time specified in such bond, and for his surrender, to be arrested upon the warrant of the Governor of this state.

History.—s. 16, ch. 20460, 1941.

**941.17 Extension of time of commitment, adjournment.**—If the accused is not arrested under warrant of the Governor by the expiration of the time specified in the warrant or bond, a judge or magistrate may discharge him or may recommit him for a further period not to exceed 60 days, or a judge or magistrate judge may again take bail for his appearance and surrender, as provided in s. 941.16, but

within a period not to exceed 60 days after the date of such new bond.

History.—s. 17, ch. 20460, 1941.

**941.18 Forfeiture of bail.**—If the prisoner is admitted to bail, and fails to appear and surrender himself according to the conditions of his bond, the judge, or magistrate by proper order, shall declare the bond forfeited and order his immediate arrest without warrant if he be within this state. Recovery may be had on such bond in the name of the state as in the case of other bonds given by the accused in criminal proceedings within this state.

History.—s. 18, ch. 20460, 1941.

**941.19 Persons under criminal prosecution in this state at time of requisition.**—If a criminal prosecution has been instituted against such person under the laws of this state and is still pending, the Governor, in his discretion, either may surrender him on demand of the executive authority of another state or hold him until he has been tried and discharged or convicted and punished in this state.

History.—s. 19, ch. 20460, 1941.

**941.20 Guilt or innocence of accused, when inquired into.**—The guilt or innocence of the accused as to the crime of which he is charged may not be inquired into by the governor or in any proceeding after the demand for extradition accompanied by a charge of crime in legal form as above provided shall have been presented to the Governor, except as it may be involved in identifying the person held as the person charged with the crime.

History.—s. 20, ch. 20460, 1941.

**941.21 Governor may recall warrant or issue alias.**—The Governor may recall his warrant or warrants of arrest or may issue another warrant whenever he deems proper.

History.—s. 21, ch. 20460, 1941.

**941.22 Fugitives from this state; duty of Governors.**—Whenever the Governor of this state shall demand a person charged with crime or with escaping from confinement or breaking the terms of his bail, probation, or parole in this state, from the executive authority of any other state, or from the Chief Justice or an Associate Justice of the Supreme Court of the District of Columbia authorized to receive such demand under the laws of the United States, he shall issue a warrant under the seal of this state, to some agent, commanding him to receive the person so charged if delivered to him and convey him to the proper officer of the county in this state in which the offense was committed.

History.—s. 22, ch. 20460, 1941.

**941.23 Application for issuance of requisition; by whom made; contents.**—

(1) When the return to this state of a person charged with crime in this state is required, the bailiff or State Attorney shall present to the Governor his written application for a requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the crime charged against him, the approximate

time, place, and circumstances of its commission, the state in which he is believed to be, including the location of the accused therein, at the time the application is made and certifying that, in the opinion of the said state attorney the ends of justice require the arrest and return of the accused to this state for trial and that the proceeding is not instituted to enforce a private claim.

(2) When the return to this state is required of a person who has been convicted of a crime in this state and has escaped from confinement or broken the terms of his bail, probation, or parole, the State Attorney of the county in which the offense was committed, the Parole and Probation Commission, the Department of Corrections, or the warden of the institution or sheriff of the county, from which escape was made, shall present to the Governor a written application for a requisition for the return of such person, in which application shall be stated the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement, or of the breach of the terms of his bail, probation, or parole, the state in which he is believed to be, including the location of the person therein at the time application is made.

(3) The application shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to the judge, stating the offense with which the accused is charged, or of the judgment of conviction, or of the sentence. The prosecuting officer, Parole and Probation Commission, Department of Corrections, warden, or sheriff may also attach such further affidavits and other documents in duplicate as he shall deem proper to be submitted with such application. One copy of the application, with the action of the Governor indicated by endorsement thereon, and one of the certified copies of the indictment, complaint, information, and affidavits, or of the judgment of conviction or of the sentence shall be filed in the office of the Department of State, to remain of record in that office. The other copies of all papers shall be forwarded with the Governor's requisition.

History.—s. 23, ch. 20460, 1941; s. 7, ch. 22858, 1945; ss. 10, 35, ch. 69-106; s. 44, ch. 73-334; s. 19, ch. 77-120; s. 32, ch. 79-3.

**941.24 Costs and expenses.**—The costs and expenses of confinement of persons convicted in this state after extradition shall be paid as now or hereafter provided by law.

History.—s. 24, ch. 20460, 1941.

**941.25 Immunity from service of process in certain civil actions.**—A person brought into this state by, or after waiver of, extradition based on a criminal charge shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceedings to answer which he is being or has been returned, until he has been convicted in the criminal proceeding, or, if acquitted, until he has had reasonable opportunity to return to the state from which he was extradited.

History.—s. 25, ch. 20460, 1941.



**941.26 Written waiver of extradition proceedings.—**

(1) Any person arrested in this state charged with having committed any crime in another state or alleged to have escaped from confinement, or broken the terms of his bail, probation, or parole may waive the issuance and service of the warrant provided for in ss. 941.07 and 941.08, and all other procedure incidental to extradition proceedings, by executing or subscribing in the presence of a judge of any court of record within this state a writing which states that he consents to return to the demanding state; provided, however, that before such waiver shall be executed or subscribed by such person, it shall be the duty of such judge to inform such person of his rights to the issuance and service of a warrant of extradition and to obtain a writ of habeas corpus as provided for in s. 941.10.

(2) If and when such consent has been duly executed, it shall forthwith be forwarded to the office of the Governor of this state and filed therein. The judge shall direct the officer having such person in custody to deliver forthwith such person to the duly accredited agent or agents of the demanding state, and shall deliver or cause to be delivered to such agent or agents a copy of such consent; provided, however, that nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights, or duties of the officers of the demanding state or of this state.

History.—s. 25-A, ch. 20460, 1941.

**941.27 Nonwaiver by this state.**—Nothing in this chapter contained shall be deemed to constitute a waiver by this state of its right, power, or privilege to try such demanded person for crime committed within this state, or of its right, power, or privilege to regain custody of such person by extradition proceedings or otherwise for the purpose of trial, sentence, or punishment for any crime committed within this state, nor shall any proceedings had under this chapter which result in, or fail to result in, extradition be deemed a waiver by this state of any of its rights, privileges, or jurisdiction in any way whatsoever.

History.—s. 25-B, ch. 20460, 1941.

**941.28 No right of asylum; no immunity from other criminal prosecutions while in this state.**—After a person has been brought back to this state by, or after waiver of, extradition proceedings, he may be tried in this state for other crimes which he may be charged with having committed here as well as that specified in the requisition for his extradition.

History.—s. 26, ch. 20460, 1941; s. 250, ch. 77-104.

**941.29 Interpretation.**—The provisions of ss. 941.01-941.30 shall be so interpreted and construed as to effectuate its general purposes to make uniform the law of those states which enact it.

History.—s. 27, ch. 20460, 1941; s. 7, ch. 22858, 1945.

**941.30 Short title.**—ss. 941.01-941.29 may be cited as the "Uniform Criminal Extradition Law."

History.—s. 30, ch. 20460, 1941.

**941.31 Fresh pursuit; authority of officers of other states; etc.**—Any duly authorized state, county, or municipal arresting officer of another state of the United States who enters this state in fresh pursuit, and continues within this state in such fresh pursuit, of a person in order to arrest him on the ground that he is believed to have committed a felony in such other state, shall have the same authority to arrest and hold such person in custody, as has any authorized arresting officer, state, county, or municipal, of this state, to arrest and hold in custody a person on the ground that he is believed to have committed a felony in this state.

History.—s. 1, ch. 20461, 1941.

**941.32 Fresh pursuit; arrest; etc.**—If an arrest is made in this state by an officer of another state in accordance with the provisions of s. 941.31, he shall without unnecessary delay take the person so arrested before a County Court Judge or other judicial officer having jurisdiction of commitment, of the county in which the arrest was made, who shall conduct a hearing for the purpose of determining the lawfulness of the arrest. If the committing judicial officer determines that the arrest was lawful, he shall commit the person arrested to await for a reasonable time the issuance of an extradition warrant by the Governor of this state, or admit him to bail for such purpose. If the committing judicial officer determines that the arrest was unlawful, he shall discharge the person arrested.

History.—s. 2, ch. 20461, 1941; s. 44, ch. 73-334.

**941.33 Fresh pursuit; validity of arrest.**—Section 941.31 shall not be construed so as to make unlawful any arrest in this state which would otherwise be lawful.

History.—s. 3, ch. 20461, 1941.

**941.34 Definition of "state."**—For the purpose of this law the word "state" shall include the District of Columbia.

History.—s. 4, ch. 20461, 1941.

**941.35 Definition of "fresh pursuit."**—The term "fresh pursuit" as used in this law shall include fresh pursuit as defined by the common law, and also the pursuit of a person who has committed a felony or who is reasonably suspected of having committed a felony. It shall also include the pursuit of a person suspected of having committed a supposed felony, though no felony has actually been committed, if there is reasonable ground for believing that a felony has been committed. Fresh pursuit as used herein shall not necessarily imply instant pursuit, but pursuit without unreasonable delay.

History.—s. 5, ch. 20461, 1941.

**941.37 Short title.**—ss. 941.31-941.36 may be cited as the "Uniform Law on Fresh Pursuit."

History.—s. 8, ch. 20461, 1941.

**941.38 Extradition of persons alleged to be of unsound mind.**—A person alleged to be of unsound mind found in this state, who has fled from another state, in which at the time of his flight, he was under detention by law in a hospital, asylum, or other institution for the insane as a person of unsound mind; or he had been heretofore determined by legal proceedings to be of unsound mind, the finding being unreversed and in full force and effect, and the control of his person having been acquired by a court of competent jurisdiction of the state from which he fled; or he was subject to detention in such state, being then his legal domicile (personal service of process having been made) based on legal proceedings then pending to have him declared of unsound mind, shall, on demand of the executive authority of the state from which he fled, be delivered up to be removed thereto.

History.—s. 2, ch. 29686, 1955.

**941.39 Same; definitions.**—In this chapter, unless the context or subject matter otherwise requires:

(1) "Flight" or "fled" means any voluntary or involuntary departure from the jurisdiction of the court where the proceedings hereinafter mentioned may have been instituted and are still pending, with the effect of avoiding, impounding, or delaying the action of the court in which said proceedings may have been instituted or be pending, or any such departure from the state where the person demanded then was, if he then was under detention by law as a person of unsound mind and subject to detention.

(2) "State" means states, territories, districts and insular and other possessions of the United States.

(3) "Justice of Supreme Court of District of Columbia" as applied to a request to return any person within the purview of this chapter to or from the District of Columbia shall be included and have the same meaning as the terms "executive authority," "governor," and "chief magistrate."

History.—s. 1, ch. 29686, 1955.

**941.40 Same; procedure; limitation of detention; costs.**—

(1) Whenever the executive authority of any state demands of the executive authority of this state any fugitive within the purview of the preceding section, and produces a copy of the commitment, decree of other judicial process and proceeding, certified as authentic by the governor or chief magistrate of the state whence the person so charged has fled, with an affidavit made before a proper officer showing the person to be such a fugitive, it shall be the duty of the executive authority of this state to cause him to be apprehended and secured, if found in this state, and to cause immediate notice of the apprehension to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive and to cause the fugitive to be delivered to such agent when he shall appear.

(2) Any agent so appointed who receives the fugitive into custody shall be empowered to transmit him to the state from which he has fled.

(3) If no such agent appears within 30 days from

the time of the apprehension, the fugitive may be discharged.

(4) All costs and expenses incurred in the apprehending, securing, maintaining, and transmitting such fugitive to the state making such demand, shall be paid by such state.

History.—ss. 3-6, ch. 29686, 1955.

**941.41 Same; Governor to demand.**—The Governor is vested with the power, on the application of any person interested, to demand the return to this state of any fugitive within the purview of this statute.

History.—s. 7, ch. 29686, 1955.

**941.42 Same; purpose of law.**—This law is remedial and shall be in addition and as a supplement to any and all existing methods of procedure, including reciprocal agreements between this state and any other state for the transfer of persons of unsound mind; and shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History.—ss. 8, 9, ch. 29686, 1955.

## PART II

### INTERSTATE AGREEMENT ON DETAINERS

941.45 Agreement on Detainers.

941.46 Definition.

941.47 Cooperation with other states.

941.49 Responsibility of delivery.

941.50 Designation of officer.

**941.45 Agreement on Detainers.**—The interstate compact known as the "Agreement on Detainers" is enacted into law and entered into by the state as a party, and is of full force and effect between the state and any other states joining therein in the form substantially as follows:

(1) **POLICY AND PURPOSE.**—The party states find that charges outstanding against a prisoner, detainees based on untried indictments, informations, or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainees based on untried indictments, informations, or complaints. The party states also find that proceedings with reference to such charges and detainees, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

(2) **DEFINITIONS.**—As used in this agreement:

(a) "State" means the United States of America, a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(b) "Sending state" means a state in which a prisoner is incarcerated at the time he initiates a request for final disposition pursuant to subsection (3) or at

the time that a request for custody or availability is initiated pursuant to subsection (4).

(c) "Receiving state" means the state in which trial is to be had on an indictment, information, or complaint pursuant to subsection (3) or subsection (4).

**(3) REQUEST FOR FINAL DISPOSITION.—**

(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information, or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within 180 days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information, or complaint; provided that, for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner.

(b) The written notice and request for final disposition referred to in paragraph (a) shall be given or sent by the prisoner to the warden, commissioner of corrections or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

(c) The warden, commissioner of corrections, or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information, or complaint on which the detainer is based.

(d) Any request for final disposition made by a prisoner pursuant to paragraph (a) shall operate as a request for final disposition of all untried indictments, informations, or complaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of corrections, or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If trial is not had on any indictment, information, or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment,

such indictment, information, or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

(e) Any request for final disposition made by a prisoner pursuant to paragraph (a) shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph (d), and a waiver of extradition to the receiving state to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this section. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

(f) Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in paragraph (a) shall void the request.

**(4) REQUEST FOR CUSTODY OR AVAILABILITY.—**

(a) The appropriate officer of the jurisdiction in which an untried indictment, information, or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with subsection (5)(a) upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated; provided that the court having jurisdiction of such indictment, information, or complaint shall have duly approved, recorded, and transmitted the request and provided further that there shall be a period of 30 days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

(b) Upon receipt of the officer's written request as provided in paragraph (a), the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

(c) In respect of any proceeding made possible by this subsection, trial shall be commenced within 120 days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any neces-



sary or reasonable continuance.

(d) Nothing contained in this subsection shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph (a), but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery.

(e) If trial is not had on any indictment, information, or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to paragraph (e) of subsection (5), such indictment, information, or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

**(5) OFFER TO DELIVER TEMPORARY CUSTODY.—**

(a) In response to a request made under subsection (3) or subsection (4), the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information, or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in subsection (3). In the case of a federal prisoner, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this section or to the prisoner's presence in federal custody at the place for trial, whichever custodial arrangement may be approved by the custodian.

(b) The officer or other representative of a state accepting an offer of temporary custody shall present the following upon demand:

1. Proper identification and evidence of his authority to act for the state into whose temporary custody the prisoner is to be given, and

2. A duly certified copy of the indictment, information, or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

(c) If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information, or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in subsection (3) or subsection (4), the appropriate court of the jurisdiction where the indictment, information, or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

(d) The temporary custody referred to in this section shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations, or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suit-

able jail or other facility regularly used for persons awaiting prosecution.

(e) At the earliest practicable time consonant with the purposes of this section, the prisoner shall be returned to the sending state.

(f) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this section, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

(g) For all purposes other than that for which temporary custody as provided in this section is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

(h) From the time that a party state receives custody of a prisoner pursuant to this section until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations, or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping, and returning the prisoner. The provisions of this paragraph shall govern unless the states concerned have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies, and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs or responsibilities therefor.

**(6) TOLLING PERIOD AND LIMITATIONS.—**

(a) In determining the duration and expiration dates of the time periods provided in subsections (3) and (4), the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

(b) No provision of this section, and no remedy made available by this section, shall apply to any person who is adjudged to be mentally ill.

(7) **DESIGNATION OF OFFICER.**—Each state party to this agreement shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement and who shall provide, within and without the state, information necessary to the effective operation of this section.

(8) **EFFECTIVENESS AND WITHDRAWAL.**—This agreement shall enter into full force and effect as to a party state when such state has enacted the same into law. A state party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time

such withdrawal takes effect, nor shall it affect their rights in respect thereof.

(9) **CONSTRUCTION AND SEVERABILITY.**—This section shall be liberally construed so as to effectuate its purposes. The provisions of this section shall be severable, and if any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this section and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state party hereto, the agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

*History.*—s. 1, ch. 73-287.

**941.46 Definition.**—As used in this part, "appropriate court" means, with reference to the courts of this state, the circuit court possessing the proper venue.

*History.*—s. 2, ch. 73-287.

**941.47 Cooperation with other states.**—All courts, departments, agencies, officers, and employees of this state and its political subdivisions are hereby directed to enforce the agreement on detainees and to cooperate with one another and with other party states in enforcing the agreement and effectuating its purpose.

*History.*—s. 3, ch. 73-287.

**941.49 Responsibility of delivery.**—It shall be lawful and mandatory upon the warden or other official in charge of a penal or correctional institution in this state to give over the person of any inmate thereof whenever so required by the operation of the Agreement on Detainers.

*History.*—s. 5, ch. 73-287.

**941.50 Designation of officer.**—The officer who will serve as central administrator of, and information agent for, the Agreement on Detainers shall be designated by the secretary of the Department of Health and Rehabilitative Services.

*History.*—s. 6, ch. 73-287.

### PART III

#### INTERSTATE CORRECTIONS COMPACT

941.55 Title.

941.56 Interstate Corrections Compact.

941.57 Powers.

**941.55 Title.**—This part may be cited as the "Interstate Corrections Compact."

*History.*—s. 1, ch. 73-288.

**941.56 Interstate Corrections Compact.**—The Interstate Corrections Compact is hereby enacted into law and entered into by this state with any other states legally joining therein in the form sub-

stantially as follows:

#### INTERSTATE CORRECTIONS COMPACT

##### ARTICLE I

###### Purpose and Policy

The party states, desiring by common action to fully utilize and improve their institutional facilities and provide adequate programs for the confinement, treatment, and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of cooperation with one another, thereby serving the best interests of such offenders and of society and effecting economies in capital expenditures and operational costs. The purpose of this compact is to provide for the mutual development and execution of such programs of cooperation or the confinement, treatment, and rehabilitation of offenders with the most economical use of human and material resources.

##### ARTICLE II

###### Definitions

As used in this compact, unless the context clearly requires otherwise:

(a) "State" means a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

(b) "Sending state" means a state party to this compact in which conviction or court commitment was had.

(c) "Receiving state" means a state party to this compact to which an inmate is sent for confinement other than a state in which conviction or court commitment was had.

(d) "Inmate" means a male or female offender who is committed, under sentence to, or confined in, a penal or correctional institution.

(e) "Institution" means any penal or correctional facility, including, but not limited to, a facility for the mentally ill or mentally defective, in which inmates as defined in (d) above may lawfully be confined.

##### ARTICLE III

###### Contracts

(a) Each party state may make one or more contracts with any one or more of the other party states for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

1. Its duration.

2. Payments to be made to the receiving state by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs, or treatment not reasonably included as part of normal maintenance.

3. Participation in programs of inmate employment, if any; the disposition or crediting of any pay-

ments received by inmates on account thereof; and the crediting of proceeds from, or disposal of, any products resulting therefrom.

4. Delivery and retaking of inmates.

5. Such other matters as may be necessary and appropriate to fix the obligations, responsibilities, and rights of the sending and receiving states.

(b) The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant thereto, and nothing in any such contract shall be inconsistent therewith.

#### ARTICLE IV

##### Procedures and Rights

(a) Whenever the duly constituted authorities in a state party to this compact which has entered into a contract pursuant to Article III shall decide that confinement in, or transfer of an inmate to, an institution within the territory of another party state is necessary or desirable in order to provide adequate quarters and care or an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the territory of said other party state, the receiving state to act in that regard solely as agent for the sending state.

(b) The appropriate officials of any state party to this compact shall have access, at all reasonable times, to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

(c) Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state, for transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state; provided that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of Article III.

(d) Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this compact, including a conduct record of each inmate, and certify said record to the official designated by the sending state, in order that each inmate may have official review of his or her record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

(e) All inmates who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would

have had if confined in an appropriate institution of the sending state.

(f) Any hearing or hearings to which an inmate confined pursuant to this compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. Said record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subdivision, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state.

(g) Any inmate confined pursuant to this compact shall be released within the territory of the sending state unless the inmate, and the sending and receiving states, shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

(h) Any inmate confined pursuant to the terms of this compact shall have any and all rights to participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or his status changed on account of any action or proceeding in which he could have participated if confined in any appropriate institution of the sending state located within such state.

(i) The parent, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise, or otherwise function with respect to any inmate shall not be deprived of or restricted in his exercise of any power in respect of any inmate confined pursuant to the terms of this compact.

#### ARTICLE V

##### Acts Not Reviewable in Receiving State: Extradition

(a) Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge, or if the inmate is formally accused of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact



through any and all states party to this compact without interference.

(b) An inmate who escapes from an institution in which he is confined pursuant to this compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition or rendition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

#### ARTICLE VI

##### Federal Aid

Any state party to this compact may accept federal aid for use in connection with any institution or program, the use of which is or may be affected by this compact or any contract pursuant hereto and any inmate in a receiving state pursuant to this compact may participate in any such federally aided program or activity for which the sending and receiving states have made contractual provision, provided that if such program or activity is not part of the customary correctional regimen, the express consent of the appropriate official of the sending state shall be required therefor.

#### ARTICLE VII

##### Entry into Force

This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two states. Thereafter, this compact shall enter into force and become effective and binding as to any other of said states upon similar action by such state.

#### ARTICLE VIII

##### Withdrawal and Termination

This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from

the compact to the appropriate officials of all other party states. An actual withdrawal shall not take effect until 1 year after the notices provided in said statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such inmates as it may have confined pursuant to the provisions of this compact.

#### ARTICLE IX

##### Other Arrangements Unaffected

Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a nonparty state for the confinement, rehabilitation, or treatment of inmates nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

#### ARTICLE X

##### Construction and Severability

The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

*History.*—s. 2, ch. 73-288.

**941.57 Powers.**—The Department of Corrections is hereby authorized and directed to do all things necessary or incidental to the carrying out of the compact in every particular.

*History.*—s. 3, ch. 73-288; s. 20, ch. 77-120; s. 33, ch. 79-3.

## CHAPTER 942

## INTERSTATE EXTRADITION OF WITNESSES

- 942.01 Definitions.
- 942.02 Summoning witness in this state to testify in another state.
- 942.03 Witness from another state summoned to testify in this state.
- 942.04 Exemption from arrest and service of process.
- 942.05 Uniformity of interpretation.
- 942.06 Short title.

**942.01 Definitions.—**

(1) "Witness," as used in this chapter, includes a person whose testimony is desired in any proceeding or investigation by a grand jury or in a criminal action, prosecution, or proceeding held by the prosecution or the defense.

(2) "State" includes any territory of the United States and District of Columbia.

(3) "Summons" includes a subpoena, order, or other notice requiring the appearance of a witness.

*History.—s. 1, ch. 20458, 1941.*

**942.02 Summoning witness in this state to testify in another state.—**

(1) If a judge of a court of record, in any state which by its laws has made provision for commanding persons within that state to attend and testify in this state, certifies under the seal of such court that there is a criminal prosecution pending in such court, or that a grand jury investigation has commenced or is about to commence, that a person being within this state is a material witness in such prosecution or grand jury investigation, and that his presence will be required for a specified number of days, upon presentation of such certificate to any judge of a court of record in the county in which such person is, such judge shall fix a time and place for a hearing and shall make an order directing the witness to appear at a time and place certain for the hearing. The witness shall at all times be entitled to counsel.

(2) If at a hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution or a grand jury investigation in the other state, and that the laws of the state in which the prosecution is pending, or grand jury investigation has commenced or is about to commence, will give to him protection from arrest and the service of civil and criminal process, he shall issue a summons, with a copy of the certificate attached, directing the witness to attend and testify in the court where the prosecution is pending, or where a grand jury investigation has commenced or is about to commence at a time and place specified in the summons. In any such hearing the certificate shall be prima facie evidence of all the facts stated therein.

(3) If said certificate recommends that the witness be taken into immediate custody and delivered to an officer of the requesting state to assure his attendance in the requesting state, such judge may, in lieu of notification of the hearing, direct that such witness be forthwith brought before him for said

hearing; and the judge at the hearing being satisfied of the desirability of such custody and delivery, for which determination the certificate shall be prima facie proof of such desirability, may, in lieu of issuing subpoena or summons, order that said witness be forthwith taken in custody and delivered to an officer of the requesting state.

(4) If the witness, who is summoned as above provided, after being paid or tendered by some properly authorized person the sum of 10 cents a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending and \$5 for each day that he is required to travel and attend as a witness, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this state.

*History.—s. 2, ch. 20458, 1941; s. 1, ch. 61-491.*

**942.03 Witness from another state summoned to testify in this state.—**

(1) If a person in any state, which by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions or grand jury investigations commenced or about to commence in this state, is a material witness in a prosecution pending in a court of record in this state, or in a grand jury investigation which has commenced or is about to commence, a judge of such court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required. Said certificate may include a recommendation that the witness be taken into immediate custody and delivered to an officer of this state to assure his attendance in this state. This certificate shall be presented to a judge of a court of record in the county in which the witness is found.

(2) If the witness is summoned to attend and testify in this state, he shall be tendered the sum of 10 cents a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending, and \$5 for each day that he is required to travel and attend as a witness. A witness who has appeared in accordance with the provisions of the summons shall not be required to remain within this state a longer period of time than the period mentioned in the certificate, unless otherwise ordered by the court. If such witness, after coming into this state, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this state.

*History.—s. 3, ch. 20458, 1941.*

**942.04 Exemption from arrest and service of process.—**

(1) If a person comes into this state in obedience to a summons directing him to attend and testify in this state, he shall not while in this state pursuant to such summons be subject to arrest or the service

of process, civil or criminal, in connection with matters which arose before his entrance into this state under the summons.

(2) If a person passes through this state while going to another state in obedience to a summons to attend and testify in that state, or while returning therefrom, he shall not while so passing through this state be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this state under the summons.

**History.**—s. 4, ch. 20458, 1941.

**942.05 Uniformity of interpretation.**—This

chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of the states which enact it, and shall be only applicable to such state as shall enact reciprocal powers to this state relative to the matter of securing attendance of witnesses as herein provided.

**History.**—s. 5, ch. 20458, 1941.

**942.06 Short title.**—This chapter may be cited as the “Uniform Law to Secure the Attendance of Witnesses from Within or Without a State in Criminal Proceedings.”

**History.**—s. 6, ch. 20458, 1941.



## CHAPTER 943

## DEPARTMENT OF LAW ENFORCEMENT

- 943.01 Short title.
- 943.02 Definitions.
- 943.03 Department of Law Enforcement.
- 943.04 Division of Criminal Investigation; creation; investigative and related authority.
- 943.05 Division of Criminal Justice Information Systems; duties; crime reports.
- 943.06 Criminal Justice Information Systems Council.
- 943.07 Definitions; ss. 943.06-943.08.
- 943.08 Duties; Criminal Justice Information Systems Council.
- 943.09 Division of Standards and Training.
- 943.10 Definitions; ss. 943.09-943.24.
- 943.11 Police Standards and Training Commission; creation; membership; meetings; compensation.
- 943.12 Special powers; police officer training.
- 943.13 Police officers; qualifications for employment.
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- 943.15 Reimbursement of employing agency by commission.
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- 943.20 Qualifications and standards above minimum.
- 943.21 Exception; elected officers.
- 943.22 Salary incentive program for local and state law enforcement officers.
- 943.23 Notice of employment; inactive status; reinstatement.
- 943.24 Intent.
- 943.25 Advanced training; program; costs; funding.
- 943.26 Division of Local Law Enforcement Assistance.
- 943.29 Division of Staff Services.
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- 943.01 Short title.**—This chapter shall be known as the "Department of Law Enforcement Act of 1974."
- History.**—s. 1, ch. 74-386; s. 2, ch. 78-347.
- 943.02 Definitions.**—For the purpose of this chapter:
- (1) "Department" means the Department of Law Enforcement.
- (2) "Executive director" means the executive director of the Department of Law Enforcement.
- History.**—s. 2, ch. 74-386; s. 2, ch. 78-347.
- 943.03 Department of Law Enforcement.**—
- (1) The executive director shall have served at least 5 years as a police executive or possess training and experience in police affairs or public administration and shall be a bona fide resident of the state. It shall be the duty of the executive director to supervise, direct, coordinate, and administer all activities of the department and to exercise the duties prescribed for the State Law Enforcement Coordinator under part VII of chapter 23, known as the Florida Mutual Aid Act.
- (2) The department shall employ such administrative, clerical, technical, and professional personnel, including division directors as hereinafter provided, as may be required, at salaries to be established by the department, to perform such duties as the department may prescribe.
- (3) Pursuant to chapter 120, the department shall adopt the rules and regulations deemed necessary to carry out its duties and responsibilities under this chapter.
- (4) The department may make and enter into all contracts and agreements with other agencies, organizations, associations, corporations, individuals, or federal agencies as the department may determine are necessary, expedient, or incidental to the performance of its duties or the execution of its power under this chapter. However, nothing in this chapter shall authorize the employment of private investigative personnel by contract to conduct investigations.
- (5)(a) The department shall be governed by all laws regulating the purchase of supplies and equipment as other state agencies and may enter into contracts with other state agencies to make photographs and photostats, to transmit information by teletype, and to perform all those services consonant with the purpose of this chapter.

(b) It may use without charge the technical personnel and equipment of any state agency.

(6) The powers herein enumerated, or set forth in other parts of this chapter, shall be deemed an exercise of the state police power for the protection of the welfare, health, peace, safety, and morals of the people and shall be liberally construed.

(7) The Department of Legal Affairs shall be the legal advisor to and shall represent the department.

(8) The department may accept for any of its purposes and functions under this chapter any and all donations of property, real, personal, or mixed, and grants of money, from any governmental unit or public agency or from any institution, person, firm, or corporation. Such moneys shall be deposited, disbursed, and administered in a trust fund as provided by law.

(9) The department shall make an annual report of its activities to the governor and to the legislature and include in such report its recommendations for additional legislation.

(10) The department shall establish headquarters in Tallahassee. The Department of General Services shall furnish the department with proper and adequate housing for its operation.

*History.—ss. 3, 9, ch. 74-386.*

#### **943.04 Division of Criminal Investigation; creation; investigative and related authority.—**

(1) There is created a Division of Criminal Investigation within the Department of Law Enforcement. The division shall be supervised by a director who shall be employed by the department upon the recommendation of the executive director. It shall be the duty of the director to supervise, direct, coordinate, and administer all activities of the division.

(2)(a) Under appropriate rules and regulations adopted by the department, or upon written order of the Governor or by direction of the Legislature acting by a concurrent resolution, and at the direction of the executive director, the Division of Criminal Investigation may investigate violations of any of the criminal laws of the state, and shall have authority to bear arms, make arrests and apply for, serve and execute search warrants, arrest warrants, capias and other process of the court.

(b) Investigations may also be conducted in connection with the faithful execution and effective enforcement of the laws of the state with reference to organized crime, vice, racketeering, rioting, inciting to riot and insurrection, and, upon specific direction by the Governor in writing to the executive director, the misconduct, in connection with their official duties, of public officials and employees and of officials and members of public corporations and authorities subject to suspension or removal by the Governor.

(c) All investigators employed by the department shall be considered peace officers for all purposes. The executive director shall have the authority to designate the person occupying any appropriate position within the department as a peace officer, if such person is qualified under the department's personnel regulations relating to agents, and all persons thus employed by the department shall be considered peace officers for all purposes and shall be entitled to the privileges, protection, and benefits of ss. 112.19, 121.051, 122.34, and 870.05.

(3) Whenever it shall appear to the department that there is cause for the prosecution of a crime, the department shall refer the evidence of such crime to the officials authorized to conduct the prosecution.

*History.—s. 4, ch. 74-386; s. 5, ch. 76-247; s. 1, ch. 77-127; s. 1, ch. 77-174; s. 2, ch. 78-347; s. 34, ch. 79-8.*

#### **943.05 Division of Criminal Justice Information Systems; duties; crime reports.—**

(1) There is created a Division of Criminal Justice Information Systems within the Department of Law Enforcement. The division shall be supervised by a director who shall be employed upon the recommendation of the executive director.

(2) The division shall:

(a) Establish a system of fingerprint analysis and identification.

(b) Establish a system of intrastate communication of vital statistics and information relating to crimes, criminals, and criminal activity. The division may cooperate with state, county, municipal, and federal agencies in the establishment of such a system.

(c) Establish a system of uniform crime reports and statistical analysis.

1. All state, county, and municipal law enforcement agencies shall submit to the department uniform crime reports setting forth their activities in connection with law enforcement.

2. It shall be the duty of the division, under the supervision of the executive director, to adopt and promulgate rules and regulations prescribing the form, general content, and time and manner of submission of such uniform crime reports required pursuant to subparagraph 1. The rules so adopted and promulgated shall be filed with the Department of State pursuant to chapter 120, and shall have the force and effect of law. Willful or repeated failure by any state, county, or municipal law enforcement official to submit the uniform crime reports required by subparagraph 1. shall constitute neglect of duty in public office.

3. The division shall correlate the reports submitted to it pursuant to subparagraph 1. and shall compile and submit to the governor and the legislature semiannual reports based on such reports. A copy of said reports shall be furnished to all prosecuting authorities and law enforcement agencies.

*History.—s. 5, ch. 74-386; s. 1, ch. 77-174; s. 2, ch. 78-347.*

#### **943.06 Criminal Justice Information Systems Council.—**There is created a Criminal Justice Information Systems Council within the Department of Law Enforcement.

(1) The council shall be composed of nine members, consisting of the Attorney General or a designated assistant; the chairman of the Parole and Probation Commission; the state courts administrator; and six members, to be appointed by the Governor, consisting of two sheriffs, two police chiefs, one public defender, and one state attorney.

(2) Members appointed by the Governor shall be appointed for terms of 4 years, except that in the first appointment under this section, two members shall be appointed for terms of 2 years, two members for terms of 3 years, and two members for terms of 4 years; and the terms of such members shall be

designated by the Governor at the time of appointment. No appointive member shall serve beyond the time he ceases to hold the office or employment by reason of which he was eligible for appointment to the council. Any member appointed to fill a vacancy occurring because of death, resignation, or ineligibility for membership shall serve only for the unexpired term of his predecessor or until a successor is appointed and qualifies.

(3) The council shall annually elect its chairman and other officers. The council shall hold at least four regular meetings each year at the call of the chairman or upon the written request by three members of the council. A majority of the members of the council constitutes a quorum.

(4) Membership on the council shall not disqualify a member from holding any other public office or being employed by a public entity except that no member of the Legislature shall serve on the council. The Legislature finds that the council serves a state, county, and municipal purpose and that service on the council is consistent with a member's principal service in a public office or employment.

(5) Members of the council shall serve without compensation, but shall be entitled to be reimbursed for per diem and traveling expenses as provided by s. 112.061.

**History.**—s. 6, ch. 74-386; s. 1, ch. 77-174; s. 4, ch. 78-323; s. 2, ch. 78-347.

**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

**§943.07 Definitions; ss. 943.06-943.08.**—The following words and phrases as used in ss. 943.06, 943.07, and 943.08 shall have the following meanings, unless the context otherwise requires:

(1) "Information system" means a system, whether automated or manual, operated or leased by state or local government or governments, including the equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation, or dissemination of information.

(2) "Criminal justice information system" means an information system for the collection, processing, preservation, or dissemination of criminal justice information.

(3) "Criminal justice information" means information on individuals collected or disseminated as a result of arrest, detention, or the initiation of a criminal proceeding by criminal justice agencies, including arrest record information, correctional and release information, criminal history record information, conviction record information, identification record information, and wanted persons record information. The term shall not include statistical or analytical records or reports in which individuals are not identified and from which their identities are not ascertainable. The term shall not include criminal justice intelligence information.

(4) "Criminal justice intelligence information" means information about an individual on matters pertaining to the administration of criminal justice, other than criminal justice information, which is indexed under an individual's name or which is retrievable by reference to identifiable individuals by name or otherwise. This term shall not include information on criminal justice agency personnel or information on lawyers, victims, witnesses, or jurors

collected in connection with a case in which they were involved.

(5) "Dissemination" means the transmission of information, whether orally or in writing.

**History.**—s. 6, ch. 74-386; s. 4, ch. 78-323.

**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

**§943.08 Duties; Criminal Justice Information Systems Council.**—The council shall develop and recommend operating policies and procedures relating to the following areas:

(1) The exchange of criminal justice information and criminal justice intelligence information and the operation of criminal justice information systems and criminal justice intelligence information systems, both interstate and intrastate;

(2) The installation of criminal justice information systems and criminal justice intelligence information systems and the exchange of information by such systems within the state and with similar systems and criminal justice agencies in other states and in the Federal Government;

(3) The physical security of the system, to prevent unauthorized disclosure of information contained in the system and to insure that the criminal justice information in the system is currently and accurately revised to include subsequently revised information;

(4) The purging or sealing of criminal justice information upon order of a court of competent jurisdiction or when required by law;

(5) The dissemination of criminal justice information to persons or agencies not associated with criminal justice when such dissemination is authorized by law;

(6) The access to criminal justice information maintained by any criminal justice agency by any person about whom such information is maintained for the purpose of challenge, correction, or addition of explanatory material; and

(7) Such other areas as relate to the collection and dissemination of criminal justice information and criminal justice intelligence information.

**History.**—s. 6, ch. 74-386; s. 1, ch. 77-174; s. 4, ch. 78-323.

**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

**§943.09 Division of Standards and Training.**—There is created a Division of Standards and Training within the Department of Law Enforcement. The department shall employ a division director with the approval of the Police Standards and Training Commission.

**History.**—s. 7, ch. 74-386; s. 1, ch. 77-174; s. 2, ch. 78-347.

**§943.10 Definitions; ss. 943.09-943.24.**—The following words and phrases as used in ss. 943.09-943.24 shall have the following meanings unless the context otherwise requires:

(1) "Police officer" means any person employed full time by any municipality or the state or any political subdivision thereof, whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, traffic, or highway laws of this state.

(2) "Employing agency" means any municipality or the state or any political subdivision thereof em-



playing police officers as defined in subsection (1).

<sup>1</sup>(3) "Commission" means the Police Standards and Training Commission.

(4) "Part-time" or "auxiliary" police officer means any person employed, with or without compensation, less than full time by the state or any political subdivision or municipality thereof, whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, traffic, or highway laws of this state.

(5) "Private police training school" means any private school, corporation, or institution, for profit or not for profit, devoted wholly or in part to instruction, by correspondence or otherwise, in police services, police administration, police training, police education, and law enforcement, which awards any type of certificate, diploma, degree, or recognition for attendance, graduation, study, or participation to students, enrollees, or participants. This definition applies to all such schools operating wholly or in part within the state, including those chartered, incorporated, or formed outside the state.

<sup>1</sup>History.—s. 7, ch. 74-386; s. 4, ch. 78-323.

<sup>1</sup>Note.—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

**<sup>1</sup>943.11 Police Standards and Training Commission; creation; membership; meetings; compensation.—**

(1) There is created a Police Standards and Training Commission within the Department of Law Enforcement. The commission shall be composed of 12 members, consisting of the Attorney General or a designated assistant; the Commissioner of Education or a designated assistant; the special agent of the Federal Bureau of Investigation in Florida in charge of training; the executive director of the Department of Highway Safety and Motor Vehicles; and eight members, to be appointed by the Governor, consisting of three sheriffs, three chiefs of police, and two police officers who are neither sheriffs nor chiefs of police. Prior to the appointment, the sheriff, chief of police, and police officer members shall have had at least 8 years' experience in law enforcement as police officers.

(2) Members appointed by the Governor shall be appointed for terms of 4 years except that in the first appointments under this section, two members shall be appointed for terms of 1 year, two members for terms of 2 years, two members for terms of 3 years, and two members for terms of 4 years; and the terms of such members shall be designated by the Governor at the time of appointment. No appointive member shall serve beyond the time he ceases to hold the office or employment by reason of which he was eligible for appointment to the commission. Any member appointed to fill a vacancy occurring because of death, resignation, or ineligibility for membership shall serve only for the unexpired term of his predecessor or until a successor is appointed and qualifies.

(3) The Governor, in appointing the three sheriffs, three chiefs of police, and two police officers, shall take into consideration representation by geography, population, and other relevant factors in order that the representation on the commission be apportioned to give representation to the state at large rather than to a particular area.

(4) Membership on the commission shall not disqualify a member from holding any other public office or being employed by a public entity, except that no member of the Legislature shall serve on the commission. The Legislature finds that the commission serves a state, county, and municipal purpose and that service on the commission is consistent with a member's principal service in a public office or employment.

(5) The commission shall hold at least four regular meetings each year at the call of the chairman or upon the written request by three members of the commission. A majority of the members of the commission constitutes a quorum.

(6) Members of the commission shall serve without compensation but shall be entitled to be reimbursed for per diem and traveling expenses as provided by s. 112.061.

<sup>1</sup>History.—s. 7, ch. 74-386; s. 1, ch. 77-174; s. 4, ch. 78-323; s. 2, ch. 78-347.

<sup>1</sup>Note.—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

**<sup>1</sup>943.12 Special powers; police officer training.—**In connection with the employment and training of police officers, the commission shall have special power to:

(1) Establish uniform minimum standards for the employment and training of police officers, including standards with respect to parking enforcement specialists as described in s. 316.640(3)(c), and including qualifications and requirements as may be established by the commission subject to specific provisions which are contained in this chapter.

(2) Establish uniform minimum standards, with reasonable classifications as determined by the commission, for the employment and training of part-time or auxiliary police officers.

(3) Establish minimum curricular requirements for schools operated by or for any municipality or the state or any political subdivision thereof for the specific purpose of training police recruits or police officers.

(4) Consult and cooperate with municipalities or the state or any political subdivision thereof and with universities, colleges, community colleges, and other educational institutions concerning the development of police training schools and programs or courses of instruction, including, but not necessarily limited to, education and training in the areas of police science, police administration, and all allied and supporting fields.

(5) Approve institutions and facilities for school operation by or for any municipality or the state or any political subdivision thereof for the specific purpose of training police officers and police recruits.

(6) Issue certificates of competency to persons who, by reason of experience and completion of advanced education or inservice or specialized training, are especially qualified for particular aspects or classes of police work.

(7) Make or encourage studies on any aspect of police education and training or recruitment.

(8) Make recommendations concerning any matter within its purview pursuant to this chapter.

(9) Promulgate rules and regulations for the administration of this chapter pursuant to chapter 120.

(10) Make and enter into contracts and agree-

ments with other agencies, organizations, associations, corporations, individuals, or federal agencies as the commission may determine are necessary, expedient, or incidental to the performance of its duties or the execution of its powers.

(11) Accept, for any of its purposes and functions, any and all donations of money from any governmental unit or public agency or from any institution, person, firm, or corporation. Such moneys shall be deposited, disbursed, and administered in a trust fund as provided by law.

**History.**—s. 7, ch. 74-386; s. 2, ch. 76-270; s. 2, ch. 78-291; s. 4, ch. 78-323; s. 298, ch. 79-400.

**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

**943.13 Police officers; qualifications for employment.**—After August 1, 1974, any person employed as a police officer shall:

(1) Be at least 18 years of age.  
(2) Be a citizen of the United States, notwithstanding chapter 74-37, Laws of Florida, or any act of the Legislature passed during the 1976 Regular Session.

(3) Be a high school graduate or its "equivalent" as the term may be determined by the commission.

(4) Not have been convicted of a felony or of a misdemeanor involving "moral turpitude" as the term is defined by law and who has not been released or discharged under any other than honorable conditions from any of the Armed Forces of the United States.

<sup>1</sup>(5) Have his fingerprints on file with the commission or an agency designated by the commission.

<sup>1</sup>(6) Have passed an examination by a licensed physician, based on specifications established by the commission.

<sup>1</sup>(7) Have a good moral character as determined by investigation under procedures established by the commission.

**History.**—s. 7, ch. 74-386; s. 1, ch. 76-277; s. 4, ch. 78-323.

**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this subsection prior to that date.

**943.14 Police training programs; private police schools; certificates and diplomas; exemptions; injunction proceedings.**—

(1) The commission shall establish and maintain a police training program with such curriculum, and administered by such agencies and institutions, as it approves, and shall issue a certificate of completion to any person satisfactorily completing the training program established.

(2) The commission shall issue a certificate of compliance to any person satisfactorily complying with the training program established in subsection (1) and the qualifications for employment in s. 943.13, and no person shall be employed as a police officer by any employing agency until he has obtained such certificate of compliance.

(a) The commission may issue a temporary employment authorization to an individual meeting the qualifications for employment in s. 943.13, pending basic certification under this subsection, upon submission of evidence from an employing agency that a critical need exists and the individual is enrolled in an approved training program, or will be enrolled in the next approved training program available in

the geographic area, or no assigned state training program for state officers is available within a reasonable time as determined by the commission.

(b) Any person issued a temporary employment authorization as a police officer pending basic certification under this subsection must enroll in the first training program offered in the geographic area, or assigned state training program for a state officer offered as determined by the commission, subsequent to his employment. In no case shall a temporary employment authorization be in force for more than 180 consecutive days, and such temporary employment authorization shall not be renewable or transferable.

(3) The commission may issue a certificate to any person who has received training which the commission has determined is at least equivalent to that required by the commission in the state and who has satisfactorily complied with all other requirements of this chapter.

(4) All training or educational subjects which are taught, instructed, or used in any police or law enforcement schools or taught, instructed, or used in any private police training school shall first be approved in writing by the commission.

(5) Any certificates or diplomas issued by any police or law enforcement school or any private police training school which relate to completion, graduation, or attendance in police training or educational subjects, or related matter, shall be approved by the commission.

(6) All personnel used as instructors, teachers, or evaluators by any of the aforementioned schools, corporations, or institutions shall be certified by the commission.

(7) Police or law enforcement schools, courses which are accredited and certified by the Department of Education in accordance with the rules and regulations of the commission, and any schools authorized specifically by the Department of State to train those persons to be qualified pursuant to s. 493.43(6) are exempt from the requirements of subsections (4), (5), and (6).

(8) Police science or police administration courses or subjects which are a part of the curriculum of any accredited college, university, or community college of this state, and all full-time instructors of such institutions, shall be exempt from the provisions of this section.

(9) At the request of the commission, the Department of Legal Affairs shall apply directly to the circuit court of any county wherein any such school conducts or carries on any business or where any unlawful practice contrary to this section is being committed for an injunction restraining any such school from operating contrary to this section. The court, in its discretion, may grant a temporary injunction restraining the operation of any such school contrary to this section, pending the outcome of said cause, and, upon final hearing, shall permanently enjoin such unlawful operations as are contrary to this section. The commission and the Department of Legal Affairs shall not be required to give any bond in any proceedings hereunder.

**History.**—s. 7, ch. 74-386; s. 2, ch. 76-277; s. 1, ch. 77-174; s. 1, ch. 78-259; s. 4, ch. 78-323.

**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the

possible effect of laws affecting this section prior to that date.

**1943.15 Reimbursement of employing agency by commission.**—The commission shall, subject to the availability of funds, reimburse an employing agency an amount equivalent to 50 percent of the salary, if any, and allowable living expenses of recruit trainees in attendance at approved training programs.

**History.**—s. 7, ch. 74-386; s. 4, ch. 78-323.

**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

**1943.16 Payment of tuition by employing agency.**—

(1) An employing municipality, state agency, or political subdivision of the state is authorized to pay any costs of tuition of trainees in attendance at approved training programs.

(2) A trainee who attends such approved training program at the expense of a municipality, state agency, or political subdivision must remain in the employment of such municipality, state agency, or political subdivision for a period of not less than 1 year. If his employment is terminated on his own initiative within 1 year, he shall reimburse the municipality, state agency, or political subdivision for his participation in such training program, and such municipality, state agency, or political subdivision may institute a civil action to collect such tuition costs if not reimbursed.

**History.**—s. 7, ch. 74-386; s. 4, ch. 78-323.

**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

**1943.17 Inservice training and promotion; participation, grants.**—

(1)(a) The commission, by rules and regulations, shall prescribe curricula and standards for advanced and specialized training courses and training in addition to those prescribed in ss. 943.12 and 943.14.

(b) The standards provided by this section shall be deemed as those approved by the commission for promotional purposes but shall not be construed as binding on any employing agency for promotional requirements.

(2) Law enforcement agencies participating under the provisions of ss. 943.09-943.24 shall adhere to the standards and procedures established by the commission.

(3) Institutions and agencies offering approved programs of inservice or advanced training may receive grants from the commission, subject to the availability of funds, not to exceed 50 percent of the cost of offering approved training courses.

**History.**—s. 7, ch. 74-386; s. 4, ch. 78-323.

**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

**1943.18 Salary scale study; report, recommendation.**—The commission shall make a comprehensive study of the compensation paid to police officers throughout the state. Among the items to be researched shall be variation in salary scale, education and training of officers, retirement and pension programs, and any other factors on which compensation is based. The commission shall report its findings to each regular session of the legislature and make recommendations for achieving uniformity in compen-

sation for officers with equal or comparable responsibilities, experience, education, and training.

**History.**—s. 7, ch. 74-386; s. 4, ch. 78-323.

**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

**1943.19 Saving clause.**—All police officers certified by the commission on August 1, 1974, shall not be required to meet the provisions of ss. 943.12(1) and 943.13 as a condition of tenure or continued employment; nor shall their failure to fulfill such requirements make them ineligible for any promotional examination for which they are otherwise eligible.

**History.**—s. 7, ch. 74-386; s. 4, ch. 78-323.

**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

**1943.20 Qualifications and standards above minimum.**—Nothing herein shall be construed to preclude an employing agency from establishing qualifications and standards for hiring, training, or promoting police officers that exceed the minimum set by the commission.

**History.**—s. 7, ch. 74-386; s. 4, ch. 78-323.

**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

**943.21 Exception; elected officers.**—The provisions of ss. 943.09-943.24 shall not apply to any elected officers.

**History.**—s. 7, ch. 74-386.

**943.22 Salary incentive program for local and state law enforcement officers.**—

(1) For the purpose of this section the following terms shall have the meaning ascribed below:

(a) "Local unit" means any municipality, county, or other political subdivision of this state employing law enforcement officers.

(b) "Law enforcement officer" means any person elected, appointed, or employed full-time by any municipality or the state or any political subdivision thereof, who is vested with authority to bear arms and make arrests and whose primary responsibility is the prevention and detection of crime or the enforcement of the criminal, traffic, or highway laws of the state. The term includes supervisory and command officers who hold active certification from the commission, but shall not include support personnel employed by the employing agency.

(c) "Basic certification" means that a law enforcement officer has been certified for employment as required by s. 943.12, s. 943.13, s. 943.14, or s. 943.19 or has been excepted as provided under s. 943.21.

(d) "Approved training course" means the satisfactory completion, other than basic certification, of approved police training courses under the Police Standards Career Development Program. For the purposes of this section, no course of the career development program shall consist of less than 40 hours of advanced or technical police training or work in the police sciences.

(e) "Community college" means a community college as approved in s. 230.761(1).

(f) Requirement of a "community college degree or equivalent" is satisfied when a law enforcement officer holds a document from the commission certifying that commission records indicate his gradua-



tion or completion of at least 60 semester hours or 90 quarter hours at a community college with a major study concentration relating to the criminal justice system. The commission may authorize the completion of 60 semester hours or 90 quarter hours at an accredited college or university as meeting the equivalent of a community college degree. For the purpose of this section the commission shall establish which major study concentration areas relate to the criminal justice system.

(g) "Accredited college or university" means a college or university which has been accredited by the Southern Association of Colleges and Universities or other accrediting agency which is recognized by the state for accreditation purposes.

(h) Requirement of a "bachelor's degree" is satisfied when a law enforcement officer holds a document from the commission certifying that its records indicate his graduation from an accredited college or university with a major study concentration relating to the criminal justice system. For the purpose of this section, the commission shall establish which major study concentration areas relate to the criminal justice system.

(2)(a) Each law enforcement officer who meets basic certification shall receive a sum not exceeding \$25 per month in the manner provided for in paragraph (g).

(b) Each law enforcement officer who has a community college degree or equivalent shall receive a sum not exceeding \$30 per month in the manner provided for in paragraph (g).

(c) Any law enforcement officer who receives a bachelor's degree shall receive a sum not exceeding \$50 per month in the manner provided for in paragraph (g).

(d) Each law enforcement officer who completes 320 hours of approved training courses as established by the career development program of the commission shall receive a sum not exceeding \$80 per month. However, the commission may provide for proportional shares for courses completed in 80-hour units in a manner provided for in paragraph (g).

(e) The maximum aggregate amount any law enforcement officer may receive under this section is \$130 per month. However, no education incentive awards shall be made for any state law enforcement position for which the class specification requires the minimum of a 4-year degree, or higher. No contributions shall be required and no benefits shall be paid under the provisions of the Florida Retirement System with regard to any compensation paid under the provisions of this section.

(f) No local unit or state agency employing law enforcement officers shall use any state funds received, or any federal funds made available, under s. 943.03(8) for the purpose of circumventing payment of any currently planned or existing salary or compensation plan which provides normal pay increases periodically to its law enforcement officers.

(g) The Division of Police Standards and Training through its commission shall establish rules in cooperation with the department as necessary to provide effectively for the proper administration of the salary incentive program. Such rules shall in-

clude, but not be limited to:

1. Proper documentation and verification of any claimed training or education requirement.

2. Proper documentation and verification that the local unit or state agency employing law enforcement officers has provided in its salary structure and salary plans incentive pay for law enforcement officers as required in this section.

(h) Each local unit and state agency employing law enforcement officers shall submit reports to the commission on December 31, March 31, June 30, and September 30 of each year containing information relative to compensation of law enforcement officers employed by it.

*History.*—s. 7, ch. 74-386; s. 1, ch. 77-436; s. 299, ch. 79-400.

**943.23 Notice of employment; inactive status; reinstatement.**—An employing agency shall immediately report to the commission the employment, appointment, or termination of employment or appointment of any police officer or of any part-time or auxiliary police officer. In cases of termination it shall be the duty of the employing agency to notify the commission in writing, setting forth in detail the reasons for such termination. Upon receipt of such notification of termination by the commission, the police officer's certificate for employment, as provided for by s. 943.13, s. 943.14 or s. 943.19, shall be deemed temporarily inactive. Before an employing agency may employ a police officer whose certificate for employment has become inactive by virtue of this section, the employing agency shall contact the commission to determine the eligibility of the police officer for further employment and to inquire as to the reasons the police officer terminated employment with his previous employing agency. If the employing agency, after being informed of the reasons for prior termination of the police officer and of his eligibility for further employment, does in fact employ the police officer, the police officer's certificate of employment shall be reinstated by the commission upon notification of such employment.

*History.*—s. 7, ch. 74-386.

**943.24 Intent.**—

(1) It is the intent of the Legislature to strengthen and upgrade law enforcement in Florida by attracting competent, highly qualified young people for professional careers in this field and to retain well-qualified and experienced officers for the purpose of providing maximum protection and safety to the citizens of, and visitors to, this state.

(2) It is the further intent of the Legislature to establish a minimum foundation program for law enforcement officers which will provide a statewide minimum salary for all such officers, to provide state monetary supplement in order to effectuate an upgrading of compensation for all law enforcement officers, and to upgrade the educational and training standards of such officers.

*History.*—s. 7, ch. 74-386.

**943.25 Advanced training; program; costs; funding.**—

(1) The Division of Standards and Training is directed to establish and supervise, as approved by the commission, an advanced and highly specialized

training program for the purpose of training police officers and support personnel in the prevention, investigation, detection, and identification of crime, and, upon request, to instruct law enforcement agencies within this state in these highly advanced and specialized areas.

(2) No fee or other charge shall be assessed against any person, municipality, sheriff, county, or state law enforcement agency for the training, room, or board of any person; said expenses shall be borne by the state. Any compensation to any person during the period of his or her training shall be fixed and determined by the proper authority within the municipality, county, or state law enforcement agency sponsoring the person, and such compensation, if any, shall be paid directly to the person.

(3) All courts created by Art. V of the State Constitution shall assess \$1 as a court cost against every person convicted for violation of a state penal or criminal statute or convicted for violation of a municipal or county ordinance. In addition, \$1 from every bond estreature or forfeited bail bond related to such penal statutes or penal ordinances shall be forwarded to the State Treasurer as hereinafter described. However, no such assessment shall be made against any person convicted for violation of any state statute, municipal ordinance, or county ordinance relating to the parking of vehicles. All such costs collected by the aforesaid courts shall be collected and remitted to the Department of Revenue, in accordance with administrative rules promulgated by the Executive Director of the Department of Revenue, for deposit in the State Treasury and be earmarked to the Department of Law Enforcement and the trust fund for block grant matching, equally, and be disbursed by the Executive Office of the Governor to the Bureau of Criminal Justice Assistance of the Department of Community Affairs and to the Department of Law Enforcement, equally, as provided herein. All funds earmarked to the Department of Law Enforcement shall be disbursed only for those purposes provided for in subsection (7). At such time as matching federal funds are no longer available under the provisions of Pub. L. No. 90-351, all funds collected shall be earmarked to the Department of Law Enforcement.

(4) The Auditor General is directed in his audit of courts to ascertain that such assessments have been collected and shall report to the Legislature annually. All such records of such courts shall be open for his inspection.

(5) Municipalities and counties may assess an additional \$1, as aforesaid, for law enforcement education expenditures for their respective law enforcement officers.

(6) All funds which have accumulated to the Florida Police Academy Fund as of August 1, 1974, shall be transferred and made available to the Department of Law Enforcement for implementation of training programs and training facilities. No such funds, or funds from any other source, shall be expended for the planning or construction of any new facility or expansion of any existing facility without the specific prior approval of the Legislature, designating the location and the amount to be expended for the training facility. However, this shall not pro-

hibit the expenditure of any such funds for establishment or construction of, or improvements to, any facility for law enforcement training on a regional basis.

(7) The Executive Office of the Governor is authorized to approve, for disbursement from funds allocated for, and which are credited to, the Department of Law Enforcement, those sums necessary and required for the implementation of the training programs and training facilities submitted by the department and approved by the commission.

(8) A trust fund for block grant matching by the state is created under the administration of the Bureau of Criminal Justice Assistance. Disbursement of said funds shall be made for the purpose of matching, implementing, administering, and qualifying for federal funds provided under the provisions of Pub. L. No. 90-351, as amended, and Pub. L. No. 93-415, as amended, referred to as the "Omnibus Crime Control and Safe Streets Act of 1968" and the "Juvenile Justice and Delinquency Act of 1974," including providing technical assistance to local governments for meeting criminal justice program planning requirements. The Executive Office of the Governor is authorized to approve, for disbursement from said trust fund, those sums necessary and required by the state for block grant matching federal funds on grants approved pursuant to Pub. L. Nos. 90-351 and 93-415, as amended. Disbursements from the trust fund for the purpose of supplanting shortfalls in LEAA program or planning funds shall not be made without specific legislative appropriation.

(9)(a) The commission, either by contract or agreement, may authorize any state university or community college in the state, or any other organization, to provide training for, or facilities for training, peace officers, which training shall include, but not be limited to, police techniques in detecting crime, apprehending criminals, and securing and preserving evidence.

(b) All law enforcement officers selected by the various law enforcement agencies, if their selection is approved by the commission, shall receive such training without cost.

**History.**—s. 8, ch. 74-386; s. 1, ch. 77-119; s. 1, ch. 77-174; s. 3, ch. 78-291; s. 2, ch. 78-347; s. 9, ch. 78-420; s. 189, ch. 79-164; s. 144, ch. 79-190.

**943.26 Division of Local Law Enforcement Assistance.**—There is created a Division of Local Law Enforcement Assistance within the Department of Law Enforcement. The division shall be supervised by a director who shall be employed upon the recommendation of the executive director. The division, upon the direction of the executive director of the department, shall be authorized to:

(1) Adopt and recommend cooperative policies for the coordination of the law enforcement work of all state, county, and municipal agencies possessing law enforcement responsibilities.

(2) Upon request of a sheriff or police chief, assist the requesting agency by providing consultation, research and planning assistance, or field technical services, and may engage in such other activities as

will aid local law enforcement officers in preventing or solving crimes and controlling criminal activity.

History.—s. 9, ch. 74-386; s. 2, ch. 78-347.

**943.29 Division of Staff Services.**—There is created a Division of Staff Services within the Department of Law Enforcement. The division shall be supervised by a director who shall be employed upon the recommendation of the executive director. The division shall establish a system of administrative and technical services for the department.

History.—s. 12, ch. 74-386; s. 1, ch. 77-174; s. 2, ch. 78-347.

**943.31 Legislative intent.**—The Legislature finds and declares that:

(1) The existing crime laboratory system is inadequate or virtually nonexistent in certain areas of the state, while other areas are capably being served.

(2) Inadequate crime laboratory services produce a detrimental effect on the criminal justice system, in that vital evidence may not be timely and expertly analyzed.

(3) Local law enforcement agencies in areas without sufficient crime laboratory services have voiced a need for such services, and statistics based on population, number of law enforcement officers, and the incidence of crimes for which laboratory analysis is necessary document this need.

(4) It is the intent of the Legislature to:

(a) Provide a statewide criminal analysis laboratory system to meet the needs of the criminal justice agencies.

(b) Provide state-operated laboratories in certain regions of the state where a distinct need for a significant level of laboratory services has been established.

(c) Provide financial assistance to certain other crime laboratories presently in existence and adequately serving the needs of specific portions of the state.

History.—s. 1, ch. 74-362.

**943.32 Statewide criminal analysis laboratory system.**—There shall be established a statewide criminal analysis laboratory system to be composed of:

(1) The state-operated laboratories under the jurisdiction of the Department of Law Enforcement in Jacksonville, Pensacola, Tallahassee, Tampa, and such other areas of the state as may be necessary;

(2) The existing locally funded laboratories in Broward, Dade, Palm Beach, Indian River, and Seminole Counties, specifically designated in s. 943.35 to be eligible for state matching funds; and

(3) Such other laboratories as render criminal analysis laboratory services to criminal justice agencies in the state.

History.—s. 2, ch. 74-362; s. 1, ch. 77-174; s. 2, ch. 78-347.

**943.33 State-operated criminal analysis laboratories.**—The state-operated laboratories shall furnish laboratory service upon request to law enforcement officials in the state. The services of such laboratories shall also be available to any defendant in

a criminal case upon showing of good cause and upon order of the court with jurisdiction in the case. The court may assess the costs of such service to the defendant or local public defender's office.

History.—s. 4, ch. 74-362.

**943.34 Powers and duties of department in relation to state-operated laboratories.**—The department shall exercise full operational control of the state-operated laboratories and shall exercise, among others, the power and duty to:

(1) Establish the organizational structure of such laboratories to include the designation of the geographical regions which the laboratories shall serve.

(2) Establish policy and procedures to be employed by the laboratories.

(3) Promote coordination, cooperation, and standardization between the various state-operated laboratories.

(4) Promote cooperation between the state-operated laboratories and other criminal analysis laboratories in the state in order to achieve a coordinated statewide system of criminal analysis laboratory services to serve all geographic areas of the state.

(5) Establish standards of education and experience for professional and technical personnel employed by the state-operated laboratories.

(6) Adopt internal procedures for the review and evaluation of state-operated laboratory services.

History.—s. 5, ch. 74-362.

**943.35 Matching funds for existing laboratories.**—

(1) The following existing criminal analysis laboratories shall be eligible for receipt of state matching funds:

(a) The Broward County Sheriff's Crime Laboratory;

(b) The Dade County Department of Public Safety Crime Laboratory;

(c) The Palm Beach County Crime Laboratory;

(d) The Region IV Crime Laboratory in Seminole County; and

(e) The Indian River Crime Laboratory.

(2) The state shall provide matching funds not to exceed 75 percent of the operating cost of such laboratories previously enumerated. The state shall match only that portion of the operating budget which is from local contributions. The following functions are not to be considered laboratory operations for the purpose of appropriating state matching funds:

(a) Identification photography;

(b) Identification of fingerprints, other than latent;

(c) Polygraph;

(d) Electronic surveillance;

(e) Crime scene technicians; and

(f) Medical examiners.

These functions shall be excluded for the purpose of providing matching funds, unless such functions become included in the state-operated system at a later time.

History.—s. 6, ch. 74-362.



**943.36 Submission of annual budget.—**

(1) For the purpose of providing matching funds, each laboratory designated in s. 943.35 shall submit to the Executive Office of the Governor, on or before November 1, a written report containing an estimate in itemized form showing the amount needed for operational expenses for the fiscal year beginning July 1 thereafter. Each such estimate shall itemize the expenditures required for the laboratory submitting it. The report shall indicate the portion of operating expenses to be funded by utilizing federal funds and that portion utilizing local funds. The report shall specify the amount of the local appropriation to be used as the basis for computing the state's matching contribution.

(2) The form of such reports shall be prescribed by the Executive Office of the Governor.

(3) Laboratories which are partially funded by the state shall continue to be locally operated but shall provide services when possible to any law enforcement official, upon request.

*History.*—s. 7, ch. 74-362; s. 145, ch. 79-190.

**943.37 Option to become state-operated laboratory; operational control.—**

(1) Those laboratories specified in s. 943.35 may submit to the Department of Law Enforcement a request to become state-operated laboratories. Such request shall include an offer to convey to the state the laboratory facility, including the physical plant, fixtures, equipment, and property on which such facility is located.

(2) The Department of Law Enforcement shall evaluate the request and make a determination based on the crime laboratory needs of the state. If the department concurs with the request, a plan for the transfer of the laboratory shall be jointly developed between representatives of the department and the chief of such laboratory or his designated representative. Such transfer plan shall include:

(a) A provision to allow any employee of such laboratory to maintain his position, or a position with comparable duties, with no decrease in pay for a reasonable transition period.

(b) A provision specifying the duration of the transition period.

(c) A provision to insure that there shall be no reduction in the level of services provided by the laboratory during the transition period. Implementation of the transfer plan is conditioned upon the approval of the Governor through inclusion of the expenses entailed in such transfer in his budget recommendations to the Legislature and the Legislature approving such recommendation.

(3) At such time as the state assumes the full financial responsibility for the operation of the laboratory, the Department of Law Enforcement will assume operational control, subject to the provisions of the transfer plan. The laboratory facility, including the physical plant, fixtures, equipment, and property on which such facility is located, shall be conveyed to the state upon assumption of full financial responsibility by the state.

*History.*—ss. 8, 9, ch. 74-362; s. 2, ch. 78-347.

**943.38 Creation of Crime Laboratory Council.—**

(1) There is created a Crime Laboratory Council within the Department of Law Enforcement. The council shall be composed of 10 members, to be appointed by the Governor, consisting of two sheriffs, three police chiefs, three laboratory directors, an educator in the field of forensic science or criminology, and a state attorney.

(2) Members shall be appointed for terms of 2 years.

(3) The Governor, in appointing the members, shall take into consideration representation by geography, population, and any other relevant factors in order that the representation on the council will be apportioned to give representation to the state at large rather than to a particular area.

*History.*—s. 10, ch. 74-362; s. 4, ch. 78-323; s. 2, ch. 78-347.

*Note.*—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

**943.39 Crime Laboratory Council; organization; meetings; compensation.—**

(1) As soon as possible after July 1, 1974, the Governor shall appoint the 10 members required by s. 943.38. Thirty days after such appointments have been made, the council shall hold its first meeting. The council shall at this time elect its chairman and other officers.

(2) The council shall meet at the call of the chairman, upon the written request of three members of the council, or at the call of the executive director of the Department of Law Enforcement. A majority of the members of the council constitutes a quorum.

(3) Members of the council shall serve without compensation but shall be entitled to be reimbursed for per diem and traveling expenses as provided by s. 112.061.

*History.*—ss. 12, 13, ch. 74-362; s. 4, ch. 78-323; s. 2, ch. 78-347.

*Note.*—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

**943.40 Duties of Crime Laboratory Council.—**

The council shall serve in an advisory capacity to the Department of Law Enforcement. The council shall provide advice and make recommendations as necessary to improve the operation of the laboratories.

*History.*—s. 11, ch. 74-362; s. 4, ch. 78-323; s. 2, ch. 78-347.

*Note.*—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

**943.405 Prevention of crimes against the elderly.—**

(1) It is the express intent of the Legislature that all state agencies cooperate with the Bureau of Criminal Justice Assistance of the Department of Community Affairs in carrying out the provisions of this section.

(2) The Bureau of Criminal Justice Assistance of the Department of Community Affairs, in carrying out its assigned purposes under Pub. L. No. 90-351 of providing for the preparation and implementation of annual comprehensive statewide plans for the reduction of crime and improvement of the criminal justice system, and under the state plan requirement of Pub. L. No. 94-503 of providing for the development of programs and projects for the prevention of crime against the elderly, in conjunction with the

Department of Health and Rehabilitative Services in carrying out its purposes of providing needed health and social services for the elderly, shall give priority to the preparation of yearly plans and a comprehensive 5-year plan for the development, implementation, and operation of programs designed to prevent crime against the elderly and to reduce the fear of crime in the elderly. The bureau shall identify, through research and through monitoring and evaluation of programs and projects conducted outside of the bureau, any social, economic, or educational methods, techniques, or procedures which have the potential effectively to prevent crime against the elderly and reduce fear of crime in the elderly. The bureau shall determine the costs and benefits that would be associated with such prevention and reduction efforts and shall develop, or recommend the implementation of, those methods, techniques, and procedures which are found likely to be cost-efficient. The bureau shall identify funding needs for such programs.

(3) In planning and developing programs and recommendations relating to the prevention of crime against elderly persons and reduction of fear of crime in elderly persons, the bureau shall consider and evaluate the potential for new or improved programs in, but not limited to, the following areas:

- (a) Public education and awareness;
- (b) Community coordination in areas of social services and criminal justice;
- (c) Use of the elderly as a resource in community crime prevention and the voluntary involvement of elderly persons and retired professionals in the criminal justice system itself in order to improve the responsiveness and effectiveness of the existing system;
- (d) Victim and witness assistance;
- (e) Reduction of the economic and physical consequences of crime against the elderly; and
- (f) Reduction of isolation of the elderly in the community.

(4) Other agencies of state government shall cooperate with and assist the bureau, within their available resources, in gathering statistical data and in implementing programs which have the potential to prevent crime against elderly persons and to reduce the fear of crime in elderly persons and shall consider the findings and recommendations of the bureau in developing and implementing agency programs and formulating agency budget requests. The Department of Health and Rehabilitative Services shall participate in the preparation and implementation of the comprehensive plans. The Department of Law Enforcement shall collect statistical data on the characteristics of victims of crime similar to that collected by it with respect to those who commit crimes.

(5) The bureau shall submit to the Governor for transmittal to the President of the Senate and the Speaker of the House of Representatives the first yearly plan to prevent crime against the elderly and to reduce the fear of crime in the elderly not later than March 1, 1978, and such plan shall be updated and resubmitted not later than March 1 of each calendar year thereafter through 1982. The plan shall outline bureau proposals for the identification of ap-

propriate prevention and reduction efforts and the development of prevention and reduction programs and the provisions for services under such programs. The yearly plan shall contain, but not be limited to, the following elements:

(a) A compilation and analysis of statistical data on types of crimes committed against the elderly in this state and the incidence of such crime. Included in this shall be an identification of the areas of the state where crime against the elderly is of significant proportions. Such data should also reflect an assessment of the degree of unreported, as well as officially reported, criminal acts.

(b) An identification and projection of the potential population for which prevention programs should be considered.

(c) An inventory and evaluation of existing prevention and reduction programs, facilities, and services in the state or nationally, including population served, cost of services provided, percentage of unmet needs, and an identification of any needed program improvement or change.

(d) A listing of potential prevention efforts identified by the bureau, the estimated annual cost of providing such prevention services for the anticipated target population, an identification of potential funding sources, and the projected benefits of providing such services.

(6) The yearly plans shall be compiled and analyzed by the bureau in the 5-year comprehensive plan, which shall be submitted to the Governor for transmittal to the President of the Senate and Speaker of the House of Representatives with the last yearly plan on or before March 1, 1982.

(7) All funding sources, including reallocated LEAA funds, shall be considered by the bureau for implementing programs and projects for crimes against the elderly.

**History.**—ss. 1-3, ch. 77-315; s. 2, ch. 78-347; s. 190, ch. 79-164; s. 146, ch. 79-190.

#### **943.41 Short title; definition.—**

(1) Sections 943.41-943.44 shall be known and may be cited as the "Florida Uniform Contraband Transportation Act."

(2) As used in ss. 943.41-943.44, "contraband article" means:

(a) Any controlled substance as defined in chapter 893.

(b) Any gambling paraphernalia, lottery tickets, money, and currency used or intended to be used in the violation of the gambling laws of the state.

(c) Any equipment, liquid or solid, which is being used or intended to be used in violation of the beverage or tobacco laws of the state.

(d) Any motor fuel upon which the motor fuel tax has not been paid as required by law.

**History.**—ss. 1, 2, ch. 74-385.

#### **943.42 Unlawful to transport, conceal, or possess contraband articles; use of vessel, motor vehicle, or aircraft.—It is unlawful:**

(1) To transport, carry, or convey any contraband article in, upon, or by means of any vessel, motor vehicle, or aircraft.

(2) To conceal or possess any contraband article in or upon any vessel, motor vehicle, or aircraft.

(3) To use any vessel, motor vehicle, or aircraft to facilitate the transportation, carriage, conveyance, concealment, receipt, possession, purchase, sale, barter, exchange, or giving away of any contraband article.

*History.*—s. 2, ch. 74-385.

**943.43 Forfeiture of vessel, motor vehicle, or aircraft; exceptions.**—Any vessel, motor vehicle, or aircraft which has been or is being used in violation of any provision of s. 943.42 or in, upon, or by means of which, any violation of said section has taken or is taking place shall be seized and may be forfeited. No vessel, motor vehicle, or aircraft used by any person as a common carrier in the transaction of business as a common carrier nor any other vessel, motor vehicle, or aircraft shall be forfeited under the provisions of ss. 943.41-943.44, unless the owner or person legally in charge of such vessel, motor vehicle, or aircraft was at the time of the alleged illegal act a consenting party or privy thereto. No vessel, motor vehicle, or aircraft shall be forfeited under the provisions of ss. 943.41-943.44 by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such vessel, motor vehicle, or aircraft was unlawfully in the possession of a person who acquired possession thereof in violation of the criminal laws of this state or any political subdivision thereof, any other state, or the United States.

*History.*—s. 3, ch. 74-385.

**943.44 Forfeiture proceedings.**—

(1) The State Attorney within whose jurisdiction the vessel, motor vehicle, or aircraft has been seized because of its use or attempted use in violation of any provisions of law dealing with contraband as herein defined may proceed against the vessel, motor vehicle, or aircraft by rule to show cause in the circuit court within the jurisdiction in which the offense occurred and may have such vessel, motor vehicle, or aircraft forfeited to the use of, or to be sold by, the law enforcement agency making the seizure, upon producing due proof that the vessel, motor vehicle, or aircraft was being used in violation of the provisions of said law. However, the provisions of this section shall not apply to innocent parties or destroy any valid lien or retain title contract on vessels, motor vehicles, or aircraft as defined by existing registration law, and the notation of a lien upon the face of the certificate of title shall be deemed prima facie valid. The seizing agency may release said vessel, motor vehicle, or aircraft to the innocent party or lienholder upon the filing of a sworn affidavit by said innocent party or lienholder that he had no knowledge of the alleged violation causing such seizure and upon then producing a valid certificate of title.

(2) When it appears by affidavit that the residence of the owner of the vessel, motor vehicle, or aircraft is out of the state or is unknown to the State Attorney, the court shall appoint an attorney at law to represent the absent owner against whom the rule shall be tried contradictorily within 10 days after its filing. This affidavit may be made by the State Attorney or one of his assistants. The attorney so appoint-

ed may waive service and citation of the petition or rule, but shall not waive time nor any legal defense.

(3) Whenever the head of the law enforcement agency effecting the forfeiture deems it necessary or expedient to sell the property forfeited rather than retain it for the use of the law enforcement agency, he shall cause a notice to be made by publication as provided by law and thereafter shall dispose of said property at public auction to the highest bidder for cash without appraisal.

(4) Upon the sale of any vessel, motor vehicle, or aircraft, the state shall issue a title certificate to the purchaser subject to any existing valid liens or retain title contract.

(5) The proceeds of all funds collected from any such sale shall be paid into the fine and forfeiture fund of the municipality or county whose law enforcement agency made the seizure, forfeiture, and sale.

*History.*—s. 4, ch. 74-385.

**943.46 Short title.**—Sections 943.46-943.465 shall be known as the Florida RICO (Racketeer Influenced and Corrupt Organization) Act.

*History.*—s. 1, ch. 77-334; s. 2, ch. 79-218.

**943.461 Definitions.**—As used in ss. 943.46-943.465:

(1) "Racketeering activity" means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit:

(a) Any crime which is chargeable by indictment or information under the following provisions of the Florida Statutes:

1. Section 210.18, relating to evasion of payment of cigarette taxes.
2. Section 409.325, relating to public assistance fraud.
3. Chapter 517, relating to sale of securities.
4. Section 550.24, s. 550.35, or s. 550.36, relating to dogracing and horseracing.
5. Section 551.09, relating to jai alai frontons.
6. Chapter 552, relating to the manufacture, distribution, and use of explosives.
7. Chapter 562, relating to beverage law enforcement.
8. Chapter 687, relating to interest and usurious practices.
9. Chapter 782, relating to homicide.
10. Chapter 784, relating to assault and battery.
11. Chapter 787, relating to kidnapping.
12. Chapter 790, relating to weapons and firearms.
13. Section 796.01, s. 796.03, s. 796.04, s. 796.05, or s. 796.07, relating to prostitution.
14. Chapter 806, relating to arson.
15. Chapter 812, relating to theft, robbery, and related crimes.
16. Chapter 817, relating to fraudulent practices, false pretenses, fraud generally, and credit card crimes.
17. Chapter 831, relating to forgery and counterfeiting.
18. Chapter 832, relating to issuance of worthless checks and drafts.
19. Chapter 837, relating to perjury.



20. Chapter 838, relating to bribery and misuse of public office.

21. Chapter 843, relating to obstruction of justice.

22. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or s. 847.07, relating to obscene literature and profanity.

23. Section 849.09, s. 849.14, s. 849.15, s. 849.23, s. 849.24, or s. 849.25, relating to gambling.

24. Chapter 893, relating to drug abuse prevention and control.

25. Sections 918.12-918.14, relating to tampering with jurors, evidence, and witnesses.

(b) Any conduct defined as "racketeering activity" under 18 U.S.C. s. 1961(1)(A), (B), (C), and (D).

(2) "Unlawful debt" means any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in the state in whole or in part because the debt was incurred or contracted:

(a) In violation of any one of the following provisions of law:

1. Section 550.24, s. 550.35, or s. 550.36, relating to dogracing and horseracing.

2. Section 551.09, relating to jai alai frontons.

3. Chapter 687, relating to interest and usury.

4. Section 849.09, s. 849.14, s. 849.15, s. 849.23, s. 849.24, or s. 849.25, relating to gambling.

(b) In gambling activity in violation of federal law or in the business of lending money at a rate usurious under state or federal law.

(3) "Enterprise" means any individual, sole proprietorship, partnership, corporation, business trust, union chartered under the laws of this state, or other legal entity, or any unchartered union, association, or group of individuals associated in fact although not a legal entity, and it includes illicit as well as licit enterprises and governmental, as well as other, entities.

(4) "Pattern of racketeering activity" means engaging in at least two incidents of racketeering conduct that have the same or similar intents, results, accomplices, victims, or methods of commission or otherwise are interrelated by distinguishing characteristics and are not isolated incidents, provided at least one of such incidents occurred after the effective date of this act and that the last of such incidents occurred within 5 years after a prior incident of racketeering conduct.

(5) "Documentary material" means any book, paper, document, writing, drawing, graph, chart, photograph, phonorecord, magnetic tape, computer printout, other data compilation from which information can be obtained or from which information can be translated into useable form, or other tangible item.

History.—s. 2, ch. 77-334; s. 3, ch. 79-218; s. 300, ch. 79-400.

#### 943.462 Prohibited activities and defense.—

(1) It is unlawful for any person who has with criminal intent received any proceeds derived, directly or indirectly, from a pattern of racketeering activity or through the collection of an unlawful debt to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real

property or in the establishment or operation of any enterprise.

(2) It is unlawful for any person, through a pattern of racketeering activity or through the collection of an unlawful debt, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property.

(3) It is unlawful for any person employed by, or associated with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt.

(4) It is unlawful for any person to conspire or endeavor to violate any of the provisions of subsections (1), (2), or (3).

History.—s. 3, ch. 77-334.

#### 943.463 Criminal penalties and alternative fine.—

(1) Any person convicted of engaging in activity in violation of the provisions of s. 943.462 is guilty of a felony of the first degree and shall be punished as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) In lieu of a fine otherwise authorized by law, any person convicted of engaging in conduct in violation of the provisions of s. 943.462, through which he derived pecuniary value, or by which he caused personal injury or property damage or other loss, may be sentenced to pay a fine that does not exceed three times the gross value gained or three times the gross loss caused, whichever is the greater, plus court costs and the costs of investigation and prosecution, reasonably incurred.

(3) The court shall hold a hearing to determine the amount of the fine authorized by subsection (2).

(4) For the purposes of subsection (2), "pecuniary value" means:

(a) Anything of value in the form of money, a negotiable instrument, or a commercial interest or anything else the primary significance of which is economic advantage; or

(b) Any other property or service that has a value in excess of \$100.

History.—s. 4, ch. 77-334.

#### 943.464 Civil remedies.—

(1) Any circuit court may, after making due provision for the rights of innocent persons, enjoin violations of the provisions of s. 943.462 by issuing appropriate orders and judgments, including, but not limited to:

(a) Ordering any defendant to divest himself of any interest in any enterprise, including real property.

(b) Imposing reasonable restrictions upon the future activities or investments of any defendant, including, but not limited to, prohibiting any defendant from engaging in the same type of endeavor as the enterprise in which he was engaged in violation of the provisions of s. 943.462.

(c) Ordering the dissolution or reorganization of any enterprise.

(d) Ordering the suspension or revocation of a license, permit, or prior approval granted to any enterprise by any agency of the state.

(e) Ordering the forfeiture of the charter of a corporation organized under the laws of the state, or the

revocation of a certificate authorizing a foreign corporation to conduct business within the state, upon finding that the board of directors or a managerial agent acting on behalf of the corporation, in conducting the affairs of the corporation, has authorized or engaged in conduct in violation of s. 943.462 and that, for the prevention of future criminal activity, the public interest requires the charter of the corporation forfeited and the corporation dissolved or the certificate revoked.

(2) All property, real or personal, including money, used in the course of, intended for use in the course of, derived from, or realized through, conduct in violation of a provision of ss. 943.46-943.464 is subject to civil forfeiture to the state. The state shall dispose of all forfeited property as soon as commercially feasible. If property is not exercisable or transferable for value by the state, it shall expire. All forfeitures or dispositions under this section shall be made with due provision for the rights of innocent persons. The proceeds realized from such forfeiture and disposition shall be promptly deposited in the treasury of the state and immediately credited to the General Revenue Fund of the state.

(3) Property subject to forfeiture under this section may be seized by a law enforcement officer upon court process. Seizure without process may be made if:

(a) The seizure is incident to a lawful arrest or search or an inspection under an administrative inspection warrant.

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a forfeiture proceeding based upon this section.

(4) In the event of a seizure under subsection (3), a forfeiture proceeding shall be instituted promptly. Property taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the law enforcement officer making the seizure, subject only to the order of the court. When property is seized under this section, pending forfeiture and final disposition, the law enforcement officer may:

(a) Place the property under seal.

(b) Remove the property to a place designated by court.

(c) Require another agency authorized by law to take custody of the property and remove it to an appropriate location.

(5) The Department of Legal Affairs, any State Attorney, or any state agency having jurisdiction over conduct in violation of a provision of this act may institute civil proceedings under this section. In any action brought under this section, the circuit court shall proceed as soon as practicable to the hearing and determination. Pending final determination, the circuit court may at any time enter such injunctions, prohibitions, or restraining orders, or take such actions, including the acceptance of satisfactory performance bonds, as the court may deem proper.

(6) Any aggrieved person may institute a proceeding under subsection (1). In such proceeding, relief shall be granted in conformity with the principles that govern the granting of injunctive relief from threatened loss or damage in other civil cases,

except that no showing of special or irreparable damage to the person shall have to be made. Upon the execution of proper bond against damages for an injunction improvidently granted and a showing of immediate danger of significant loss or damage, a temporary restraining order and a preliminary injunction may be issued in any such action before a final determination on the merits.

(7) Any person who is injured by reason of any violation of the provisions of s. 943.462 shall have a cause of action for three-fold the actual damages sustained and, when appropriate, punitive damages. Such person shall also recover attorneys' fees in the trial and appellate courts and costs of investigation and litigation, reasonably incurred.

(a) The defendant or any injured person may demand a trial by jury in any civil action brought pursuant to this section.

(b) Any injured person shall have a right or claim to forfeited property or to the proceeds derived therefrom superior to any right or claim the state has in the same property or proceeds.

(8) A final judgment or decree rendered in favor of the state in any criminal proceeding under this act shall estop the defendant in any subsequent civil action or proceeding as to all matters as to which such judgment or decree would be an estoppel as between the parties.

(9) The Department of Legal Affairs may, upon timely application, intervene in any civil action or proceeding brought under subsection (6) or subsection (7) if he certifies that, in his opinion, the action or proceeding is of general public importance. In such action or proceeding, the state shall be entitled to the same relief as if the Department of Legal Affairs had instituted the action or proceeding.

(10) Notwithstanding any other provision of law, a criminal or civil action or proceeding under this act may be commenced at any time within 5 years after the conduct in violation of a provision of this act terminates or the cause of action accrues. If a criminal prosecution or civil action or other proceeding is brought, or intervened in, to punish, prevent, or restrain any violation of the provisions of this act, the running of the period of limitations prescribed by this section with respect to any cause of action arising under subsection (6) or subsection (7) which is based in whole or in part upon any matter complained of in any such prosecution, action, or proceeding shall be suspended during the pendency of such prosecution, action, or proceeding and for 2 years following its termination.

(11) The application of one civil remedy under any provision of this act shall not preclude the application of any other remedy, civil or criminal, under this act or any other provision of law. Civil remedies under this act are supplemental, and not mutually exclusive.

**History.**—s. 5, ch. 77-334; s. 301, ch. 79-400.  
cf.—s. 16.53 Legal Affairs Revolving Trust Fund.

#### **943.465 Civil investigative subpoenas.—**

(1) As used in this section, "investigative agency" means the Department of Legal Affairs or the office of a state attorney.

(2) If, pursuant to the civil enforcement provisions of s. 943.464, an investigative agency has rea-

son to believe that a person or other enterprise has engaged in, or is engaging in, activity in violation of this act, the investigative agency may administer oaths or affirmations, subpoena witnesses or material, and collect evidence pursuant to the Florida Rules of Civil Procedure.

(3) If matter that the investigative agency seeks to obtain by the subpoena is located outside the state, the person or enterprise subpoenaed may make such matter available to the investigative agency or its representative for examination at the place where such matter is located. The investigative agency may designate representatives, including officials of the

jurisdiction in which the matter is located, to inspect the matter on its behalf and may respond to similar requests from officials of other jurisdictions.

(4) Upon failure of a person or enterprise, without lawful excuse, to obey a subpoena, and after reasonable notice to such person or enterprise, the investigative agency may apply to the circuit court for the judicial circuit in which such person or enterprise resides, is found, or transacts business for an order compelling compliance.

*History.*—s. 1, ch. 79-218.



## CHAPTER 944

## STATE CORRECTIONAL SYSTEM

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**944.01 Short title.**—This act may be cited as "The Florida Corrections Code of 1957."

*History.*—s. 45, ch. 57-121.

**944.012 Legislative intent.**—The Legislature hereby finds and declares that:

(1) Florida spends each year in excess of \$60 million for its state correctional system, but Florida citizens have not received a fair return on that investment. Florida correctional institutions have contributed little to the reduction of crime. To the contrary, crime rates continue to rise; recidivism rates are notoriously high; and large prisons have for the most part become schools for crime, making successful reintegration into the community unlikely.

(2) It is clear that major changes in correctional methods are required. It is essential to abate the use of large institutions and continue the development of community-based corrections; to equip judges with more effective evaluative tools to deal with the criminal offender; and to provide alternatives to institutionalization, including the availability of probationers' residences and community correctional centers.

(3) One of the chief factors contributing to the high recidivism rate in the state is the general inability of ex-offenders to find or keep meaningful employment. Although 90 percent of all offenders sent to prison return to society one day, the correctional system has done little to provide the offender with the vocational skills he needs to return to society as a productive citizen. This failure virtually guarantees the probability of return to crime. Vocational training and assistance in job placement must be looked to on a priority basis as an integral part of the process of changing deviant behavior in the institutionalized offender, when such change is determined to be possible.

(4) These changes must not be made out of sympathy for the criminal or out of disregard of the threat of crime to society. They must be made precisely because that threat is too serious to be countered by ineffective methods.

(5) In order to make the correctional system an efficient and effective mechanism, the various agencies involved in the correctional process must coordinate their efforts. Where possible, interagency offices should be physically located within major institutions and should include representatives of the Florida State Employment Service, the vocational rehabilitation programs of the Department of Health and Rehabilitative Services, and the Parole and Probation Commission. Duplicative and unnecessary methods of evaluating offenders must be eliminated and areas of responsibility consolidated

in order to more economically utilize present scarce resources.

(6) It is the intent of the Legislature:

(a) To provide a mechanism for the early identification, evaluation, and treatment of behavioral disorders of adult offenders coming into contact with the correctional system.

(b) To separate dangerous or repeat offenders from nondangerous offenders, who have potential for rehabilitation, and place dangerous offenders in secure and manageable institutions.

(c) When possible, to divert from expensive institutional commitment those individuals who, by virtue of professional diagnosis and evaluation, can be placed in less costly and more effective environments and programs better suited for their rehabilitation and the protection of society.

(d) To make available to those offenders who are capable of rehabilitation the job-training and job-placement assistance they need to build meaningful and productive lives when they return to the community.

(e) To provide intensive and meaningful supervision for those on probation so that the condition or situation which caused the person to commit the crime is corrected.

*History.*—s. 2, ch. 74-112; s. 472, ch. 77-147.

**944.02 Definitions.**—The following words and phrases used in this chapter shall, unless the context clearly indicates otherwise, have the following meanings:

(1) "Correctional system" means all prisons and other state correctional institutions now existing or hereafter created under the jurisdiction of the Department of Corrections.

(2) "Department" means the Department of Corrections.

(3) "Commission" means the Parole and Probation Commission.

(4) "Secretary" means the Secretary of Corrections.

(5) "Prisoner" means any person who is under arrest and in the lawful custody of any law enforcement official, or any person convicted and sentenced by any court and committed to any municipal or county jail or state prison, prison farm, or penitentiary, or to the custody of the department, as provided by law.

(6) "State correctional institution" means any prison, road camp, prison industry, prison forestry camp, or any prison camp or prison farm or other correctional facility, temporary or permanent, in which prisoners are housed, worked or maintained, under the custody and jurisdiction of the department.

*History.*—s. 1, ch. 57-121; s. 18, ch. 61-530; ss. 19, 35, ch. 69-106; ss. 1, 2, ch. 70-441; s. 1, ch. 71-345; s. 283, ch. 71-377; s. 3, ch. 74-112; s. 21, ch. 77-120; s. 34, ch. 79-3.

**944.023 Correctional Improvement Plan.**—

(1) It shall be the duty of the department to:

(a) Develop a plan for the decentralization of reception and classification facilities for the implementation of a regionally based diagnosis and evaluation capability for adult offenders. The plan shall provide for a system of psychological testing and

evaluation as well as medical screening through department resources or with other public or private agencies through a purchase-of-services agreement. Priority in planning shall be given to the placement and location of facilities and programs in regions of the state representative of the geographic origin of commitments to the prison system.

(b) Develop plans for comprehensive vocational and educational training of offenders and their evaluation within each institution, program, or facility of the department, based upon the identified needs of the offender and the requirements of the employment market to which he shall return upon release.

(c) Develop a plan for the utilization of local jail facilities as short-term confinement resources of the department for offenders with sentences of 3 years or less and for the integration of detention services with community-based programs. Included in this plan shall be the designation of such facilities and programs within a regional framework of the state.

(d) Develop a detailed study of methods to implement diversified alternatives to institutionalization when such alternatives can be safely utilized.

(2) It shall be the duty of the department to develop a mechanism for the evaluation of adult offenders coming before the courts of the state and of those individuals under the parole or probation supervision of the department. Priority in the plan shall be given to:

(a) The utilization of community-based resources of the department for pretrial intervention analysis or presentence evaluation.

(b) A purchase-of-services arrangement with public or private agencies capable of providing the necessary diagnostic programs.

(c) The development of a diagnostic and evaluation mechanism internal to the programs of the department.

(3) Each year, commencing with the 1976 fiscal year, the department and the commission shall each render a written report to the Legislature, updating the Correctional Improvement Plan, making recommendations for modification or improvement, and giving a detailed analysis of the manner and method, including funding, by which the Legislature can continue to implement the overall goals of the Correctional Improvement Plan.

**History.**—s. 4, ch. 74-112; s. 252, ch. 77-104; s. 22, ch. 77-120; s. 1, ch. 77-174; s. 35, ch. 79-3.

**944.024 Adult intake and evaluation.**—The state system of adult intake and evaluation shall include:

(1) The performance of pretrial investigation through a decentralized community-based procedure.

(2) Assistance in the evaluation of offenders for diversion from the criminal justice system or referral to residential or nonresidential programs.

(3) The provision of secure detention services for pretrial detainees who are unable to comply with the conditions of release established by the court or who represent a serious threat to the community.

(4) The provision of diagnostic, evaluation, and classification services at the presentence stage to assist the court and the department in planning programs for rehabilitation of convicted offenders.

(5) The performance of postsentence intake by the department. Any physical facility established by the department for the intake and evaluation process prior to the offender's entry into the correctional system shall provide for specific office and work areas for the staff of the commission. The purpose of such a physical center shall be to combine in one place as many of the rehabilitation-related functions as possible, including pretrial and posttrial evaluation, parole and probation services, vocational rehabilitation services, family assistance services of the Department of Health and Rehabilitative Services, and all other rehabilitative and correctional services dealing with the offender.

**History.**—s. 5, ch. 74-112; s. 13, ch. 75-49; s. 23, ch. 77-120; s. 473, ch. 77-147. cf.—s. 944.026 Community-based facilities and programs.

#### **944.025 Pretrial intervention program.**—

(1) The department shall supervise pretrial intervention programs for persons charged with a crime, before or after any information has been filed or an indictment has been returned in the Circuit Court. Such programs shall provide appropriate counseling, education, supervision, and medical and psychological treatment as available and when appropriate for the persons released to such programs.

(2) Any first offender who is charged with any misdemeanor or felony of the third degree is eligible for release to the pretrial intervention program on the approval of the administrator of the program and the consent of the victim, the State Attorney, and the judge who presided at the initial appearance hearing of the offender. In no case, however, shall any individual be so released unless, after consultation with his attorney or one made available to him if he is indigent, he has voluntarily agreed to such program and has knowingly and intelligently waived his right to a speedy trial for the period of his diversion. In no case shall the defendant or his immediate family personally contact the victim or his immediate family to acquire the victim's consent under the provisions of this act.

(3) The criminal charges against an individual admitted to the program shall be continued without final disposition for a period of 90 days from the date the individual was released to the program, if the offender's participation in the program is satisfactory, and for an additional 90 days upon the request of the program administrator and consent of the State Attorney, if the offender's participation in the program is satisfactory.

(4) Resumption of pending criminal proceedings shall be undertaken at any time if the program administrator or State Attorney finds such individual is not fulfilling his obligations under this plan or if the public interest so requires.

(5) At the end of the intervention period, the administrator shall recommend:

(a) That the case revert to normal channels for prosecution in instances in which the offender's participation in the program has been unsatisfactory;

(b) That the offender is in need of further supervision; or

(c) That dismissal of charges without prejudice shall be entered in instances in which prosecution is



not deemed necessary.

The State Attorney shall make the final determination as to whether the prosecution shall continue.

(6) The chief judge in each circuit may appoint an advisory committee for the pretrial intervention program. Said committee shall be composed of the chief judge or his designate, who shall serve as chairman; the State Attorney, Public Defender, and program administrator, or their representatives; and such other persons as the chairman shall deem appropriate. The committee may also include persons representing any other agencies to which persons released to the pretrial intervention program may be referred.

(7) The department may contract for the services and facilities necessary to operate pretrial intervention programs.

**History.**—s. 6, ch. 74-112; s. 1, ch. 75-301; s. 24, ch. 77-120; s. 1, ch. 77-174; s. 36, ch. 79-3.

#### **944.026 Community-based facilities and programs.—**

(1) In addition to those facilities and services described elsewhere in this chapter, the department shall develop, provide, or contract for a statewide system of community-based facilities, services, and programs dealing with the rehabilitation of offenders, which shall include, but shall not necessarily be limited to:

(a) A system of community correctional centers to be located at various places throughout the state as required. The purpose of these centers is to facilitate the reintegration of offenders back into the community by means of participation in various work-release, study-release, or other community rehabilitation programs. However, no facility shall be constructed, leased, or purchased in any county until public hearings have been held in that county. Such public hearings shall be pursuant to uniform rules adopted by the department.

(b) Adult intake and evaluation programs and services where required. It is the intent of this subsection to decentralize the intake and evaluation function of the corrections system so that intake services are located in urban areas of the state. For the purpose of this act the term "intake and evaluation services" may include a physical center, programs and services carried out in municipal or county jails or other areas of local communities, or a combination of the above.

(c) Drug treatment facilities or services providing in part for secure detention as a part of facilities serving major population centers.

(2) The following facilities or services shall be provided or contracted for by the department:

(a) Residential facilities in Dade, Broward, Palm Beach, Duval, Escambia, Leon, Orange, Brevard, Hillsborough, Pinellas, Sarasota (or Manatee), and Polk Counties, in which probationers, participants in pretrial intervention programs, and others committed to or under the supervision of the department may reside while working or attending school. A plan shall be established for the phasing-in of these residential facilities over a period of 5 years from July 1, 1974. The purpose of these facilities and services is to provide the court with an alternative to

commitment to other state correctional institutions and to assist in the supervision of probationers.

(b) Pretrial intervention programs in appropriate counties to provide early counseling and supervision services to specified first offenders.

**History.**—s. 7, ch. 74-112; s. 25, ch. 77-120; s. 37, ch. 79-3.  
cf.—s. 944.024 Adult intake and evaluation.

#### **944.031 Florida State Prison; existence; location; purpose.—**

(1) A state prison is established to be known as the "Florida State Prison."

(2) This institution shall be located in Bradford County.

(3) The purpose of this institution shall be to provide custody, care, training, and counseling to the inmates confined therein.

**History.**—s. 1, ch. 72-331.

#### **944.032 Union Correctional Institution; existence; location; purpose.—**

(1) A correctional institution is established to be known as the "Union Correctional Institution."

(2) This institution shall be located in Union County.

(3) The purpose of this institution shall be to provide custody, care, training, and counseling to the inmates confined therein.

**History.**—s. 1, ch. 72-331.

#### **944.033 Community Correctional Centers; existence; location; purpose.—**

(1) A system of correctional facilities is established to be known as "Community Correctional Centers."

(2) These centers shall be located at various locations throughout the state as required.

(3) The purpose of these centers is to facilitate the reintegration of offenders back into the community by means of participation in various community rehabilitation programs.

**History.**—s. 1, ch. 72-331.

#### **944.034 DeSoto Correctional Institution; existence; location; purpose.—**

(1) A correctional institution is established to be known as the "DeSoto Correctional Institution."

(2) This institution shall be located in DeSoto County.

(3) The purpose of this institution shall be to provide custody, care, training, and counseling to the inmates confined therein.

**History.**—s. 1, ch. 72-331.

#### **944.04 Glades Correctional Institution; existence; location; purpose.—**

(1) There is and shall continue to be a state prison farm to be known as the "Glades Correctional Institution."

(2) The Glades Correctional Institution shall be and is located at Belle Glade, Palm Beach County.

(3) The Glades Correctional Institution shall be a medium security type institution. Its purpose shall be to provide custody, care, industrial, vocational, and other training to the prisoners confined therein.

**History.**—s. 3, ch. 57-121; s. 2, ch. 61-192.

**944.05 Apalachee Correctional Institution; existence; location; purpose.—**

(1) There is and shall be a state prison to be known as the "Apalachee Correctional Institution."

(2) This institution shall be and is located in Jackson and Gadsden Counties, Florida; and Decatur County, Georgia.

(3) The primary purpose of this institution shall be for the imprisonment of youthful male offenders who, in the opinion of the department, seem capable of moral rehabilitation and restoration to good citizenship.

**History.**—s. 4, ch. 57-121; s. 3, ch. 61-192; ss. 19, 35, ch. 69-106; s. 26, ch. 77-120; s. 38, ch. 79-3.

**944.06 Florida Correctional Institution; existence; location; purpose.—**

(1) There is and shall continue to be a state prison to be known as the "Florida Correctional Institution."

(2) This institution shall be and is located at Lowell, Marion County.

(3) The Florida Correctional Institution shall be the primary institution for adult female prisoners of the Florida Correctional System. It shall be composed of such units for the detention of such classes of male and female prisoners as the department shall provide. All adult female prisoners sentenced and committed by the court to the custody of the department shall be conveyed in the manner provided by the law to this institution for initial classification and confinement.

(4) The purpose of this institution shall be to provide custody, care, protection, industrial, vocational and other training, and reformatory help for the prisoners confined therein. This institution shall act as the security unit for the Florida School for Girls.

**History.**—s. 5, ch. 57-121; s. 4, ch. 61-192; s. 18, ch. 61-530; ss. 19, 35, ch. 69-106; s. 27, ch. 77-120; s. 39, ch. 79-3.

**944.061 Avon Park Correctional Institution; existence; location; purpose.—**

(1) There is and shall continue to be a state prison to be known as the "Avon Park Correctional Institution."

(2) This institution shall be located in Polk County.

(3) The primary purpose of this institution shall be to provide custody, care and academic and vocational training to prisoners confined therein.

**History.**—s. 1, ch. 67-100.

**944.062 Reception and medical center.—**The Lake Butler Reception and Medical Center may serve as a medical center or a regional intake and evaluation center, be converted into any other suitable facility, or serve a combination of any such purposes.

**History.**—s. 1, ch. 67-100; ss. 19, 35, ch. 69-106; ss. 1, 2, ch. 70-441; s. 25, ch. 74-112; s. 28, ch. 77-120; s. 191, ch. 79-164.

**944.063 Department of Corrections road prisons; establishment; purpose.—**

(1) There is and shall continue to be established a system of road prisons throughout the state at locations mutually agreeable to the Department of Transportation and the Department of Corrections.

(2) The purpose of the road prisons shall be to

provide such services to the Department of Transportation as may be required for proper maintenance of the highways under the Department of Transportation and to provide custody, care and training to the prisoners confined therein.

**History.**—s. 1, ch. 67-100; ss. 19, 23, 35, ch. 69-106; ss. 1, 2, ch. 70-441; s. 29, ch. 77-120; s. 40, ch. 79-3.

**944.064 Sumter Correctional Institution; existence; location; purpose.—**

(1) There is and shall continue to be a state prison to be known as the "Sumter Correctional Institution."

(2) This institution shall be located in Sumter County.

(3) The primary purpose of this institution shall be for the imprisonment of youthful male offenders who, in the opinion of the department seem capable of moral rehabilitation and restoration to good citizenship.

**History.**—s. 1, ch. 67-100; s. 30, ch. 77-120; s. 41, ch. 79-3.

**944.08 Commitment to custody of department; venue of institutions.—**

(1) The words "penitentiary" or "state prison" or "state prison farm," whenever the same are used in any of the laws of this state, as a place of confinement or punishment for a crime, shall be construed to mean and refer to the custody of the Department of Corrections within the state correctional system.

(2) For the purposes of all judicial proceedings, the institutions of the state correctional system and the precincts thereof shall be deemed to be within and part of the county in which they are situated, and the courts of such counties or circuits shall have jurisdiction of all crimes and offenses committed therein.

**History.**—s. 6, ch. 57-121; s. 18, ch. 61-530; s. 32, ch. 77-120; s. 42, ch. 79-3.

**944.09 Supervision of offenders committed to the department; rules and regulations; punishment.—**

(1) All persons committed to the department shall be supervised by it.

(2) The department shall publish rules and regulations and make a copy available for review by each employee and inmate. The rules and regulations shall include or relate to:

(a) The rights of inmates.

(b) The rules of conduct to be observed by inmates and the categories of violations according to degrees or levels of severity as well as the degrees of punishment applicable and appropriate to such violations.

(c) Disciplinary procedures and punishment.

(d) Grievance procedures.

(e) The operation and management of the correctional institution or facility and its personnel and functions.

(f) Mail to and from the state correctional system.

(3) Regulations of the department shall be adopted and filed with the Department of State as provided in chapter 120.

(4) It shall be the duty of the superintendents to supervise the government, discipline, and policy of the state correctional institutions and to enforce all

orders, rules, and regulations.

(5) The department shall cause a record to be kept of violations of rules of conduct, the rule or rules violated, the nature of punishment administered, the authority ordering such punishment, the duration of time during which the offender was subjected to punishment, and the condition of the prisoner's health.

**History.**—s. 7, ch. 57-121; s. 18, ch. 61-530; ss. 19, 35, ch. 69-106; s. 14, ch. 74-112; s. 33, ch. 77-120; s. 43, ch. 79-3.

**944.091 United States prisoners, board authorized.**—The department is authorized upon request to board prisoners of the United States committed to their custody by any agency of the United States if such prisoners have less than 6 months remaining of their federal sentence, and if such prisoners have family relationships or job opportunities in this state, on a space-available basis only. Daily compensation for the board of such prisoners shall be paid at a rate to be mutually agreed upon by the department and the appropriate United States agency. Such compensation is to recover the total maintenance cost of such prisoners which shall be not less than the average cost per inmate per day for all inmates confined by the department.

**History.**—s. 1, ch. 69-240; ss. 19, 35, ch. 69-106; ss. 1, 2, ch. 70-441; s. 34, ch. 77-120; s. 44, ch. 79-3.

**944.10 Division of Building Construction and Property Management to provide buildings; sale and purchase of land.**—

(1) The Division of Building Construction and Property Management of the Department of General Services shall cause all necessary buildings, facilities, and physical plants to be erected to accommodate all prisoners, and from time to time shall make such additional alterations as may be necessary to provide for any increase in the number of prisoners; it shall cause to be established proper accommodations for such officers of the Department of Corrections who are required to reside constantly within the precincts of the institutions.

(2) The Division of Building Construction and Property Management of the Department of General Services may sell, to the best possible advantage, any or all detached parcels of land belonging to the bodies of land purchased for the state correctional institutions. The Division of Building Construction and Property Management is authorized to purchase any contiguous parcels of land within the boundary lines of the lands purchased for state correctional institutions.

**History.**—s. 8, ch. 57-121; s. 18, ch. 61-530; ss. 19, 22, 35, ch. 69-106; ss. 1, 2, ch. 70-441; s. 2, ch. 75-70; s. 35, ch. 77-120; s. 45, ch. 79-3.

**944.11 Department to adopt rules as to admission of books.**—The department shall adopt such regulations as it may deem proper governing the admission of educational and other reading matter within the state institutions for the use of the prisoners, and for the proper observance of days of religious significance within the institutions and for the proper instruction of the prisoners in their basic moral and religious duties.

**History.**—s. 9, ch. 57-121; ss. 19, 35, ch. 69-106; s. 36, ch. 77-120; s. 46, ch. 79-3.

**944.13 Annual report.**—The department shall have a detailed account kept of all matters pertaining to the state correctional system and shall each year report fully to the Legislature, making such recommendations concerning the prisoners and the correctional system as may appear to be necessary and expedient.

**History.**—s. 11, ch. 57-121; ss. 19, 35, ch. 69-106; s. 1, ch. 73-305; s. 38, ch. 77-120; s. 47, ch. 79-3.

**944.14 Supervision of correctional institutions; enforcement of orders and regulations.**—Subject to the orders, policies, and regulations established by the department, it shall be the duty of the wardens or superintendents to supervise the government, discipline, and policy of the state correctional institutions, and to enforce all orders, rules and regulations.

**History.**—s. 12, ch. 57-121; s. 18, ch. 61-530; ss. 19, 35, ch. 69-106; s. 39, ch. 77-120; s. 48, ch. 79-3.

**944.15 Register of institution violations.**—The department shall cause to be kept at each institution a register of institution violations and what kind of punishments, if any, are administered to the prisoners; the offense committed; the rule or rules violated; the nature of the punishment administered; the authority ordering such punishment; the duration of time during which the offender was subjected to punishment; and the condition of the prisoners' health.

**History.**—s. 13, ch. 57-121; ss. 19, 35, ch. 69-106; s. 40, ch. 77-120; s. 49, ch. 79-3.

**944.16 Prisoners; how received.**—All prisoners shall be delivered to the custody of the department at such reception and classification centers as shall be provided for this purpose. No prisoner shall be received by the department, unless the sheriff, United States Marshal, or other officer having such prisoner in charge, shall also deliver a commitment in due form issued by authority of the court committing such prisoners.

**History.**—s. 14, ch. 57-121; s. 18, ch. 61-530; ss. 19, 35, ch. 69-106; s. 41, ch. 77-120; s. 50, ch. 79-3.  
cf.—s. 945.09 Commitment of prisoners; classification; reception and classification center; transfer.

**944.17 Uniform commitments to department.**—The department shall design and supply to the several clerks of the courts a uniform commitment to be used by said clerks in the issuing of commitments to the department of all persons who may be convicted and sentenced in their respective courts. No prisoner shall be received into the custody of the department by other commitment forms.

**History.**—s. 15, ch. 57-121; s. 18, ch. 61-530; ss. 19, 35, ch. 69-106; s. 42, ch. 77-120; s. 51, ch. 79-3.

**944.18 Copy of indictment or information to be transmitted to department.**—When any person has been convicted of any criminal offense in this state and is sentenced to serve any term under the custody of the department, the clerk of the court in which such person is convicted shall, with the commitment of such person, transmit to the department a certified copy of the indictment or information upon which such person shall have been convicted, and such copy of the indictment or information shall



be kept on file in the office of the department at Tallahassee.

**History.**—s. 16, ch. 57-121; s. 18, ch. 61-530; ss. 19, 35, ch. 69-106; s. 43, ch. 77-120; s. 52, ch. 79-3.

**944.19 Vocational, adult, and academic education of prisoners under the jurisdiction of the department.**—

(1) The department shall establish educational programs for the prisoners under its jurisdiction utilizing its personnel, or by arranging for instruction to be given by public or private educational agencies of the state.

(2) The department shall cooperate with the school board and the State Department of Education, which may establish and maintain classes for prisoners under the jurisdiction of the department, to provide instruction of a vocational, adult, or academic nature designed to meet the needs of said prisoners. Such instruction is to be under the supervision and control of the school board in which the institution is located. For the organization and operation of these classes, school boards are authorized to expend funds available to them either from local sources or through the minimum foundation program as provided by law.

(3) This program shall be operated in the various institutions only with the approval of the State Board of Education.

**History.**—s. 17, ch. 57-121; s. 18, ch. 61-530; ss. 19, 35, ch. 69-106; s. 1, ch. 69-300; s. 44, ch. 77-120; s. 53, ch. 79-3.

**944.23 Persons authorized to visit state prisons.**—The following persons shall be authorized to visit at their pleasure all state correctional institutions: The Governor, all cabinet members, members of the Legislature, judges of state courts, State Attorneys, Public Defenders, and authorized representatives of the commission. No other person not otherwise authorized by law shall be permitted to enter a state correctional institution except under such regulations as the department may prescribe. Permission shall not be unreasonably withheld from those who give sufficient evidence to the department that they are bona fide reporters or writers.

**History.**—s. 21, ch. 57-121; ss. 19, 35, ch. 69-106; s. 19, ch. 74-112; s. 45, ch. 77-120; s. 54, ch. 79-3.

**944.24 Administration of correctional institutions for women.**—

(1) All regularly employed assistants, officers, and employees whose duties bring them into contact with the inmates of the institution shall be women as far as practicable.

(2) If any woman received by or committed to said institution shall give birth to a child while an inmate of said institution, such child and its welfare shall be within the jurisdiction of the appropriate circuit court if the mother chooses to keep the infant. Upon petition by the Department of Corrections, the mother, or another interested party, a temporary custody hearing before the circuit court judge without a jury shall be held as soon as possible to determine the best interests of the child. The department shall provide and maintain facilities or parts of facilities, within existing facilities, suitable to ensure the safety and welfare of such mothers and children, to be used at the discretion of the court.

(3) Any woman inmate who gives birth to a child during her term of imprisonment may be temporarily taken to a hospital outside the prison for the purpose of childbirth, and the charge for hospital and medical care shall be charged against the funds allocated to the institution. The department shall provide for the care of any children so born and shall pay for their care until suitably placed.

**History.**—s. 22, ch. 57-121; s. 18, ch. 61-530; ss. 19, 35, ch. 69-106; s. 46, ch. 77-120; s. 55, ch. 79-3; s. 1, ch. 79-331.

**944.25 Registry of prisoners; facts required to be entered.**—

There shall be entered the name of each prisoner, the crime of which he is convicted, the period of his sentence, from what county sentenced, his nativity, to what degree educated, at what institution and under what system, an accurate description of the person, and whether he has been previously confined in any state or federal prison and if so, when and how he was discharged, and such other facts as shall be found necessary to the department. A copy of this report will be transmitted to the office of the secretary.

**History.**—s. 23, ch. 57-121; ss. 19, 35, ch. 69-106; s. 47, ch. 77-120; s. 56, ch. 79-3.

**944.275 Gain-time.**—

(1) The department shall grant the following deductions for gain-time on a monthly basis, as earned, from the sentence of every prisoner who has committed no infraction of the rules of the department or of the laws of the state and who has performed in a satisfactory and acceptable manner the work, duties, and tasks assigned, as follows:

(a) Three days per month off the first and second years of the sentence;

(b) Six days per month off the third and fourth years of the sentence; and

(c) Nine days per month off the fifth and all succeeding years of the sentence;

and the prisoner shall be entitled to credit for a month as soon as the prisoner has served such time as, when added to the deduction allowable, would equal a month.

(2)(a) It is the intent of the Legislature that work programs be recognized as an integral part of the rehabilitative process and that gain-time under this section be awarded only if earned as provided herein.

(b) The department is authorized to grant additional gain-time allowances on a monthly basis, as earned, up to 1 day for each day of productive or institutional labor performed by any prisoner who has committed no infraction of the rules of the department or of the laws of this state and who has accomplished, in a satisfactory and acceptable manner, the work, duties, and tasks assigned. Such gain-time allowances under this section shall be awarded on the basis of diligence of the inmate, the quality and quantity of work performed, and the skill required for performance of the work.

(c) The amount of time in a work program equivalent to 1 day shall be determined by the department. The department may provide for the award of gain-time under this subsection on a fractional basis for less than 1 day's participation in work programs.

(d) Any prisoner who, without approval, refuses

or neglects to perform the work, duties, and tasks assigned in the correctional work program shall forfeit gain-time as provided in s. 944.28.

(e) The department may grant additional gain-time allowances up to 6 days per month for any inmate who, because of age, illness, infirmity, or confinement for reasons other than discipline, does not participate in a correctional work program, who demonstrates a constructive utilization of time, and who has committed no infraction of the rules of the department or the laws of the state. However, no prisoner shall receive additional gain-time credits under both paragraph (b) and this paragraph during the same month.

(3)(a) An inmate who faithfully performs the assignments given to him in a conscientious manner over and above that which may normally be expected of him, against whom no disciplinary report has been filed within the preceding 6 months, and whose conduct, personal adjustment, and individual effort towards his own rehabilitation show his desire to be a better than average inmate or who diligently participates in an approved course of academic or vocational study may be granted, on an individual basis, from 1 to 6 days per month extra gain-time to be deducted from the term of his sentence.

(b) An inmate who does some outstanding deed, such as the saving of a life or assisting in recapturing an escaped inmate, or who in some other manner performs an outstanding service that would merit the granting of additional deductions from the term of his sentence, may be granted special gain-time on the basis of from 1 to 60 days.

(4) When a prisoner is under two or more concurrent sentences, the prisoner shall be allowed gain-time as if such sentences were all one sentence; and the prisoner's gain-time, including any additional gain-time allowed under subsection (2) and extra gain-time allowed under subsection (3), shall be subject to forfeiture as though such sentences were all one sentence.

(5) No gain-time shall be awarded except as provided in this section.

*History.—s. 1, ch. 78-304; s. 57, ch. 79-3.*

#### **944.28 Forfeiture of gain-time and right to earn gain-time in the future.—**

(1) If a prisoner is convicted of escape, or if the clemency or parole granted to him is revoked, the department may, without notice or hearing, declare a forfeiture of all gain-time earned and extra gain-time allowed such prisoner, if any, prior to such escape or his release under such clemency or parole, as the case may be.

(2)(a) All or any part of the gain-time earned by a prisoner and extra gain-time allowed him, if any, shall be subject to forfeiture if such prisoner shall unsuccessfully attempt to escape, or assault another person, or threaten or knowingly endanger the life or person of another person, or by action or word refuse to carry out any instruction duly given to him, or neglect to perform the work, duties, and tasks assigned to him in a faithful, diligent, industrious, orderly, and peaceful manner, or violate any law of the state or any rule or regulation of the department or institution.

(b) The method of forfeiting gain-time which is

subject to forfeiture under paragraph (a) of this subsection shall be as follows: A written charge shall be prepared, which shall specify the misconduct upon which it is based and the approximate date thereof. A copy of such charge shall be delivered to the prisoner and he shall be given notice of a hearing before the disciplinary committee created under the authorization of the rules and regulations heretofore or hereafter adopted by the department for the institution in which he is confined. He shall be present at such hearing. If at such hearing the prisoner pleads guilty to the charge or such committee determines from the proof presented that he is guilty thereof, it shall find him guilty; and, if it considers that all or a part of the prisoner's gain-time and extra gain-time should be forfeited, it shall so recommend in its written report, which shall be presented to the superintendent of the institution. If such superintendent approves such recommendation in whole or in part, he shall so indicate over his signature on the report, and forward the report to the department. The department may thereupon, at its discretion, declare the forfeiture thus approved by the superintendent, or any part thereof.

(3)(a) A prisoner's right to earn gain-time during all or any part of the remainder of the sentence or sentences under which he is imprisoned may be declared forfeited because of the seriousness of a single instance of misconduct for which all of his earned gain-time and extra gain-time, if any, have been forfeited or because of the seriousness of an accumulation of instances of misconduct, each of which has resulted in the forfeiture of all or a part of his earned gain-time and extra gain-time.

(b) The method of declaring such a forfeiture shall be as follows: A written charge shall be prepared, which shall specify each instance of misconduct upon which it is based, the approximate date thereof, and the amount of gain-time forfeited on account thereof. A copy of such charge shall be delivered to the prisoner and he shall be given notice of a hearing before the disciplinary committee created under the authorization of rules and regulations heretofore or hereafter adopted by the department, for the institution in which he is confined. Such notice shall specify that such hearing will be held for the purpose of determining whether such committee shall recommend a forfeiture of the prisoner's right to earn gain-time during all or a part of the remainder of his sentence or sentences. If at such hearing the prisoner pleads guilty to the charge or such committee determines that he is guilty thereof upon the basis of proof presented at such hearing, it shall find him guilty; and, if it considers that the misconduct of which the prisoner is thus found guilty is serious enough, it may recommend in its written report the forfeiture of the prisoner's right to earn gain-time during all or some specified part of the remainder of his sentence or sentences. Such report shall be presented to the superintendent of such institution, who may approve such recommendation in whole or in part by endorsing such approval on such report. In the event of such an approval, the superintendent shall forward such report to the department. Thereupon, the department may, in its discretion, declare the forfeiture thus approved by the superintendent

or any specified part thereof.

(4) Upon the recommendation of the superintendent, the department may, in its discretion, restore all or any part of any gain-time forfeited under this section.

(5) In order to facilitate the speedy administration of the gain-time program, the department may delegate its functions, duties, and powers under this section to one of its agents.

**History.**—s. 26, ch. 57-121; s. 18, ch. 61-530; s. 2, ch. 63-243; s. 1, ch. 65-197; ss. 19, 35, ch. 69-106; s. 20, ch. 74-112; s. 48, ch. 77-120; s. 58, ch. 79-3.

#### **944.291 Prisoner released by reason of gain-time allowances.—**

(1) A prisoner who has served his term or terms, less allowable statutory gain-time deductions and extra good-time allowances, as provided by law, shall, upon release, be under the supervision and control of the department and shall be subject to all statutes relating to parole, but in no event shall such supervision extend beyond 2 years, as determined by the Parole and Probation Commission.

(2) The provisions of this section shall not apply to prisoners who, at the time of sentence, could not have earned at least 180 days' gain-time.

**History.**—s. 1, ch. 67-421; s. 21, ch. 74-112; s. 50, ch. 77-120; s. 1, ch. 78-223; s. 59, ch. 79-3.

**944.292 Suspension of civil rights.—**Upon conviction of a felony as defined in s. 10, Art. X of the State Constitution, the civil rights of the person convicted shall be suspended in Florida until such rights are restored by a full pardon, conditional pardon, or restoration of civil rights granted pursuant to s. 8, Art. IV of the State Constitution.

**History.**—s. 28, ch. 74-112; s. 1, ch. 76-139.

**944.293 Initiation of restoration of civil rights.—**With respect to those persons convicted of a felony, the following procedure shall apply: Prior to the time an offender is discharged from supervision, an authorized agent of the department shall obtain from the Governor the necessary application and other forms required for the restoration of civil rights. The authorized agent shall assist the offender in completing these forms and shall insure that the application and all necessary material are forwarded to the Governor before the offender is discharged from supervision.

**History.**—s. 29, ch. 74-112; s. 1, ch. 76-139; s. 60, ch. 79-3.

**944.30 Life prisoners; commutation to term for years.—**Any prisoner who is sentenced to life imprisonment, who has actually served 10 years and has sustained no charge of misconduct and has a good institutional record, shall be recommended by the department for a reasonable commutation of his sentence, and if the same be granted, commuting the life sentence to a term for years, then such prisoner shall have the benefit of the ordinary commutation, as if the original sentence was for a term for years, unless it shall be otherwise ordered by the Board of Pardons.

**History.**—s. 28, ch. 57-121; s. 18, ch. 61-530; s. 51, ch. 77-120; s. 61, ch. 79-3.

**944.31 Prison inspectors' duties.—**Prison inspectors shall be employed by the department and charged with the duty of inspecting the penal and correctional systems of the state. The prison inspectors shall inspect each jail, stockade or correctional institution or any place in which state or county prisoners are housed, worked, or kept within the state, with reference to the physical conditions, cleanliness, sanitation, safety, comfort, the quality and supply of all bedding, the quality, quantity, and diversity of food served and the manner in which it is served, the number and condition of the prisoners confined therein, and the general conditions of each institution. They shall see that all the rules and regulations issued by the department are strictly observed and followed by all persons connected with the correctional systems of the state. The inspectors will be directly responsible to the department which shall coordinate and supervise their work throughout the state. Each prison inspector may enter any place where prisoners in this state are kept and shall be immediately admitted to such place as he desires; and, he may consult and confer with any prisoner privately and without molestation.

**History.**—s. 29, ch. 57-121; s. 6, ch. 61-192; s. 18, ch. 61-530; ss. 19, 35, ch. 69-106; s. 52, ch. 77-120; s. 62, ch. 79-3.

**944.32 Reports of prison inspectors; recordation; inspection.—**Upon completing an inspection of any jail or a correctional institution the inspector shall make a full and complete report on such forms as shall be provided by the department. One copy of each report shall be filed with the department, one copy with the Clerk of the Circuit Court of the county where the inspection is made and as many other copies as the department shall require; these reports shall at all times be open to inspection in the office of the Clerk of the Circuit Court, and shall be matters of public record and subject to inspection by the public at any time.

**History.**—s. 30, ch. 57-121; s. 18, ch. 61-530; s. 53, ch. 77-120; s. 63, ch. 79-3.

**944.33 Failure of inspector to make report; false report; penalty.—**If any prison inspector shall fail to make a report of his findings, he shall be immediately discharged and shall not be again employed in such capacity. If any prison inspector shall knowingly make a false report of his findings, he shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 31, ch. 57-121; s. 1166, ch. 71-136.

**944.34 Order and punishment.—**All necessary means shall be used by the superintendents, and such punishments as may be needful shall be adopted to maintain order, enforce obedience and discipline, suppress insurrection, prevent escapes, and compel performance of labor; but no cruel or inhuman punishment shall be inflicted upon any prisoner, and no punishment injurious to the mind or the body of the prisoner shall be permitted, nor shall any prisoner be compelled to labor without sufficient food.

**History.**—s. 32, ch. 57-121.



**944.35 Corporal punishment prohibited; penalty.**—It is unlawful for any corporal punishment, any cruel or inhuman punishment, or any punishment by which the flesh of the body is broken, bruised, or lacerated to be inflicted upon any prisoner at any time. Any person who violates the provisions of this section shall be discharged immediately and shall not again be employed in any capacity in connection with the correctional system and shall be punished as provided by law for whatever offense he may have committed in perpetrating the act. No prisoner shall be punished because of any report or representation which he may have made to any inspector.

**History.**—s. 33, ch. 57-121.

**944.36 Cruel treatment of prisoners; permitting prisoners to escape.**—Any agent, employee, or officer of the department, or guard, having supervision over state prisoners being worked under the provisions of law, who shall be guilty of any cruel or inhuman treatment to any prisoner by neglect or otherwise, or shall willfully or negligently permit any prisoner to escape, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 34, ch. 57-121; s. 18, ch. 61-530; s. 1167, ch. 71-136; s. 54, ch. 77-120; s. 64, ch. 79-3.

**944.37 Acceptance of unauthorized compensation; penalty.**—No officer or employee of the department shall receive, directly or indirectly, from any prisoner or from anyone on behalf of such prisoner, any gift, reward, or any compensation whatsoever for his services or supplies other than that prescribed or authorized by law or the department. Whoever violates this section shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.083.

**History.**—s. 35, ch. 57-121; s. 18, ch. 61-530; s. 1168, ch. 71-136; s. 55, ch. 77-120; s. 65, ch. 79-3.

**944.38 Acceptance of remuneration from contractor; dealing or barter with prisoners; interest in contract; penalty.**—

(1) No officer or employee of the department shall receive any compensation whatsoever, directly or indirectly, for any act or service which he may do or perform for or on behalf of any officer or employee or agent, or employee of a contractor; nor shall any officer or employee of the department or the state be interested, directly or indirectly, in any contract or purchase made, or authorized to be made, by anyone for or on behalf of the department.

(2) No officer or employee of the department or of the state, or any contractor, or employee of a contractor, shall, without permission of the department, make any gift or present to a prisoner, or receive the same from any prisoner, or have any barter or dealings with any prisoner.

(3) For any violation of the provisions of this section the officer or employee of the state shall be discharged from his office or service; and every contractor, or employee, or agent of a contractor en-

gaged therein, and a party thereto, shall be expelled from the institutional grounds, and not again permitted within the same as a contractor, agent, or employee.

**History.**—s. 36, ch. 57-121; s. 18, ch. 61-530; ss. 19, 35, ch. 69-106; s. 56, ch. 77-120; s. 66, ch. 79-3.

**944.39 Interference with prisoners; penalty.**—Any person who, without authority, interferes with or in any way interrupts the work of any prisoner under the custody of the department or who in any way interferes with the discipline or good conduct of any prisoner shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. No person shall, by disguise, misrepresentation of identity or other illicit means, attempt to gain admission to or enter upon the grounds of any state correctional institution for the purpose of visiting any prisoner in violation of the general visiting policy adopted by the department. A person, upon conviction of an offense as outlined in this section, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Any peace officer or any officer or guard of the department or any prison inspector or any employee of the department may arrest without warrant any person violating the provisions of this section.

**History.**—s. 37, ch. 57-121; s. 7, ch. 61-192; s. 18, ch. 61-530; ss. 19, 35, ch. 69-106; s. 1169, ch. 71-136; s. 57, ch. 77-120; s. 67, ch. 79-3.

**944.40 Escapes; penalty.**—Any prisoner confined in any prison, jail, road camp, or other penal institution, state, county, or municipal, working upon the public roads, or being transported to or from a place of confinement who escapes or attempts to escape from such confinement shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The punishment of imprisonment imposed under this section shall run consecutive to any former sentence imposed upon any prisoner.

**History.**—s. 38, ch. 57-121; s. 1, ch. 65-224; s. 1, ch. 69-332; s. 1170, ch. 71-136.

**944.42 Assault by prisoner other than life; penalty.**—Every person undergoing a sentence of less than life in a state correctional institution who, with malice aforethought, commits an assault upon the person of another with a deadly weapon or instrument or by any means of force likely to produce great bodily injury but which is not an assault with intent to commit a felony shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 2, ch. 57-313; s. 1171, ch. 71-136.

**944.43 Possession of weapon; penalty.**—Every prisoner committed to the custody of the department who, while in such custody, possesses or carries upon his person or has under his control any instrument or weapon of any kind or any explosive substance, contrary to any rule or regulation promulgated by the department, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 3, ch. 57-313; s. 13, ch. 59-1; s. 18, ch. 61-530; ss. 19, 35, ch. 69-106; s. 1172, ch. 71-136; s. 58, ch. 77-120; s. 68, ch. 79-3.

**944.44 Holding persons as hostages; penalty.**—Any prisoner who holds as hostage any person within any correctional institution or anywhere while under the jurisdiction of the department, or who by force, or threat of force holds any person or persons against their will in defiance of official orders, shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 4, ch. 57-313; s. 18, ch. 61-530; s. 1173, ch. 71-136; s. 59, ch. 77-120; s. 69, ch. 79-3.

**944.45 Mutiny, riot, strike; penalty.**—Whoever instigates, contrives, willfully attempts to cause, assists, or conspires to cause any mutiny, riot, or strike in defiance of official orders, in any state correctional institution, shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 5, ch. 57-313; s. 1174, ch. 71-136.

**944.46 Harboring, concealing, aiding escaped prisoners; penalty.**—Whoever harbors, conceals, maintains, or assists, or gives any other aid to any prisoner after his escape from any state correctional institution, knowing that he is an escaped prisoner, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 6, ch. 57-313; s. 1175, ch. 71-136.

**944.47 Introduction or removal of certain articles unlawful; penalty.**—

(1)(a) It is unlawful to introduce into or upon the grounds of any correctional or penal institution under the supervision or control of the department, or to take or attempt to take or send therefrom, any of the following articles which are hereby declared to be contraband for the purposes of this section, to wit:

1. Any written or recorded communication or any currency or coin given or transmitted or intended to be given or transmitted to any inmate of any correctional or penal institution under the supervision and direction of the department;
2. Any article of food or clothing;
3. Any intoxicating beverage or beverage which causes or may cause an intoxicating effect;
4. Any narcotic or hypnotic or excitative drug or any drug of whatever kind or nature including, but not limited to, nasal inhalators of any variety, sleeping pills, barbiturates of any variety, and any controlled substance as defined in s. 893.02(3); and
5. Any firearm or any instrumentality customarily used as a dangerous weapon;

except through regular channels as authorized by the officer in charge of each correctional or penal institution.

(b) It is unlawful to transmit or attempt to transmit or cause or attempt to cause to be transmitted to, or received by, any inmate of any state correctional institution any article or thing declared by this subsection to be contraband, at any place which is outside of the grounds of such institution, except through regular channels as authorized by the officer in charge of such institution.

(2) Whoever violates any provision of this section

shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 7, ch. 57-313; s. 8, ch. 61-192; s. 1, ch. 65-225; s. 1, ch. 67-160; ss. 19, 35, ch. 69-106; s. 1176, ch. 71-136; s. 60, ch. 77-120; s. 1, ch. 78-42; s. 70, ch. 79-3.

**944.48 Service of sentence.**—Whenever any prisoner is convicted under the provisions of ss. 944.41-944.47 the punishment of imprisonment imposed shall be served consecutively to any former sentence imposed upon any prisoner convicted hereunder.

**History.**—s. 8, ch. 57-313.

**944.485 Department to adopt plan for subsistence fees with respect to certain prisoners; time of adoption; requirements.**—

(1) In recognition of the fact that many prisoners in the correctional system have sources of income and assets outside of the correctional system, which may include bank accounts, inheritances, real estate, social security payments, veteran's payments, and other types of financial resources, and in recognition of the fact that the daily subsistence cost of incarcerating prisoners in the correctional system is a great burden on the taxpayers of the state, each prisoner in the state correctional system, except those who have entered into an agreement under s. 947.135 prior to October 1, 1978:

(a) Shall disclose all revenue or assets as a condition of parole eligibility.

(b) Shall pay from such income and assets, except where such income is exempt by state or federal law, all or a fair portion of the prisoner's daily subsistence costs, based upon the inmate's ability to pay, the liability or potential liability of the inmate to the victim or the guardian or the estate of the victim, and the needs of his dependents.

(2) Any prisoner who is directed to pay all or a fair portion of daily subsistence costs is entitled to reasonable advance notice of the assessment and shall be afforded an opportunity to present reasons for opposition to the assessment.

(3) The department shall promulgate, within 90 days of October 1, 1978, rules which implement this section.

**History.**—s. 1, ch. 78-441.

**944.49 Requirement of labor; compensation; amount; crediting of account of prisoner; forfeiture; civil rights; prisoner not employee or entitled to compensation insurance benefits.**—

(1) The department shall require of every able-bodied prisoner imprisoned in any institution as many hours of faithful labor in each day and every day during his term of imprisonment as shall be prescribed by the rules and regulations of the department.

(2)(a) Each prisoner who is engaged in productive work in any state correctional institution, program, or facility under the jurisdiction of the department may receive for work performed such compensation as the department shall determine. Such compensation shall be in accordance with a schedule based on quality and quantity of work performed and skill required for performance, and said compensation

shall be credited to the account of the prisoner or the prisoner's family.

(b) Any monetary payments made directly to the prisoner shall be used in whole or in part to satisfy restitution ordered by a court of competent jurisdiction to the victim of the criminal act.

(c) It shall be the policy of the department to require inmates receiving compensation for work performed in community programs to reimburse the state for lodging, food, transportation, and other expenses incurred for sustaining the inmate. Reimbursement shall be according to rules promulgated by the department, which shall provide that the inmate retain only a minimal amount of money for personal items and shall take into consideration compensation that may be allocated for the support of the inmate's family and for restitution for the victim of the crime committed.

(3) Said compensation shall be paid from the Department of Corrections Correctional Work Program Trust Fund. Whenever any price is fixed on any article, material, supply, or service, to be produced, manufactured, supplied, or performed in connection with the work program of the department, the compensation paid to the prisoners shall be included as an item of cost in the final price.

(4) When any prisoner escapes, the department shall determine what portion of his earnings shall be forfeited, and such forfeiture shall be deposited in the State Treasury in the Inmate Welfare Fund of the department.

(5) Nothing in this section is intended to restore, in whole or in part, the civil rights of any prisoner. No prisoner compensated under this section shall be considered as an employee of the state or the department, nor shall such prisoner come within any other provision of the Workers' Compensation Act.

**History.**—s. 39, ch. 57-121; s. 18, ch. 61-530; ss. 19, 35, ch. 69-106; ss. 2, 16, ch. 76-273; s. 253, ch. 77-104; s. 61, ch. 77-120; s. 71, ch. 79-3; s. 121, ch. 79-40.

**944.50 Forfeiture of earnings of prisoners; determination of amount to be forfeited; deposit in Correctional Work Program Trust Fund.**—When any prisoner shall willfully violate the terms of his employment or the rules and regulations of the department, the department may in its discretion determine what portion of all moneys earned by the prisoner shall be forfeited by said prisoner and such forfeiture shall be redeposited to the Department of Corrections Correctional Work Program Trust Fund.

**History.**—s. 40, ch. 57-121; s. 18, ch. 61-530; ss. 19, 35, ch. 69-106; s. 253, ch. 77-104; s. 62, ch. 77-120; s. 72, ch. 79-3.

**944.512 State lien on proceeds from literary or other type of account of crime for which imprisoned.**—

(1) A lien prior in dignity to all others shall exist in favor of the state upon royalties, commissions, proceeds of sale, or any other thing of value payable to or accruing to a convicted felon or a person on his behalf, including any person to whom the proceeds may be transferred or assigned by gift or otherwise, from any literary, cinematic, or other account of the crime for which he was convicted.

(2) The proceeds of such account shall be distributed as follows:

(a) Twenty-five percent to the dependents of the convicted felon.

(b) Twenty-five percent to the victim or victims of the crime or to their dependents, to the extent of their damages as determined by the court in the lien enforcement proceedings.

(c) An amount equal to pay court costs, which shall include jury fees and expenses, court reporter fees, and reasonable per diem for the prosecuting attorneys for the state, shall go to the General Revenue Fund. Additional costs shall be assessed for the computed per capita cost of imprisonment in the state correctional institution. Such costs shall be determined by the Auditor General.

(d) The rest, residue, and remainder to the convicted felon upon his or her release or parole or upon the expiration of his or her sentence.

(3) The department is hereby authorized and directed to report to the Department of Legal Affairs the existence or reasonably expected existence of circumstances which would be covered by this section. Upon such notification, the Department of Legal Affairs is authorized and directed to take such legal action as is necessary to perfect and enforce the lien created by this section.

**History.**—ss. 1-3, ch. 77-45; s. 73, ch. 79-3; s. 302, ch. 79-400.

**944.52 Legal advisor.**—The Department of Legal Affairs shall be the legal advisor of the Department of Corrections.

**History.**—s. 42, ch. 57-121; s. 18, ch. 61-530; ss. 11, 35, ch. 69-106; s. 63, ch. 77-120; s. 74, ch. 79-3.

**944.54 Transportation furnished prisoners upon release.**—

(1) The superintendents or wardens of the several state correctional institutions are authorized to furnish each prisoner, upon his release from a state correctional institution, transportation from such institution to such place as the classification committee may determine to be in the best interest of the prisoner. The transportation furnished shall be by the most economical means, utilizing a common carrier of the state, and such cost of transportation shall not exceed \$50. The classification committee may, in its discretion, determine that the best interests of the state will be served by providing transportation for the prisoner to a place outside the state, in which instance transportation in excess of \$50 may be authorized with the excess being paid only from surplus transportation funds available to the institution. However, the transportation furnished shall be the most economical available, utilizing a common carrier.

(2) Transportation as authorized herein shall be furnished by a nonnegotiable travel voucher payable to the common carrier being utilized and in no event shall there be any cash disbursement to the releasee or any person, firm, or corporation. Such travel voucher shall not be valid 60 days after issuance thereof.

**History.**—ss. 1, 2, ch. 59-317; s. 1, ch. 78-14.

**944.551 Vocational education and career development services; coordination with other agencies.**—

(1) The department shall coordinate and develop



job training and job placement in cooperation with the Department of Health and Rehabilitative Services, the Division of Vocational Education of the Department of Education, and the Florida State Employment Service of the Department of Labor and Employment Security.

(2) The department shall have the capability of evaluating current job-training programs and performing follow-up investigations and studies to determine the effectiveness of these programs. Job histories of each offender enrolled in the program shall be maintained, tracing the offender's employment after leaving prison for a period of at least 2 years.

**History.**—s. 15, ch. 74-112; s. 64, ch. 77-120; s. 474, ch. 77-147; s. 75, ch. 79-3; s. 47, ch. 79-7.

#### **944.57 Manpower development programs.**

Commencing July 1, 1975, the department shall expand the manpower development training program to appropriate institutions designated by it. The program shall provide for vocational testing and training of offenders in the custody of the department and shall contain the basic components of the manpower development and training program existing on July 1, 1974, in the Apalachee Correctional Institution. The department is authorized to apply for and receive gifts, grants, and other payments, including property and services, from any governmental or other public or private entity or person to effect the purposes of the manpower programs provided in this chapter.

**History.**—s. 17, ch. 74-112; s. 66, ch. 77-120; s. 76, ch. 79-3.

**944.58 Definitions; ss. 944.581-944.593.**—As used in ss. 944.581-944.593:

(1) "Correctional officer" means any person employed by this state or any subdivision thereof whose responsibility is the supervision, protection, care, custody, and control of inmates within the correctional institutions of this state. It is the intent of this definition to exclude from this act secretarial, clerical, and professionally trained personnel.

(2) "Employing agency" means this state or any subdivision thereof employing correctional officers as defined in subsection (1).

(3) "Council" means the Correctional Standards Council.

**History.**—s. 2, ch. 74-107; s. 4, ch. 78-323.

**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

#### **944.581 Correctional Standards Council.**

(1)(a) There is created a Correctional Standards Council. The council shall be composed of 11 members, consisting of the Attorney General or his designated assistant, the Commissioner of Education or his designated assistant, the <sup>2</sup>Secretary of Offender Rehabilitation or his designated assistant, and eight members to be appointed by the Governor. The eight members appointed by the Governor shall consist of two state correctional officers, one of whom shall be an administrator and the other a correctional officer who is not an administrator; one person who is in charge of a municipal correctional institution; one person who is in charge of a county correctional institution; two sheriffs; and two representatives at large, one of whom shall be in charge of a correction-

al education program in a 4-year or 2-year educational institution.

(b) Members appointed by the Governor shall be appointed for terms of 2 years. No appointive member shall serve beyond the time he ceases to hold the office or employment by reason of which he was eligible for appointment to the council. Any member appointed to fill a vacancy because of death, resignation, or ineligibility for membership shall serve only for the unexpired term of his predecessor or until a qualified successor is appointed.

(2)(a) The council shall annually elect its chairman and other officers.

(b) The council shall hold at least four regular meetings each year at the call of the chairman or upon written request by two members of the council. A majority of the members of the council constitutes a quorum.

(3) Members of the council shall serve without compensation, but shall be entitled to be reimbursed for per diem and traveling expenses as provided by s. 112.061.

(4) The council shall make an annual report of its activities to the Governor and to the Legislature and shall include in such report its recommendations for additional legislation.

**History.**—ss. 3-6, ch. 74-107; s. 1, ch. 75-271; s. 254, ch. 77-104; s. 67, ch. 77-120; s. 1, ch. 77-174; s. 4, ch. 78-323.

**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

**Note.**—Section 1, ch. 78-53, changed the title of "Secretary of Offender Rehabilitation" to "Secretary of Corrections."

**944.582 General powers of the council.**—The council is authorized to:

(1) Promulgate rules and regulations for the administration of this act, pursuant to chapter 120.

(2) Employ a director and such other personnel as may be necessary in the performance of its functions.

(3) Provide rules of procedure for its internal management and control.

(4) Enter into contracts or do such things as may be necessary and incidental to the administration of its authority pursuant to this act.

**History.**—s. 7, ch. 74-107; s. 4, ch. 78-323.

**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

**944.583 Special powers; correctional officer training.**—In connection with the employment and training of correctional officers, the council shall have the special powers to:

(1) Establish uniform minimum standards for the employment and training of correctional officers, including qualifications and requirements as may be established by the council subject to specific provisions contained in this act.

(2) Establish minimum curricular requirements for schools operated by the state or any subdivision thereof for the purpose of training correctional officer recruits or correctional officers.

(3) Consult and cooperate with the state or any subdivision thereof and with universities, colleges, community colleges, and other educational institutions concerning the development of correctional officer training schools and programs or courses of instruction.

(4) Approve institutions and facilities for school

operation by or for the state or any subdivision thereof for the specific purpose of training correctional officers and correctional officer recruits.

(5) Issue certificates of competency to persons who, by reason of experience and completion of inservice advanced education or specialized training, are especially qualified for particular aspects or classes of correctional work.

(6) Make or encourage studies on any aspect of corrections education and training or recruitment.

(7) Make or encourage studies on compensation paid correctional officers throughout the state. The council shall study the salary scale, education, training, and any other items on which compensation is based and make recommendations to the next regular session of the legislature regarding this study.

(8) Make recommendations concerning any aspect of corrections which is within the purview of the council pursuant to this act.

**History.**—s. 8, ch. 74-107; s. 4, ch. 78-323.

**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

**944.584 Correctional officers; qualifications for employment.**—After July 1, 1974, any person employed as a correctional officer shall:

(1) Have reached the age of majority.  
 (2) Be a high school graduate or its "equivalent" as the term may be determined by the council.  
 (3) Have his fingerprints on file with the council or any agency designated by the council.

<sup>1</sup>(4) Have passed an examination by a licensed physician based on specifications established by the council.

<sup>1</sup>(5) Have a good moral character as determined by investigation under procedures established by the council.

**History.**—s. 9, ch. 74-107; s. 1, ch. 77-116; s. 4, ch. 78-323.

**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this subsection prior to that date.

**944.585 Correctional officer training program established.**—

(1) The council shall establish and maintain a correctional officer training program with such curriculum and administered by such agencies and institutions as it approves and shall issue a certificate of completion to any person satisfactorily completing the training program established.

(2) The council shall issue a certificate of compliance to any person satisfactorily complying with the training program established in subsection (1) and the qualifications for employment in s. 944.584, and any person employed as a correctional officer shall obtain such certificate of compliance within 12 months after the date he began his employment or within 12 months of July 1, 1977, whichever is later. No person employed as a correctional officer shall become a permanent state employee until he has received the certificate of compliance.

(3) The council may issue a certificate to any person who has received training in another state when the council has determined that such training was at least equivalent to that required by the council for approved correctional officer education and training programs in this state and when such person has satisfactorily complied with all other requirements of this act.

(4) Correctional officers who began their employment between July 1, 1974, and June 30, 1976, shall be required to meet the provisions of subsection (2) or subsection (3) as a condition of eligibility for promotion.

**History.**—s. 10, ch. 74-107; ss. 1, 2, ch. 77-210; s. 4, ch. 78-323; s. 303, ch. 79-400.

**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

**944.586 Reimbursement of employing agency by council.**—The council shall, subject to the availability of funds, reimburse an employing agency an amount equivalent to 50 percent of the salary, if any, and allowable living expenses of recruit trainees in attendance at approved training programs.

**History.**—s. 11, ch. 74-107; s. 4, ch. 78-323.

**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

**944.587 Payment of tuition by employing agency.**—An employing agency, state agency, or political subdivision of this state is authorized to pay any or all costs of tuition of trainees in attendance at approved training programs.

**History.**—s. 12, ch. 74-107; s. 4, ch. 78-323.

**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

**944.588 Inservice training and promotion; participation, grants.**—

(1) The council, by rules and regulations, shall prescribe curricula and standards for advanced and specialized training courses and training in addition to those prescribed in ss. 944.584 and 944.585.

(2) Correctional institutions and employing agencies participating under the provisions of this section shall adhere to the standards and procedures established by the council.

(3) Institutions and agencies offering approved programs of inservice or advanced training may receive grants from the council, subject to the availability of funds, not to exceed 50 percent of the cost of offering approved training courses.

**History.**—s. 13, ch. 74-107; s. 4, ch. 78-323.

**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

**944.589 Financing of council.**—The council may accept, for any of its purposes and functions under this act, any donations of property, real, personal, or mixed, and grants of money from any governmental unit, public agency, institution, person, firm, or corporation. Such moneys shall be deposited, or disbursed and administered in a trust fund as provided by the laws of Florida.

**History.**—s. 14, ch. 74-107; s. 4, ch. 78-323.

**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

**944.590 Salary scale study; report, recommendation.**—The council shall make a comprehensive study of the compensation paid to correctional officers throughout the state. Among the items to be researched shall be variation in salary scale, education and training of officers, retirement and pension programs, comparison of salaries received by correctional officers with salaries of other law enforcement officers within the state, and any other factors on which compensation is based. The council shall report its findings to each regular session of the legisla-

ture and make recommendations for achieving uniformity in compensation for correctional officers with equal or comparable responsibilities, experience, education, and training.

**History.**—s. 15, ch. 74-107; s. 4, ch. 78-323.

**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

**944.591 Intent.—**

(1) It is the intent of the Legislature to strengthen and upgrade the correctional institutions in Florida by attracting competent, highly qualified young people for professional careers in this field and to retain well-qualified and experienced correctional officers.

(2) It is the further intent of the Legislature to establish a minimum foundation program for correctional officers which will provide a statewide minimum salary for all such officers, to provide a state monetary supplement to effectuate an upgrading of compensation for all correctional officers, and to upgrade the educational and training standards of such officers.

**History.**—s. 16, ch. 74-107; s. 4, ch. 78-323.

**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

**944.592 Saving clause.—**

(1) Correctional officers employed on July 1, 1974, shall not be required to meet the provisions of ss. 944.583(1) and 944.584 as a condition of tenure or continued employment; nor shall their failure to fulfill such requirements make them ineligible for any

promotional examination for which they are otherwise eligible.

(2) The provisions of this act shall not apply to any elected officers.

(3) Correctional officers who began employment between July 1, 1974, and June 30, 1976, shall not be required to meet the provisions of s. 944.585 as a condition of continued employment.

**History.**—ss. 17, 19, ch. 74-107; s. 3, ch. 77-210; s. 4, ch. 78-323.

**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

**944.593 Qualifications and standards above minimum.**—Nothing herein shall be construed to preclude an employing agency from establishing qualifications and standards for hiring, training, or promoting correctional officers that exceed the minimum set by the council.

**History.**—s. 18, ch. 74-107; s. 4, ch. 78-323.

**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

**944.596 Transfer of convicted foreign citizens or nationals under treaty.**—When a treaty is in effect between the United States and a foreign country providing for the transfer of a convicted offender who is a citizen or national of a foreign country to the foreign country of which he is a citizen or national, the Governor or his designee is authorized, subject to the terms of such treaty, to consent to the transfer of such convicted offender.

**History.**—s. 1, ch. 79-75.



## CHAPTER 945

## DEPARTMENT OF CORRECTIONS

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**945.01 Definitions.**—As used herein, the following terms shall have the meanings ascribed to them unless the context shall clearly indicate otherwise:

(1) "Correctional system" means all prisons and other correctional institutions now existing or hereafter created under the jurisdiction of the department.

(2) "Department" means the Department of Corrections.

(3) "Secretary" means the Secretary of Corrections.

(4) "Reception center" means a temporary custodial institution for offenders committed to the de-

partment for classification and assignment to an appropriate institution in the correctional system.

**History.**—s. 1, ch. 57-213; s. 18, ch. 61-530; ss. 19, 35, ch. 69-106; ss. 1, 2, ch. 70-441; s. 283, ch. 71-377; s. 68, ch. 77-120; s. 77, ch. 79-3.

#### 945.025 Jurisdiction of department.—

(1) The Department of Corrections shall have supervisory and protective care, custody, and control of the inmates, buildings, grounds, property, and all other matters pertaining to the following institutions, facilities, and programs for the imprisonment, correction, and rehabilitation of adult offenders:

- (a) Apalachee Correctional Institution;
- (b) Florida Correctional Institution;
- (c) Glades Correctional Institution;
- (d) Florida State Prison;
- (e) Department of Corrections Road Prisons;
- (f) Sumter Correctional Institution;
- (g) Avon Park Correctional Institution;
- (h) Union Correctional Institution;
- (i) Reception and Medical Center at Lake Butler;
- (j) Cross City Correctional Institution;
- (k) Lake Correctional Institution;
- (l) Brevard Correctional Institution;
- (m) Department of Corrections Community Correctional Centers;
- (n) Department of Corrections Vocational Centers; and
- (o) DeSoto Correctional Institution.

(2) In establishing, operating, and utilizing these facilities, the department shall attempt, whenever possible, to avoid the placement of nondangerous offenders with potential for rehabilitation with repeat offenders or dangerous offenders. Medical, mental, and psychological problems shall be diagnosed and treated whenever possible. The Department of Health and Rehabilitative Services shall cooperate to insure the delivery of services to persons under the department's custody or supervision. When it is the intent of the department to transfer a mentally ill or retarded prisoner to the Department of Health and Rehabilitative Services, an involuntary commitment hearing shall be held according to the provisions of chapter 393 or chapter 394.

(3) There shall be other correctional facilities, including detention facilities of varying levels of security, work-release facilities, and community correctional facilities, halfway houses, and other approved community residential and nonresidential facilities and programs; however, no adult correctional facility shall be established by changing the use and purpose of any mental health facility or mental health institution under the jurisdiction of any state agency or department without authorization in the General Appropriation Act or other approval by the Legislature. Any facility the purpose and use of which was changed subsequent to January 1, 1975, shall be returned to its original use and purpose by July 1, 1977. However, the G. Pierce Wood Memorial Hospital located at Arcadia, DeSoto County, shall not be converted into a correctional facility as long as such hospital is in use as a state mental health hospital. Any community residential facility may be deemed

a part of the state correctional system for purposes of maintaining custody of offenders, and for this purpose the department may contract for and purchase the services of such facilities.

**History.**—s. 1, ch. 57-317; s. 1, ch. 67-99; ss. 19, 35, ch. 69-106; ss. 1, 2, ch. 70-441; s. 26, ch. 74-112; s. 14, ch. 75-49; s. 1, ch. 76-232; s. 69, ch. 77-120; s. 475, ch. 77-147; s. 6, ch. 77-312; s. 78, ch. 79-3.

**Note.**—Former s. 965.01(1).

**945.031 Official seal.**—The Department of Corrections is authorized to adopt an official seal. The seal shall be used for the purpose of authenticating its official documents and such other purposes as it may prescribe.

**History.**—s. 1, ch. 65-163; ss. 19, 35, ch. 69-106; s. 70, ch. 77-120; s. 79, ch. 79-3.

**945.04 Department of Corrections; general function.**—The Department of Corrections shall be responsible for the inmates and for the operation of, and shall have supervisory and protective care, custody, and control of, all buildings, grounds, property of, and matters connected with, the correctional system.

**History.**—s. 4, ch. 57-213; s. 18, ch. 61-530; s. 71, ch. 77-120; s. 80, ch. 79-3.

**945.045 Department duty to use inmate labor.**—The Department of Corrections shall maximize the use of inmate labor in the construction of inmate housing and the conduct of all maintenance projects so that such activities provide work opportunities for the optimum number of inmates in the most cost-effective manner.

**History.**—s. 18, ch. 76-273; s. 1, ch. 77-174; s. 81, ch. 79-3.

**945.047 Licensing requirements for physicians, osteopaths, and chiropractors employed by the department.**—

(1) The Department of Corrections shall employ only physicians, osteopathic physicians, or chiropractic physicians holding licenses in good standing to practice medicine in this state, except that, by October 1, 1980, no more than 10 percent of the total number of such physicians employed by the department may be exempted from the provisions of this subsection. Each such exempted physician shall hold a valid license to practice medicine, osteopathy, or chiropractic in another state and shall have been certified by the appropriate board as eligible for admission for examination in this state under chapter 458, chapter 459, or chapter 460, as applicable. The appropriate board shall not certify as eligible for admission for examination any person who has been adjudged unqualified or guilty of any of the acts enumerated in the disciplinary provisions contained in chapter 458, chapter 459, or chapter 460, as applicable.

(2) No person subject to the provisions of this section shall, by virtue of his continued employment in accordance with such provisions, be in violation of the unauthorized practice provisions of chapter 458, chapter 459, or chapter 460 during such period of employment.

**History.**—s. 3, ch. 79-302.

**945.06 Correctional work programs.**—

(1) The department shall adopt and put into effect an agricultural and industrial production and marketing program to provide training facilities for

persons confined in the adult correctional institutions under the control and supervision of the department. The emphasis of this program shall be to provide inmates with useful work experience, on a full-time basis when feasible, and appropriate job skills that will facilitate their reentry into society and provide an economic benefit to the public and the department through effective utilization of inmates.

(2) The department is authorized to cause to be manufactured, processed, or produced by the inmates of the adult correctional institutions under the control and supervision of the department such items as are practical and adaptable for prison industry and are needed and used in state institutions and agencies and in other governmental jurisdictions of the state. The department shall give priority to the implementation of those activities and services that will directly assist in reducing the reliance of the department upon external sources of supply in the areas of agriculture, animal husbandry, and the allied craft trades that are capable of producing a fiscal benefit to the state and which will facilitate self-sufficiency for the inmate, the department, and other units of government.

**History.**—s. 6, ch. 57-213; ss. 19, 35, ch. 69-106; s. 2, ch. 72-24; s. 3, ch. 76-273.

**945.061 Correctional work program objectives.**—In adopting or modifying master plans for correctional work programs, and in the administration of the Department of Corrections, it shall be the objective of the department to develop:

(1) Attitudes favorable to work, the work situation, and a law-abiding life in each inmate employed in the correctional work program.

(2) Training opportunities that are reasonably broad, but which develop specific work skills.

(3) Programs that motivate inmates to use their abilities. Inmates who do not adjust to these programs shall be reassigned.

(4) In cooperation with its regional advisory councils, training programs which will be of mutual benefit to all governmental jurisdictions of the state by reducing the costs of government to the taxpayers and which integrate all instructional programs into a unified curriculum suitable for all inmates, but taking account of the different abilities of each inmate. The department shall avail itself of the services of local manpower planning councils to assess the employment opportunities for released inmates.

**History.**—s. 6, ch. 76-273; s. 1, ch. 77-174; s. 82, ch. 79-3.

**945.062 Financing of correctional work programs.**—

(1) The department shall explore new financing arrangements, including the involvement of private industry and expertise within or outside the institutions, to the maximum extent allowed by law. Nothing in this section shall be construed or interpreted as authorizing or permitting the department to incur a state debt of any kind or nature as contemplated by the State Constitution in relation to such financing arrangements.

(2) The correctional work program shall be effi-

cient and shall stress productive labor for all inmates physically able to engage in it.

*History.*—s. 7, ch. 76-273.

**945.063 Operational guidelines for the correctional work programs.—**

(1) The department shall establish guidelines for the operation of correctional work programs, which shall include the following procedures:

(a) The education, work experience, emotional and mental abilities, and physical capabilities of the inmate and the length of sentence imposed on the inmate are to be analyzed before assignment of the inmate into the various processes best suited for training.

(b) When feasible, the department shall attempt to obtain training credit for an inmate seeking apprenticeship status.

(c) The inmate may begin in a general work skills program and progress to a specific work skills training program, depending upon the ability, desire, and work record of the inmate.

(d) Modernization and upgrading of equipment and facilities should include greater automation and improved production techniques to expose inmates to the latest technological procedures to facilitate their adjustment to real work situations.

(2) Evaluations of correctional work programs shall be conducted according to the following guidelines:

(a) Systematic evaluations shall be implemented, in accordance with s. 20.315(15), to determine whether the correctional work programs are related to successful post-release adjustments.

(b) Operations and policies of work programs shall be reevaluated to determine if they are consistent with their primary objectives.

(3) The department shall seek the advice of private labor and management to:

(a) Assist its work programs in the development of statewide policies aimed at innovation and organizational change.

(b) Obtain technical and practical assistance, information, and guidance.

(c) Encourage the cooperation and involvement of the private sector.

*History.*—s. 8, ch. 76-273.

**945.065 Prison Industry Commission; creation; membership; meetings; compensation.—**

(1) There is created within the Department of Corrections the Prison Industry Commission composed of eight commissioners.

(a) Seven commissioners shall be appointed by the Governor and confirmed by the Senate. Two of such commissioners shall be representatives of Florida-based business enterprises; two shall be representatives of agricultural enterprises; two shall be knowledgeable in the field of vocational training.

(b) One commissioner shall be the Secretary of Corrections.

(2) All members of the Prison Industry Commission shall serve for 4-year terms, except that the Secretary of Corrections shall be a member of the Prison Industry Commission so long as he shall remain in that position. The terms of the initial members of the Prison Industry Commission shall be as

follows: two of the commissioners appointed by the Governor shall have terms of 2 years, two shall have terms of 3 years, and two shall have terms of 4 years. Commissioners may be reappointed. Vacancies shall be filled by appointment for the remainder of the term by the occupant of the office from which the appointment to the vacant seat was originally made.

(3) As soon as practicable after appointment, the members of the Prison Industry Commission shall hold an organizational meeting and elect a chairman and such other officers as the Prison Industry Commission deems necessary; however, the Secretary of Corrections shall not be elected to any office. Officers shall serve for 1 year and may be reelected.

(4) The Prison Industry Commission shall meet a minimum of four times each year and may also hold additional meetings at the call of the chairman, provided each member is given at least 3 days' notice of such meeting. A majority of the members shall constitute a quorum for the transaction of business. Action may be taken by a majority of the members present at a meeting where a quorum is present.

(5) Commissioners shall receive no compensation but shall receive travel expenses and per diem in accordance with s. 112.061.

*History.*—s. 4, ch. 76-273; s. 4, ch. 78-323; s. 83, ch. 79-3.

*Note.*—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

**945.066 Commission powers and duties.—**

(1) The Prison Industry Commission shall:

(a) Plan a correctional work program which provides suitable training and work experience to assist in the rehabilitation and training of persons confined to adult correctional institutions and which will not result in undue competition with private enterprise.

(b) Recommend the establishment and maintenance of industrial plants which can be operated primarily by inmates in a manner profitable to the state and beneficial in the training of inmates through the manufacture, processing, or producing of such items as are practical and adaptable for prison industry and are needed and used by state institutions and agencies; counties, municipalities, school districts, or other political subdivisions; any federal agency or institution; or any agency, institution, or political subdivision of another state.

(c) Review the operation of correctional work programs annually, to determine if undue competition with private enterprise exists, and recommend adjustments necessary to prevent undue competition.

(d) Determine which existing industries are operated on a self-sustaining basis and recommend policies which would assist in achieving a financially self-sustaining basis for all correctional work programs.

(e) Provide an annual report to the Governor, the secretary of the department, and the Legislature prior to October 1 of each year summarizing the status of the correctional work program. The report may also include any other relevant information and recommendations for changes in any other area of offender rehabilitation which would aid in the establishment or success of a correctional work program.

(2) The department is authorized to implement a



correctional work program, taking into consideration the recommendations of the Prison Industry Commission, including recommendations for providing for gain-time credits for those inmates who participate in the correctional work program. The department shall work with the Prison Industry Commission, shall be responsible for the administration of the correctional work program, and shall provide the Prison Industry Commission with staff assistance to carry out the provisions of this act.

*History.*—s. 5, ch. 76-273.

**945.081 Classification regulations.**—The Department of Corrections shall adopt regulations for the classification of all offenders according to age, sex, and such other factors as it may deem advisable and shall provide for the separation of prisoners by sex.

*History.*—s. 1, ch. 65-171; ss. 19, 35, ch. 69-106; s. 72, ch. 77-120; s. 84, ch. 79-3.

**945.09 Commitment of prisoners; classification; reception and classification program; transfer.**—

(1) All prisoners sentenced to the state penitentiary shall be committed by the court to the custody of the Department of Corrections.

(2) All prisoners committed to its custody shall be conveyed to such institution, facility, or program in the correctional system as the department shall direct, in accordance with its classification scheme. The department shall establish a program of graduated punishment with the following classification of inmates:

(a) *Class I.*—Incorrigible inmates for whom a total lockup will be required; facilities shall include, but not be limited to, a portion of the Florida State Prison;

(b) *Class II.*—An intermediate class between Class I and Class III for those inmates who have had difficulty in the system but who have not yet proven themselves to be incorrigible;

(c) *Class III.*—Inmates for whom there exists hope of rehabilitation.

(3) Each prisoner shall be processed through a reception and evaluation program in the area where the prisoner was committed or where he was incarcerated.

(4) Pursuant to such regulations as it may provide, the department is authorized to transfer prisoners from one institution to another institution in the correctional system and to classify and reclassify prisoners as circumstances may require.

*History.*—s. 9, ch. 57-213; s. 18, ch. 61-530; s. 1, ch. 67-38; ss. 19, 35, ch. 69-106; s. 27, ch. 74-112; s. 73, ch. 77-120; s. 1, ch. 77-174; s. 85, ch. 79-3.  
cf.—ss. 921.18, 921.20-921.22 Handling of persons receiving indeterminate sentences for noncapital felonies.

s. 944.16 Prisoners; how received.

**945.091 Extend the limits of confinement; restitution by employed inmates.**—

(1) The department is authorized to adopt regulations permitting the extension of the limits of the place of confinement of an inmate as to whom there is reasonable cause to believe he will honor his trust, by authorizing him, under prescribed conditions, and following investigation and approval by the secretary, who shall maintain a written record of such action, to leave the confines of that place unaccom-

panied by a custodial agent for a prescribed period of time to:

(a) Visit, for a specified period, a specifically designated place or places for the purpose of visiting a dying relative, attending the funeral of a relative, or arranging for employment or for a suitable residence for use when released, to otherwise aid in the rehabilitation of the inmate, or for another compelling reason consistent with the public interest, and return to the same or another institution or facility designated by the Department of Corrections; or

(b) Work at paid employment, participate in an education or a training program, or voluntarily serve a public or nonprofit agency in the community, while continuing as an inmate of the institution or facility in which he shall be confined, except during the hours of his employment, education, training, or service and traveling thereto and therefrom. Inmates shall participate in paid employment only during the last 18 months of their confinement, unless sooner requested by the Parole and Probation Commission.

(2) The department may adopt regulations as to the eligibility of inmates for this extension of confinement, the disbursement of any earnings of these inmates, or the entering into of agreements between itself and any city or county or federal agency for the housing of these inmates in a local place of confinement.

(3) The willful failure of an inmate to remain within the extended limits of his confinement or to return within the time prescribed to the place of confinement designated by the department shall be deemed as an escape from the custody of the department and shall be punishable as prescribed by law.

(4) The provisions of this section shall not be deemed to authorize any inmate who has been convicted of any murder, manslaughter, sexual battery, robbery, burglary, arson, aggravated assault, aggravated battery, kidnapping, escape, breaking and entering with intent to commit a felony, or aircraft piracy, or any attempt to commit the aforementioned crimes, to attend any classes at any state community college or any university which is a part of the State University System.

(5)(a) The department may require inmates working at paid employment as provided in paragraph (1)(b) to provide restitution to the aggrieved party for the damage or loss caused by the offense of the inmate, in an amount to be determined by the department.

(b) An offender who is required to provide restitution or reparation may petition the circuit court to amend the amount of restitution or reparation required or to revise the schedule of repayment established by the department or the Parole and Probation Commission.

*History.*—s. 1, ch. 67-59; s. 1, ch. 69-6; ss. 19, 35, ch. 69-106; s. 1, ch. 71-112; s. 9, ch. 76-273; s. 74, ch. 77-120; s. 4, ch. 77-150; s. 86, ch. 79-3.

**945.10 Investigations; information confidential.**—

(1) Except as provided below, information in a presentence investigation report made by the Department of Corrections shall be confidential and shall be available only to officers and employees of the court, the Legislature, the Parole and Probation

Commission, the Department of Health and Rehabilitative Services, the Department of Corrections, and public law enforcement agencies in the performance of a public duty or, with the written permission of the Department of Corrections, to parties establishing legitimate research purposes. The Department of Corrections shall promulgate rules and regulations stating what portions of its files, reports, or records are considered confidential and subject to restricted view. The Department of Corrections shall promulgate rules and regulations to prevent the disclosure of confidential information to unauthorized parties, except as provided above. However, nothing in this subsection shall alter other provisions of the law relating to the accessibility of inmate records.

(2) No inmate of any institution, facility, or program of the Department of Corrections shall have access to any information contained in the files of the department. The department shall restrict release of information to any person except members of the news media and those listed in subsection (1) when there is reasonable cause to believe that such person may divulge such information to the inmate.

(3) The Department of Corrections and the commission shall mutually cooperate for the proper performance of the respective functions of each agency.

**History.**—s. 10, ch. 57-213; s. 18, ch. 61-530; s. 1, ch. 65-453; ss. 19, 35, ch. 69-106; s. 24, ch. 74-112; s. 255, ch. 77-104; s. 87, ch. 79-3.  
cf.—ss. 921.18, 921.20-921.22 Handling of persons receiving indeterminate sentences for noncapital felonies.

#### 945.11 Use of prisoners in public works.—

(1) The department is authorized to enter into agreements with such political subdivisions of the state, as defined by s. 1.01(9), and with such agencies and institutions of the state as might, under supervision of employees of the department, use the services of inmates of correctional institutions and camps when it is determined by the department that such services will not be detrimental to the welfare of such inmates or the interests of the state in a program of rehabilitation.

(2) The budget of the department may be reimbursed from the budget of any political subdivision of the state, as defined by s. 1.01(9), state agency, or state institution for the services of inmates and personnel of the department in such amounts as may be determined by agreement between the department and the head of such political subdivision, agency, or institution.

**History.**—s. 11, ch. 57-213; s. 18, ch. 61-530; ss. 19, 35, ch. 69-106; ss. 1, 2, ch. 70-441; s. 10, ch. 76-273.

#### 945.12 Transfers for rehabilitative treatment.—

(1) The Department of Corrections is authorized to transfer drug dependents, as defined in chapter 397, and retarded, addicted, tuberculous, mentally ill, or other prisoners requiring specialized services to appropriate public or private facilities or programs for the purpose of providing such specialized service or treatment for as long as such service or treatment is needed, but for no longer than the remainder of the prisoner's sentence. When it is the intent of the department to transfer a mentally ill or retarded prisoner to the Department of Health and Rehabilitative Services, an involuntary commitment hearing shall be held according to the provisions of chapter 393 or chapter 394.

If the committing court finds, after a hearing, that the patient does not meet the criteria for involuntary admission, he shall be returned to the Department of Corrections. If, at the hearing, the court concludes that the patient meets the criteria for involuntary hospitalization under s. 393.11 or s. 394.467(1), the judge shall order the patient to be transferred to a state mental health treatment facility or a retardation facility for treatment. The patient shall be retained by the Department [of Health and Rehabilitative Services] for a period not to exceed the remainder of his sentence. If the administrator of the facility and the patient's physician find that the patient no longer meets the criteria for involuntary admission, he shall be returned to the Department of Corrections immediately. If the patient remains hospitalized when his sentence expires, then an involuntary commitment hearing shall immediately be held in accordance with the provisions of s. 393.11 or s. 394.467.

(2) The Department of Corrections is authorized to enter into agreements with the controlling authorities of such state institutions as shall have or be provided with appropriate facilities for the secure confinement and treatment of drug addicts, alcoholics, insane, and tuberculous persons. In any such agreement, the department shall provide for custodial personnel to maintain proper security of persons transferred from the correctional system to any other state institution. Such custodial personnel shall be employed and paid by the department and subject to such rules as shall be agreed upon jointly by it and the controlling authority entering into such agreement.

(3) The department shall reimburse the institution furnishing treatment at a figure agreed upon by it and the controlling authority of such institution.

(4) When, in the opinion of the superintendent of an institution to which a prisoner has been transferred, such prisoner has been cured, or will no longer benefit from treatment at that institution, other than an insane prisoner, the superintendent shall notify the department which shall, at the earliest practicable date thereafter, convey such prisoner to the appropriate classification center for reclassification.

(5) When the department plans to release a mentally ill or retarded offender, an involuntary commitment hearing shall be held, as soon as possible prior to release, according to the provisions of chapter 393 or chapter 394.

(6)(a) A prisoner who has been determined by the Department of Health and Rehabilitative Services and the Department of Corrections to be amenable to rehabilitative treatment for sexual deviation, and who has voluntarily agreed to participate in such rehabilitative treatment, may be transferred to the Department of Health and Rehabilitative Services provided that appropriate bed space is available.

(b) The provisions of this subsection shall stand repealed on July 1, 1981.

**History.**—s. 12, ch. 57-213; s. 18, ch. 61-530; ss. 19, 35, ch. 69-106; s. 1, ch. 74-122; s. 75, ch. 77-120; s. 7, ch. 77-312; s. 88, ch. 79-3; ss. 7, 10, ch. 79-341.

<sup>1</sup>Note.—Bracketed language inserted by the editors.

**945.13 Maintenance of industrial plants.—**

(1) The Department of Corrections may maintain such industrial plants at the various institutions under its supervision and control as it may determine can be conducted and maintained in a manner profitable to the state and for the benefit of the inmates of such institutions.

(2) The department shall cause the plants as far as practicable to be operated by the inmates of such institutions under such rules and regulations as it may prescribe.

**History.**—s. 1, ch. 10271, 1925; CGL 8663; s. 6, ch. 57-314; ss. 19, 35, ch. 69-106; s. 76, ch. 77-120; s. 89, ch. 79-3.

**Note.**—Former s. 959.01.

**945.14 Sale of goods made by prisoners prohibited.—**

(1) No goods, wares, or merchandise manufactured or mined in whole or in part by prisoners (except prisoners on parole or probation) shall be sold or offered for sale in this state by any person, or by any federal authority, state, or political subdivision thereof; provided, however that nothing in this section and s. 945.15 shall be construed to forbid the sale, exchange, or disposition of such goods within the limitations set forth in s. 945.16(1).

(2) When in the planning of the rehabilitation program of the Department of Corrections through its recreational facilities, plans are made for prisoners to engage in hobbies and hobbycrafts after their normal working hours and when they are not required by the superintendent or warden of a state prison or correctional institution to be on their assigned duties, they may make items of a hobby or hobbycraft nature which may be disposed of by the prisoner through the institutional canteen or commissary to persons visiting the institution.

**History.**—ss. 1, 2, ch. 19277, 1939; CGL 1940 Supp. 8135(61); s. 24, ch. 57-1; s. 1, ch. 61-180; s. 1, ch. 63-176; ss. 19, 35, ch. 69-106; s. 77, ch. 77-120; s. 90, ch. 79-3.

**Note.**—Former s. 959.02.

**945.15 Penalty for selling goods made by prisoners.**—Every person violating the provisions of s. 945.14 shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—ss. 1, 2, ch. 19277, 1939; CGL 1940 Supp. 8135(61); s. 1177, ch. 71-136.

**Note.**—Former s. 959.03.

**945.16 Use of goods and services produced in correctional work programs.—**

(1) All services or items manufactured, processed, grown, or produced by the department in its present programs or in future programs and not required for use therein may be furnished or sold to all state agencies, departments, and institutions; political subdivisions of the state; other states; or agencies of the federal government within the state.

(2) No similar article of comparable price and quality found necessary for use by any state agency may be purchased from any other source when the Department of Corrections shall certify that the same is available and can be furnished by the department. The purchasing authority of any such state agency shall have the power to make reasonable determinations of need, price, and quality with reference to articles available for sale by such correction-

al work programs operated by the department. In the event of a dispute between the department and any purchasing authority, based upon price or quality, the matter shall be referred to the Executive Office of the Governor, whose decision shall be final.

**History.**—s. 13, ch. 57-213; s. 18, ch. 61-530; s. 2, ch. 63-176; ss. 19, 35, ch. 69-106; s. 1, ch. 71-109; s. 11, ch. 76-273; s. 1, ch. 77-174; s. 91, ch. 79-3; s. 147, ch. 79-190.

**945.161 Sale of "Florida" tags to Jaycees.—**

The Department of Corrections is authorized to sell to the Jaycees, at a price to be determined by the department, "FLORIDA" tags manufactured by the tag plant at the state prison for the purpose of advertising the state.

**History.**—s. 1, ch. 59-332; ss. 19, 35, ch. 69-106; s. 78, ch. 77-120; s. 92, ch. 79-3; s. 193, ch. 79-164.

**945.17 Creation of Correctional Work Program Trust Fund.**—There is hereby created a Department of Corrections Correctional Work Program Trust Fund, available for the purpose of financing the operation of correctional work programs authorized and required by s. 945.06. This account shall be a separate fund in the State Treasury and shall be the depository of all funds used for this purpose by all institutions under the supervision and control of the department.

**History.**—s. 1, ch. 57-314; s. 18, ch. 61-530; ss. 19, 35, ch. 69-106; ss. 1, 2, ch. 70-441; s. 12, ch. 76-273; s. 93, ch. 79-3.

**945.18 Sources of fund.**—Should any general service operation of an institution be transferred to the correctional work program operation by the department, all assets and liabilities of such operation shall become a part of the Correctional Work Program Trust Fund. All income, receipts, earnings, and profits from industrial enterprises shall hereafter be credited to the Correctional Work Program Trust Fund, to be used for the purposes herein set forth; however, if the earned surplus in the fund at the end of any fiscal year exceeds \$5,000,000, one-half of such amount as is determined by the Auditor General to be in excess of this amount shall be deposited in the General Revenue Fund, and the other half shall be utilized by the department for the expansion and improvement of the correctional work program.

**History.**—s. 2, ch. 57-314; s. 1, ch. 61-384; s. 18, ch. 61-530; s. 3, ch. 63-176; s. 8, ch. 69-82; s. 13, ch. 76-273; s. 1, ch. 77-174; s. 1, ch. 77-317.

**945.19 Use of fund.**—The funds shall be used for the purposes of financing the operation of the correctional work programs herein set forth, and all costs of operation of correctional work programs shall be paid from this fund, including compensation of all personnel whose time or proportion of time is devoted to such work program operations. The department shall establish budgeting and cost accounting procedures to provide comparative analysis of each work program unit. The department shall prepare and issue annual consolidated and individual institution financial statements, including, but not limited to, balance sheets and operating statements for the correctional work programs. Any withdrawals from the Correctional Work Program Trust Fund which do not relate to the operation of the correctional work program shall be identified separately in the operating statements. The Department of Cor-



rections shall have the authority to use moneys in the Correctional Work Program Trust Fund to enter into lease-purchase agreements for the lease of fixtures and equipment over periods of time exceeding the current fiscal year, except that such agreements are subject to annual legislative appropriations. The department shall have the authority to construct buildings or make capital improvements for the operation of said work programs.

**History.**—s. 3, ch. 57-314; ss. 19, 35, ch. 69-106; s. 14, ch. 76-273; s. 1, ch. 77-174; s. 94, ch. 79-3.

**945.20 Disbursements from fund.**—The funds shall be deposited in the State Treasury and paid out only on warrants drawn by the State Comptroller, duly approved by the Department of Corrections. The department shall maintain all necessary records and accounts relative to such funds.

**History.**—s. 4, ch. 57-314; s. 18, ch. 61-530; ss. 19, 35, ch. 69-106; s. 79, ch. 77-120; s. 95, ch. 79-3.

**945.21 Regulations of the department.**—

(1) The department is authorized to adopt and promulgate regulations governing the administration of the correctional system and the operation of the department. In addition to specific subjects otherwise provided for herein, regulations of the department may relate to:

- (a) Conduct to be observed by prisoners.
- (b) Punishment of prisoners.
- (c) Gain-time for good conduct of, release payments to, and release transportation of, inmates.
- (d) Uniforms for inmates and custodial personnel.
- (e) Rules of conduct of custodial and other personnel.
- (f) Classification of personnel and duties assigned thereto.
- (g) Credits for confinement prior to commitment to the Department of Corrections.
- (h) Payments to prisoners for work performed. Such payments, if any, shall include restrictions on the use of earnings, including payments for support of dependents and release reserves. The regulations shall provide that no payment shall be made to any prisoner who fails to perform the work assigned satisfactorily.
- (i) Visiting hours and privileges.
- (j) Mail to and from inmates.
- (k) The operation of canteens and the participation in canteen funds.
- (l) The feeding of prisoners, including diet and menus, and the furnishing of health and comfort items to indigent prisoners.
- (m) Such other regulations as in the opinion of the department may be necessary for the efficient operation and management of the correctional system.

(2) Regulations of the department shall be adopted and filed with the Department of State as provided in chapter 120.

**History.**—s. 14, ch. 57-213; s. 18, ch. 61-530; ss. 10, 19, 35, ch. 69-106; s. 17, ch. 76-273; s. 80, ch. 77-120; s. 96, ch. 79-3.

**945.215 Inmate Welfare and Employee Benefit Trust Funds.**—

(1)(a) All moneys now held in any auxiliary, canteen, welfare, donated, or similar fund in any state

institution under the jurisdiction of the Department of Corrections shall be deposited in the Inmate Welfare Trust Fund of the department, which fund is created in the State Treasury, or in a place which the department shall designate. The money in this fund is hereby appropriated for the benefit, education, and general welfare of inmates of any state institution under the jurisdiction of the department, including but not limited to the establishment of, maintenance of, employment of personnel for, and the purchase of items for resale at canteens or vending machines maintained at state institutions and for the establishment of, maintenance of, employment of personnel for, and necessary expenses in connection with the operation of hobby shops, recreational facilities, or other like facilities or programs at the institutions under the jurisdiction of the department.

(b) There shall be deposited in the Inmate Welfare Trust Fund all net proceeds from the operation of canteens, vending machines, hobby shops, and other such facilities and any moneys which may be assigned to the department by inmates or others for deposit in said fund. The moneys of said fund shall constitute a trust held by the department for the benefit and welfare of the inmates of the institutions under the jurisdiction of the department.

(c) Any contraband found upon, or in the possession of, any inmate in any institution under the jurisdiction of the department shall be confiscated and liquidated, and the proceeds thereof shall be deposited in the Inmate Welfare Trust Fund of the department.

(d) The secretary of the department or his designee may invest in the manner authorized by law for fiduciaries any money in the Inmate Welfare Trust Fund of the department that in his opinion is not necessary for immediate use, and the interest earned and other increments derived from such investments made pursuant to this section shall be deposited in the Inmate Welfare Trust Fund of the department.

(2) The department may establish an Employee Benefit Trust Fund from the proceeds of vending machines or other such services not intended for use by inmates. Such fund shall be maintained and audited separately and apart from the Inmate Welfare Trust Fund.

**History.**—s. 1, ch. 79-78.

**945.25 Records.**—

(1) It shall be the duty of the Department of Corrections to obtain and place in its permanent records information as complete as may be practicably available on every person who may become subject to parole. Such information shall be obtained as soon as possible after imposition of sentence and shall, in the discretion of the department, include, among other things:

- (a) A copy of the indictment or information and a complete statement of the facts of the crime for which such person has been sentenced.
- (b) The court in which the person was sentenced.
- (c) The terms of the sentence.
- (d) The name of the presiding judge, the prosecuting officers, the investigating officers, and the attorneys for the person convicted.

(e) A copy of all probation reports which may have been made.

(f) Any social, physical, mental, psychiatric, or criminal record of such person.

(2) The department, in its discretion, shall also obtain and place in its permanent records such information on every person who may be placed on probation, and on every person who may become subject to pardon and commutation of sentence.

(3) It shall be the duty of the court and its prosecuting officials to furnish to the department upon its request such information and also to furnish such copies of such minutes and other records as may be in their possession or under their control.

(4) The department may make such rules as to the privacy or privilege of such information and its use by others than the department or the Parole and Probation Commission and its staff as may be deemed expedient in the performance of their duties.

(5) Following the initial hearing provided for in s. 947.172(1), the commission shall prepare and the department shall include in the official record a copy of the seriousness-of-offense and favorable-parole-outcome scores and shall include a listing of the specific factors and information used in establishing a presumptive parole release date for the inmate.

**History.**—s. 11, ch. 20519, 1941; ss. 19, 35, ch. 69-106; ss. 81, 87, ch. 77-120; s. 20, ch. 78-417; s. 97, ch. 79-3.

**Note.**—Former s. 947.14(1), (2), (4), and (6).

#### **945.26 Department powers and duties relating to parolees and probationers.—**

(1) The Department of Corrections shall:

(a) Investigate all cases referred to it by the circuit court and make its findings and report thereon in writing to such court with its recommendation.

(b) Cause to be delivered to each person placed on probation under its supervision a certified copy of the terms of such probation and any change or modification thereof, and cause said person to be instructed regarding the same.

(c) Keep informed concerning the conduct, habits, associates, employment, recreations, and whereabouts of such probationer, by visits, requiring reports and in other ways.

(d) Make such reports in writing or otherwise as the court may reasonably require.

(e) Use all practicable and proper methods to aid and encourage persons on probation and to bring about improvement in their conduct and condition.

(f) Keep records on each probationer referred to it.

(g) Cooperate with circuit courts exercising criminal jurisdiction by supervising such probationers and prisoners upon whom the pronouncing of sentence has been deferred and making such reports to said courts as directed thereby.

(h) Supervise all persons placed on parole.

(i) Aid parolees and probationers in securing employment.

(2) The department is authorized to enter into cooperative agreements with the federal government or any department or agency thereof, with any county or municipality in this state or any department or agency thereof, or with any nonprofit charitable corporation or foundation concerned with the rehabilitation of persons who are probationers or

parolees or who are under presentence investigation, for the performance by the department of services relating to the evaluation and rehabilitation of such persons. Any such agreement shall provide for payment to the department of the actual cost of rendering the services contracted for.

**History.**—s. 21, ch. 20519, 1941; s. 1, ch. 65-453; s. 4, ch. 75-301; s. 82, ch. 77-120; s. 98, ch. 79-3.

**Note.**—Former s. 948.02.

cf.—ss. 949.07, 949.08 Compacts with other states.

#### **945.27 Proceedings by department.—**

(1) Whenever it becomes necessary for the welfare and convenience of any of the institutions now under, or which may hereafter be placed under, the supervision and control of the Department of Corrections to acquire private property for the use of any of said institutions and the same cannot be acquired by agreement satisfactory to the said department and the parties interested in, or the owners of, said private property, the department is hereby empowered and authorized to exercise the right of eminent domain and to proceed to condemn the said property in the same manner as provided by law for the condemnation of property.

(2) Any suit or actions brought by the said department to condemn property as provided in this section shall be brought in the name of the Department of Corrections, and it shall be the duty of the Department of Legal Affairs to conduct the proceedings for, and to act as counsel for, the said department.

**History.**—s. 83, ch. 77-120; s. 99, ch. 79-3.

#### **945.30 Payment for cost of supervision and rehabilitation.—**

(1) Any person under probation or parole supervision, except a person on probation or parole within or without the state under an interstate compact adopted pursuant to chapter 949, shall be required to contribute no less than \$10 or more than \$50 per month as decided by the sentencing court, to a court-approved public or private entity providing him with supervision and rehabilitation. Any failure to pay such contribution shall constitute grounds for the revocation of probation by the court or the revocation of parole by the Parole and Probation Commission. The Department of Corrections may exempt a person from the payment of all or any part of the foregoing contribution if it finds any of the following factors to exist:

(a) The offender has diligently attempted, but been unable, to obtain employment which provides him sufficient income to make such payments.

(b) The offender is a student in a school, college, university, or course of vocational or technical training designed to fit the student for gainful employment. Certification of such student status shall be supplied to the Secretary of Corrections by the educational institution in which the offender is enrolled.

(c) The offender has an employment handicap, as determined by a physical, psychological, or psychiatric examination acceptable to, or ordered by, the secretary.

(d) The offender's age prevents him from obtaining employment.

(e) The offender is responsible for the support of dependents, and the payment of such contribution

constitutes an undue hardship on the offender.

(f) There are other extenuating circumstances, as determined by the secretary.

(2) In addition to the contribution required under subsection (1), the department shall provide a maximum payment of \$10 per month for each probationer who is contributing \$10 per month to the court-approved public or private entity providing him with supervision or rehabilitation. The department shall make such payment to the court-approved public or private entity providing supervision to the offender under this section. Such payment shall be implemented through a contract to be entered into by the Secretary of Corrections and the public or private entity. Terms of the contract shall

state, but not be limited to, the extent of services to be rendered by the public or private entity providing supervision or rehabilitation. In addition, the public or private entity shall supply the department with a monthly report documenting the acceptance of each offender placed under its supervision by the court, documenting the payment of the required contribution by each offender under supervision or rehabilitation, and notifying the department of all offenders for whom supervision or rehabilitation shall be terminated. Supervisory records of the public or private entity shall be open to inspection upon the request of the department or its agents.

**History.**—s. 18, ch. 74-112; s. 2, ch. 76-238; s. 1, ch. 77-321; s. 1, ch. 77-428; s. 1, ch. 78-368; s. 100, ch. 79-3.



## CHAPTER 947

## PAROLE AND PROBATION COMMISSION

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**947.001 Short title.**—This chapter shall be known and may be cited as the "Objective Parole Guidelines Act of 1978."

*History.*—s. 2, ch. 78-417.

**947.002 Intent.**—

(1) The present system lacks objective criteria for paroling and, thus, is subject to allegations of arbitrary and capricious release and, therefore, potential abuses. It is the intent of this act to establish an objective means for determining and establishing parole dates for inmates.

(2) Objective parole criteria will be designed to

give primary weight to the seriousness of the offender's present criminal offense and his past criminal record. In considering the risk of recidivism, practice has shown that the best predictor is prior record.

(3) The functional reorganization of the commission shall begin on July 1, 1978. However, full implementation of objective parole guidelines shall be delayed until January 1, 1979, to provide sufficient time for integration of the full intent of this act.

(4) The chairman shall be the agency head. While the commission is responsible for making decisions on the granting and revoking of parole, the chairman shall establish, execute, and be held accountable for all administrative policy decisions. The routine administrative decisions are the full responsibility of the chairman.

(5) Hearing examiner panels are assigned on the basis of caseload needs as determined by the chairman.

*History.*—s. 1, ch. 78-417.

**947.005 Definitions.**—As used in this chapter, unless the context clearly indicates otherwise:

(1) "Commission" means the Parole and Probation Commission.

(2) "Department" means the Department of Corrections.

(3) "Secretary" means the Secretary of Corrections.

(4) "Hearing examiner panel" means a panel consisting of two hearing examiners.

(5) "Presumptive parole release date" means the tentative parole release date as determined by objective parole guidelines.

(6) "Effective parole release date" means the actual parole release date as determined by the presumptive parole release date, satisfactory institutional conduct, and an acceptable parole plan.

*History.*—s. 3, ch. 78-417; s. 101, ch. 79-3.

**947.01 Creation of Parole and Probation Commission; number and qualifications of its members.**—A Parole and Probation Commission is created to consist of eight citizens who are residents of the state. The members of the commission shall include:

(1) Seven members who are qualified by their knowledge of penology and allied social sciences to discharge the duties and perform the work of the commission efficiently; and

(2) One member who shall be the Secretary of Corrections. The secretary shall participate in the policymaking decisions of the commission, including the development and review of objective parole guidelines, but shall not participate in decisions on the granting and revocation of parole. The secretary shall be ineligible for appointment as chairman, shall receive no compensation for his services on the commission, and shall not be required to attend any minimum number of meetings.

*History.*—s. 1, ch. 20519, 1941; s. 1, ch. 63-83; s. 1, ch. 65-453; s. 30, ch. 74-112; s. 84, ch. 77-120; s. 1, ch. 77-174; s. 4, ch. 78-417; s. 102, ch. 79-3.

**947.02 Commission; appointment.—**

(1) The members of the commission shall be appointed in the following manner: Whenever there is an appointment of a member of the commission to be made or a vacancy to be filled, the Governor and Cabinet shall appoint a Parole and Probation Commission Qualifications Committee, which shall consist of five persons having special knowledge of penology, the administration of criminal justice, and offender rehabilitation programs, and shall designate one member thereof as chairman. The Parole and Probation Commission Qualifications Committee shall provide for statewide advertisement of the position and the receiving of applications for the position as member of the commission and shall devise a plan for the determination, by investigation and comprehensive evaluation, of the qualification of applicants including, but not limited to, the character, habits, and philosophy of the applicants. From such investigations and evaluations, said qualifications committee shall compile a list of persons eligible for said position of member of the commission. Eligibility for appointment to membership on the commission shall expire at the end of 2 years. The qualifications committee shall recommend three such eligibles to the Governor and Cabinet who shall make the appointment to the position of member of the commission from those three eligible persons. The appointments of members of the commission shall be certified to the Senate by the Governor and Cabinet for confirmation.

(2) Whenever a vacancy occurs in the membership of the commission by reason of the expiration of a member's term, the Parole and Probation Commission Qualifications Committee shall evaluate the incumbent member and shall recommend to the Governor and Cabinet one of the following:

- (a) That the incumbent member be reappointed without examination of new applicants;
- (b) That the incumbent be considered with other eligible persons in accordance with the selection process; or
- (c) That upon finding reasonable and sufficient cause the incumbent not be reappointed to the commission.

**History.**—s. 1, ch. 20519, 1941; s. 2, ch. 65-453; s. 33, ch. 69-106; s. 31, ch. 74-112; s. 1, ch. 75-207; s. 5, ch. 78-417.

**947.03 Commission; tenure and removal.—**

(1) Members of the commission shall be appointed for terms of 6 years and until their successors are appointed and qualified.

(2) Vacancies in the membership of the commission shall be filled by the Governor and Cabinet for the unexpired term in the manner provided for in s. 947.02.

(3) Each member shall devote his whole time and capacity to the duties of his office, and shall be subject to removal by the Governor and Cabinet for the same reasons that a state officer may be removed as provided in s. 7, Art. IV of the State Constitution. All such removals shall be submitted to the Senate for its consent as provided by said section of the Constitution.

**History.**—s. 1, ch. 20519, 1941; s. 3, ch. 65-453; s. 6, ch. 69-216; s. 33, ch. 69-106; s. 1, ch. 79-42.

**947.04 Organization of commission; officers; offices.—**

(1) On July 1 of each even-numbered year, the members of the commission shall meet and select from their number a chairman who shall serve for a period of 2 years and until a successor is elected and qualified. The chairman shall not succeed himself. The chairman, as chief administrative officer of the commission, shall have the authority and responsibility to plan, direct, coordinate, and execute the powers, duties, and responsibilities assigned to the commission, except those of granting and revoking parole as provided for in this chapter. The chairman is authorized to provide or disseminate information relative to parole by means of documents, seminars, programs, or otherwise as he shall determine necessary. The chairman shall establish, execute, and be held accountable for all administrative policy decisions. However, parole granting and revocation decisions shall be made in accordance with the provisions of ss. 947.172, 947.174, and 947.23. The commissioners shall be directly accountable to the chairman in the execution of their duties as commissioners, and the chairman shall have authority to recommend to the Governor suspension of a commissioner who fails to perform the duties as provided for by statute.

(2) Notwithstanding the provisions of s. 20.05(7), the chairman shall appoint administrators with responsibility for the management of commission activities in the following functional areas:

- (a) Parole grant and work release.
- (b) Parole revocation.
- (c) Clemency.
- (d) Administrative services.

(3) The commissioners shall select from their number a secretary who shall serve for a period of 1 year or until a successor is elected and qualified.

(4) The commission may establish and maintain offices in centrally and conveniently located places in Florida. Headquarters shall be located in Tallahassee for the transaction of business. The commission shall keep its official records and papers at the headquarters, which it shall furnish and equip.

(5) Acts and decisions of the chairman may be modified as provided in s. 947.06.

**History.**—s. 2, ch. 20519, 1941; s. 6, ch. 78-417; s. 2, ch. 79-42.

**947.05 Seal.**—The commission shall adopt an official seal of which the courts shall take judicial notice.

**History.**—s. 3, ch. 20519, 1941.

**947.06 Meeting; when commission may act.—**

The commission shall meet at regularly scheduled intervals and from time to time as may otherwise be determined by the chairman. The making of recommendations to the Governor and Cabinet in matters of executive clemency and modifications of acts and decisions of the chairman as provided in s. 947.04(1) shall be by a majority vote of the commission. No prisoner shall be placed on parole except as provided in ss. 947.172 and 947.174 by a panel of no fewer than two commissioners appointed by the chairman. All matters relating to the granting, denying, or revoking of parole shall be decided in a meeting at which the public shall have the right to be present. Persons

not members or employees of the commission may participate in deliberations concerning the granting and revoking of paroles only upon the prior written approval of the chairman of the commission.

**History.**—s. 4, ch. 20519, 1941; s. 1, ch. 23757, 1947; s. 7, ch. 78-417; s. 3, ch. 79-42.

**947.07 Rules and regulations.**—The commission shall have power to make such rules and regulations as it deems best for its governance, including among other things rules of practice and procedure and rules prescribing qualifications to be possessed by its employees.

**History.**—s. 27, ch. 20519, 1941; s. 1, ch. 23757, 1947.

**947.071 Rulemaking procedures.**—It is the intent of the Legislature that all rulemaking procedures by the commission shall be conducted pursuant to the Florida Administrative Procedure Act, chapter 120.

**History.**—s. 34, ch. 74-112.

**947.09 Competitive examinations for certain full-time employees.**—

(1) The commission shall from time to time as may be necessary prepare and conduct, or cause to be prepared and conducted, free competitive examinations for all full-time positions requiring special knowledge in penology, social welfare, or correctional supervision which the commission may have the power to fill. Such examinations may be written or oral. Written portions of such examinations shall be conducted so that the identity of the examinees shall not be known to the examiners. Only citizens of Florida who have resided in and have been bona fide residents of the state for 2 years or more next prior to the date thereof shall be eligible to take such examinations and for employment by the commission.

(2) From the examinations so conducted, the commission shall compile lists of eligibles from which it shall make its selections to the positions for which said examinations shall have been held. Such lists shall not remain in force for a longer period than 2 years, and at the expiration of said period, or upon the exhaustion of any list, a new list shall be compiled by the commission before another selection may be made to a position for which the expired or exhausted list was applicable, except that in an emergency the commission may provisionally employ a person for a position for which no eligible list is available. No such provisional employment shall be for a longer period than 3 months, and successive provisional employment shall not be made by the commission.

(3) Persons taking such examinations shall rank upon such eligible lists in the order of their relative fitness as determined by such examination. To fill any such full-time position, and any vacancy occurring therein, the commission shall employ one person from the three persons standing highest on the applicable eligible list.

**History.**—s. 6, ch. 20519, 1941; s. 2, ch. 21775, 1943.

**947.095 Hearing examiner panels; organization and authority.**—Hearing examiner panels shall consist of two hearing examiners assigned on

the basis of caseload needs, as determined by the chairman.

(1) The hearing examiner panels shall have the authority to conduct hearings and make recommendations with respect to presumptive and effective parole release dates.

(2) Hearing examiner panels shall function in panels of two members each, and the concurrence of the two examiners shall be required for their recommendation as provided for in s. 947.172. In the event that such concurrence is not reached, the administrator for parole grant and work-release or his designee shall make the final decision on the recommendation to the commission.

(3) The implementation of hearing examiner panels shall take place by January 1, 1980, or earlier as resources are provided to the commission.

**History.**—ss. 8, 25, ch. 78-417; s. 4, ch. 79-42.

**947.10 Business and political activity upon part of members and full-time employees of commission.**—No member of the commission and no full-time employee thereof shall, during their service upon or under the commission, engage in any other business or profession nor hold any other public office; nor shall they serve as the representative of any political party, or any executive committee or other governing body thereof, or as an executive officer or employee of any political committee, organization, or association, or be engaged on the behalf of any candidate for public office in the solicitation of votes, or otherwise. However, this shall not be deemed to exclude the appointment of the Secretary of Corrections to the commission under the terms and conditions set forth in this chapter.

**History.**—s. 7, ch. 20519, 1941; s. 32, ch. 74-112; s. 85, ch. 77-120; s. 103, ch. 79-3.

**947.11 Legal adviser.**—The Department of Legal Affairs shall be the legal adviser of the commission.

**History.**—s. 8, ch. 20519, 1941; ss. 11, 35, ch. 69-106.

**947.12 Members, employees, expenses.**—

(1) The members of the commission and its employees shall be reimbursed for traveling expenses as provided in s. 112.061. All bills for expenses shall be properly receipted, audited, and approved and forwarded to the Comptroller, and shall be paid in a manner and form as the bills for the expenses of the several departments of the state government are paid. All expenses, including salaries and other compensation, shall be paid from the General Revenue Fund and within the appropriation as fixed therefor by the Legislature. Such expenses shall be paid by the State Treasurer upon proper warrants issued by the Comptroller of the state, drawn upon vouchers and requisitions approved by the commission, signed by the Comptroller and countersigned by the Governor.

(2) The members of the examining board created in s. 947.02 shall each be paid \$10 per diem for each full day spent in performing the duties of said board, and in addition thereto said members shall be paid



by the state their necessary traveling expenses when traveling in the performance of their duties.

**History.**—s. 9, ch. 20519, 1941; s. 1, ch. 22864, 1945; s. 1, ch. 24033, 1947; s. 8, ch. 57-401; s. 19, ch. 63-400.

**947.13 Powers and duties of commission.—**

(1) The commission shall have the powers and perform the duties of:

(a) Determining what persons shall be placed on parole, subject to the provisions of ss. 947.172 and 947.174.

(b) Fixing the time and conditions of parole, as provided in this chapter.

(c) Determining violations of parole and what action shall be taken with reference thereto.

(d) Making such investigations as may be necessary.

(e) Reporting to the Board of Pardons the facts, circumstances, criminal records, and social, physical, mental, and psychiatric conditions and histories of persons under consideration by the Board of Pardons for pardon, commutation of sentence, or remission of fine, penalty, or forfeiture.

(2)(a) The commission shall immediately examine records of the department under s. 945.25, and any other records which it obtains, and may make such other investigations as may be necessary.

(b) The Department of Health and Rehabilitative Services and all other state, county, and city agencies, sheriffs and their deputies, and all peace officers shall cooperate with the commission and the department and shall aid and assist them in the performance of their duties.

**History.**—s. 10, ch. 20519, 1941; s. 1, ch. 72-256; ss. 86, 87, ch. 77-120; s. 476, ch. 77-147; s. 9, ch. 78-417; s. 104, ch. 79-3.

**947.135 Mutual participation program.—**

(1) **SHORT TITLE.**—This act shall be known and may be cited as the "Mutual Participation Program Act of 1976."

(2) **LEGISLATIVE INTENT.**—It is the intent of the Legislature to:

(a) Involve the department and the commission in program planning with the offender while he is incarcerated, leading to the establishment of certain criteria affecting the grant of parole and release from parole.

(b) Involve the offender in developing his individual rehabilitation program for the period of incarceration and parole with the department and the commission.

(c) Require establishment of criteria to be used in determining which offenders are eligible for this program;

however, no offender shall be eligible to participate in this program who was sentenced as an habitual felony offender pursuant to s. 775.084 or who was convicted of a capital or life felony as provided by s. 775.081, s. 775.082, or s. 775.083. Offenders meeting these criteria may be offered the opportunity to participate in the program which will include a parole date.

(3) **MUTUAL PARTICIPATION PROGRAM: DEVELOPMENT: CRITERIA; DEPARTMENT AND COMMISSION RULES.—**

(a) The department and the commission shall

jointly develop a mutual participation program which sets forth for each eligible offender the terms of his institutional confinement, a parole date, and terms of parole supervision and release, provided each offender meets the criteria set forth in this act and any additional criteria established by the department and the commission.

1. The department and the commission, as a portion of the mutual participation program, shall require that each eligible offender satisfactorily participate in a correctional work program pursuant to s. 945.06, and only through satisfactory completion of this phase of the program shall an offender become eligible to progress to a less restrictive program.

2. Additional criteria shall be established and required by the commission and the department for participation in the program, including, but not limited to, vocational counseling and work release programs; however, criteria for satisfactory participation in the program shall not include academic classroom instruction at the college level.

3. The commission shall establish a parole date for each eligible offender, based on the satisfactory completion of the program. In no case shall such date fall after the date which would have been established under s. 947.172.

(b) The commission shall promulgate rules on criteria used to establish parole dates, conditions precedent to the granting of parole, terms of parole, and release from parole. The department and the commission shall establish such criteria relating to parole supervision, which criteria shall include, but not be limited to, the requirements for participation in vocational or counseling programs available in the community, stipulations related to employment, and other criteria considered necessary for the successful reintegration of the offender into society.

(c) Periodic written reports of the offender's progress in the program shall be submitted to the department and the commission.

(4) The department and the commission shall submit to the Legislature an annual evaluation of the mutual participation program.

(5) The department and the commission shall promulgate rules required pursuant to subsection (4)(b) by September 1, 1976.

**History.**—ss. 1-6, ch. 76-274; s. 1, ch. 77-174; s. 10, ch. 78-417; s. 105, ch. 79-3; s. 13, ch. 79-42; s. 194, ch. 79-164.

**947.15 Reports.**—On or before January 1 of each year, the commission shall make a written report to the Governor and Cabinet of its activities together with a full and detailed financial statement, copies of which shall be sent to the Department of Legal Affairs and to such other officials and persons as the commission may deem advisable. One copy of said report shall become a part of the records of the commission.

**History.**—s. 28, ch. 20519, 1941; ss. 11, 33, 35, ch. 69-106.

**947.16 Eligibility for parole; powers and duties of commission.—**

(1) Every person who has been, or who may hereafter be, convicted of a felony or who has been convicted of one or more misdemeanors and whose sentence or cumulative sentences total 12 months or

more, who is confined in execution of the judgment of the court, and whose record during confinement is good, shall, unless otherwise provided by law, be eligible for consideration for parole. An inmate who has been sentenced for an indeterminate term or a term of 5 years or less shall have an initial interview conducted by a hearing examiner panel within 6 months after the initial date of confinement in execution of the judgment. An inmate who has been sentenced for a minimum term in excess of 5 years shall have an initial interview conducted by a hearing examiner panel within 1 year after the initial date of confinement in execution of the judgment. An inmate convicted of a capital crime shall be interviewed at the discretion of the commission. As used in this section, the term "confined" shall be deemed to include presence in any appropriate treatment facility, public or private, by virtue of transfer from the Department of Corrections under any applicable law.

(2) An initial hearing may be postponed for a period not to exceed 60 days. Such postponement shall be for good cause, and the reasons therefor shall be noted in writing and included in the official record. However, in no case shall such postponement result in a hearing being conducted any time later than 1 year after the initial date the inmate is confined in execution of the judgment of the court. Notwithstanding the provisions of this subsection, an initial interview may be deferred for an inmate who is out to court or transferred to the Department of Health and Rehabilitative Services for psychological or psychiatric treatment or observation. If an inmate is returned to the department within 1 year of the date of confinement in execution of the judgment, the provisions of subsection (1) shall apply. In all other cases an initial interview shall be conducted within 3 months of the date the inmate returned to the department.

(3) Persons who have become eligible for parole and who may, according to the objective parole guidelines of the commission, be granted parole shall be placed on parole in accordance with the provisions of this law; except that, in any case of a person convicted of murder, robbery, aggravated assault, aggravated battery, kidnapping, sexual battery or attempted sexual battery, incest or attempted incest, an unnatural and lascivious act or an attempted unnatural and lascivious act, lewd and lascivious behavior, assault or aggravated assault when a sexual act is completed or attempted, battery or aggravated battery when a sexual act is completed or attempted, arson, or any felony involving the use of a firearm or other deadly weapon or the use of intentional violence, at the time of sentencing the judge may enter an order retaining jurisdiction over the offender for review of a commission release order. This jurisdiction of the trial court judge is limited to the first third of the maximum sentence imposed. When any person is convicted of two or more felonies and concurrent sentences are imposed, then the jurisdiction of the trial court judge as provided herein shall apply to the first third of the maximum sentence imposed for the highest felony charged and proven. When any person is convicted of two or more felonies and consecutive sentences are imposed, then the jurisdiction

of the trial court judge as provided herein shall apply to one-third of the total consecutive sentences imposed.

(a) In retaining jurisdiction for the purposes of this act, the trial court judge shall state the justification with individual particularity, and said justification shall be made a part of the court record.

(b) Gain-time as provided for in ss. 944.27, 944.271, and 944.29 shall accrue; except that an offender over whom the trial court has retained jurisdiction as provided herein shall not be released during the first one-third of his sentence by reason of gain-time.

(c) In such cases of retained jurisdiction, the commission, within the time requirements of s. '947.17(4), shall send notice of its release order to the original sentencing court and to the appropriate state attorney. Such notice shall stay the time requirements of s. '947.17(4).

(d) Within 10 days of receipt of the notice provided for in paragraph (c), the original sentencing court shall notify the commission as to whether or not it further desires to retain jurisdiction. If the original sentencing court does not so notify the commission within the 10-day period or the court notifies the commission that it does not desire to retain jurisdiction, then the commission may dispose of the matter as it sees fit.

(e) Upon receipt of notice of intent to retain jurisdiction from the original sentencing court, the commission shall, within 10 days, forward to the court its release order, findings of fact, parole hearing examiner's report and recommendation, and all supporting information upon which its release order was based.

(f) Within 30 days of receipt of the items listed in paragraph (e), the original sentencing court shall review the order, findings, and evidence, and, if the court finds the commission's order is not based on competent substantial evidence or that the parole is not in the best interest of the community or the inmate, the court may vacate the release order. The court shall notify the commission of its decision, and, if the release order is vacated, such notification shall contain the evidence relied on and the reasons for denial. A copy of such notice shall be sent to the inmate.

(g) The decision of the trial court judge to vacate any parole release order as provided in this act shall not be appealable.

(4) Within 45 days after any interview for parole, the inmate shall be advised of the presumptive parole release date. Subsequent to the establishment of the presumptive parole release date, the commission may, at its discretion, review the official record or conduct additional interviews with the inmate. However, the presumptive parole release date shall not be changed except for reasons of institutional conduct or the acquisition of new information not available at the time of the initial interview.

**History.**—s. 12, ch. 20519, 1941; s. 3, ch. 21775, 1943; ss. 1, 2, ch. 71-110; s. 2, ch. 74-122; s. 88, ch. 77-120; s. 1, ch. 78-318; s. 11, ch. 78-417; s. 106, ch. 79-3; s. 5, ch. 79-42; s. 195, ch. 79-164; s. 2, ch. 79-310; s. 8, ch. 79-341.

<sup>1</sup>Note.—Section 947.17 was repealed by s. 24, ch. 78-417.

#### **947.165 Objective parole guidelines.—**

(1) The commission shall develop and implement objective parole guidelines which shall be the criteria upon which parole decisions are made. Such guidelines shall be established by rule and promulgated pursuant to chapter 120 before January 1, 1979. The objective parole guidelines shall be developed according to an acceptable research method and shall be based on the seriousness of offense and the likelihood of favorable parole outcome. Factors used in arriving at the salient factor score and the severity of offense behavior category shall not be applied as aggravating circumstances.

(2) The commission shall review the objective parole guidelines before January 1, 1980, and make any revisions considered necessary by virtue of experience. Thereafter, such review and necessary revision shall be conducted no less than on an annual basis. The commission shall be responsible for notifying the department of the statistical information and automated data requirements necessary for program review and monitoring by the commission, and the department shall consider such a request on a priority basis in accordance with the provisions of s. 20.315(20).

**History.**—s. 12, ch. 78-417; s. 6, ch. 79-42; s. 3, ch. 79-310.

<sup>1</sup>Note.—Section 3, ch. 79-310, purported to create s. 947.165, effective January 1, 1979, but, in effect, constituted an amendment of subsection (1) of existing s. 947.165.

#### **947.172 Establishment of presumptive parole release date.—**

(1) The hearing examiner panel shall conduct an initial hearing in accordance with the provisions of s. 947.16(1). This hearing shall include introduction and explanation of the objective parole guidelines as they relate to presumptive and effective parole release dates and discussion relative to the inmate's institutional conduct record.

(2) Based on the objective parole guidelines and any other competent evidence relevant to aggravating and mitigating circumstances, the hearing examiner panel shall, within 10 days after the interview, recommend in writing to a panel of no fewer than two commissioners appointed by the chairman a presumptive parole release date for the inmate. The chairman shall assign cases to such panels on a random basis, without regard to the inmate or to the commissioners sitting on the panel. If the recommended presumptive parole release date falls outside the objective parole guidelines, the hearing examiner panel shall include a statement in writing as to the reasons for the decision, specifying individual particularities, with the recommendation, and the chairman shall sit on the panel in addition to the two or more commissioners. If a panel fails to reach a decision on a recommended presumptive parole release date, the chairman shall cast the deciding vote. Within 45 days from the date of the initial interview, the inmate shall be notified in writing of the decision as to the inmate's presumptive parole release date.

(3) A presumptive parole release date shall become binding on the commission when agreement on a presumptive parole release date is reached. Should the presumptive parole release date fall outside the objective parole guidelines, the reasons for this deci-

sion shall be stated in writing with individual particularities.

(4) On or before January 1, 1980, a presumptive parole release date developed pursuant to this section shall be established for each inmate in the custody of the department who will not be released from incarceration on or before January 1, 1980, by virtue of parole, accumulation of gain-time, or expiration of sentence. However, the presumptive parole release date need not be established on or before such date for:

(a) Those inmates sentenced to a minimum term of 5 years or less who were confined in execution of the judgment of the court on or after August 1, 1979. Presumptive parole release dates for these inmates shall be established pursuant to this section.

(b) Those inmates sentenced to a minimum term in excess of 5 years who were confined in execution of the judgment of the court on or after February 1, 1979. Presumptive parole release dates for these inmates shall be established pursuant to this section.

(c) The commission shall continue its current schedule of annual interviews until January 1, 1980, or until such time as the objective parole guidelines are implemented, whichever comes first.

**History.**—ss. 13, 21, ch. 78-417; s. 107, ch. 79-3; s. 7, ch. 79-42.

#### **947.173 Review of presumptive parole release date.—**

(1) An inmate may request review of his presumptive parole release date by the commission if the inmate shows cause in writing, with individual particularities, within 60 days after the date of the decision on the presumptive parole release date.

(2) A panel of no fewer than two commissioners appointed by the chairman shall review the inmate's request for review and shall notify the inmate in writing of its decision within 60 days after the date of receipt of the request by the commission. Such panel shall not include the commissioners who authorized the original presumptive parole release date, except when that date has been established by the full commission.

(3) The commission may affirm or modify the authorized presumptive parole release date. However, in the event of a decision to modify the presumptive parole release date, in no case shall this modified date be after the date established under the procedures of s. 947.172. It is the intent of this legislation that, once set, presumptive parole release dates be modified only for good cause in exceptional circumstances.

**History.**—s. 14, ch. 78-417; s. 8, ch. 79-42; s. 196, ch. 79-164.

#### **947.174 Subsequent hearings; establishment of effective parole release dates.—**

(1) For any inmate whose presumptive parole release date falls more than 2 years after the date of the initial hearing date, a hearing examiner panel shall schedule a hearing for review of the presumptive parole release date. Such hearing shall take place within 2 years after the initial hearing and every 2 years thereafter. Such hearings shall be limited to determining whether or not information has been gathered which might affect the presumptive parole release date. The provisions of this subsection shall not apply to an inmate serving a concurrent



sentence in another jurisdiction pursuant to s. 921.16(2).

(2) The commission, for good cause, may at any time request that a hearing examiner panel conduct a subsequent hearing according to the procedures outlined in this section. Such request shall specify in writing the reasons for such review.

(3) The department shall, within a reasonable amount of time, make available and bring to the attention of the commission such information as is deemed important to the review of the presumptive parole release date, including, but not limited to, current progress reports, psychological reports, and disciplinary reports.

(4) The department or a hearing examiner panel may recommend that an inmate be placed in a work-release program prior to the last 18 months of his confinement before the presumptive parole release date. If the commission does not deny the recommendation within 30 days of the receipt of the recommendation, the inmate may be placed in such a program, and the department shall advise the commission of the fact prior to such placement.

(5) For purposes of this section, the commission shall develop and make available to all inmates guidelines which shall:

(a) Define what shall constitute an unsatisfactory institutional record. In developing such guidelines, the commission shall consult with the department.

(b) Define what constitutes a satisfactory release plan.

(6) Provided that the inmate's institutional conduct has been satisfactory, the presumptive parole release date shall become the effective parole release date as follows:

(a) Sixty days prior to the presumptive parole release date, a hearing examiner panel shall conduct a final interview with the inmate in order to establish an effective parole release date. If it is determined that the inmate's institutional conduct has been unsatisfactory, a statement to this effect shall be made in writing with particularity and forwarded to a panel of no fewer than two commissioners appointed by the chairman. Within 14 days, the panel shall determine whether or not to authorize the effective parole release date, and the inmate shall be notified of the decision in writing within 30 days of the final interview.

(b) When an effective date of parole has been established, release on that date shall be conditioned upon the completion of a satisfactory plan for parole supervision. An effective date of parole may be delayed for up to 30 days without a hearing for development and approval of release plans.

*History.*—s. 15, ch. 78-417; s. 9, ch. 79-42; s. 4, ch. 79-310.

#### **947.175 Notice to local agencies.—**

(1) The Parole and Probation Commission shall, at least 10 days prior to the effective parole release date of an inmate, inform the appropriate local criminal justice agencies in the community in which the inmate is scheduled to be released.

(2) The department shall, at least 7 days prior to the anticipated date of release on work release of an inmate, inform the sheriff and the state attorney in the community in which the inmate is scheduled to

be released and in the community in which the inmate was convicted.

*History.*—s. 15, ch. 75-49; s. 1, ch. 77-303; s. 16, ch. 78-417; s. 108, ch. 79-3.

**947.18 Conditions of parole.**—No person shall be placed on parole merely as a reward for good conduct or efficient performance of duties assigned in prison. No person shall be placed on parole until and unless the commission shall find that there is reasonable probability that, if he is placed on parole, he will live and conduct himself as a respectable and law-abiding person and that his release will be compatible with his own welfare and the welfare of society. No person shall be placed on parole unless and until the commission is satisfied that he will be suitably employed in self-sustaining employment, or that he will not become a public charge. The commission shall determine the terms upon which such persons shall be granted parole. In addition to any other lawful condition of parole, the commission may make the payment of the debt due and owing to the state under s. 960.17 a condition of parole, subject to modification based on change of circumstances.

*History.*—s. 14, ch. 20519, 1941; s. 4, ch. 77-452.

#### **947.181 Victim restitution.—**

(1) The Parole and Probation Commission may require, as a condition of parole, reparation or restitution to the aggrieved party for the damage or loss caused by the offense for which the parolee was imprisoned. The maximum amount of reparation or restitution allowable may be determined by the court at the time of sentencing. The amount of such reparation or restitution shall be determined by the Parole and Probation Commission.

(2) If the parolee fails to make the reparation or restitution to the aggrieved party, as authorized in subsection (1), it shall be considered by the commission as a violation of parole as specified in s. 947.21 and may be cause for revocation of his parole.

*History.*—s. 3, ch. 77-150; s. 304, ch. 79-400.

#### **947.19 Terms of parole.—**

(1) The commission, upon authorizing an effective parole release date, shall specify in writing the terms and conditions of the parole, a certified copy of which shall be given to the parolee. The terms and conditions of parole shall be based on objective guidelines.

(2) A parolee may, within 30 days of receipt of the certified copy of the terms and conditions of parole, request that the commission modify the terms and conditions of parole, provided that the parolee specify in writing the reasons for requesting such modifications.

(3) A panel of no fewer than two commissioners appointed by the chairman shall consider requests for review of the terms and conditions of parole, render a written decision to continue or to modify the terms and conditions of parole, specifying the reasons therefor, and inform the parolee of the decision in writing within 30 days of the date of receipt of request for review. Such panel shall not include those commissioners who authorized the original conditions of parole.

(4) During any period of requested review of terms and conditions of parole, the parolee shall be

subject to the authorized terms and conditions of parole until such time according to the provisions of this section a decision is made to continue or modify the terms and conditions of parole.

**History.**—s. 15, ch. 20519, 1941; am. s. 7, ch. 22858, 1945; s. 17, ch. 78-417; s. 10, ch. 79-42.

**947.20 Rules of commission.**—The commission shall adopt general rules on the terms and conditions of parole and what shall constitute the violation thereof and may make special rules to govern particular cases. Such rules, both general and special, may include, among other things, a requirement that the parolee shall not leave the state or any definite area in Florida without the consent of the commission; that he shall contribute to the support of his dependents to the best of his ability; that he shall make reparation or restitution for his crime; that he shall not associate with persons engaged in criminal activity; and that he shall carry out the instructions of his parole supervisor and, in general, comport himself in accordance with the terms and conditions of his parole.

**History.**—s. 15, ch. 20519, 1941; s. 18, ch. 78-417.

**947.21 Violations of parole.**—

(1) A violation of the terms of parole may render the parolee liable to arrest and a return to prison to serve out the term for which he was sentenced.

(2) An offender whose parole is revoked may, at the discretion of the commission, be credited with any portion of the time he has satisfactorily served on parole.

**History.**—s. 15, ch. 20519, 1941; s. 22, ch. 74-112.

**947.22 Authority of certain officers to arrest parole violators with and without a warrant.**—

(1) If any member of the commission shall have reasonable grounds to believe that any parolee has violated the terms and conditions of his parole in a material respect, such member may issue a warrant for the arrest of such parolee. The warrant shall be returnable before a member of the commission or his authorized representative and shall command that the parolee be brought before him, at which time a determination may be made by the commission to admit him to bail conditioned for his appearance before the commission or, if he is not admitted to bail, commit him to jail pending a hearing before the commission as hereinafter provided. Any parole or probation supervisor, any officer authorized to serve criminal process, and any peace officer of this state shall be authorized to execute said warrant.

(2) Any parole or probation supervisor, when he has reasonable ground to believe that a parolee has violated the terms and conditions of his parole in a material respect, shall have the right to arrest without warrant said parolee and bring him forthwith before the commission, or some member thereof, and proceedings shall thereupon be had as provided herein when a warrant has been issued by a member of the commission.

**History.**—s. 16, ch. 20519, 1941; s. 1, ch. 71-111.

**947.23 Action of commission upon arrest of parolee.**—

(1) As soon as practicable after the arrest of a person charged with violation of the terms and conditions of his parole, the parolee shall be afforded a prompt preliminary hearing, conducted by a member of the commission or its duly authorized representative, at or near the place of violation or arrest to determine if there is probable cause or reasonable grounds to believe that the parolee has committed a violation of the terms or conditions of his parole. The parolee may knowingly execute a waiver of this hearing, up until the time of such hearing, provided that the consequences of such action have been fully explained. If the parolee elects to proceed with the preliminary hearing:

(a) He shall be afforded a timely notice of the preliminary hearing, which notice shall state the purpose of the hearing and state the alleged violation;

(b) He shall be permitted to cross-examine adverse witnesses, unless it is determined that good cause exists not to allow such examination;

(c) He shall be allowed to call witnesses and present evidence in his own behalf; and

(d) He may be represented by counsel.

The findings based on the evidence presented at the preliminary hearing shall be made available to the parolee either immediately following the hearing or within a reasonable time thereafter.

(2) If the preliminary hearing results in a finding of probable cause or reasonable grounds to believe that a violation of the terms or conditions of parole has occurred, the commission or a member thereof shall convene a hearing on the alleged violation. The parolee shall appear before the commission or commissioner in person, and, if he desires, he may be represented by counsel. At such hearing, the state and the parolee may introduce such evidence as is necessary and pertinent to the charge of parole violation.

(3) The commission, a member thereof, or a duly authorized representative of the commission shall have the authority to administer oaths and compel the attendance of witnesses at such hearing by the issuance, under the seal of the commission and signature of a commissioner, of summons, subpoenas, and subpoenas duces tecum. Subpoenas and subpoenas duces tecum shall be enforceable by appropriate proceedings in circuit court, and failure to comply with a court order enforcing a subpoena or subpoena duces tecum shall constitute contempt of court. The commission shall issue subpoenas on behalf of the state or the parolee, provided the party requesting the subpoenas furnishes to the commission, or a duly authorized representative thereof, the names and addresses of his proposed witnesses at least 7 days prior to the hearing date.

(4) At the hearing, the parolee shall be informed orally and in writing of:

(a) The violation of the terms and conditions of parole with which he has been charged;

(b) The right to be represented by counsel;

(c) The right to be heard in person;

(d) The right to secure, present, and compel the

attendance of witnesses and production of documents on his behalf;

(e) The right of access to all evidence used against him; and

(f) The right to confront and cross-examine adverse witnesses, unless the commission or the member conducting the hearing finds specifically, and states in writing, good cause not to allow the confrontation.

(5)(a) At any such hearing convened by the commission, or a member thereof, the accused may waive his right to proceed further if, after being informed of his rights and after being advised of the consequences of a waiver in regard to the nature of the order which may be entered as a result of such waiver, he affirms, in writing, knowledge and understanding of such rights and consequences and elects, in writing, to execute the waiver.

(b) At any such hearing convened by a member of the commission, the parolee shall be informed orally and in writing of his right to have a hearing before a majority of the commission. The hearing may proceed before the member of the commission if the parolee waives, in writing, his right to have a hearing before a majority of the commission. At any such hearing so convened, the parolee, if he has waived his right to have a hearing before a majority of the commission, may also waive, in the manner provided in paragraph (a), his right to proceed further.

(6) Within a reasonable time after the hearing, the commission or the member who conducted the hearing shall make findings of fact in regard to the alleged parole violation and the commission shall enter an order determining whether the charges of parole violation have been sustained. By such order, the commission shall revoke the parole and return the parolee to prison to serve the sentence theretofore imposed upon him, reinstate the original order of parole, or enter such other order as is proper; however, any decision to revoke parole shall be based on a violation of a term or condition specifically enumerated in the parole release order. In cases in which parole is revoked, the commission shall make a written statement of the evidence relied on and the reasons for revoking parole.

(7) Whenever a parole is revoked by the commission and said parolee ordered by said commission to be returned to prison, the parolee, by reason of his misconduct, shall be deemed to forfeit all gain-time or commutation of time for good conduct, as provided for by s. 944.27, earned up to the date of his release on parole. Nothing herein shall deprive the prisoner

of his right to gain-time or commutation of time for good conduct, as provided by s. 944.27, from the date he is returned to prison.

**History.**—s. 17, ch. 20519, 1941; s. 4, ch. 21775, 1943; s. 1, ch. 74-241; s. 1, ch. 77-174; s. 19, ch. 78-417; s. 11, ch. 79-42.

**947.24 Discharge from parole.**—When a person is placed on parole, the commission shall determine the period of time the person shall be on parole, such time not to exceed a maximum period of 2 years unless the commission designates a longer period of time, in which case it will advise the parolee in writing of the reasons for the extended period. In any event, the period of parole shall not exceed the maximum period for which the person has been sentenced. The commission, after having retained jurisdiction of a person for a sufficient length of time to evidence satisfactory rehabilitation and cooperation, may discharge the person from parole, may relieve a person on parole from making further reports, or may permit such person to leave the state or country, upon determination that such action is in the best interests of the person and of society.

**History.**—s. 18, ch. 20519, 1941; s. 1, ch. 63-83; s. 9, ch. 74-112; s. 256, ch. 77-104.

**947.25 Recommendations for clemency.**—When a parolee has, in the opinion of the commission, so conducted himself as to deserve clemency, a commutation of sentence, or the remission in whole or in part of any fine, forfeiture, or penalty, the commission may recommend that such clemency be extended to such parolee by order of the Governor approved by three members of the cabinet. In such case, the commission shall fully advise the office of the Governor of the facts upon which such recommendation is based.

**History.**—s. 18, ch. 20519, 1941; s. 23, ch. 74-112.

**947.26 Cooperation of custodian of prisoner; right of access.**—The superintendent, warden, or jailer of any jail or prison in which persons convicted of crime may be confined, and all officers or employees thereof, shall at all times cooperate with the commission, and upon its request shall furnish it with such information as they may have respecting any person inquired about as will enable the commission properly to perform its duties. Such officials shall at all reasonable times, when the public safety permits, give the members of the commission and its authorized agents and employees access to all prisoners in their charge.

**History.**—s. 19, ch. 20519, 1941.



## CHAPTER 948

## PROBATION

- 948.01 When courts may place defendant on probation.
- 948.011 When court may impose fine and place on probation as to imprisonment.
- 948.03 Terms and conditions of probation.
- 948.031 Condition of probation; public service.
- 948.04 Period of probation; duty of probationer.
- 948.05 Court to admonish or commend probationer.
- 948.06 Violation of probation; revocation; modification; continuance.

**948.01 When courts may place defendant on probation.—**

(1) Any court of the state having original jurisdiction of criminal actions, where the defendant in a criminal case has been found guilty by the verdict of a jury or has entered a plea of guilty or a plea of nolo contendere or has been found guilty by the court trying the case without a jury, except for an offense punishable by death, may at a time to be determined by the court, either with or without an adjudication of the guilt of the defendant, hear and determine the question of the probation of such defendant.

(2) When the penalty for the offense may involve imprisonment in the state prison, the Circuit Court, prior to such hearing, shall, and in misdemeanor cases may, refer the case to the Department of Corrections for investigation and recommendation. The court, upon such reference, shall direct the department, and it shall be the duty of the department, to make an investigation and report in writing at a specified time prior to sentencing to the court upon the circumstances of the offense, the criminal record, the social history, and the present condition of the defendant, together with its recommendation pursuant to the provisions of s. 921.231.

(3) If it appears to the court upon a hearing of the matter that the defendant is not likely again to engage in a criminal course of conduct and that the ends of justice and the welfare of society do not require that the defendant shall presently suffer the penalty imposed by law, the court, in its discretion, may either adjudge the defendant to be guilty or stay and withhold the adjudication of guilt, and in either case stay and withhold the imposition of sentence upon such defendant, and shall place him upon probation under the supervision and control of the department for the duration of such probation. And the department shall thereupon and thereafter, during the continuance of such probation, have the supervision and control of the defendant. However, no defendant placed on probation for a misdemeanor shall be placed under the supervision of the department unless the court affirmatively and specifically orders such supervision after finding that supervision in the community is necessary to provide adequate protection to the community or to assist in the rehabilitation of the offender, or both.

(4) Whenever punishment by imprisonment for a misdemeanor or a felony, except for a capital felony,

is prescribed, the court, in its discretion, may, at the time of sentencing, direct the defendant to be placed on probation upon completion of any specified period of such sentence. In such case, the court shall stay and withhold the imposition of the remainder of sentence imposed upon the defendant, and direct that the defendant be placed upon probation after serving such period as may be imposed by the court.

(5) In no case shall the imposition of sentence be suspended and the defendant thereupon placed on probation unless such defendant be placed under the custody of the department, Salvation Army, or other public or private entity.

(6) When the court, under any of the foregoing subsections, places the defendant on probation, it may specify that the defendant serve all or part of the probationary period in a community residential facility under the jurisdiction of the Department of Corrections or the Department of Health and Rehabilitative Services or owned or operated by the Salvation Army or any public or private entity providing such services, and it shall require the payment prescribed in s. 945.30.

**History.**—s. 20, ch. 20519, 1941; s. 7, ch. 22858, 1945; s. 1, ch. 59-130; s. 1, ch. 61-498; s. 1, ch. 65-453; s. 1, ch. 67-204; ss. 12, 13, ch. 74-112; s. 3, ch. 75-301; s. 3, ch. 76-238; s. 90, ch. 77-120; s. 1, ch. 77-174; s. 109, ch. 79-3.  
*cf.*—s. 924.06 Appeal by defendant.  
 s. 949.01 Juvenile matters unaffected.

**948.011 When court may impose fine and place on probation as to imprisonment.—**When the law authorizes the placing of a defendant on probation, and when his offense is punishable by both fine and imprisonment, the trial court may, in its discretion, impose a fine upon him and place him on probation as to imprisonment.

**History.**—s. 1, ch. 59-175.

**948.03 Terms and conditions of probation.—**

(1) The court shall determine the terms and conditions of probation and may include among them the following, that the probationer shall:

- (a) Avoid injurious or vicious habits.
- (b) Avoid persons or places of disreputable or harmful character.
- (c) Report to the probation and parole supervisors as directed.
- (d) Permit such supervisors to visit him at his home, or elsewhere.
- (e) Work faithfully at suitable employment insofar as may be possible.
- (f) Remain within a specified place.
- (g) Make reparation or restitution to the aggrieved party for the damage or loss caused by his offense in an amount to be determined by the court.
- (h) Support his legal dependents to the best of his ability.
- (i) Make payment of the debt due and owing to the state under s. 960.17, subject to modification based on change of circumstances.
- (2) The enumeration of specific kinds of terms and conditions shall not prevent the court from adding thereto such other or others as it considers proper. The court may rescind or modify at any time of

the terms and conditions theretofore imposed by the court upon the probationer.

**History.**—s. 23, ch. 20519, 1941; s. 5, ch. 77-452. cf.—ss. 949.07, 949.08 Compacts with other states.

**948.031 Condition of probation; public service.**—Any person who is convicted of a felony or misdemeanor and who is placed on probation may be required as a condition of probation to perform some type of public service for a tax-supported or tax-exempt entity, with the consent, and under the supervision, of such entity. Such public service shall be performed at a time other than during such person's regular hours of employment.

**History.**—s. 1, ch. 76-70.

**948.04 Period of probation; duty of probationer.**—

(1) Defendants found guilty of misdemeanors who are placed on probation shall be under supervision not to exceed 6 months unless otherwise specified by the court. Defendants found guilty of felonies who are placed on probation shall be under supervision not to exceed 2 years unless otherwise specified by the court. No defendant placed on probation pursuant to subsection 948.01(4) shall be subject to the probation limitations of this subsection.

(2) Upon the termination of the period of probation, the probationer shall be released from probation and shall not be liable to sentence for the crime for which probation was allowed. During the period of probation, the probationer shall perform the terms and conditions of his probation. The Department of Corrections may recommend early termination of probation to the court at any time prior to the scheduled termination date.

**History.**—s. 24, ch. 20519, 1941; s. 5, ch. 21775, 1943; s. 10, ch. 74-112; s. 1, ch. 79-77.

**948.05 Court to admonish or commend probationer.**—The court may at any time cause the probationer to appear before it to be admonished, or commended, and when satisfied that its action will be for the best interests of justice and the welfare of society, may discharge the probationer from further supervision.

**History.**—s. 25, ch. 20519, 1941. cf.—s. 949.04 Construction of law.

**948.06 Violation of probation; revocation; modification; continuance.**—

(1) Whenever within the period of probation there is reasonable ground to believe that a probationer has violated his probation in a material respect, any parole or probation supervisor may arrest such probationer without warrant wherever found, and forthwith shall return him to the court granting such probation. Any committing magistrate may issue a warrant upon the facts being made known to him by affidavit of one having knowledge of such facts for the arrest of the probationer, returnable forthwith before the court granting such probation. Any parole or probation supervisor, all officers authorized to serve criminal process, and all peace officers of this state shall be authorized to serve and execute said warrant. The court, upon the probationer being brought before it, shall advise him of such charge of violation and if such charge is admitted to be true may forthwith revoke, modify, or continue probation and, if revoked, shall adjudge the probationer guilty of the offense charged and proven or admitted, unless he shall have previously been adjudged guilty, and impose any sentence which it might have originally imposed before placing the probationer on probation. If such violation of probation is not admitted by the probationer, the court may commit him or release him with or without bail to await further hearing, or it may dismiss the charge of probation violation. If such charge is not at said time admitted by the probationer and if it is not dismissed, the court, as soon as may be practicable, shall give the probationer an opportunity to be fully heard on his behalf in person or by counsel. After such hearing, the court may revoke, modify, or continue the probation. If such probation is revoked, the court shall adjudge the probationer guilty of the offense charged and proven or admitted, unless he shall have previously been adjudged guilty, and impose any sentence which it might have originally imposed before placing the probationer on probation.

(2) No part of the time that the defendant is on probation shall be considered as any part of the time that he shall be sentenced to serve.

**History.**—s. 26, ch. 20519, 1941; s. 2, ch. 59-130; s. 2, ch. 61-498; s. 1, ch. 69-71.

## CHAPTER 949

## PAROLE AND PROBATION; GENERAL PROVISIONS

- 949.01 Juvenile matters unaffected.
- 949.02 Youth parolees.
- 949.04 Law to be liberally construed.
- 949.05 Constitutionality.
- 949.06 Short title.
- 949.07 Compacts with other states.
- 949.071 Definition of "state" as used in s. 949.07; further declaration relating to interstate compacts.
- 949.08 Department of Corrections to enact rules and regulations relating to compacts.
- 949.09 Same; short title.
- 949.10 Subsequent felony arrest of felony parolee or probationer prima facie evidence of violation.
- 949.11 Hearing.
- 949.12 Immediate temporary revocation; bail not allowed.

**949.01 Juvenile matters unaffected.**—Nothing in chapters 947-949 shall be construed to change or modify the law respecting parole and probation as administered by a circuit court exercising juvenile jurisdiction.

*History.*—s. 30, ch. 20519, 1941; s. 44, ch. 73-334.

**949.02 Youth parolees.**—Nothing in chapters 947-949 shall be construed to change or modify the law respecting paroles as administered by the Department of Health and Rehabilitative Services.

*History.*—s. 31, ch. 20519, 1941; s. 1, ch. 57-317; ss. 19, 35, ch. 69-106; s. 477, ch. 77-147.

**949.04 Law to be liberally construed.**—Chapters 947-949 shall be liberally construed that its objects may be achieved.

*History.*—s. 33, ch. 20519, 1941.

**949.05 Constitutionality.**—

(1) If any clause, sentence, paragraph, section, or part of chapters 947-949 shall for any reason be adjudged by any court of competent jurisdiction to be unconstitutional, invalid, or void, such judgment shall not affect, impair, or invalidate the remainder of the law, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

(2) If the method of selecting the commission members as herein provided is found to be invalid by reason of the vesting of the appointing power in the Governor and the cabinet, the members of the Parole and Probation Commission herein provided for shall be appointed by the Governor.

*History.*—s. 34, ch. 20519, 1941; s. 1, ch. 65-453; s. 33, ch. 69-106.

**949.06 Short title.**—Chapters 947, 948, and 949 (except ss. 949.07-949.09) shall be known as the "Parole and Probation Law."

*History.*—s. 36, ch. 20519, 1941.

**949.07 Compacts with other states.**—The Governor is hereby authorized and directed to enter into a compact on behalf of the state with any state of the United States legally joining therein in the form substantially as follows:

A compact entered into by and among the contracting states, signatories hereto, with the consent of the Congress, granted by an act entitled "An act granting the consent of Congress to any two or more states to enter into agreements or compacts for cooperative effort and mutual assistance in the prevention of crime and for other purposes."

The contracting states solemnly agree;

(1) That it shall be competent for the duly constituted judicial and administrative authorities of a state party to this compact, herein called "sending state," to permit any person convicted of an offense within such state and placed on probation or released on parole to reside in any other state party to this compact, herein called "receiving state," while on probation or parole, if:

(a) Such person is in fact a resident of or has his family residing within the receiving state and can obtain employment there.

(b) Though not a resident of the receiving state and not having his family residing there, the receiving state consents to such person being sent there.

Before granting such permission, opportunity shall be granted to the receiving state to investigate the home and prospective employment of such person. A resident of the receiving state, within the meaning of this section, is one who has been an actual inhabitant of such state continuously for more than 1 year prior to his coming to the sending state and has not resided within the sending state more than 6 continuous months immediately preceding the commission of the offense for which he has been convicted.

(2) That each receiving state will assume the duties of visitation of and supervision over probationers or parolees of any sending state and in the exercise of those duties will be governed by the same standards that prevail for its own probationers and parolees.

(3) That duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any person on probation or parole. For that purpose no formalities will be required other than establishing the authority of the officer and the identity of the person to be retaken. All legal requirements to obtain extradition of fugitives from justice are hereby expressly waived on the part of states party hereto as to such persons. The decision of the sending state to retake a person on probation or parole shall be conclusive upon and not reviewable within the receiving state; provided however, that if at the time when a state seeks to retake a probationer or parolee there should be pending against him within the receiving state any criminal charge, or he should be suspected of having committed within such state a criminal offense, he shall not be retaken without the consent of the receiving state



until discharged from prosecution or from imprisonment for such offense.

(4) That the duly accredited officers of the sending state will be permitted to transport prisoners being retaken through any and all states parties to this compact without interference.

(5) That the Governor of each state may designate an officer who, acting jointly with like officers of other contracting states, if and when appointed, shall promulgate such rules and regulations as may be deemed necessary more effectively to carry out the terms of this compact.

(6) That this compact shall become operative immediately upon its ratification by any state as between it and any other state or states so ratifying. When ratified, it shall have the full force and effect of law within such state, the form of ratification to be in accordance with the laws of the ratifying state.

(7) That this compact shall continue in force and remain binding upon each ratifying state until renounced by it. The duties and obligations hereunder of a renouncing state shall continue as to parolees or probationers residing therein at the time of withdrawal until retaken or finally discharged by the sending state. Renunciation of this compact shall be by the same authority which ratified it, by sending 6 months' notice in writing of its intention to withdraw from the compact to the other states party hereto.

*History.*—s. 1, ch. 20455, 1941.

**949.071 Definition of "state" as used in s. 949.07; further declaration relating to interstate compacts.—**

(1) It is hereby declared that the term "state," as used in s. 949.07, relating to and authorizing and directing the governor to enter into an interstate compact in behalf of Florida with any state of the United States for out-of-state supervision of probationers and parolees, and prescribing the form to be substantially used for any such compact, means any one of the several states and the Commonwealth of Puerto Rico, the Virgin Islands, and the District of Columbia.

(2) It is hereby recognized and further declared that pursuant to the consent and authorization contained in s. 111(b) of Title 4 of the United States Code as added by Pub. L. No. 970-84th Congress, Chapter 941-2d Session, this state shall be a party to said interstate compact for the supervision of parolees and probationers with any additional jurisdiction legally joining therein when such jurisdiction shall have enacted said compact in accordance with the

terms thereof.

*History.*—s. 1, ch. 57-89.

**949.08 Department of Corrections to enact rules and regulations relating to compacts.—**

The Department of Corrections shall have power and shall be charged with the duty of promulgating such rules and regulations and the expenditures of funds as may be deemed necessary to carry out the terms, conditions, and intents of a compact entered into by the state pursuant to s. 949.07.

*History.*—s. 2, ch. 20455, 1941; s. 1, ch. 65-453; s. 91, ch. 77-120; s. 110, ch. 79-3.

**949.09 Same; short title.—ss. 949.07-949.08 shall be known as the "Uniform Law for Out-of-state Probation and Parole Supervision."**

*History.*—s. 4, ch. 20455, 1941.

**949.10 Subsequent felony arrest of felony parolee or probationer prima facie evidence of violation.—**

The subsequent arrest on a felony charge, in this state, of any person who has been placed on parole or probation following a finding of guilt of any felony, or a plea of guilty or nolo contendere to any felony, shall be prima facie evidence of the violation of the terms and conditions of such parole or probation. Upon such arrest, the parole agreement or probation order shall immediately be temporarily revoked and such person shall remain in custody until a hearing by the Parole and Probation Commission or the court.

*History.*—s. 1, ch. 72-232.

**949.11 Hearing.**—Any person whose parole or probation agreement is revoked pursuant to s. 949.10 shall be given a hearing pursuant to s. 947.23 or s. 948.06. The hearing shall be held within 10 days from the date of such arrest, the provisions of s. 947.23 or s. 948.06 notwithstanding. Failure of the commission or the court to hold the hearing within 10 days from the date of arrest shall cause the immediate release of such person from incarceration on the temporary revocation.

*History.*—s. 2, ch. 72-232.

**949.12 Immediate temporary revocation; bail not allowed.**—A person whose parole or probation has been temporarily revoked pursuant to s. 949.10 shall not be admitted to bail prior to the hearing provided for in s. 949.11.

*History.*—s. 3, ch. 72-232.

## CHAPTER 950

## JAILS AND JAILERS

- 950.01 Confinement in jail of another county.
- 950.02 Removal to jail of another county.
- 950.03 County jailers to receive United States prisoners.
- 950.04 Penalty for neglect of duty in keeping prisoners of the United States.
- 950.051 Jails to be constructed so male and female prisoners may be separated.
- 950.061 Unlawful for male and female prisoners to be confined together.
- 950.07 Appropriation authorized to remodel jail so classes of prisoners may be separated.
- 950.08 Officers refusing to comply with law subject to removal.
- 950.09 Malpractice by jailers.

**950.01 Confinement in jail of another county.**

—When it appears to the court at the time of passing sentence upon any prisoner who is to be punished by imprisonment in the county jail that there is no jail in the county suitable for the confinement of such prisoner, the court may order the sentence to be executed in any county in this state in which there may be a jail suited to that purpose, and the expense of supporting such prisoner shall be borne by the county in which the offense was committed.

**History.**—s. 25, ch. 1637, sub-ch. 13, 1868; RS 3027; GS 4104; RGS 6208; CGL 8540; s. 1, ch. 61-488.

cf.—s. 839.21 Penalty for refusal to receive prisoner.

**950.02 Removal to jail of another county.—**

(1) When in the opinion of the Governor the interests of the state demand it, the circuit judge shall, upon the request of the Governor, make an order directing that any person held under a criminal charge shall be confined in the jail of another county of the state than that in which the offense charged is alleged to have been committed.

(2) When it shall be made to appear to a circuit judge to be necessary to quickly remove a prisoner to the jail of another county for safekeeping or to prevent injury to such prisoner, and the Governor is not easily accessible, or it is deemed inadvisable, by reason of circumstances, to first communicate with the Governor, the circuit judge shall make an order directing that any person held under a criminal charge shall be confined in the jail of another county of the state than that in which the offense is alleged to have been committed. Immediately after the removal the sheriff of the county from which the prisoner was removed shall make full report to the Governor of the state of the reasons for such removal and attach a copy of the said judge's order.

(3) No order above referred to shall be made except by the judge of the circuit in which the county where the offense is alleged to have been committed is located. Such order shall be of full force and effect throughout the state, but the county to which the prisoner is sent, or any officer thereof, is not required to incur or pay any expense or charge of maintaining such prisoner.

**History.**—ss. 1, 2, ch. 3207, 1881; RS 3028; GS 4105; RGS 6209; CGL 8541; ss. 1-3, ch. 20414, 1941.

**950.03 County jailers to receive United States prisoners.**—The keeper of the jail in each county within this state shall receive into his custody any prisoner who may be committed to his charge under the authority of the United States and shall safely keep each prisoner according to the warrant or precept for such commitment until he is discharged by due course of law of the United States.

**History.**—s. 1, ch. 85, 1847; RS 3029; GS 4106; RGS 6210; CGL 8542.

**950.04 Penalty for neglect of duty in keeping prisoners of the United States.**—The keeper of each jail shall be subject to the same penalties for any neglect or failure of duty in keeping prisoners who are committed to his charge under the authority of the United States as he would be subject to under the laws of this state for the like neglect or failure in the case of prisoners committed under the authority of the said laws; provided, the United States pays or causes to be paid to the jailer such fees as he would be entitled to for like service rendered by virtue of the existing laws of this state during the time such prisoners shall be therein confined; and moreover, supports such of the prisoners as shall be committed for offenses.

**History.**—s. 2, ch. 85, 1847; RS 3030; GS 4107; RGS 6211; CGL 8543.

**950.051 Jails to be constructed so male and female prisoners may be separated.**—The county commissioners of the respective counties of this state shall so construct and arrange the jails of their respective counties that it shall be unnecessary to confine in said jails male and female prisoners in the same room, cell, or apartment.

**History.**—s. 1, ch. 65-172.

**950.061 Unlawful for male and female prisoners to be confined together.**—It is unlawful for male and female prisoners in said jails to be confined in the same cell, room, or apartment, or be so confined as to be permitted to commingle, and the sheriffs of this state shall confine and separate all prisoners in their custody or charge in accordance with this chapter.

**History.**—s. 1, ch. 65-172.

**950.07 Appropriation authorized to remodel jail so classes of prisoners may be separated.**—The county commissioners of the several counties of this state are authorized to appropriate from the general revenue fund of the said counties such moneys as are necessary to carry into effect the provisions of ss. 950.051 and 950.061.

**History.**—s. 8, ch. 5967, 1909; RGS 6215; CGL 8547.

**950.08 Officers refusing to comply with law subject to removal.**—Any board of county commissioners and any sheriff willfully refusing to carry out and comply with the provisions of ss. 950.051 and 950.061 in their respective spheres of duty shall be removed from office by the Governor.

**History.**—s. 4, ch. 5967, 1909; RGS 6216; CGL 8548.

**950.09 Malpractice by jailers.**—If any jailer shall, by too great duress of imprisonment or otherwise, make or induce a prisoner to disclose and give evidence against some other person, or be guilty of willful inhumanity and oppression to any prisoner under his care and custody, he shall be punished by

removal from office and shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 20, Feb. 10, 1832; RS 2574; GS 3490; RGS 5366; CGL 7500; s. 1178, ch. 71-136.



## CHAPTER 951

## COUNTY AND MUNICIPAL PRISONERS

- 951.01 County prisoners may be put to labor.
- 951.02 Duty of prison inspectors for state prisoners.
- 951.03 County commissioners to provide food, etc.
- 951.04 Duty of county commissioners upon discharge of prisoner.
- 951.05 Working county prisoners on roads and bridges or other public works of the county; hiring out to another county.
- 951.06 Employment of guards; duties; salary.
- 951.07 Punishment of prisoners; rules and regulations.
- 951.075 Assault, battery, or assault and battery in a county or municipal jail or detention facility; penalty.
- 951.08 Working prisoner more than 10 hours per day prohibited.
- 951.10 Leasing prisoners to work for private interests prohibited.
- 951.11 Turning prisoners over to board of bond trustees, etc.
- 951.12 Working prisoners on public roads and exchange of prisoners between counties.
- 951.13 Transferring from one county to another.
- 951.14 Failure of person to discharge his duty; penalty.
- 951.15 Credit on fines and costs.
- 951.16 Prisoners entitled to receive credit on fine based on imprisonment.
- 951.17 Corporal punishment prohibited.
- 951.18 Punishment other than corporal punishment.
- 951.19 Interference with county prisoners.
- 951.21 Gain-time for good conduct for county prisoners.
- 951.22 County detention facilities; contraband articles.
- 951.23 County and municipal detention facilities; definitions.
- 951.24 Extend the limits of confinement for county prisoners.
- 951.25 Sale of goods and services produced by county prisoners.

**951.01 County prisoners may be put to labor.**

—The board of county commissioners of each county may employ all persons in the jail of their respective counties under sentence upon conviction for crime at labor upon the roads, bridges, or other public works of the county where they are so imprisoned. County prisoners shall be kept and worked under such rules and regulations and supervisions as may be prescribed by the Department of Corrections, and the department may enforce all such rules and regulations. Upon the failure of any person in charge of said county prisoners to comply with such rules and regulations, the department may require the discharge of such person.

**History.**—s. 1, ch. 2090, 1877; RS 3032; GS 4109; s. 1, ch. 5705, 1907; s. 1, ch. 5963, 1909; RGS 6217; s. 1, ch. 7323, 1917; s. 1, ch. 9203, 1923; CGL 8549; s. 44, ch. 57-121; s. 1, ch. 61-488; s. 18, ch. 61-530; ss. 19, 35, ch. 69-106; ss. 1, 2, ch.

70-441; s. 92, ch. 77-120; s. 111, ch. 79-3.

cf.—s. 336.42 County convicts may be put to labor.

s. 951.12 Working prisoners on public roads and exchange of prisoners between counties.

**951.02 Duty of prison inspectors for state prisoners.**—Prison inspectors for state prisoners shall inspect and supervise all county prison camps and municipal detention facilities under the direction of the Department of Corrections. The prison inspectors shall make written reports to the Secretary of Corrections and shall send duplicate copies of said reports to the board of county commissioners of the county or the city commissioners of the municipality in which said prisoners so inspected were sentenced, which reports shall at all times be open to public inspection.

**History.**—s. 1, ch. 2090, 1877; RS 3032; GS 4109; s. 1, ch. 5705, 1907; s. 1, ch. 5963, 1909; RGS 6217; s. 1, ch. 7323, 1917; s. 1, ch. 9203, 1923; CGL 8549; s. 44, ch. 57-121; ss. 1, chs. 61-198, 61-488; s. 18, ch. 61-530; ss. 19, 35, ch. 69-106; ss. 1, 2, ch. 70-441; s. 1, ch. 71-113; s. 93, ch. 77-120; s. 112, ch. 79-3.

**951.03 County commissioners to provide food, etc.**—Boards of county commissioners, when working county prisoners on the public works of the counties shall provide, or cause to be provided, substantial food, clothes, shoes, medical attention, etc., for said prisoners as are required for state prisoners in the state.

**History.**—s. 1, ch. 2090, 1877; RS 3032; GS 4109; s. 1, ch. 5705, 1907; s. 1, ch. 5963, 1909; RGS 6217; s. 1, ch. 7323, 1917; s. 1, ch. 9203, 1923; CGL 8549; s. 1, ch. 61-488.

**951.04 Duty of county commissioners upon discharge of prisoner.**—When a prisoner is discharged by reasons of having served his sentence, or upon receiving a pardon or parole, he shall be furnished transportation, or its equivalent in money, back to the place from which he was sentenced, together with the sum of \$5, where the sentence is for 4 months or more, and the sum of \$3 where the sentence is for a lesser period than 4 months, in addition to his transportation, all of which shall be paid out of the general fund of the county in which he was convicted, and for the purpose of carrying out the provisions of this chapter, the clerk of the board of county commissioners of each county shall, under the directions of said board, issue a check on said fund with which to pay these amounts to the prisoners being discharged at the time of their release.

**History.**—s. 1, ch. 2090, 1877; RS 3032; GS 4109; s. 1, ch. 5705, 1907; s. 1, ch. 5963, 1909; RGS 6217; s. 1, ch. 7323, 1917; s. 1, ch. 9203, 1923; CGL 8549; s. 1, ch. 61-488.

**951.05 Working county prisoners on roads and bridges or other public works of the county; hiring out to another county.**—The board of county commissioners of the several counties may require all county prisoners under sentence confined in the jail of their respective counties for any offense to labor upon the public roads, bridges, farms, or other public works owned and operated by the county, or in the event the county commissioners of any county deem it to the best interest of their county, they may hire out their prisoners to any other county in the state to be worked upon the public roads,

bridges, or other public works of that county, or they may, upon such terms as may be agreed upon between themselves and the Division of Road Operations of the Department of Transportation, lease or let said prisoners to the division instead of keeping them in the county jail where they are sentenced. The money derived from the hire of such prisoners shall be paid to the county hiring out such prisoners and placed to the credit of the fine and forfeiture fund of the county.

**History.**—s. 13, ch. 6537, 1913; RGS 6218; s. 2, ch. 9203, 1923; CGL 8550; s. 1, ch. 61-488; ss. 23, 35, ch. 69-106.

#### **951.06 Employment of guards; duties; salary.—**

(1) The county commissioners shall employ a captain or warden and such guards as they deem necessary, pursuant to standards for employment established and administered by the Department of Corrections.

(2) All captains or wardens of prisoners shall see that all rules and regulations prescribed by law or the department are fully observed and complied with; enforce discipline among the prisoners in and about the camps; and administer punishment to prisoners, when in their judgment the same is necessary in order to enforce proper discipline, conforming always to the law and rules and regulations.

(3) All boards of county commissioners shall immediately discharge any captain, warden, or guard in their employ who shall be guilty of gross negligence or cruel and inhuman treatment of prisoners under their control and their action shall be final.

(4) The salaries of captains, wardens, and guards provided for in this chapter shall be fixed by the board of county commissioners employing them, and the captain or warden shall be furnished means of transportation over the roads of the county when necessary, the upkeep and operation of which shall be furnished by the county; provided, however, the county shall not in any case be required to furnish a driver of such conveyance where such services are required to be paid for.

(5) All salaries contemplated by this chapter shall be paid from the general revenue fund of the county.

**History.**—s. 13, ch. 6537, 1913; RGS 6218; s. 2, ch. 9203, 1923; CGL 8550; s. 44, ch. 57-121; ss. 1, 2, ch. 61-198; s. 18, ch. 61-530; ss. 19, 35, ch. 69-106; ss. 1, 2, ch. 70-441; s. 94, ch. 77-120; s. 113, ch. 79-3. cf.—s. 336.43 Employment of convict guards.

**951.07 Punishment of prisoners; rules and regulations.**—The flogging or whipping of prisoners in this state is prohibited, but the Department of Corrections may make and enforce suitable and reasonable rules and regulations for the government of such prisoners while serving sentences in prison camps or jails and enforce the same by solitary confinement, restriction of privileges, or any other humane and reasonable method of punishment. Any prisoner in any jail or prison camp of this state who shall repeatedly, knowingly, and willfully refuse to obey any such reasonable rule or regulation while being subject thereto shall be guilty of a misdemeanor or of the second degree, punishable as provided in s. 775.082 or s. 775.083, and such punishment shall

upon his conviction be in addition to the sentence he is then serving.

**History.**—s. 13, ch. 6537, 1913; RGS 6218; s. 2, ch. 9203, 1923; CGL 8550; s. 44, ch. 57-121; s. 1, ch. 61-488; s. 18, ch. 61-530; ss. 19, 35, ch. 69-106; ss. 1, 2, ch. 70-441; s. 1179, ch. 71-136; s. 95, ch. 77-120; s. 114, ch. 79-3.

**951.075 Assault, battery, or assault and battery in a county or municipal jail or detention facility; penalty.**—Every person being detained or undergoing a sentence in a county or municipal jail or detention facility who commits assault, battery, or assault and battery upon the person of another with a deadly weapon or instrument or by any means of force likely to produce great bodily injury, but which is not an assault with intent to commit a felony, shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 1, ch. 77-41.

**951.08 Working prisoner more than 10 hours per day prohibited.**—No prisoner shall be compelled to labor more than 10 hours per day nor be subject to punishment for any refusal to labor beyond such limit; provided, that the 10 hours shall be the time embraced from the leaving to the return of the prisoner to his place of detention.

**History.**—s. 13, ch. 6537, 1913; RGS 6218; s. 2, ch. 9203, 1923; CGL 8550; s. 1, ch. 61-488.

**951.10 Leasing prisoners to work for private interests prohibited.**—No county prisoners shall be leased to work for any private interests.

**History.**—s. 3, ch. 9203, 1923; CGL 8551; s. 1, ch. 61-488.

**951.11 Turning prisoners over to board of bond trustees, etc.**—The board of county commissioners in counties where a board of bond trustees, board of public works, or other duly constituted board, has charge of the construction and maintenance of the public roads may turn the county prisoners over to the said trustees to be worked on the public roads of said county, subject to all the rules and regulations herein provided.

**History.**—s. 4, ch. 9203, 1923; CGL 8552; s. 1, ch. 61-488.

**951.12 Working prisoners on public roads and exchange of prisoners between counties.**—All persons confined in the county jail under sentence of a court may be worked on the roads of the county. In case the number of prisoners in any county at any time be less than five, the county commissioners of such county may arrange with the county commissioners of any other county for an exchange of prisoners. The county commissioners shall not be required to work the prisoners on the public roads when there is no contract between the counties as provided herein, nor when in their judgment the number of prisoners is insufficient to justify the employment of a guard to work them.

**History.**—s. 4, ch. 4769, 1899; GS 4110; RGS 6219; CGL 8553; s. 1, ch. 61-488.

**951.13 Transferring from one county to another.**—

(1) When the county commissioners of any county shall have made provision for the expenses of supporting and guarding, while at work on the public roads, a larger number of prisoners than can be

supplied from that county, upon the application of the county commissioners of such county, the county commissioners of any other county which has not otherwise provided for the working of its prisoners or otherwise disposed of its prisoners, or may hereafter dispose of its prisoners, shall deliver to said county or counties applying for same, in the order of their application, such prisoners as may be confined in the county jail or hereafter be sentenced to such county jail.

(2) Provided, that the cost of guarding and maintaining such prisoners shall be paid by the county applying for and receiving the same and any and all such prisoners from such other counties may at any time be returned to the sheriff of such other counties at the expense of the county having received and used them; provided, further, that no prisoners shall be sent out of the county in which they have been convicted and sentenced to work to any other county unless a contract for that purpose shall have been entered into by the boards of county commissioners of the respective counties, and arrangements made for their safekeeping, proper care, and safe return by the employing counties to the county or counties from which such prisoners were sentenced.

**History.**—s. 5, ch. 4769, 1899; GS 4111; RGS 6220; CGL 8554; s. 1, ch. 61-488.

**951.14 Failure of person to discharge his duty; penalty.**—Any person appointed by virtue of the laws of the state relative to working county prisoners on the public road, or to whom duties are assigned in this chapter, who shall fail to make complete return within the time specified therein, or who shall otherwise fail to discharge the duties imposed upon him by this chapter, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 8, ch. 4769, 1899; GS 4112; RGS 6221; CGL 8555; s. 7, ch. 29615, 1955; s. 1, ch. 61-488; s. 1180, ch. 71-136.

**951.15 Credit on fines and costs.**—Every working prisoner shall be entitled to receive, together with subsistence, a credit at the rate of 30 cents per diem, on account of fines and costs adjudged against him.

**History.**—RS 3033; s. 2, ch. 2090, 1897; GS 4113; RGS 6222; CGL 8556; s. 1, ch. 61-488.

**951.16 Prisoners entitled to receive credit on fine based on imprisonment.**—Every person who may be imprisoned in the county jail for failure to pay a fine and costs, or either, under sentence imposed upon conviction for crime shall be entitled to receive, together with subsistence, a credit on such fine and costs, or either, as the case may be, in proportion to the time such person may be imprisoned.

**History.**—s. 1, ch. 6176, 1911; RGS 6223; CGL 8557.

**951.17 Corporal punishment prohibited.**—The Department of Corrections shall prohibit corporal punishment upon county prisoners.

**History.**—s. 1, ch. 9332, 1923; CGL 8558; s. 44, ch. 57-121; s. 1, ch. 61-488; s. 18, ch. 61-530; ss. 19, 35, ch. 69-106; ss. 1, 2, ch. 70-441; s. 96, ch. 77-120; s. 115, ch. 79-3.

**951.18 Punishment other than corporal punishment.**—The Department of Corrections shall devise such other adequate and proper punishment as

shall seem wise to supply in place of corporal punishment.

**History.**—s. 3, ch. 9332, 1923; CGL 8559; s. 44, ch. 57-121; ss. 19, 35, ch. 69-106; ss. 1, 2, ch. 70-441; s. 97, ch. 77-120; s. 116, ch. 79-3.

**951.19 Interference with county prisoners.**—Whoever shall interfere with county prisoners while at work, at their meals, at rest, or while going to and from their quarters or with the guards in charge of them, either by assaulting them or by inciting them or attempting to incite the prisoners to disobedience, revolt, or escape, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083.

**History.**—s. 2, ch. 4391, 1895; GS 3508; RGS 5394; CGL 7533; s. 1181, ch. 71-136.

**951.21 Gain-time for good conduct for county prisoners.**—

(1) Commutation of time for good conduct of county prisoners shall be granted by the board of county commissioners, and the following deductions shall be made from the term of sentence when no charge of misconduct has been sustained against a county prisoner: 5 days per month off the first and second years of the sentence; 10 days per month off the third and fourth years of the sentence; 15 days per month off the fifth and all succeeding years of the sentence. Where no charge of misconduct is sustained against a county prisoner, the deduction shall be deemed earned and the prisoner shall be entitled to credit for a month as soon as the prisoner has served such time as, when added to the deduction allowable, will equal a month. A county prisoner under two or more cumulative sentences shall be allowed commutation as if they were all one sentence.

(2) For each sustained charge of escape or attempted escape, mutinous conduct, or other serious misconduct, all the commutation which shall have accrued in favor of a county prisoner up to that day shall be forfeited, except that in case of escape if the prisoner voluntarily returns without expense to the state or county then such forfeiture may be set aside by the board of county commissioners if in its judgment his subsequent conduct entitles him thereto.

(3) The board of county commissioners upon recommendation of the warden or sheriff may adopt a policy to allow for county prisoners, in addition to time credits, an extra good-time allowance for meritorious conduct or exceptional industry, in accordance with the Department of Offender Rehabilitation's existing policy for such awards for state prisoners.

(4) All or any part of the gain-time earned by a county prisoner and any extra gain-time allowed him, if any, shall be subject to forfeiture by the board of county commissioners upon recommendation of the sheriff or warden for violation of any law of the state or any rule or regulation of the board or institution.

**History.**—s. 23, ch. 3883, 1889; RS 3059; GS 4140; s. 1, ch. 6177, 1911; s. 1, ch. 6917, 1915; RGS 6231; CGL 8567; s. 1, ch. 18065, 1937; s. 1, ch. 19199, 1939; s. 1, ch. 25210, 1949; s. 1, ch. 28300, 1953; s. 1, ch. 61-347; s. 1, ch. 65-220; ss. 19, 35, ch. 69-106; ss. 1, 2, ch. 70-441; s. 98, ch. 77-120.



Note.—Former s. 954.06.

### 951.22 County detention facilities; contraband articles.—

(1) It is unlawful except through regular channels as duly authorized by the sheriff or officer in charge to introduce into or possess upon the grounds of any county detention facility as defined in s. 951.23 or to give to or receive from any inmate of any such facility wherever said inmate is located at the time or to take or to attempt to take or send therefrom any of the following articles which are hereby declared to be contraband for the purposes of this act, to wit: Any written or recorded communication; any currency or coin; any article of food or clothing; any intoxicating beverage or beverage which causes or may cause an intoxicating effect; any narcotic, hypnotic, or excitative drug or drug of any kind or nature, including nasal inhalators, sleeping pills, barbiturates, and controlled substances as defined in s. 893.02(3); any firearm or any instrumentality customarily used or which is intended to be used as a dangerous weapon; and any instrumentality of any nature that may be or is intended to be used as an aid in effecting or attempting to effect an escape from a county facility.

(2) Whoever violates subsection (1) shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 1, ch. 63-140; s. 1182, ch. 71-136; s. 180, ch. 71-355; s. 33, ch. 74-112; s. 1, ch. 78-41.

### 951.23 County and municipal detention facilities; definitions.—

#### (1) DEFINITIONS.—

(a) As used in this section, the term "county detention facility" means a county jail, a county stockade, a county prison camp, and any other place except a municipal detention facility used by a county or county officer for the detention of persons charged with or convicted of either felony or misdemeanor.

(b) The term "county prisoner" means a person who is detained in a county detention facility by reason of being charged with or convicted of either felony or misdemeanor.

(c) The term "municipal detention facility" means a city jail, a city stockade, a city prison camp, and any other place except a county detention facility used by a municipality or municipal officer for the detention of persons charged with or convicted of violation of municipal laws or ordinances.

(d) The term "municipal prisoner" means a person who is detained in a municipal detention facility by reason of being charged with or convicted of violation of municipal law or ordinance.

(2) RULES PRESCRIBING STANDARDS AND REQUIREMENTS.—The Department of Corrections is authorized and directed to adopt rules and regulations prescribing standards and requirements with reference to:

(a) The construction, equipping, maintenance, and operation of county and municipal detention facilities;

(b) The cleanliness and sanitation of county and municipal detention facilities; the number of county and municipal prisoners who may be housed therein per specified unit of floor space; the quality, quantity,

and supply of bedding furnished to such prisoners; the quality, quantity, and diversity of food served to them and the manner in which it is served; the furnishing to them of medical attention and health and comfort items; and the disciplinary treatment which may be meted out to them.

(c) The confinement of prisoners by classification, such rules being established with the participation of local detention units and the final approval of the Department of Corrections, and providing, whenever possible, for classifications which separate males from females, juveniles from adults, felons from misdemeanants, those awaiting trial from those convicted, and, in addition, providing for the separation of unusual prisoners, such as the mentally ill, alcoholic or narcotic addicts, sex deviates, suicide risks, and any other classification which the local unit and the department may deem necessary for the safety of the prisoners and the operation of the facility.

(3) ENFORCEMENT BY DEPARTMENT OF CORRECTIONS.—The Department of Corrections shall enforce such rules and regulations and shall designate personnel of the department to inspect all county and municipal detention facilities in order to determine whether such standards and requirements are being met. Upon complaint filed by him in circuit court, he may be granted an injunction prohibiting the confinement of any county or municipal prisoner in any county or municipal detention facility which does not meet such standards and requirements.

#### (4) REMOVAL OF PRISONERS TO ANOTHER COUNTY OR MUNICIPALITY.—

(a) If the department finds that county or municipal prisoners are detained in any county or municipal detention facility which does not meet such standards and requirements, he may so certify to the circuit court, and thereupon the court shall order the prisoners, or any part of them, removed to and confined in a county or municipal detention facility which does meet such standards and requirements, whether it be in the same county or municipality or in some other county or municipality.

(b) The expense of maintaining prisoners removed to another county or municipality under the provisions of paragraph (a) shall be borne by the county or municipality from which they are removed.

(c) Promptly upon the making of any order authorized by paragraph (a), copies thereof shall be sent to the officer in charge of the county or municipal detention facility from which the county or municipal prisoners affected by such order are required to be removed, to the board of county commissioners of the county or the city commissioners of the municipality in which such county or municipal detention facility is situated, and to the officer in charge of the county or municipal detention facility to which they are required to be removed. If the order requires the removal of county or municipal prisoners to a county or municipal detention facility in another county or municipality, a copy thereof shall also be promptly sent to the board of county commissioners of the

county, or the city commissioners of the municipality, in which it is situated.

**History.**—ss. 1-6, ch. 67-17; ss. 19, 35, ch. 69-106; ss. 1, 2, ch. 70-441; s. 2, ch. 71-113; s. 99, ch. 77-120; s. 117, ch. 79-3.

#### **951.24 Extend the limits of confinement for county prisoners.—**

(1) Any county shall be deemed to have a work-release program upon the motion of that county's board of county commissioners which shall require the concurrence of the sheriff of said county.

(2) Whenever punishment by imprisonment in the county jail is prescribed, the sentencing court, in its discretion, may at any time during the sentence consider granting the privilege to the prisoner to leave the confines of the jail or county facility during necessary and reasonable hours, subject to the rules and regulations prescribed by the court, to work at paid employment, conduct his own business or profession, or participate in an educational or vocational training program, while continuing as an inmate of the county facility in which he shall be confined except during the period of his authorized release.

(3) Any prisoner, at the time of sentencing or thereafter, may request the court in writing for the privilege of being placed on the work-release program. The Department of Corrections, upon the request of the court, is authorized to conduct such investigations as are necessary and to make recommendations to the court pertaining to the suitability of the plan for the prisoner and to supervise said prisoner if released under this program. Such a release may be granted by the court with the advice and consent of the sheriff and upon agreement by the prisoner. The court may withdraw the privilege at any time, with or without notice.

(4) The wages or salary of prisoners employed under this program may be disbursed by the sheriff pursuant to court order for the following purposes in the order listed:

- (a) Board of the prisoner.
- (b) Necessary travel expense to and from work and other necessary incidental expenses of the prisoner.
- (c) Support of the prisoner's legal dependents.
- (d) Payment, either in full or ratable, of the prisoner's obligations acknowledged by him in writing or which have been reduced to judgment.
- (e) The balance to the prisoner upon discharge from his sentence, or until an order of the court is entered declaring that the prisoner has left lawful confinement, declaring that the balance remaining is forfeited, and directing the sheriff to deposit the funds in the general fund of the county to be spent for general purposes.

(5) The sheriff may collect from a prisoner the wages or salary earned pursuant to this program. He shall deposit the same in a trust checking account and shall keep a ledger showing the status of the account of each prisoner. Such wages and salaries shall not be subject to garnishment in the hands of either the employer or the sheriff during the prisoner's sentence and shall be disbursed only as provided

in this section.

(6) Every prisoner gainfully employed is liable for the cost of his board in the jail as fixed by the county. The sheriff shall charge his account, if he has one, for such board. If the prisoner is gainfully self-employed he shall deposit with the sheriff an amount determined by the court sufficient to accomplish the provisions of paragraphs (a) through (e) of subsection (4), in default of which his privileges under this section are automatically forfeited.

(7) Any prisoner who willfully fails to remain within the extended limits of his confinement or to return within the time prescribed to the place of confinement shall be deemed an escapee from custody and shall be subject to punishment as prescribed by law.

(8) Exchange for the purpose of work-release of county prisoners among other counties of the state that have implemented work-release programs is hereby authorized, with the concurrence of the sheriffs of the involved counties. For the purpose of this subsection, upon exchange, the prisoner shall be deemed a prisoner of the county where confined unless or until he is removed from extended confinement status. Prisoners from other jurisdictions, serving lawful sentences, may also be received into a county work-release program as above provided.

(9) In carrying out the purpose of this section, any board of county commissioners may provide in its annual budget for payment to the Department of Corrections out of funds collected from those being supervised such amounts as are agreed upon by the board and department to be reasonable and necessary. County Judges are hereby authorized to levy \$10 per month upon those supervised for purposes of paying for supervision under this act.

(10) The board of county commissioners of any county may, upon the recommendation of the sheriff, authorize the person in charge of a county stockade or workcamp to implement subsections (4), (5), and (6), when such facility is not directly under the sheriff.

**History.**—s. 1, ch. 69-143; s. 6, ch. 75-301; s. 100, ch. 77-120; s. 118, ch. 79-3.  
**Note.**—Former s. 948.07.

#### **951.25 Sale of goods and services produced by county prisoners.—**

(1) Any service or item manufactured, processed, grown, or produced, in whole or in part, by county prisoners in a county operating under a home rule charter adopted pursuant to ss. 10, 11, and 24 of Art. VIII of the State Constitution of 1885, as preserved by s. 6(e), Art. VIII of the 1968 Revised Constitution, and not required for use in the work program may be furnished or sold to any state agency, department, or institution; political subdivision of the state; other state; or agency of the Federal Government within the state or to the public.

(2) Any sale made under this section shall be in accordance with rules established by the governing body of such county.

**History.**—s. 1, ch. 79-93.

## CHAPTER 958

## YOUTHFUL OFFENDERS

- 958.011 Short title.
- 958.021 Legislative intent.
- 958.03 Definitions.
- 958.04 Eligibility for youthful offender; classification.
- 958.05 Judicial disposition of youthful offenders.
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- 958.08 Community control program; supervision.
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- 958.11 Designation of facilities for youthful offenders; certification of facility capacity.
- 958.12 Participation in certain activities required.
- 958.13 Sealing, expunction, and dissemination of records.
- 958.14 Violation of community control program.
- 958.15 Mutual participation agreements.

**958.011 Short title.**—Sections 958.011-958.15 shall be known and may be cited as the "Florida Youthful Offender Act."

**History.**—s. 1, ch. 78-84.

**958.021 Legislative intent.**—The purpose of this act is to improve the chances of correction and successful return to the community of youthful offenders sentenced to imprisonment by preventing their association with older and more experienced criminals during the terms of their confinement. It is the further intent of the Legislature to provide an additional sentencing alternative to be used in the discretion of the court when dealing with offenders who have demonstrated that they can no longer be handled safely as juveniles and who require more substantial limitations upon their liberty to ensure the protection of society.

**History.**—s. 2, ch. 78-84.

**958.03 Definitions.**—As used in this act:

(1) "Department" means the Department of Corrections.

(2) "Community control program" means an individualized program of restriction or noninstitutional confinement for youthful offenders placed in the community in lieu of commitment to the custody of the department and for youthful offenders subsequent to release from the custody of the department as provided by law.

**History.**—s. 3, ch. 78-84; s. 119, ch. 79-3.

**958.04 Eligibility for youthful offender; classification.**—

(1) The court may classify as a youthful offender any person:

(a) Who is at least 18 years of age or who has been transferred for prosecution to the criminal division of the circuit court pursuant to chapter 39;

(b) Who is found guilty of or who has tendered, and the court has accepted, a plea of nolo contendere or guilty to a crime which is, under the laws of this

state, a felony of the first, second, or third degree if such crime was committed before the defendant's 21st birthday; and

(c) Who has not previously been classified a youthful offender under the provisions of this act; however, no person who has been found guilty of a capital or life felony may be classified a youthful offender under this act.

(2) A person shall be classified a youthful offender if such person meets the criteria of subsection (1) and such person:

(a) Has not previously been found guilty of a felony, whether or not the adjudication of guilt has been withheld; or

(b) Has not been adjudicated delinquent for an act which would be a capital, life, or first degree felony if committed by an adult.

(3) A person excluded from classification as a youthful offender under subsection (2) by virtue of having been previously found guilty of a crime which if committed in Florida would be a felony of the first, second, or third degree under the laws of this state may be classified a youthful offender after consideration of the following criteria:

(a) The seriousness of the offense to the community and the protection of the community;

(b) Whether the offense was committed in an aggressive, violent, premeditated, or willful manner;

(c) Whether the offense was against persons or against property;

(d) The sophistication and maturity of the defendant, as determined by consideration of his home, environmental situation, emotional attitude, and pattern of living;

(e) The record and previous history of the defendant, including:

1. Previous contacts with the department, the Department of Health and Rehabilitative Services, other law enforcement agencies, and courts;

2. Prior periods in a community control program;

3. Prior violations of law; and

4. Prior commitments to institutions;

(f) The likelihood of reasonable rehabilitation of the defendant if he is assigned to youthful offender services and facilities; and

(g) Whether classification would:

1. Reflect the seriousness of the offense, promote respect for law, and provide just punishment for the offense; and

2. Provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

**History.**—s. 5, ch. 78-84.

**958.05 Judicial disposition of youthful offenders.**—If the court classifies a person a youthful offender, in lieu of other criminal penalties authorized by law, the court shall dispose of the criminal case as follows:

(1) The court may place the youthful offender on probation in a community control program, with or without an adjudication of guilt, for a period not to



exceed 2 years or extend beyond the 23rd birthday of the defendant.

(2) The court may commit the youthful offender to the custody of the department for a period not to exceed 6 years. The sentence of the court shall specify a period of not more than the first 4 years to be served by imprisonment and a period of not more than 2 years to be served in a community control program. The defendant shall serve the sentence of the court unless sooner released as provided by law.

(3) If the court finds that any one of the following aggravating factors exists, the court may impose a minimum term of imprisonment of 1 year before eligibility for parole, and the court shall sentence the defendant to a term of imprisonment not to exceed more than the first 4 years and a period of not more than 2 years to be served in a community control program. The court shall make written findings as to the aggravating factors found to exist.

(a) The defendant inflicted or attempted to inflict serious bodily injury to another during the commission of the felony or in flight therefrom. "Serious bodily injury" means bodily injury which creates a substantial risk of death or serious disfigurement, serious impairment of health, or serious loss or impairment of the function of any organ or part of the body.

(b) The defendant presents a continuing risk of physical harm to the public.

(c) The defendant knowingly created a great risk of bodily injury or death to any person.

(d) The defendant committed a felony that was heinous or involved physical violence.

History.—s. 6, ch. 78-84.

**958.06 Suspension of sentence by court.**—The court, upon motion of the defendant, or upon its own motion, may within 60 days after imposition of sentence suspend the further execution of the sentence and place the defendant on probation in a community control program upon such terms as the court may require. The department shall forward to the court, not later than 3 working days prior to the hearing on the motion, all relevant material on the youthful offender's progress while in custody.

History.—s. 7, ch. 78-84.

**958.07 Presentence report; access by defendant.**—The defendant is entitled to an opportunity to present to the court facts which would materially affect the decision of the court to adjudicate the defendant a youthful offender. The defendant, his attorney, and the state shall be entitled to inspect all factual material contained in the presentence report or diagnostic reports prepared or received by the department. The court may withhold from disclosure to the defendant and his attorney sources of information which have been obtained through a promise of confidentiality. In all cases in which parts of the report are not disclosed, the court shall state for the record the reasons for its action and shall inform the defendant and his attorney that information has not been disclosed.

History.—s. 8, ch. 78-84.

**958.08 Community control program; supervision.**—Community control programs shall be supervised by the department or other public or private agencies designated by the department and shall include, but shall not be limited to:

(1) Supervised activities designed to encourage noncriminal behavior, with appropriate sanctions for violation of the terms of the program by the youthful offender; and

(2) Restitution in money or in kind or through public service.

History.—s. 4, ch. 78-84.

**958.09 Extension of limits of confinement.**—

(1) The department is authorized to adopt regulations permitting the extension of the limits of the place of confinement of a youthful offender when there is reasonable cause to believe that he will honor the trust placed in him. The department may authorize a youthful offender, under prescribed conditions and following investigation and approval by the department which shall maintain a written record of such action, to leave the place of his confinement unaccompanied by a custodial agent for a prescribed period of time to:

(a) Visit a designated place or places for the purpose of visiting a dying relative, attending the funeral of a relative, or arranging for employment or for a suitable residence for use when released, to otherwise aid in the correction of the youthful offender, or for another compelling reason consistent with the public interest, and return to the same or another institution or facility designated by the department; or

(b) Work at paid employment, participate in an educational or a training program, or voluntarily serve a public or nonprofit agency or a public service program in the community; provided, that the youthful offender shall be confined except during the hours of his employment, education, training, or service and while traveling thereto and therefrom.

(2) The department may adopt rules as to the eligibility of youthful offenders for such extension of confinement, the disbursement of any earnings of youthful offenders, or the entering into of agreements between the department and any municipal, county, or federal agency for the housing of youthful offenders in a local place of confinement.

(3) The willful failure of a youthful offender to remain within the extended limits of confinement or to return within the time prescribed to the place of confinement designated by the department is an escape from the custody of the department and a felony of the third degree, punishable as provided by s. 775.082.

(4) The department may contract with other public and private agencies for the confinement or community supervision of youthful offenders when consistent with the youthful offender's welfare and the interest of society.

History.—s. 9, ch. 78-84.

**958.10 Community control program; maximum term.**—

(1) A youthful offender, when placed in a community control program upon release from imprisonment by parole or by accumulation of statutory

gain-time allowances, shall be supervised in the program for a period not to exceed either 2 years or the balance of the maximum term to which he was sentenced, whichever is less; and the release shall be under such conditions as may be set by written order of the Parole and Probation Commission.

(2) During the period spent in the community control program, the youthful offender shall perform the terms and conditions of his release agreement and shall be subject to revocation or modification of the release agreement as if he were on parole. The provisions of s. 945.30 shall apply to youthful offenders released on parole or by accumulation of statutory gain-time allowances, except those youthful offenders within or without the state under an interstate compact adopted pursuant to chapter 949.

(3) The department shall develop policies which will provide for enhanced supervision programs for youthful offenders who have violated the technical terms of their release agreements where such violations do not constitute misdemeanors or felonies. The policies shall stress alternatives other than revocation and confinement in prison and may include community residential or community nonresidential activities.

History.—s. 10, ch. 78-84.

**958.11 Designation of facilities for youthful offenders; certification of facility capacity.—**

(1) The department shall designate and adapt facilities and programs for youthful offenders and shall employ and utilize personnel specially qualified by training and experience to operate facilities and programs for youthful offenders.

(2) Insofar as is practical, youthful offender facilities and programs shall be used only for youthful offenders, and such youthful offenders shall be segregated from other offenders.

History.—s. 11, ch. 78-84.

**958.12 Participation in certain activities required.—**A youthful offender may be required to participate in vocational, educational, correctional, or public service training or activities. Income derived by a youthful offender from participation in such training or activities may be used, in part, to defray a portion of the costs of his incarceration or supervision, to satisfy pre-existing obligations, or to

pay restitution to the victim of the crime for which the youthful offender has been convicted in an amount determined by the sentencing court. The court may recommend placement of the youthful offender in a community residential facility as a condition of supervision, subject to budgetary limitations and the availability of bed space.

History.—s. 12, ch. 78-84.

**958.13 Sealing, expunction, and dissemination of records.—**

(1) The records relating to the arrest, indictment, information, trial, or disposition of alleged offenses of a person adjudicated a youthful offender under this act shall be subject to such sealing, expunction, and control of dissemination as are the criminal justice records of other adult offenders under applicable provisions of law.

(2) The records relating to the incarceration, rehabilitation, and postcustodial supervision of a youthful offender under this act shall be accessible only to criminal justice agencies, other public and private entities having responsibilities under this act, and, otherwise, only to such public and private entities able to demonstrate to a court of competent jurisdiction that access to such records is in the interest of a youthful offender, a group of youthful offenders, or the public welfare.

(3) Nothing in this section shall be construed as prohibiting a youthful offender or his attorney from discovery of records or information as otherwise authorized by law or required by the state or the federal constitution.

History.—s. 13, ch. 78-84.

**958.14 Violation of community control program.—**A violation or alleged violation of the terms of a community control program shall subject the youthful offender to the provisions of ss. 948.06(1), 949.10, 949.11, and 949.12.

History.—s. 14, ch. 78-84.

**958.15 Mutual participation agreements.—**The provisions of this act shall not restrict the participation of youthful offenders in a mutual participation agreement adopted pursuant to s. 947.135.

History.—s. 15, ch. 78-84.

## CHAPTER 959

## YOUTH SERVICES

- 959.001 Definitions.
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- 959.021 Authority of department; regulations; annual report.
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- 959.21 Certified copy of charge to be attached to the commitment.
- 959.22 Case history of each child committed.
- 959.225 Records; privileged information.
- 959.23 Duty of juvenile detention inspectors.
- 959.24 County and state detention facilities.
- 959.25 Exceptional child educational program.
- 959.28 Field services.

**959.001 Definitions.**—When used in this chapter unless the context clearly requires otherwise:

(1) "Department" means the Department of Health and Rehabilitative Services as defined in s. 20.19.

(2) "Intake" means the acceptance and screening of complaints to determine the action to be taken in the best interest of the child and the community, including such alternatives as:

(a) The disposition of the complaint without court action when appropriate;

(b) The referral of the child to another public or private agency when appropriate; and

(c) The instigation of court action when necessary.

Also included in intake is the performance of necessary activities to further the prevention of juvenile delinquency.

(3) "Child" means a child as defined in chapter 39, who is alleged to be, or has been adjudicated, delinquent.

(4) "Detention facilities" means the county or state facilities used for detention, including the physical plant, fixtures, equipment, and properties on which such facilities are located, and shall include the outdoor areas customarily used by the detention facility.

(5) "Court" means the circuit court with juvenile jurisdiction.

(6) "Detention care" means the temporary care

of children in secure or nonsecure custody.

(7) "Volunteer" means a person screened and selected by the department to advise and assist in programs for the prevention, control, and treatment of juvenile delinquency.

(8) "Secure facility" means a physically restricting facility for the temporary care of children, pending adjudication or court disposition.

(9) "Nonsecure facility" means a physically unrestricted facility for the temporary care of children, pending adjudication or court disposition.

(10) "Attention home" means a residence in the community to house one or more, but not exceeding six, children in a physically unrestricted environment, pending adjudication.

(11) "Home detention" means any child, pending adjudication, released to the custody of his parents, guardian, or custodian under the supervision of a community youth leader.

**History.**—s. 1, ch. 73-230; s. 1, ch. 73-241; s. 257, ch. 77-104; s. 478, ch. 77-147.

### 959.011 Administration.—

(1) The <sup>1</sup>[department] shall be responsible for the planning, development, and coordination of a statewide, comprehensive youth services program for the prevention, control, and treatment of juvenile delinquency.

(2) The <sup>1</sup>[department] shall develop and implement diversified and innovative programs in order to provide for the treatment of persons referred or committed to the <sup>2</sup>division. Such programs may include, but shall not be limited to, training schools, foster homes, halfway houses, forestry camps, training ships, regional diagnostic and classification centers, detention care, aftercare, intake, probation, shelter care, individual and group counseling, volunteer assistance, prevention services, and other state and local community-based residential and nonresidential programs.

(3) The <sup>1</sup>[department] shall have exclusive supervisory care, custody, and active control of persons committed to it. Pursuant to such regulations as the department may provide, the <sup>1</sup>[department] is authorized to transfer persons from one facility or program to another facility or program within the <sup>1</sup>[department], including, but not limited to, furlough in the community and the revocation of such furlough.

(4) The <sup>1</sup>[department] is authorized to receive and expend state, federal or private funds which are appropriated, awarded, or designed primarily for use in juvenile delinquency programs or facilities. The <sup>1</sup>[department] is also authorized to receive and expend federal funds under programs of the Federal Government or its agencies which require the state or appropriate state agency to provide supporting or matching funds if said supporting or matching funds are appropriated by the legislature.

(5) In order to instill the virtues of work, thriftiness, and responsibility for the management of their own funds in persons in its care, and to further prepare these persons for return to the community, the department is authorized to provide payment to



these persons of reasonable sums of money for work performed while employed through its work programs, which either benefit the <sup>2</sup>division, the department, or the state or their properties, provided the funds shall be specifically provided to make such payments and that payments are made pursuant to a plan approved by the Department of Health and Rehabilitative Services and the Executive Office of the Governor.

(6) The department shall maintain a close and continuing relationship with the State Department of Education for the purposes of benefiting from the consultant services available therein and of cooperation with the commissioner of education and public school systems in preventing truancy and dropouts.

(7) The <sup>1</sup>[department] shall make studies and prepare social histories of persons when commitment to the <sup>3</sup>[youth services programs of the department] is being considered by the court.

(8) The <sup>1</sup>[department] may provide consultation services and technical assistance to courts, law enforcement agencies, and other public and private organizations. The <sup>1</sup>[department] shall develop programs to stimulate community action relating to the prevention, control, and treatment of juvenile delinquency.

(9) The department shall study all available statistical data for the purpose of a continuing evaluation of all programs relating to the prevention, control, and treatment of juvenile delinquency. The department shall also develop, and annually revise, Florida's comprehensive plan for the prevention, control, and treatment of juvenile delinquency, to include the evaluation of programs together with recommendations and comprehensive multiyear planning.

**History.**—s. 1, ch. 69-365; ss. 19, 31, 35, ch. 69-106; s. 8, ch. 71-130; s. 2, ch. 73-241; s. 148, ch. 79-190.

<sup>1</sup>**Note.**—Bracketed word substituted by the editors for "division." See s. 3(3), ch. 75-48.

<sup>2</sup>**Note.**—The Division of Youth Services was abolished and its functions assigned. See s. 3(3), ch. 75-48.

<sup>3</sup>**Note.**—Bracketed language substituted for "Division of Youth Services." See s. 3(3), ch. 75-48.

#### **959.021 Authority of department; regulations; annual report.—**

(1) The department shall be responsible for the implementation of law and policy relating to youth services and for the coordination of its efforts with those of the Federal Government and other state departments and agencies, county governments, municipal governments, and private agencies concerned with providing youth services. It shall be responsible for establishing standards, providing technical assistance, and exercising the requisite supervision, as it relates to youth services programs, over all state-supported juvenile facilities.

(2) The department shall employ such personnel as is necessary to implement diversified programs for the training, care, and treatment of persons committed or referred to it.

(3) The department shall promulgate its own rules, regulations, and policies as are needed for the efficient government and maintenance of all facilities and programs. Said rules, regulations, and policies shall be in accord, insofar as possible, with cur-

rently accepted standards of juvenile care and treatment.

**History.**—s. 1, ch. 69-365; ss. 19, 35, ch. 69-106; s. 3, ch. 73-241; s. 479, ch. 77-147.

#### **959.022 State-operated detention.—**

(1) The Department of Health and Rehabilitative Services is authorized to develop and implement a state-operated, regionally administered system of detention services for children.

(2)(a) The department shall develop a comprehensive plan for the implementation of the regional administration of all detention services in the state. The plan shall provide for the availability of detention services for all counties, and shall be fully implemented by December 31, 1973.

(b) The initial implementation plan shall be comprised of 18 catchment areas, with each area having a secure facility, attention homes, and a home detention program. The department shall have the authority to alter or modify the initial implementation plan.

(c) The department shall establish the catchment areas under the initial implementation plan as follows:

1. Area 1.—Escambia, Santa Rosa, and Okaloosa Counties;
2. Area 2.—Walton, Holmes, Jackson, Calhoun, Gulf, Bay, and Washington Counties;
3. Area 3.—Gadsden, Leon, Jefferson, Madison, Liberty, Franklin, Wakulla, and Taylor Counties;
4. Area 4.—Hamilton, Lafayette, Dixie, Columbia, Suwannee, Union, Gilchrist, Levy, Alachua, Bradford, and Putnam Counties;
5. Area 5.—Nassau, Baker, Duval, Clay, and St. Johns Counties;
6. Area 6.—Flagler and Volusia Counties;
7. Area 7.—Seminole, Orange, and Osceola Counties;
8. Area 8.—Marion, Sumter, Lake, Citrus, and Hernando Counties;
9. Area 9.—Pinellas County;
10. Area 10.—Pasco and Hillsborough Counties;
11. Area 11.—Polk County;
12. Area 12.—Brevard and Indian River Counties;
13. Area 13.—Manatee, Hardee, Okeechobee, and Highlands Counties;
14. Area 14.—Sarasota and DeSoto Counties;
15. Area 15.—Charlotte, Glades, Lee, Hendry, and Collier Counties;
16. Area 16.—Palm Beach, St. Lucie, and Martin Counties;
17. Area 17.—Broward County;
18. Area 18.—Dade and Monroe Counties.

This designation of catchment areas shall not be construed to restrict the department from temporarily placing or transferring children from one catchment area into another.

(d) The department shall, if it has not already done so by the effective date of this act, assume the operation of the secure detention facilities in the counties of Alachua, Bay, Brevard, Broward, Dade (Youth Hall until the new county-built facility is completed), Duval, Escambia (Youth Harbor until the new county-built facility is completed), High-

lands, Hillsborough (Seffner facility only), Lake, Lee, Leon, Manatee, Marion, Orange, Palm Beach, Pinellas, Polk, Sarasota, Seminole (when county-built facility is completed), and Volusia. In Monroe County, the department shall close the current secure detention facility and change the location of detention to another facility provided by the county.

(e) In assuming the operation of secure and nonsecure detention facilities, the department shall accept the facilities on one of the following conditions at the option of the county:

1. That the department accept full title for the county detention facility; or
2. That the state and county enter into a token lease agreement of \$1 per year for a period as long as this statute remains in effect, with the exception that should the need outgrow the existing facility and it appear unrealistic to add or build new facilities on the same property, the facility would then revert to the county.

Under either option, it shall be the responsibility of the state to maintain the property and buildings at no cost to the county.

(f) In counties where the need for new secure detention facilities has been determined by the county prior to the effective date of this act, or where the need for modifications to existing buildings has been determined by the department prior to the effective date of this act, the department shall notify the affected counties, and such counties shall obtain the necessary construction plans and bids as prescribed by law. The plans shall be approved by the department, and the counties shall proceed with the required construction or modification and shall be responsible for the full construction or modification cost of the facility.

(g) The department shall develop federal funding proposals and assist the counties in applying for all available federal funds to carry out the purposes of this section.

(3) Nothing in this section shall be construed to abridge the powers granted local units of government in chapters 39 and 416 and other applicable provisions of law to operate detention programs, except that on the implementation date, the counties within the region where the state has assumed detention services shall lose the statutory authority to provide such services, whether such authority is granted by chapter 39, chapter 416, or other applicable law. On said implementation date the statutory authority to provide operation of detention services in that region shall be transferred to and be vested in the department.

(4) Any employee of a county detention facility who is performing services which the department will begin to perform as a result of this section will be offered a position with comparable duties, at no decrease in salary, by the department. For the purpose of this section, a salary shall be construed to include the cash equivalent of employee benefits. Any county employee who desires employment pursuant to the provisions of this subsection must elect this option prior to the implementation date.

**History.**—s. 1, ch. 72-216; s. 1, ch. 73-230; s. 4, ch. 73-241; s. 258, ch. 77-104; s. 1, ch. 77-174; s. 13, ch. 79-12; s. 197, ch. 79-164.

**959.05 Consultants.**—The department may hire consultants to advise and confer with the judges of the circuit courts upon request of any such court and for the purpose of advising the department on programs, institutions, care, control, and all manner of treatment of children committed to the department's care.

**History.**—s. 1, ch. 69-365; ss. 19, 35, ch. 69-106; s. 44, ch. 73-334; s. 481, ch. 77-147.

**959.06 Legal representative; contracting powers.**—

(1) The Department of Legal Affairs shall be the legal representative of the '[Department of Health and Rehabilitative Services].

(2) The Department of Health and Rehabilitative Services may contract with the federal government, other state departments and agencies, and with county and municipal governments and agencies, public and private agencies, and with private individuals and corporations in carrying out the purposes and the responsibilities of the youth services programs of the department.

**History.**—s. 1, ch. 69-365; ss. 11, 35, ch. 69-106; s. 14, ch. 79-12.

**Note.**—Bracketed language substituted for "division." See s. 3(3), ch. 75-48.

**959.10 Discipline at department facilities; security units.**—

(1) The department shall establish policies for the maintenance of good order and discipline in its youth services programs. Said policies shall be in accordance with currently accepted standards of juvenile care and treatment and due process of law.

(2) The department may approve any appropriate facilities for use as security units. When any person is committed to the department and is thereafter found incorrigible, or his continued presence in a facility of the department is deemed injurious to its management and discipline, the department may, in its discretion, transfer such person to any one of such security units, there to be kept, disciplined, and supervised. The department shall have the discretionary authority to transfer any such person from one security unit to another, and may at any time transfer him to a youth services program. The department may make transfers as herein provided under such procedures as the department may prescribe.

(3) The department shall provide for a record of the use of security and adjustment units.

**History.**—s. 1, ch. 69-365; ss. 19, 35, ch. 69-106; s. 7, ch. 73-241; s. 15, ch. 79-12.

**959.116 Transfer of minors from the Department of Corrections to the Department of Health and Rehabilitative Services.**—

(1) When any person under the age of 18 years is sentenced by any court of competent jurisdiction to the Department of Corrections, the secretary of the Department of Health and Rehabilitative Services may transfer such person to the youth services programs of the Department of Health and Rehabilitative Services for the remainder of his sentence, or until his '21st birthday, whichever results in the shorter term. If, upon such person's attaining his '21st birthday, his sentence has not terminated, he shall be transferred to the Department of Corrections for placement in a youthful offender program or, with the commission's consent, to the supervision

of the department or be given any other transfer which may lawfully be made.

(2) If such person is under sentence for a term of years, after the <sup>2</sup>[Department of Health and Rehabilitative Services] has supervised such person for a sufficient length of time to ascertain that such person has attained satisfactory rehabilitation, the <sup>3</sup>director of the Division of Youth Services, upon determination that such action is in the best interest of the person and society, may relieve such person from making further reports.

(3) When such person has, in the opinion of the Department of Health and Rehabilitative Services, so conducted himself as to deserve a pardon, a commutation of sentence, or the remission in whole or in part of any fine, forfeiture, or penalty, the secretary may recommend that such clemency be extended to such person. In such case the secretary shall fully advise the governor of the facts upon which such recommendation is based.

(4) The <sup>2</sup>[Department of Health and Rehabilitative Services] shall grant gain-time for good conduct, may grant extra good-time allowances, and may declare a forfeiture of same, as described in ss. 944.27-944.29. Any person transferred to the <sup>2</sup>[department] who is released pursuant to s. 944.291 shall be supervised by the <sup>2</sup>[department]. If any person is transferred to the <sup>2</sup>[department] who was sentenced pursuant to s. 921.18, the <sup>3</sup>director of the Division of Youth Services shall have the authority to determine the exact sentence of such person, but the sentence shall not be longer than the maximum sentence which was imposed by the court pursuant to s. 921.18. All time spent in the <sup>2</sup>[department] shall count toward the expiration of sentence. Any person so transferred to the <sup>2</sup>[department] may, at the discretion of the secretary, be returned to the Department of Corrections.

(5) Any person who has been convicted of a capital felony while under the age of 18 years shall not be furloughed on juvenile parole without the consent of the governor and three members of the cabinet.

**History.**—s. 11, ch. 72-179; s. 17, ch. 78-84; s. 120, ch. 79-3.

<sup>1</sup>**Note.**—Ch. 73-21, Laws of Florida, removed the disability of nonage for persons 18 years of age and older.

<sup>2</sup>**Note.**—The Division of Youth Services was abolished and its functions assigned. See s. 3(3), ch. 75-48. Bracketed language substituted by the editors to reflect these changes.

<sup>3</sup>**Note.**—The division, of which the director was head, was abolished by s. 3(3), ch. 75-48.

cf.—s. 1.01 Definition of minor.

s. 743.07 Rights, privileges and obligations of persons 18 years of age or older.

**959.12 Term of commitment.**—When any child is committed to the department, the commitment shall be for such period of time as the department deems proper, or until he reaches his 21st birthday, unless otherwise discharged as required by law.

**History.**—s. 1, ch. 69-365; ss. 19, 35, ch. 69-106; s. 483, ch. 77-147.

<sup>1</sup>**Note.**—Ch. 73-21, Laws of Florida, removed the disability of nonage for persons 18 years of age and older.

cf.—s. 1.01 Definition of minor.

s. 743.07 Rights, privileges and obligations of persons 18 years of age or older.

**959.13 Transfer to mental health and retardation services.**—Any person committed to youth services programs of the department may be trans-

ferred to mental health and retardation facilities for diagnosis and evaluation pursuant to the procedures and criteria provided in chapters 394 and 393, respectively, for a period not to exceed 90 days.

**History.**—s. 1, ch. 69-365; ss. 19, 35, ch. 69-106; s. 4, ch. 70-353; s. 9, ch. 73-241; s. 22, ch. 78-414.

**959.15 Detention of furloughed person or escapee on authority of the department.**—

(1) If an authorized agent of the department has reasonable ground to believe that any delinquent child committed to the department has committed an act for which he could be adjudicated delinquent, violated his furlough agreement in a material respect, or escaped from a facility of the department, such agent may take such person into his active custody. The superintendent, warden, or jailer of any facility, state, county, or municipal, is authorized to take such child into custody for the purpose of assuring that the child is delivered to the appropriate intake office or appropriate facility of the department. However, no child shall be held in detention longer than 48 hours, excluding Sundays and legal holidays, unless a special order so directing is made by the judge after a detention hearing finding that detention is required based on the criteria in s. 39.032(2). The order shall state the reasons for such finding. The reasons shall be reviewable by appeal or in habeas corpus proceedings in the district court of appeal.

(2) Any sheriff or other peace officer shall, upon request of the director of the <sup>1</sup>[department] or his duly authorized agent, assist in the apprehension and detention of any escapee from the <sup>1</sup>[department], any person who has violated his furlough agreement in a material respect, or any child who there is reasonable cause to believe has committed an act for which he could be adjudicated delinquent.

**History.**—s. 1, ch. 69-365; ss. 19, 35, ch. 69-106; s. 3, ch. 70-353; s. 10, ch. 73-241; s. 259, ch. 77-104; s. 25, ch. 78-414.

<sup>1</sup>**Note.**—Bracketed word substituted by the editors for "division." See s. 3(3), ch. 75-48.

**959.156 Furlough revocation hearing.**—Upon a recommendation that a person committed to the department have his furlough revoked, the department shall, within 30 days from the date the recommendation was made, hold an administrative hearing pursuant to chapter 120.

**History.**—s. 11, ch. 73-241; s. 19, ch. 78-95.

**959.185 Service of process.**—Any summons, subpoena, or other process requiring the presence or the taking into custody of a person committed to the department and placed in a residential treatment facility shall be served by delivering two copies of such process to the person in charge of the facility, who shall deliver one of the copies to the committed person and be responsible for said committed person's compliance with the process.

**History.**—s. 12, ch. 73-241; s. 16, ch. 79-12.

**959.19 Contracts for the transfer of Florida juveniles under federal custody.**—To the extent that maintenance costs are borne entirely from federal funds, the department is empowered to contract with federal authorities for the return of juvenile citizens of Florida who are in the custody of a federal



court or a federal correctional institution for violations of a federal law. Said juveniles under contract are to be transferred to the exclusive custody and active control of the department, under the terms, agreements and provisions of the aforementioned contract.

**History.**—s. 1, ch. 69-365; ss. 19, 35, ch. 69-106; s. 484, ch. 77-147.

**959.20 Form of commitment.**—When any child is committed to the department, the commitment form to be used by the judge of the committing court shall be as prescribed by the department.

**History.**—s. 1, ch. 69-365; ss. 19, 35, ch. 69-106; s. 485, ch. 77-147.

**959.21 Certified copy of charge to be attached to the commitment.**—The clerk of each court committing a child to the department, or the judge thereof if it has no clerk, shall prepare and attach to each commitment form a certified copy of the petition upon which the person is being committed to the department.

**History.**—s. 1, ch. 69-365; s. 17, ch. 79-12.

**959.22 Case history of each child committed.**—In addition to the requirements of ss. 959.20 and 959.21, the clerk of each court, or the judge thereof if it has no clerk, shall prepare and forward to the department, at the time of committing a child to the active control of the department, a case history of said child, in such form as prescribed by the department. Said case history shall include information about:

- (1) The sociopsychological history of each child committed.
- (2) The medical history of the child.
- (3) The educational and homelife history of each child committed, including his school records.
- (4) Such other information deemed necessary by the department and requested in writing to be submitted by the court.

**History.**—s. 1, ch. 69-365; ss. 4, 19, 35, ch. 69-106; s. 286, ch. 71-377; s. 486, ch. 77-147.

**959.225 Records; privileged information.**—

(1) The Department of Health and Rehabilitative Services shall make records regarding the persons it serves pursuant to this chapter. Records pertaining to persons committed to or supervised by the department pursuant to a court order shall be preserved until the person reaches the age of 21. Records pertaining to all other children served pursuant to this chapter shall be preserved in accordance with rules and regulations promulgated by the secretary. The destruction of all records shall be subject to the provisions of the Florida Archives and History Act, chapter 267.

(2) Records regarding children shall not be open to inspection by the public. Such records shall be inspected only upon order of the secretary of the Department of Health and Rehabilitative Services or his authorized agent by persons determined to have a sufficient reason and upon such conditions for their use and disposition as the secretary or his authorized agent may deem proper. The secretary or his authorized agent may permit properly qualified persons to inspect and make abstracts from records for statistical purposes under whatever conditions

upon their use and disposition the secretary or his authorized agent may deem proper, provided adequate assurances are given that children's names and other identifying information will not be disclosed by the applicant.

(3) All information obtained in the discharge of official duty relating to youth services by an employee of the Department of Health and Rehabilitative Services is privileged. Such information may be disclosed only to other employees of the department who have a need therefor in order to perform their official duty and to other persons as authorized by the rules and regulations of the department.

**History.**—s. 7, ch. 72-179; s. 13, ch. 73-241; s. 487, ch. 77-147.

<sup>1</sup>**Note.**—Ch. 73-21, Laws of Florida, removed the disability of nonage for persons 18 years of age and older.

cf.—s. 1.01 Definition of minor.

s. 743.07 Rights, privileges and obligations of persons 18 years of age or older.

**959.23 Duty of juvenile detention inspectors.**—

(1) Juvenile detention inspectors shall, under the direction of the Department of Health and Rehabilitative Services, inspect all juvenile detention facilities at least semiannually and on other occasions as directed.

(2) The juvenile detention inspectors shall make written reports to the department and send duplicate copies of said reports to:

- (a) The board of county commissioners of the appropriate county;
- (b) The judge of the circuit court exercising juvenile jurisdiction;
- (c) The person in charge of the detention facility; and
- (d) The sheriff of the appropriate county.

Such reports shall at all times be open to public inspection.

**History.**—s. 2, ch. 70-353; s. 1, ch. 70-439; s. 44, ch. 73-334; s. 488, ch. 75-147.

**959.24 County and state detention facilities.**—

(1) "Juvenile detention facility" means a detention home as defined in s. 39.01(16) or a county detention facility as defined in s. 951.23 if such detention home or county detention facility is used for the detention of children adjudicated delinquent or children awaiting hearing in delinquency proceedings in a circuit court exercising juvenile jurisdiction.

(2)(a) The Department of Health and Rehabilitative Services is authorized and directed to adopt rules and regulations prescribing standards and requirements with reference to:

1. The construction, equipping, maintenance, staffing, programming, and operation of juvenile detention facilities;
2. The treatment, training, and education of children confined therein;
3. The cleanliness and sanitation of juvenile detention facilities;
4. The number of children who may be housed in such facilities per specified unit of floor space;
5. The quality, quantity and supply of bedding furnished to children housed in such facilities;
6. The quality, quantity and diversity of food served and the manner in which it is served;

7. The furnishing of medical attention and health and comfort items; and

8. The disciplinary treatment administered.

(b) In setting standards and requirements, the department shall consult with officers of counties which operate juvenile detention facilities. After standards and requirements are changed, counties which operate juvenile detention facilities shall be provided with copies of such standards and requirements. After the adoption or alteration of standards and requirements, a reasonable time shall be allowed for counties to implement any required changes.

(3) The department shall enforce such rules and regulations and shall designate personnel of the department to inspect all such detention facilities in order to determine whether such standards and requirements are being met. If the standards and requirements are not being met, the use of such facility may be prohibited by an order of the judge of the circuit court. In the absence of such an order, the department may file a complaint in circuit court, whereupon an injunction may be granted to prohibit the confinement of any child in any juvenile detention facility which does not meet such standards and requirements.

(4)(a) If the department finds that children are detained in any juvenile detention facility which does not meet such standards and requirements, it may so certify to the circuit court and thereupon the court shall either order such deficiency corrected so as to meet minimum standards and requirements or order such children, or any part of them, removed to and confined in a juvenile detention facility which does meet such standards and requirements, whether it is in the same or another county, if such county is willing to receive such child or children.

(b) The expense of maintaining children who are removed to another county under the provisions of paragraph (a) shall be borne by the county from which they are removed.

(c) Promptly upon the issuing of any order authorized by paragraph (a), copies thereof shall be sent to the officer in charge of the detention facility from which the children affected by such order are required to be removed, to the board of county commissioners and sheriff of the county in which such detention facility is situated, to the officer in charge of the county detention facility to which they are required to be removed, and to the parents or guardians of all children required to be moved. If the order requires the removal of children to a detention facility in another county, a copy thereof shall also be promptly sent to the board of county commissioners and sheriff of the county in which it is situated and to the judge of the circuit court.

**History.**—s. 2, ch. 70-353; s. 1, ch. 70-439; s. 44, ch. 73-334; s. 259, ch. 77-104; s. 489, ch. 77-147; s. 305, ch. 79-400.

#### **959.25 Exceptional child educational program.—**

(1) The Legislature recognizes that the wards of the Department of Health and Rehabilitative Services, by reason of their commitment to state custody, are as a group the most seriously socially maladjusted children within the state. It is recognized that a meaningful compensatory educational and work

readiness program is an essential component of the treatment process for youthful offenders. High priority should be given to the development of innovative educational techniques in order to remedy the deficiencies of children within the department. It is the intent of the Legislature that sufficient funds and personnel be provided for an exceptional child educational program for children in the custody of the department. The educational resources for the department should be equal to or greater than the resources available in the public schools for the education of children with similar social maladjustments and learning disabilities. Funds shall annually be appropriated to the department from the General Revenue Fund by the methods and for the educational purposes hereinafter specified. Nothing in this section shall be construed to prevent, upon demonstration of need, the appropriation of moneys for educational purposes in addition to those moneys and purposes provided in this section. Moneys for construction and maintenance of physical plant, transportation, and food shall be appropriated separately from this section.

(2) The department shall establish an exceptional child educational program pursuant to the Florida School Code and the regulations of the State Board of Education. The department shall each year, prior to April 1, submit to the Department of Education a plan for the exceptional child educational program. Upon approval of such plan by the Department of Education, the funds appropriated pursuant to this section shall be released to the department.

(3) Each year there shall be appropriated from the General Revenue Fund, educational moneys for the department. Such funds shall be made available for educational programs in facilities under the control and supervision of the department. The procedures for determining such appropriation, for expenditures other than for construction and maintenance of physical plants, transportation, food, and salaries for instructional personnel pursuant to subsection (4) shall be as follows:

(a) The number of instructional units shall be projected by the department and certified by the Department of Education for the fiscal year for which funds are being appropriated, and funds shall be appropriated based on such projections. For each 10 children, or major fraction thereof, in average daily attendance for 228 days, the department shall earn one instructional unit. Average daily attendance shall include all children receiving educational services provided by the department.

(b) For each four instructional units, or fraction thereof, the department shall earn one unit for special teacher services.

(c) The sum of the instructional units and units for special teacher services shall be multiplied by the amount provided per instruction unit for current expenses other than instructional salaries and transportation pursuant to s. 236.07(5).

(d) For each two units, determined as provided in paragraphs (a) and (b), the department may employ one teacher aide, to be paid from funds appropriated pursuant to subsection (4).

(4)(a) There shall annually be appropriated from the General Revenue Fund to the department suffi-

cient moneys for salaries for instructional personnel.

(b) The department may request positions and salary levels for a director of education, an assistant director of education, specialists in exceptional child education, vocational education, and the evaluation of educational programs, and such other educational personnel as may be needed to exercise administrative and supervisory authority over all educational programs of the department. Moneys shall be appropriated for such positions in addition to the moneys provided for in paragraph (a) of this subsection.

(5) It is the intent of the Legislature that the curriculum utilized in such institutions shall be consistent with that of the public school system, but with emphasis on direct job-related vocational-technical education. The department shall conduct continuous evaluation of its educational programs and shall report annually to the Legislature and to the Commissioner of Education. Such reports shall be submitted to the Commissioner of Education and the chairmen of the appropriate education committees of the Legislature.

History.—s. 5, ch. 70-353; s. 1, ch. 70-439; s. 14, ch. 73-241; s. 18, ch. 79-12.

#### **959.28 Field services.—**

(1) The department shall establish intake ser-

vices for the circuit courts of Florida for the purpose of conducting preliminary screening for future action on the case, to include possible alternatives of filing a petition for court action, nonjudicial supervision, nonresidential treatment, shelter care, and individual and group counseling.

(2) With regard to persons referred or committed to the department, the function of the department may include, but shall not be limited to:

(a) Providing counseling and such other services as may be necessary for said persons brought before the intake section of the court of persons referred or committed to the department.

(b) Providing nonjudicial supervision or voluntary counseling services for said persons in the absence of a judicial proceeding, but only if the parents and child agree to such supervision.

(c) Providing counseling and other services as may be necessary for the families of persons brought before the court or persons referred or committed to the department and preparing their homes for the return of the person, in order that the value of the training he has received shall not be lost.

(d) Supervising any person furloughed into the community from a facility of the department.

History.—s. 10, ch. 71-130; s. 15, ch. 73-241; s. 44, ch. 73-334; s. 19, ch. 79-12.



## CHAPTER 960

## VICTIMS OF CRIMES

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**960.01 Short title.**—The provisions of this chapter shall be known and may be cited as the "Florida Crimes Compensation Act."

*History.*—s. 1, ch. 77-452.

**960.02 Declaration of policy and legislative intent.**—The Legislature recognizes that many innocent persons suffer personal injury or death as a direct result of criminal acts or in their efforts to prevent crime or apprehend persons committing or attempting to commit crimes. Such persons or their dependents may thereby suffer disabilities, incur financial hardships, or become dependent upon public assistance. The Legislature finds and determines that there is a need for government financial assistance for such victims of crime. Accordingly, it is the intent of the Legislature that aid, care, and support be provided by the state, as a matter of moral responsibility, for such victims of crime. It is the express intent of the Legislature that all state departments and agencies cooperate with the Department of Health and Rehabilitative Services in carrying out the provisions of this chapter.

*History.*—s. 1, ch. 77-452.

**960.03 Definitions.**—As used in this chapter, unless the context otherwise requires:

- (1) "Claimant" means any person filing a claim pursuant to this chapter.
- (2) "Commission" means the Florida Crimes Compensation Commission.
- (3) "Crime" means the commission by any person of a felony or misdemeanor under the laws of

this state, which is punishable under the criminal laws of the State of Florida and which results in physical injury to or death of a resident of this state. However, no act involving the operation of a motor vehicle, boat, or aircraft which results in injury or death shall constitute a crime for the purpose of this chapter unless the injury or death was intentionally inflicted through the use of such vehicle, boat, or aircraft, or unless such vehicle, boat, or aircraft is an implement of a crime to which this act applies.

(4) "Department" means the Department of Health and Rehabilitative Services.

(5) "Intervenor" means any person who goes to the aid of another and suffers bodily injury or death as a direct result of acting, not recklessly, to prevent the commission of a crime, to lawfully apprehend a person reasonably suspected of having committed a crime, or to aid the victim of a crime.

(6) "Victim" means any person who suffers personal physical injury or death as a direct result of a crime.

*History.*—s. 1, ch. 77-452.

**960.04 Eligibility for awards.**—

(1) Except as provided in subsection (2), the following persons shall be eligible for awards pursuant to this section:

- (a) A victim.
- (b) An intervenor.
- (c) A surviving spouse, parent, or child of a deceased victim or intervenor.

(d) Any other person who is dependent for his principal support upon a deceased victim or intervenor.

(e) A dependent child of a deceased victim of a crime who is related to or residing in the same household as the person who committed the crime.

(2) Any person who:

- (a) Committed or aided in the commission of the crime upon which the claim was based;
- (b) Was engaged in an unlawful activity at the time of the crime upon which the claim is based;
- (c) Is related within the third degree of consanguinity or affinity to the person who committed the crime, except as provided in paragraph (1)(e);
- (d) Is maintaining a sexual relationship with the person who committed the crime; or
- (e) Resides in the same household as the person who committed the crime, except as provided in paragraph (1)(e),

shall not be eligible to receive an award with respect to such claim.

*History.*—s. 1, ch. 77-452; s. 1, ch. 79-297.

*Note.*—Section 2, ch. 79-297, provides that, "this act shall extend to any child who would have been eligible for an award under the provisions of this act after December 31, 1977."

**960.05 Florida Crimes Compensation Commission.**—

(1) There is hereby created within the Department of Health and Rehabilitative Services the Florida Crimes Compensation Commission, to be composed of a chairman and two other members to be

appointed by the Governor, subject to confirmation by the Senate. Members shall serve for terms of 4 years, except that members first appointed shall serve for terms of 4, 3, and 2 years, respectively. A vacancy for the unexpired term of a member shall be filled in the same manner as herein provided for on original appointment. The commission, in the performance of its duties and powers under this chapter, shall not be subject to control, supervision, or direction by the Department of Health and Rehabilitative Services.

(2) The chairman and members shall receive a salary as established pursuant to the provisions of s. 216.251. The commission shall have the authority to employ an executive director and such other personnel as may be necessary to carry out the provisions of this chapter.

History.—s. 1, ch. 77-452.

#### **960.06 Commission; powers and duties.—**

(1) The commission shall have the power and duty:

(a) To establish and maintain an office in Tallahassee and to prescribe the duties of the employees of the commission.

(b) To adopt, promulgate, amend, and rescind such rules as are necessary to carry out the provisions of this chapter, including rules for the approval of attorney's fees for representation before the commission or before the court upon judicial review as hereinafter provided.

(c) To request from the state attorney or from the law enforcement agencies involved such investigation and data as will enable the commission to determine if, in fact, a crime was committed or attempted, and the extent, if any, to which the victim or claimant was responsible for his own injury or death.

(d) To hear and determine all claims for awards filed with the commission pursuant to this chapter, considering all other programs providing valid and collectible benefits to the claimant, and to reinvestigate or reopen cases as the commission deems necessary.

(e) To require the submission of such medical records as are required and, when necessary, to direct medical examination of the victim or intervenor.

(f) To hold hearings, to administer oaths or affirmations, to examine persons under oath or affirmation and to issue summons requiring the attendance and giving of testimony of witnesses, and to require the production of any books or papers or documentary or other evidence. The powers provided in this subsection may be delegated by the commission to any member or employee thereof.

(g) To take, or cause to be taken, affidavits or depositions within or without the state.

(h) To render, prior to January 1 of each year, to the Governor, to the Secretary of Health and Rehabilitative Services, and to the presiding officers of the Senate and House of Representatives a written report of its activities.

(2) The Department of Legal Affairs shall be the legal advisor to the commission.

History.—s. 1, ch. 77-452; s. 306, ch. 79-400.

#### **960.07 Filing of claims for compensation.—**

(1) A claim for compensation may be filed by a person eligible for compensation as provided in s. 960.04 or, if such person is a minor, by his parent or guardian or, if the person entitled to make a claim is mentally incompetent, by his guardian or such other individual authorized to administer his estate.

(2) A claim must be filed not later than 1 year after the occurrence of the crime upon which the claim is based or not later than 1 year after the death of the victim or intervenor. However, for good cause the commission may extend the time for filing for a period not exceeding 2 years after such occurrence.

(3) Claims may be filed in the Tallahassee office of the commission in person or by mail or with the department in person. Any employee of the department receiving a claim for compensation shall, immediately upon receipt of such claim, mail the claim to the commission at its office in Tallahassee. In no event and under no circumstances shall the rights of a claimant under this chapter be prejudiced or lost by the failure or delay of the employees of the department in mailing claims to the commission in Tallahassee.

(4) Upon filing of a claim pursuant to this chapter, the commission shall promptly notify the state attorney of the circuit wherein the crime is alleged to have occurred. If within 10 days after such notification such state attorney advises the commission that a criminal prosecution is pending upon the same alleged crime and requests that action by the commission be deferred, the commission shall defer all proceedings under this chapter until such time as a trial verdict has been rendered, and shall so notify such state attorney and claimant. When a trial verdict has been rendered, such state attorney shall promptly notify the commission. Nothing in this subsection shall limit the authority of the commission to grant emergency awards pursuant to s. 897.12.

(5) The state attorney's office shall aid claimants in the filing and processing of claims, as may be required.

History.—s. 1, ch. 77-452.

**960.08 Out-of-pocket loss.**—"Out-of-pocket loss" shall mean unreimbursed and unreimbursable expenses or indebtedness incurred for medical care, nonmedical remedial care, or other treatment rendered in accordance with a religious method of healing, as approved by the commission, or for other services necessary as a result of the injury or death upon which such claim is based.

History.—s. 1, ch. 77-452.

#### **960.09 Determination of claims by a commissioner.—**

(1) A claim when accepted for filing shall be assigned by the chairman to himself or to another member of the commission. All claims arising from the death of an individual as a result of a single crime shall be considered together by a single commission member.

(2) The commission member to whom such claim is assigned shall examine the papers filed in support of the claim and shall thereupon cause an investigation to be conducted into the validity of the claim. The investigation shall include, but not be limited to,

an examination of police, court, and official records and reports concerning the crime and an examination of medical and hospital reports relating to the injury or death upon which the claim is based.

(3) Claims shall be investigated and determined, regardless of whether the alleged criminal has been apprehended or prosecuted for, or convicted of, any crime based upon the same incident, or has been acquitted or found not guilty of the crime in question owing to lack of criminal responsibility or to other legal exemption or defense.

(4) The commission member to whom a claim is referred may decide the claim in favor of a claimant on the basis of the papers filed in support thereof and the report of the investigation of the claim. If the commission member is unable to decide the claim upon the basis of said papers and report, he shall order a hearing. At the hearing any relevant evidence not legally privileged shall be admissible.

(5) After examining the papers filed in support of the claim and the report of the investigation, and after a hearing, if any, the commission member to whom the claim was assigned shall make a decision either granting the award or denying the claim.

(6) The commission member making a decision shall file with the executive director a written report setting forth such decision and his reasons therefor. The executive director shall thereupon notify the claimant and furnish him a copy of such report, upon request.

History.—s. 1, ch. 77-452; s. 307, ch. 79-400.

#### **960.10 Determination of claims by the full commission.—**

(1) The claimant may, within 30 days after receipt of the report of the commissioner to whom his claim was assigned, make an application in writing to the commission for consideration of the decision by the full commission.

(2) Upon receipt of an application pursuant to subsection (1) or upon its own motion, the commission shall review the record and affirm or modify the decision of the commission member to whom the claim was assigned. The action of the commission in affirming or modifying such decision shall be final. If the commission receives no application pursuant to subsection (1) or takes no action upon its own motion, the decision of the commission member to whom the claim was assigned shall become the final decision of the commission.

(3) The executive director of the commission shall promptly notify the claimant and the appropriate state fiscal officer of the final decision of the commission and furnish each with a copy of the report setting forth the decision.

History.—s. 1, ch. 77-452.

**960.11 Judicial review of decisions of the commission.—**The final decisions of the commission are reviewable in the district court of appeal as provided in s. 120.68.

History.—s. 1, ch. 77-452.

**960.12 Emergency awards.—**Notwithstanding the provisions of ss. 960.07 and 960.09, if it appears to the commission member to whom the claim is assigned, prior to taking action upon such claim,

that such claim is one with respect to which an award probably will be made, and that either the claimant is a recipient of benefits under the Federal Social Security Act or that undue hardship will result to the claimant if immediate payment is not made, the commission member may make an emergency award to the claimant, pending a final decision in the case, on the following conditions:

(1) The amount of such emergency award shall not exceed \$500;

(2) The amount of such emergency award shall be deducted from any final award made to the claimant; and

(3) The amount of such emergency award which is in excess of the final award, or the full amount of the emergency award if no final award is made, shall be repaid by the claimant to the commission.

History.—s. 1, ch. 77-452; s. 1, ch. 78-44.

#### **960.13 Awards.—**

(1)(a) No award shall be made unless the commission or the commission member, as the case may be, finds that:

1. A crime was committed;
2. Such crime directly resulted in personal injury to, or death of, the victim or intervenor; and
3. Such crime was promptly reported to the proper authorities.

(b) In no case may an award be made when the record shows that such report was made more than 72 hours after the occurrence of such crime unless the commission, for good cause shown, finds the delay to have been justified. The commission, upon finding that any claimant or award recipient has not duly cooperated with all law enforcement agencies, may deny, reduce, or withdraw any award, as the case may be.

(2) Any award shall be granted on an "actual need" basis and shall be provided subsequent to all benefits provided by primary insurance carriers, including, but not limited to, health and accident insurers, workers' compensation, and automobile accident coverage.

(3) Any award made pursuant to this chapter shall be made in accordance with the schedule of benefits and degrees of disability specified in s. 440.15, excluding subsection (5) of that section. If a claimant does not have "average weekly wages" so as to qualify under the formula in s. 440.15, the award shall be in an amount equal to the arithmetic average between the maximum and minimum awards listed in the applicable portions of ss. 440.15 and 440.12.

(4) If there are two or more persons entitled to an award as a result of the death of a person which is the direct result of a crime, the award shall be apportioned among the claimants.

(5) Any award made pursuant to this chapter shall be reduced by the amount of any payments received or to be received by the claimant as a result of the injury or death:

(a) From or on behalf of the person who committed the crime.

(b) From any other public or private source, including an award of workers' compensation pursuant to chapter 440.

(c) From an emergency award under s. 960.12.



(6) In determining the amount of an award, the commission or commission member, as the case may be, shall determine whether, because of his conduct, the victim of such crime or the intervenor contributed to the infliction of his injury or to his death, and the commission or commission member shall reduce the amount of the award or reject the claim altogether, in accordance with such determination. However, the commission or commission member, as the case may be, may disregard for this purpose the contribution of the intervenor to his own injury or death when the record shows that such contribution was attributed to efforts by an intervenor as set forth in s. 960.03(5).

(7) If the commission or commission member, as the case may be, finds that the claimant, if not granted assistance pursuant to this chapter to meet the loss of earnings, support, or out-of-pocket loss, will not suffer serious financial hardship as a result of the loss of earnings or support and the out-of-pocket loss incurred as a result of the injury, the commission or commission member shall deny the award. In determining serious financial hardship, the commission or commission member shall consider all the financial resources of the claimant. Unless a total dependency is established, members of a family are considered to be partially dependent upon a homemaker with whom they reside, without regard to actual earnings.

(8) No claimant shall receive an award in excess of \$10,000.

**History.**—s. 1, ch. 77-452; s. 122, ch. 79-40; s. 308, ch. 79-400.

#### **960.14 Manner of payment; execution or attachment.—**

(1) Any award made under this chapter shall be in accordance with the discretion and direction of the commission as to the manner of payment. No award made pursuant to this chapter shall be subject to execution or attachment other than for expenses resulting from the injury or death which is the basis for the claim. In every case providing for compensation to a claimant under this chapter, the commission may, if in its opinion the facts and circumstances of the case warrant it, convert the compensation to be paid into a partial or total lump sum without discount.

(2) The commission may reconsider a claim at any time and modify or rescind previous orders for compensation, based upon a change in financial circumstances of a victim or intervenor, or one or more of the surviving dependents of either.

**History.**—s. 1, ch. 77-452; s. 309, ch. 79-400.

**960.15 Records.**—The record of a proceeding before the commission or a commission member shall be a public record. However, any record or report obtained by a commission member or the commission, the confidentiality of which is protected by any other law or regulation, shall remain confidential, subject to such law or regulation.

**History.**—s. 1, ch. 77-452.

**960.16 Subrogation.**—Payment of an award pursuant to this chapter shall subrogate the state, to the extent of such payment, to any right of action accruing to the claimant or to the victim or interve-

nor to recover losses resulting from the crime with respect to which the award is made.

**History.**—s. 1, ch. 77-452.

#### **960.17 Award constitutes debt owed to state.—**

(1) Any payment of benefits to, or on behalf of, a victim or other claimant under this chapter creates a debt due and owing to the state by any person found, in either a civil or criminal court proceeding in which he is a party, to have committed such criminal act.

(2) The court, when placing on probation as provided in chapter 948 any person who owes a debt to the state as a consequence of a criminal act, may set as a condition of probation the payment of the debt to the state. The court may also set the schedule or amounts of payments subject to modification based on change of circumstances.

(3) The Parole and Probation Commission shall have the right to make payment of the debt to the state a condition of parole under chapter 947, subject to modification based on change of circumstances.

(4) Payments authorized under this section are to be paid to the Crimes Compensation Trust Fund.

**History.**—s. 1, ch. 77-452; s. 310, ch. 79-400.

**960.18 Penalty for fraud.**—Any person who procures compensation under this chapter by any fraud, or any person who counsels another person to procure compensation under this chapter by any fraud, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Any moneys so procured shall be recoverable by the commission, including punitive damages, costs of such action plus interest, and any attorney's fees paid by the commission.

**History.**—s. 1, ch. 77-452.

**960.19 Attorney's fees.**—The commission may determine and award reasonable attorney's fees, commensurate with services rendered, to be paid by the commission to the attorney representing the claimant. Attorney's fees may be denied on a finding that a claim or appeal is frivolous. Attorney's fees shall be in addition to awards and may be made whether or not an award is granted. Any attorney who contracts for, or receives, any larger sum than the amount allowed shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 1, ch. 77-452.

**960.20 Additional costs.**—When any person, after January 1, 1978, pleads guilty or nolo contendere to, or is convicted of, any felony or misdemeanor under the laws of this state, there shall be imposed as an additional cost in the case, in addition to any other cost required to be imposed by law, the sum of \$10. The court may waive, modify, or defer payment of the additional costs imposed by this act if it finds they would impose a severe financial hardship. All such sums shall be paid over to the State Treasurer, to be deposited in the Crimes Compensation Trust

Fund. Under no condition shall a political subdivision be held liable for the payment of this sum of \$10.

History.—s. 1, ch. 77-452; s. 311, ch. 79-400.

**960.21 Crimes Compensation Trust Fund.—**

(1) There is hereby created a special fund, to be known as the Crimes Compensation Trust Fund, for the purpose of providing for the payment of all necessary and proper expenses incurred by the operation of the commission and the payment of claims. The commission shall administer the Crimes Compensation Trust Fund.

(2) The moneys placed in the Crimes Compensation Trust Fund shall consist of all moneys appropriated by the Legislature for the purpose of compensating the victims of crime and other claimants under this act, and of moneys recovered on behalf of the commission by subrogation or other action, recovered through restitution, received from the Federal Government, received from additional court costs, received from fines, or received from any other public or private source.

(3) All administrative costs of this chapter shall be paid out of moneys collected pursuant to this chapter and deposited in the Crimes Compensation Trust Fund.

History.—ss. 1, 7, ch. 77-452; s. 312, ch. 79-400.

**960.22 Application for federal funds.—**The commission is authorized to apply for funds from, and to submit all necessary forms to, any federal agency participating in a cooperative program to compensate victims of crime.

History.—s. 1, ch. 77-452.

**960.23 Notice of provisions of this chapter.—**

It shall be the duty of every hospital licensed under the laws of this state to display prominently in its emergency room posters giving notification of the existence and general provisions of this chapter. The

department shall provide posters, application forms as approved by the commission, and general information regarding the provisions of this chapter to each hospital licensed to operate in this state and to each law enforcement agency.

History.—s. 1, ch. 77-452.

**960.24 Duties and functions of the department.—**It shall be the duty of the department to assist persons who are victims of crime. The department shall:

(1) Seek to identify the victims of crime and inform them of the provisions of this chapter.

(2) Serve as a clearinghouse for information relating to the problems encountered by the victims of crime.

(3) Enlist the assistance of public and voluntary health, education, welfare, and rehabilitation agencies or groups in a concerted effort to aid persons who are victims of crime.

(4) Assist public agencies and local governments to provide assistance for victims of crime.

(5) Act as an advocate for the victims of crime to obtain aid and services from public or private health, education, welfare, or rehabilitation agencies or groups to treat persons who have been victims of crime.

History.—s. 1, ch. 77-452.

**960.25 Surcharge on fines, civil penalties, and bail bonds.—**In addition to any fine or civil penalty prescribed by law, there is hereby established and created an additional 5 percent surcharge thereon which shall be imposed, levied, and collected together with such fine or civil penalty. The principal amount of any bail bond given as prescribed by law shall be increased by an additional 5 percent surcharge which is established hereby.

History.—s. 6, ch. 77-452.

